



# Judicial Watch

*Because no one is above the law!*

13 November 2008

**VIA CERTIFIED MAIL & EMAIL**

Immigration and Customs Enforcement  
Freedom of Information Act Office,  
800 North Capitol Street, NW, Room 585  
Washington, DC 20536  
Main Number: (202) 732-0300 or (866) 633-1182  
Fax Number: (202) 732-0310  
Email: [ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)  
(Art. No.: 7005 1160 0000 8541 9423)

**Re: Freedom of Information Act Request**

To Whom It May Concern:

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

1. Any and all records pertaining to a "directive" (to include but not limited to other terms for policy guidance – *i.e.*, order, memo, etc.) requiring arrests to be approved at least by a Field Office Director (or their deputy).
2. Any records of a 72-hour-cease-and-desist order on fugitive apprehension (including but not limited to memos, correspondence, emails, assessments, reports, statistics, briefings, etc).
3. Records detailing the requirement for Field Office Directors to certify on proposed operations plan(s) language to the effect of: "I certify that arresting this alien will not cause media or congressional interest."

**Time Frame: October 2008- Present**

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,

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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 202-646-5181 or [jsmall@judicialwatch.org](mailto: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](http://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

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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/October23, 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."

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<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](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](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 holds 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

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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.

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 United States' government is responsible for upholding the United States' Constitution and its laws. The Department of Homeland Security is responsible for leading the

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“national effort to secure the country and preserve our freedoms.”<sup>1</sup> Immigration and Customs Enforcement is responsible for “protect[ing] national security and uphold[ing] public safety by targeting criminal networks and terrorist organizations that seek to exploit vulnerabilities in our immigration system, in our financial networks, along our border, at federal facilities and elsewhere in order to do harm to the United States.”<sup>2</sup> In an effort to enforce such laws, the Office of Detention and Removal (DRO) pursues and arrests fugitive illegal aliens. These illegal aliens may not be malicious or they may be lethal terrorist. In either case, they have broken U.S. law and circumvented authority and ICE is responsible for deporting them to prevent any damage to the country. However, the *Associated Press* reported that ICE was given a directive in which only regional directors could approve a deportation prior to 2008 Presidential election day<sup>3</sup> (presumably for the vetting of names such as Zeituni Onyango who have political connections—Barack Obama). Michelle Malkin reported that the directive was in fact a freeze on all deportations.<sup>4</sup> Such a directive impedes on DRO’s mission and prohibits the U.S. government from upholding U.S. laws and performing government activities.

Allegedly the directive was to reduce embarrassment for Barack Obama who was the lead candidate for President. In addition to political considerations, did the directive account for any other factors? The requested records will contribute to understanding the questions: was national security considered, under what justification was the directive authorized, what missed opportunities were there for the DRO to complete its mission, and was the United States put at risk by allowing potential terrorists to escape? Disclosure will contribute to an understanding of these questions and to an understanding of the suspension of government operations.

The public has voraciously followed the Presidential campaigns. Americans and the worldwide public have observed a historic day in the election of Senator Barack Obama. This focus has contributed to numerous publications about Auntie Zeituni absconding a deportation order. In addition to an interest in President-elect Obama, the public has ardently debated illegal immigration. The Zeituni story and ICE directive raise the question of whether U.S. laws are applicable to every person. The public is interested in discussing whether ICE can be effective if its mission is subject to political whims.

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

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<sup>1</sup> Department of Homeland Security. “Strategic Plan- One Team, One Mission, Securing Our Homeland.” 24 September 2008. 13 November 2008. <<http://www.dhs.gov/xabout/strategicplan/>>.

<sup>2</sup> Immigration and Customs Enforcement: About. <<http://www.ice.gov/about/index.htm>>.

<sup>3</sup> Sullivan, Eileen and Elliot Spagat. “Obama Aunt from Kenya Living in US Illegally.” *Associated Press*, 31 October 2008. 12 November 2008.

<<http://ap.google.com/article/ALEqM5iVVVj5SjAgqpjIbqdmcOB74FtqRIAD945TB601>>.

<sup>4</sup> Malkin, Michelle. “Obama’s Illegal Alien Auntie: The Rest of the Story.” Michelle Malkin, 12 November 2008. 12 November 2008. <<http://michellemalkin.com/>>.

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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.

The requested records will contribute significantly to public understanding. The records will inform the public about the considerations influencing the directive and what the directive entailed. The public is questioning the validity of the DRO website with its commitment to being “fair, effective, and professional.”<sup>5</sup>

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 requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

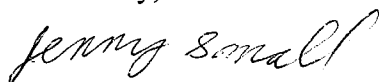
We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. We take the statutory deadlines of the Freedom of Information Act very seriously – as does the Archivist of the United States:

**“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  
Judicial Watch Inc.  
Researcher

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<sup>5</sup> U.S. Immigrations and Customs Enforcement: Office of Detention and Removal (DRO).  
<<http://www.ice.gov/pi/dro/index.htm>>