



**Judicial
Watch**

*Because no one
is above the law!*

October 26, 2012

VIA CERTIFIED MAIL & FACSIMILE:

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Re: FOIA seeking records re: scope of background checks for DACA applicants

Dear Sir or Madam:

The Immigration & Nationality Act (INA) directs the U.S. Citizenship & Immigration Service (USCIS) to maintain "direct and continuous" contact with the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) -- among other law enforcement agencies -- "for the purpose of obtaining and exchanging information" necessary to determine whether an alien is ineligible to enter or remain in the United States due to criminal conduct, among other disqualifying factors. USCIS also mandates the "coordinated, uniform, and efficient" implementation of such background checks among all classes of immigration applicants.

INA concurrently directs the Attorney General and FBI actively to assist in determining an applicant's eligibility for admission or continued stay by proactively

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alerting the State Department and USCIS whether the alien at issue is indexed in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, or any other files maintained by the National Crime Information Center, which allows users to interface with all 50 states via the National Law Enforcement Telecommunications System (NLETS).

Hence, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc., (Judicial Watch) hereby requests that your office provide the following records within twenty (20) business days:

All communications, memoranda, emails, policy guidance, directives, initiatives, and any other correspondence respecting the scope and extent of background checks to be performed (or not) on aliens applying to the Obama administration's Deferred Action for Childhood Arrivals (DACA) program.

The time frame for this request is November 1, 2011 through the present.

In placing this request, Judicial Watch directs your attention to President Barack Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act which states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA... The presumption of disclosure should be applied to all decisions involving FOIA.

Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of

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the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)(defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § 552 (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

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Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents. Judicial Watch anticipates prompt receipt of the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your timely compliance with all applicable laws.

Sincerely,



Lisette Garcia, J.D.