

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

JUDICIAL WATCH, INC.,	)	
425 Third Street, S.W., Suite 800	)	
Washington, DC 20024,	)	
	)	Civil Action No.
Plaintiff,	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF DEFENSE,	)	
1400 Defense Pentagon	)	
Washington, DC 20301,	)	
	)	
Defendant.	)	

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**COMPLAINT**

Plaintiff Judicial Watch, Inc. brings this action 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, 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

8. On November 6, 2014, by email, Plaintiff replied to Mr. Marye. Plaintiff narrowed its request to:

Any and all records of communications, including but not limited to, emails and text messages, from or to (as either a direct recipient, "Cc" or "Bcc") Secretary of Defense Chuck Hagel, and the following members of the Joint Chiefs of Staff: the Chairman of the Joint Chiefs of Staff; the Military Service Chiefs of the Army, Navy, Air Force and the Marine Corps; and the Chief of the National Guard Bureau, regarding, concerning, or related to the 'initial report' of the Army's review of the disappearance of Bowe Bergdahl from his post and his subsequent capture by Taliban forces. The time frame of the records sought is September 1, 2014 to October 28, 2014.

9. In addition, Plaintiff attached a news media article concerning the initial report referenced in the narrowed FOIA request. Plaintiff subsequently confirmed that Mr. Marye received the email and that Defendant had no further issues with the now-narrowed request.

10. 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 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 December 8, 2014 at the latest.

11. On January 29, 2015, Plaintiff sent an email to Mr. Marye requesting an update on the status of its FOIA request. Plaintiff also spoke with Mr. Marye on that day. Mr. Marye informed Plaintiff that he did not know when Defendant would make a determination on Plaintiff's narrowed FOIA request.

12. 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.

13. 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)**

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

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

16. 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: February 11, 2015

Respectfully submitted,

/s/ Michael Bekesha  
Michael Bekesha  
D.C. Bar No. 995749  
JUDICIAL WATCH, INC.  
425 Third Street S.W., Suite 800  
Washington, DC 20024  
(202) 646-5172

*Counsel for Plaintiff*