

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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|-----------------------------------|---|--|
| JUDICIAL WATCH, INC., |) | |
| 425 Third Street, S.W., Suite 800 |) | |
| Washington, DC 20024, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| U.S. DEPARTMENT OF DEFENSE, |) | |
| 1400 Defense Pentagon |) | |
| Washington, DC 20301, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

Civil Action No.

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this actions against Defendant U.S. Department of Defense to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street S.W., Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to FOIA. Plaintiff analyzes

the responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant U.S. Department of Defense is an agency of the United States Government and is headquartered at 1400 Defense Pentagon, Washington, DC 20301. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On June 3, 2014, Plaintiff submitted a FOIA request to Defendant, by certified mail, seeking access “any and all records concerning, regarding, or relating to the determinations of the Secretary of the U.S. Department of Defense” to transfer five non-U.S. citizens detained at the U.S. Naval Station, Guantanamo Bay, Cuba to the State of Qatar. The request specified that the transfer took place on May 31, 2014.

6. By letter dated June 9, 2014, Defendant acknowledged receiving Plaintiff’s request on June 3, 2014. The letter also stated that Defendant had assigned the request Case Number 14-F-0931.

7. By email dated July 17, 2014, Defendant requested clarification of Plaintiff’s request.

8. By email dated July 22, 2014, Plaintiff clarified that it was requesting any and all Secretary of Defense memos signed on or before May 31, 2014, that approved the release of the five Guantanamo Bay detainees exchanged for Sgt. Bowe Berdahl, who included:

Khair Ulla Said Wali Khairkhwa
Mullah Mohammad Fazi
Mullah Norullah Noori
Abdula Haq Wasiq
Mohammad Nabi Omari.

In addition, Plaintiff also clarified that it was requesting

copies of any “determinations” made by the Secretary of Defense determining that the aforementioned detainees are no longer a threat to U.S. national security, if such determinations are considered to be separate and apart from the “memos” that the Secretary of Defense may have signed approving the release of the five detainees. According to Section 1035(a)(1) of the National Defense Authorization Act for Fiscal Year 2014, signed by President Obama on December 26, 2013, the Secretary of the U.S. Department of Defense is authorized “to transfer or release any individual detained at [the Naval Station in Guantanamo Bay, Cuba] to the individual’s country of origin, or any foreign country, IF THE SECRETARY DETERMINES . . . THAT THE INDIVIDUALS IS NO LONGER A THREAT TO THE NATIONAL SECURITY OF THE UNITED STATES.” [emphasis added].

9. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with the request within twenty (20) working days of Plaintiff’s July 22, 2014 clarification and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Defendant’s determination was due by August 19, 2014 at the latest.

10. As of the date of this complaint, Defendant has failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

11. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

12. Plaintiff realleges paragraphs 1 through 11 as if fully stated herein.

13. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

14. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of records responsive to Plaintiff's FOIA request, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 18, 2014

Respectfully submitted,

/s/ Jason Aldrich

Jason Aldrich

D.C. Bar No. 495488

JUDICIAL WATCH, INC.

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