

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

JUDICIAL WATCH, INC.,)
 425 Third Street SW, Suite 800)
 Washington, DC 20024,)
)
 Plaintiff,)
)
 v.)
)
 U.S. DEPARTMENT OF STATE)
 The Executive Office)
 Office of the Legal Adviser, Suite 5.600)
 600 19th Street NW)
 Washington, DC 20522,)
)
 Defendant.)
 _____)

Civil Action No.

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of State 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, 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 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 State (“State Department”) is an agency of the United States Government headquartered at 2201 C Street NW, Washington, DC 20520. The State Department has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On October 23, 2017, Plaintiff submitted a FOIA request to the U.S. Department of State (“DoS” or “State”) seeking the following:

1. Any and all records regarding, concerning or relating to any contracts, grants or other allocations/disbursements of funds by the State Department to the Open Society Foundation (“OSF”) and/or any OSF subsidiaries/affiliates, and/or OSF personnel operating in Columbia, as well as the following entities: Fundacion Ideas para la Paz; La Silla Vacía; DeJusticia; Corporacion Nuevo Arco Iris; Paz y Reconciliación; Global Drug Policy Program; and news portal Las Dos Orillas. Such records shall include, but not be limited to proposals, contracts, requests for funding, payment authorizations, invoices and similar budget records, as well as any and all related communications, whether by e-mails, text messages, or instant chat, between State Department officials, employees or representatives and officials, employees or representatives of the U.S. Agency for International Development (“USAID”).

2. Any and all records of communication, whether by e-mails, text messages, or instant chats, between any officials, employees or representatives of the State Department in Columbia, including but not limited to Ambassador Kevin Whitaker, and any officials, employees or representatives of the Open Society Foundation, its subsidiaries/affiliates, and/or those entities identified in Bullet 1.

3. Any and all assessments, evaluations, reports or similar records relating to the work of OSF in Columbia, its subsidiaries/affiliates and/or the other entities identified in Bullet 1.

4. Any and all records of communication transmitted via the State Department’s SMART system sent to or from any employee of the U.S. Government operating under the authority of the Chief of Mission in Bogota that pertains to OSF, its subsidiaries/affiliates and/or the other entities listed in Bullet 1.

The time frame of the request was identified as January 1, 2015 through the present.

6. By letter dated November 27, 2017, State confirmed that it received the request on October 31, 2017 and assigned the request Tracking Number F-2017-16690.

7. As of the date of this Complaint, Defendant has 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 Defendant 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

8. Plaintiff realleges paragraphs 1 through 7 as if fully stated herein.

9. 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 with FOIA.

10. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiff's request by November 30, 2017 at the latest. At a minimum, Defendant was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination; and (iv) make the records available promptly thereafter. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

11. Because Defendant failed to determine whether to fully comply with Plaintiff's 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 conduct searches for any and all records responsive 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: March 23, 2018

Respectfully submitted,

s/ Jason B. Aldrich
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