



**Judicial
Watch™**
*Because no one
is above the law!*

July 31, 2008

VIA CERTIFIED MAIL

U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Att: Mint Annex Building, FOIA Division
Washington, D.C. 20229
(Art. No.: 7008 0150 0003 3587 0533)

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the U.S. Customs and Border Protection produce any and all agency records concerning the following subjects within twenty (20) business days:

1. Land and/ or property in (Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron Counties Texas) surveyed, considered, bought, and/ or seized for construction of a border fence (referred to as Secure Border Initiative, Southwest Border Fence, Border Wall, etc).

For purpose of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records, recordings, or representations of any kind, including without limitation all

cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed, recorded, or transcribed. The term "record" also shall mean any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact me immediately at 202-646-5172 or jsmall@judicialwatch.org.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii).

Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. Judicial Watch, Inc. regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

As a member of the news media, Judicial Watch uses the following means, among others, to publish and disseminate its distinctive work to the public:

(1) Judicial Watch maintains an Internet site, www.JudicialWatch.org, where the public can review records obtained through FOIA and read editorial works prepared by Judicial Watch, Inc., including news releases, based on FOIA materials. This website is viewed by over 20,000 people per day on average, and on several occasions, has logged up to 1,000,000 visitors in a single day.

(2) Judicial Watch also publishes a monthly newsletter in which it publishes its own editorial works and presents, analyzes, and explains information it obtains through FOIA. Judicial Watch, Inc.'s newsletter is sent to approximately 140,000 individuals each month. The organization also utilizes an e-mail Infonet service that sends out updates of Judicial Watch's activities over the Internet to almost 18,000 persons.

(3) Judicial Watch also periodically publishes and disseminates its own distinct works in the form of books and reports. For example:

- September 1998 – Judicial Watch, Inc. published the Interim Report on Crimes and Other Offenses Committed by President Bill Clinton Warranting His Impeachment and Removal from Elected Office. This 145-page report was accompanied by nearly 4,000 pages of supporting documentation and was crafted, in part, from the raw materials obtained by Judicial Watch through FOIA requests, among other regular means.
- August 1999 – Judicial Watch published Filegate Status Report, which is 136 pages long and is supported by nearly 1000 pages of documentation.
- March 2001 – Judicial Watch published The Judicial Watch Florida Recount, an independent, non-partisan analysis of the results of Florida's hotly contested 2000 Presidential election based upon a sampling of ballots reviewed by Judicial Watch pursuant to Florida's version of FOIA.
- February 2002 – Judicial Watch published The Judicial Watch 2002 "State of the Union" Report, Bush Administration Ethics Enforcement: "A Failure of Leadership."
- September 2002 – Judicial Watch published Fatal Neglect: The U.S. Government's Continuing Failure to Protect American Citizens from Terrorists.
- November 21, 2003 – Judicial Watch produced Analysis of GAO Testimony: US Postal Service – Clear Communication With Employees Needed Before Reopening of Brentwood Facility. (GAO-04-2057T/October 23, 2003). Comptroller General of the United States David M. Walker, in a reply to Judicial Watch's Analysis of GAO Testimony, wrote on December 17, 2003, "We view Judicial Watch as an important accountability organization in Washington, D.C."
- June 29, 2005 – Judicial Watch produced a special Report US Border Patrol Survey Analysis, an analysis of documents produced under FOIA.
<http://www.judicialwatch.org/borderpatrolreport.shtml>
- February 3, 2006 – Judicial Watch held an educational panel at the National Press Club and published a Special Report of the event, "A Discussion of Ethics in Washington."
<http://www.judicialwatch.org/archive/2006/special-report-ethics.pdf>
- May 9, 2006 – Judicial Watch produced The Clinton RU-486 Files, a special report of the Clinton administration's effort to put the abortion drug RU-486 on

the market in the United States, based on documents obtained from the National Archives at the Clinton Presidential Library and in the course of a five year FOIA litigation battle between Judicial Watch and the U.S. Food and Drug Administration (FDA). <http://judicialwatch.org/archive/2006/jw-ru486-report.pdf>

- June 15, 2006 – Judicial Watch publishes “Jesse Jackson Exposed,” a special report details the intimidation and shakedown tactics of Jackson’s so-called civil rights organization, the Rainbow Push Coalition.
<http://judicialwatch.org/archive/2006/jackson-report.pdf>
- October 30, 2006 – Judicial Watch releases a special report “*Academia Semillas del Pueblo* (Seeds of the People Academy): Training the Next Generation of Mexican Revolutionaries with American Tax Dollars.” The report includes excerpts of new documents obtained by Judicial Watch through the California Public Records Act that highlight the school’s radical agenda.
http://www.judicialwatch.org/archive/2006/SR_academia%20semillas.pdf
- November 27, 2006 – Judicial Watch publishes New Clinton White House Records Raise Disturbing Questions about Hillary Clinton and Abortion. Judicial Watch’s report includes excerpts of new documents obtained by Judicial Watch from the Clinton Presidential Library in Little Rock, Arkansas.
http://www.judicialwatch.org/archive/2006/SR_Clinton%20abortion.pdf

Judicial Watch also publishes and disseminates its distinctive work by participating in public conferences and seminars, including its own "Ethics in Government" conferences held in Pasadena, California (1999), Washington, DC (2000), and Miami, FL (2001).

