

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

JUDICIAL WATCH, INC.,)
425 Third Street, SW, Suite 800)
Washington, D.C. 20024,)
)
Plaintiff,) Civil Action No.)
)
v.)
)
U.S. DEPARTMENT OF HEALTH)
& HUMAN SERVICES,)
200 Independence Avenue, SW)
Washington, D.C. 20201,)
)
Defendant.)
_____)

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Health and Human Services 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 SW, Suite 800, Washington, D.C. 20024. Plaintiff seeks to promote transparency, integrity, and accountability 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 Health and Human Services is an agency of the U.S. Government and is headquartered at 200 Independence Avenue, SW, Washington, D.C. 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On November 19, 2014, Plaintiff sent a FOIA request to Defendant seeking the following records:

Any and all records concerning, regarding or related to contracts and/or consultancy agreements between HHS and Dr. Jonathan Gruber, including but not limited to [a] contract awarded June 19, 2009 for “Technical Assistance in Evaluating Options for National Healthcare Reform” (Contract Award Number HHSP23320091301EC).

6. On November 25, 2014, the Defendant acknowledged receipt of Plaintiff’s November 19, 2014 request and assigned it FOIA Case No. 15-0096.

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff’s November 19, 2014 request within twenty (20) working days and notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Defendant’s determination and notification to Plaintiff was due no later than December 24, 2014.

8. On December 17, 2014, Plaintiff sent a second FOIA request to Defendant seeking the following records:

a. Any and all records concerning, regarding, or related to communication between Jonathan Gruber and the Congressional Budget Office regarding the Affordable Care Act and/or federal and state health care exchanges;

b. Any and all records concerning, regarding, or related to communication between Jonathan Gruber and any other government agency regarding the Affordable Care Act and/or federal and state health care exchanges;

c. Any and all records concerning, regarding, or related to communication between Jonathan Gruber and any office of the Executive Branch regarding the Affordable Care Act and/or federal and state health care exchanges.

9. On December 30, 2014, the Defendant acknowledged receipt of Plaintiff's December 17, 2014 request and assigned it FOIA Request No. 2015-0286-GD.

10. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff's December 17, 2014 request within twenty (20) working days and notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Defendant's determination and notification to Plaintiff was due no later than January 29, 2015.

11. As of the date of this complaint, Defendant has failed to: (i) determine whether to comply with either the November 19, 2014 request or the December 17, 2014 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.

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 violating FOIA by unlawfully withholding records responsive to Plaintiff's FOIA requests.

14. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply fully with FOIA.

WHEREFORE, Plaintiff respectfully requests that the Court: (1)) order Defendant to conduct a search for any and all records responsive to Plaintiff's requests and order Defendant to demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to the requests and *Vaughn* indexes of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the requests; (4) grant Plaintiff an award of attorney's 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: February 12, 2015

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Jason B. Aldrich

Jason B. Aldrich
D.C. Bar No. 495488
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5172

Counsel for Plaintiff