

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

JUDICIAL WATCH, INC.,)
425 Third Street, S.W., Suite 800)
Washington, DC 20024,)

Plaintiff,)

Civil Action No.)

v.)

CENTRAL INTELLIGENCE AGENCY)
Office of General Counsel)
Washington, DC 20505,)

and)

UNITED STATES DEPARTMENT)
OF JUSTICE,)
950 Pennsylvania Avenue, N.W.)
Washington, DC 20530-0001,)

and)

UNITED STATES DEPARTMENT)
OF THE TREASURY,)
1500 Pennsylvania Avenue, N.W.)
Washington, DC 20220,)

Defendants.)

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendants Central Intelligence Agency, United States Department of Justice, and United States Department of the Treasury 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 agencies' responses to its requests and disseminates both its findings and the requested records to the public to inform them about "what their government is up to."

4. Defendant Central Intelligence Agency ("CIA") is an agency of the U.S. Government and is headquartered in Langley, Virginia. The CIA has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant United States Department of Justice is an agency of the United States Government and is headquartered at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

6. Defendant United States Department of the Treasury is an agency of the United States Government and is headquartered at 1500 Pennsylvania Ave, N.W., Washington, DC 20220. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

7. On January 25, 2017, Plaintiff submitted a FOIA request to the CIA, via certified mail and facsimile, seeking access to the following:

Any and all records regarding, concerning, or related to the investigation of retired Gen. Michael Flynn's communications with Russian Ambassador to the United States Sergey Kislyak between October 1, 2016 and the present.

For purposes of clarification, please find enclosed a CNN report regarding the investigation, which cites information that was provided to CNN by members of the Intelligence Community.

8. That same day, January 25, 2017, Plaintiff also submitted FOIA requests to the Federal Bureau of Investigation ("FBI"), a component of the United States Department of Justice, and the United States Department of the Treasury ("Treasury"). Plaintiff's request to the FBI was submitted via certified mail and email, and Plaintiff's request to Treasury was submitted via certified mail and facsimile. Plaintiff's request to the FBI and Treasury seek access to the following:

Any and all records regarding, concerning, or related to the investigation of retired Gen. Michael Flynn's communications with Russian Ambassador to the United States Sergey Kislyak between October 1, 2016 and the present.

This request includes, but is not limited to, any and all related warrants, affidavits, declarations, or similar records regarding the aforementioned investigation.

For purposes of clarification, please find enclosed a CNN report regarding the investigation, which cites information that was provided to CNN by members of the Intelligence Community.

9. Because all three requests were submitted either by facsimile or email, they were received the same day they were sent, January 25, 2017.

10. Additionally, the copy of the request Plaintiff submitted to the CIA via certified mail was received, according to U.S. Postal Service records, on February 1, 2017. The copy of the request Plaintiff submitted to the FBI via certified mail was received, according to U.S. Postal Service records, on January 30, 2017. The copy of the request Plaintiff submitted to Treasury via certified mail was received, according to U.S. Postal Service records, on February 1, 2017.

11. The FBI has acknowledged receipt of Plaintiff's request and advised Plaintiff that its request has been assigned FOIPA Request No. 1366988-000.

12. Treasury also has acknowledged receipt of Plaintiff's request and advised Plaintiff that its request has been assign FOIA Request Number 2017-01-202.

13. The CIA has not acknowledged receipt of Plaintiff's request.

14. As of the date of this Complaint, the CIA, FBI, and Treasury have failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records Defendants intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

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

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

16. Defendants are violating FOIA by failing to search for and produce all records responsive to Plaintiff's requests or demonstrate that the requested records are lawfully exempt from production.

17. Plaintiff is being irreparably harmed by reason of Defendants' violations of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to comply with FOIA.

18. To trigger FOIA's administrative exhaustion requirement, Defendants were required to determine whether to comply with Plaintiff's requests within twenty (20) working days of receipt. At the latest, the CIA's determination was due by March 2, 2017, the FBI's determination was due by February 28, 2017, and Treasury's determination was due by March 1, 2017. At a minimum, by these dates Defendants were required to: (i) gather and review the

requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendants intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

19. Because Defendants failed to make determinations with respect to Plaintiff's requests within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendants to search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that they employed search methods reasonably calculated to uncover all records responsive to the requests; (2) order Defendants to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (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: March 6, 2017

Respectfully submitted,

/s/ James F. Peterson
James F. Peterson
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Counsel for Plaintiff