

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

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	Civil Action No.
Plaintiff,)	
v.)	
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY,)	
Office of the General Counsel)	
245 Murray Lane SW)	
Mailstop 0485)	
Washington, DC 20528,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Homeland Security 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, 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 agencies' responses and disseminates both 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 Homeland Security is an agency of the U.S. Government and is headquartered at 245 Murray Lane SW, Washington, DC 20528. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. U.S. Immigration and Customs Enforcement ("ICE") is a component of Defendant.

6. On its website, ICE states that it "remains committed to publishing the most accurate information available regarding declined detainers across the country and continues to analyze and refine its reporting methodologies. While this analysis is ongoing, the publication of the Declined Detainer Outcome Report (DDOR) will be temporarily suspended." Similarly, on April 11, 2017, CNN reported that ICE decided to suspend the weekly publication of the DDOR after receiving "complaints." Tal Kopan, *Trump admin suspends controversial sanctuary city reports*, CNN (Apr. 11, 2017, available at <http://www.cnn.com/2017/04/11/politics/trump-sanctuary-city-detainer/index.html>).

7. On April 13, 2017, Plaintiff submitted by certified mail a FOIA request to U.S. Immigration and Customs Enforcement, a component of Defendant, seeking access to the following records:

- A. All complaints received by ICE concerning the DDOR;
- B. All records concerning the suspension of the weekly publication of the DDOR; and
- C. All records identifying the reporting methodologies used to create

the DDOR.

8. According to U.S. Postal Service records, ICE received Plaintiff's FOIA request on April 17, 2017.

9. As of the date of this Complaint, ICE has failed to: (i) determine whether to comply with Plaintiff's FOIA 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 I
(Violation of FOIA, 5 U.S.C. § 552)

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant is violating FOIA by failing to search for and produce all records responsive to Plaintiff's FOIA request or demonstrate that the requested records are lawfully exempt from production.

12. Plaintiff is being irreparably harmed by Defendant's violations of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

13. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a determination with respect to Plaintiff's FOIA request within twenty (20) working days of receiving the request. Accordingly, Defendant's determination was due on or before May 15, 2017. At a minimum, Defendant was required to: (i) gather and review the requested records; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant 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).

14. Because Defendant failed to make determinations with respect to Plaintiff's FOIA request 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 Defendant to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive 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: May 25, 2017

Respectfully submitted,

/s/ Michael Bekesha
Michael Bekesha
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