



**Judicial
Watch**[®]
*Because no one
is above the law!*

CERTIFIED MAIL & FACSIMILE (202) 514-1009

August 4, 2016

Director, Office of Information Policy
U.S. Dep't of Justice
Suite 11050
1425 New York Avenue NW
Washington, DC 20530-0001

**Re: Freedom of Information Act Appeal
Request DOJ-2016-000445**

Dear Sir/Madam:

Judicial Watch, Inc. hereby appeals the U.S. Dep't of Justice's final disposition of the above-captioned Freedom of Information Act ("FOIA") request.

On July 29, 2016, Judicial Watch, Inc. received a "Final Disposition" of FOIA Request DOJ-2006-000455. The disposition advised Judicial Watch Inc. that no records responsive to its request had been located and appears to seek payment of \$50,000 in search fees. A copy of the disposition is included herewith.

The request, dated October 5, 2015, sought waivers of both search and duplication fees. The disposition makes no reference to either request. In addition, the request also stated, "[I]n the event our request for waiver of search and/or duplication fees 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." Judicial Watch never authorized the department to incur \$50,000 in search fees.

In addition, the department's own regulations state, in pertinent part, as follows:

- (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is

charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

28 C.F.R. § 16.10(e). The department did not comply with any of these regulations.

Moreover, FOIA and the department's regulations make clear that search fees may not be charged where an agency fails to comply with the time limits in which to respond to a request and no unusual or exceptional circumstances, as those terms are defined by FOIA, apply. 5 U.S.C. § 552(a)(4)(A)(viii); 28 C.F.R. 16.10(d)(2). The department did not comply with FOIA's time limits and makes no assertion, much less demonstrates, that unusual or exceptional circumstances apply. As a result, it may not assess search fees against Judicial Watch in connection with the request.

Sincerely,

Judicial Watch, Inc.



Paul J. Orfanedes
Director of Litigation

Enclosure

Paul Orfanedes

Subject: FW: Final Disposition, Request DOJ-2016-000445
Attachments: DOJ-2016-000445 Invoice 20160729.pdf

From: ex_OIP-NoReply@jmd.usdoj.example.com <ex_OIP-NoReply@jmd.usdoj.example.com>
Sent: Friday, July 29, 2016 11:40 AM
To: Bill Marshall
Subject: Final Disposition, Request DOJ-2016-000445

DOJ-2016-000445 has been processed with the following final disposition: No records.

FOIA Invoice

Department of Justice
 1425 New York Avenue N.W.
 Suite 11050
 Washington, DC 20005

Mail Payment to 1425 New York Avenue NW Suite 11050 Washington, DC 20530		FOIA Tracking Number DOJ-2016-000445
		Invoice Date 07/29/2016
Requester Contact Information William F. Marshall Judicial Watch, Inc. Suite 800 425 Third Street, SW Washington, DC 20024 bmarshall@judicialwatch.org 202-646-5720		Description of Records Requested Stong Cities Network
Request Received	Date 10/19/2015	By Department of Justice
Request Fulfilled by Agency	Date 07/29/2016	By Rashad Javaid
Comments/Instructions Sample Pay.gov Help Text		
Request Fee Category Commercial		
Description of Costs	Quantity	Amount (USD)
Other		\$50,000.00
Costs Sub-total		\$50,000.00
AMOUNT DUE		\$50,000.00