

**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,)
)
 v.)
)
 U.S. DEPARTMENT OF JUSTICE,)
 950 Pennsylvania Avenue, N.W.)
 Washington, DC 20530-0001,)
)
 Defendant.)
 _____)

Civil Action No.

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against the U.S. Department of Justice (“Defendant” or “DOJ”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. 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 the Freedom of Information Act

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

STATEMENT OF FACTS

5. This lawsuit arises out of two separate FOIA requests Plaintiff submitted to the Defendant and the Federal Bureau of Investigation (“FBI”), a component of Defendant.

6. On May 21, 2018, Plaintiff submitted a FOIA request to the FBI seeking access to the following records:

All records of internal FBI communications, including emails (whether on .gov or non-.gov email accounts), text messages or instant chats, of officials in the offices of the FBI Director, FBI Deputy Director and Office of General Counsel regarding possible Russian involvement and/or interference in the 2016 US presidential campaign.

The time frame for the requested records is January 2016 through May 2017.

7. By letter dated May 30, 2018, the FBI acknowledged receipt of Plaintiff’s request and advised Plaintiff that the request had been assigned FOIPA Request No. 1406737-000.

8. By letter dated June 18, 2018, the FBI asserted that all records responsive to Plaintiff’s FOIA request were exempt from disclosure under 5 U.S.C. § 552(b)(7)(A) and thereby withheld all responsive records.

9. By letter dated July 18, 2018, Plaintiff administratively appealed the FBI’s determination to withhold all records responsive to Plaintiff’s FOIA request.

10. By letter dated July 31, 2018, the Office of Information Policy (OIP) of the DOJ acknowledged receipt of Plaintiff’s administrative appeal of the FBI’s determination to withhold all records and assigned the appeal number DOJ-AP-2018-007286.

11. By email dated September 27, 2018, the OIP of the DOJ affirmed the FBI's determination to withhold all responsive records pursuant to 5 U.S.C. § 552(b)(7)(A).

12. By letter dated May 21, 2018, Plaintiff submitted the second FOIA request to the DOJ seeking access to the following records:

All records of internal DOJ communications, including emails (whether on .gov or non-.gov email accounts), text messages or instant chats, of officials in the offices of the Attorney General and Deputy Attorney General regarding possible Russian involvement and/or interference in the 2016 US presidential campaign.

The time frame for the requested records is January 2016 through May 2017.

13. On June 5, 2018, the DOJ acknowledged receipt of Plaintiff's FOIA request and assigned it Tracking Number: DOJ-2018-005906.

14. By letter dated July 3, 2018, the DOJ indicated that it would need additional time beyond the statutory time period provided by FOIA to respond to Plaintiff's FOIA request. Plaintiff has not received any other correspondence about its FOIA request from the DOJ since then.

15. As of the date of this Complaint, the DOJ 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; and/or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I

(Violation of FOIA, 5 U.S.C. § 552)

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

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

18. To trigger FOIA's administrative exhaustion requirement, the DOJ was required to make a final determination on Plaintiff's FOIA request within the time limits set by FOIA. Accordingly, the DOJ's determination was due by July 18, 2018.

19. Because the DOJ failed to make a final determination on Plaintiff's FOIA request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

20. Plaintiff is further being irreparably harmed by the FBI's wrongful determination to withhold all records responsive to Plaintiff's FOIA request under FOIA Exemption 5 U.S.C. § 552(b)(7)(A), and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and *Vaughn* indices 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 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 15, 2019

Respectfully submitted,

/s/ Ramona R. Cotca
Ramona R. Cotca (D.C. Bar No. 501159)
JUDICIAL WATCH, INC.

Counsel for Plaintiff