

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. FOOD AND DRUG  
ADMINISTRATION,

Defendant.

Civil Action No. 07-00561 (RCL)

**AMENDED COMPLAINT**

Plaintiff Judicial Watch, Inc. brings this action against Defendant Food and Drug Administration (“FDA”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Judicial Watch, Inc. 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 non-profit, educational organization incorporated under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024.

4. Defendant FDA is an agency of the United States Government. Defendant FDA has its principal place of business at 5600 Fishers Lane, Rockville, MD 20857. Defendant FDA has possession, custody, and control of records to which Plaintiff seeks access.

## **STATEMENT OF FACTS**

5. On August 22, 2006, Plaintiff sent a FOIA request to Defendant FDA seeking access to the following records:

- a. Any and/or all communications and/or correspondence between the FDA and Senator Hillary Rodham Clinton (D-NY) regarding “.75 levonorgestrel,” also sold under the trade name “Plan B.”
- b. Any and/or all communications and/or correspondence between the FDA and any agent and/or representative of Senator Hillary Rodham Clinton (D-NY), and/or the Office of Senator Hillary Rodham Clinton regarding “.75 levonorgestrel,” also sold under the trade name “Plan B.”

6. Defendant FDA acknowledged receipt of Plaintiff’s FOIA request by letter dated August 24, 2006.

7. Defendant FDA was required by 5 U.S.C. § 552(a)(6)(A)(i) to respond to Plaintiff’s FOIA request within twenty (20) business days, or on or about September 20, 2006.

8. As of March 21, 2007, Defendant FDA failed to produce records responsive to Plaintiff’s request or otherwise respond to the request in any fashion. Plaintiff filed suit on March 21, 2007.

9. On April 18, 2007, Plaintiff sent a FOIA request to Defendant FDA seeking access to the following records:

- a. Any and/or all communications and/or correspondence between the FDA and Senator Patty Murray (D-WA) regarding “.75 levonorgestrel,” also sold under the trade name “Plan B.”
- b. Any and/or all communications and/or correspondence between the FDA and any agent and/or representative of Senator Patty Murray (D-WA), and/or the Office of Senator Patty Murray regarding “.75 levonorgestrel,” also sold under the trade name “Plan B.”

10. Defendant FDA acknowledged receipt of Plaintiff's FOIA request by letter dated April 20, 2007.

11. Defendant FDA was required by 5 U.S.C. § 552(a)(6)(A)(i) to respond to Plaintiff's FOIA request within twenty (20) business days, or on or about May 18, 2007

12. As of May 30, 2007, Defendant FDA has failed to produce records responsive to Plaintiff's request or otherwise respond to the request in any fashion.

13. On April 20, 2007, Plaintiff sent a FOIA request to Defendant FDA seeking access to the following records:

- a. Any and/or all communications and/or correspondence between the FDA and Senator Michael Enzi (R-WY) regarding ".75 levonorgestrel," also sold under the trade name "Plan B."
- b. Any and/or all communications and/or correspondence between the FDA and any agent and/or representative of Senator Michael Enzi (R-WY), and/or the Office of Senator Michael Enzi regarding ".75 levonorgestrel," also sold under the trade name "Plan B."

14. Defendant FDA acknowledged receipt of Plaintiff's FOIA request by letter dated April 23, 2007.

15. Defendant FDA was required by 5 U.S.C. § 552(a)(6)(A)(i) to respond to Plaintiff's FOIA request within twenty (20) business days, or on or about May 21, 2007

16. As of May 30, 2007, Defendant FDA has failed to produce records responsive to Plaintiff's request or otherwise respond to the request in any fashion.

**COUNT 1**  
(Violation of FOIA)

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

18. Defendant FDA has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's FOIA requests of August 22, 2006, April 18, 2007 and April 20, 2007 within the twenty (20) day time period required by 5 U.S.C. § 552(a)(6)(A)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) require Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's FOIA requests; (3) require Defendant to produce *Vaughn* indices of any responsive records subject to a claim of exemption; (4) enjoin Defendant from continuing to withhold any and all non-exempt, responsive records from Plaintiff; (5) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (6) grant Plaintiff such other relief as the Court deems just and proper.

Dated: May 30, 2007

Respectfully submitted,

JUDICIAL WATCH, INC.

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