Judicial Watch hold quarterly education panels at the National Press Club in Washington DC that have been televised by C-SPAN. Past panel discussions have been: “Defining ‘Judicial Activism’ in the Context of the Culture Wars,” “A Discussion of Ethics in Washington,” “The Case for Open Government,” “Conservative Perspectives on the Alito Nomination,” “The Role of Grassroots Groups in the Supreme Court Nominating Process,” “The Foley Scandal Fallout,” “New Fronts in the Immigration Battle,” “How to Fight Corruption in Government,” and “The Security and Prosperity Partnership – Threat or Opportunity?”

Judicial Watch also works with other media organizations to publish and disseminate distinctive work to the public, and representatives of Judicial Watch appear frequently on nationally broadcast television and radio programs. Judicial Watch has been granted press credentials at a number of national conventions and other events. Judicial Watch’s Director of Investigations and Research, Christopher Farrell, is a member of Investigative Reporters and Editors, Inc.

On February 16, 2005, Judicial Watch was rated by the highly respected capitol newspaper *The Hill* as being on of the nation's top ten "watchdogs."

Consequently, Judicial Watch qualifies for a waiver of search fees as a member of the news media. See *National Security Archive v. U.S. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). In fact, Judicial Watch has been recognized as a member of the news media in other FOIA litigation. See *Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Dep't of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006).

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch ongoing efforts document the operations and activities of the federal government and to educate the public about these operations and activities. As part of its Transparency Project, Judicial Watch is continuing to monitor instances in which the territorial sovereignty of the United States is routinely violated by the Mexican government.

Courts applying the "public interest" fee waiver provision of FOIA typically take into account four factors in determining whether to grant a waiver: (1) whether the subject of the requested records concerns the operations or activities of government; (2) whether disclosure of the requested records is likely to contribute to an understanding of government operations or activities; (3) whether disclosure of the requested records will contribute to a "reasonably broad" audience and whether the requestor has the "ability and intention" to disseminate the information to the public; and (4) whether disclosure of the requested record will contribute "significantly" to the public understanding. See *D.C. Technical Assistance Org. v. HUD*, 85 F. Supp.2d 46, 48-49 (D.D.C. 2000); 28 C.F.R. § 16.11(k)(2)(i)-(iv). Request for "public interest" waivers are to be judged on a case-by-case basis." *Larson v. CIA*, 843 F.2d 1481, 1483 (D.C. Cir. 1988).

The request unquestionably concerns government operations and activities. The

border fence has been highly contentious given the national focus on immigration. The government has invoked eminent domain and controversially waived environmental legal restrictions. The subject- matter specifically seeks information regarding property and land involved with the border fence. The subject- matter will shed light on the government's decisions, policies and overall considerations for the factors involved. The government has had to weigh several competing interests and factors with the border fence issue.

Disclosure of the requested records is likely to contribute to an understanding of operations and activities of the U.S. Customs and Border Protection as the subject matter touches upon border security and illegal immigration.

The requested records will appeal to a broad audience as the border fence issue has stoked debate in the United States. With lawsuits against DHS over the border fence, news programs featuring the communities involved, and debates over border security Americans have demonstrated a profound interest in the topic and will be intrigued by disclosure of information regarding any and all interest involved.

Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts, including radio and television programs, website, newsletter, periodic published reports, public appearances, and other educational undertakings.

Not only is the American public greatly interested in the topic, but disclosure of the records will also contribute to public understanding. As the border fence has been highly controversial with lawsuits, eminent domain, and funding, any information that can better explain government actions and portray the interests involved will provide broader public understanding.

Given these compelling circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$50.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

We look forward to receiving the requested documents and a waiver of both

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search and duplication costs within twenty (20) business days. We take the statutory deadlines of the Freedom of Information Act very seriously – as does the Archivist of the United States:

“Let’s face it, access delayed is access denied.”

Dr. Allen Weinstein
Ninth Archivist of the United States
National Archives and Records Administration
September 26, 2006
American Society of Access Professionals Keynote Speech
Washington, DC

Thank you for your cooperation.

Sincerely,

Jenny Small
Researcher