



Judicial WatchTM

Because no one is above the law.

28 September 2009

VIA CERTIFIED MAIL & DELIVERY RECEIPT EMAIL

FOIA Requests

Office of General Counsel

National Endowment for the Arts

1100 Pennsylvania Avenue, NW, Room 518

Washington, DC 20506

202/682-5418

202/682-5572(fax)

arts_foia@nea.gov

Re: Freedom of Information Act Request

Dear Sir/Madam:

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the National Endowment for the Arts produce the following records within twenty (20) business days:

1. Any and all correspondence between the White House and NEA communications director Yossi Sergant
2. Guidelines regarding the National Service Initiative
3. Guidelines regarding engaging in political activities
4. Guidelines and memos regarding the United We Serve campaign

Time Frame: January 2009 - Present

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA...The presumption of disclosure should be applied to all decisions involving FOIA.¹

¹ President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom

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President Obama adds that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails." Nevertheless, 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).

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.

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. In accordance with the statutory designation for a media group, Judicial Watch gathers information of potential interest, uses its editorial skills to create a distinct work, and distributes it to the public. Judicial Watch gathers information using Freedom of Information Act requests, state open records law requests, government contacts, interviews, Internet based research, book based research, and community tips. Judicial Watch distributes its distinct work using its editorial skills in its monthly newsletter *The Verdict*, its weekly e-mail publication *Weekly Update*, its blog *Corruption Chronicles*, and special reports.

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The Verdict maintains a subscription of over 120,000 and Judicial Watch's website has logged over 500,000 page views just between January 2009 and April 2009 with 2,000 unique visitors per day. *Weekly Update* reaches 25,000 people per week

The statute also notes that government may consider an organization's past publication record. When considering Judicial Watch's past publication record, its previous media status is also relevant. Judicial Watch has been recognized as a member of the media in past 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). Furthermore, Judicial Watch has consistently been recognized as a member of the news media in other FOIA requests. Within the last 6 months, Judicial Watch was designated as media by the Department of State on 27 March 2009 (200901038), Department of Homeland Security on 20 November 2008 (DHS/OS/PRIV 09-49), Federal Housing Finance Agency on 8 December 2008 (FOIA 2009-31), and Department of the Treasury on 6 January 2009 (2008-12-019).

In addition to meeting and exceeding the statutory requirements as a media organization, Judicial Watch's mission and peer recognition further qualify it for the media category. The Pew Research Center's Project for Excellence in Journalism provides that "the central purpose of journalism is to provide citizens with accurate and reliable information they need to function in a free society.... serving as watchdog and offering voice to the voiceless."ⁱ Judicial Watch's mission is consistent with this definition ("promotes transparency, accountability and integrity in government, politics and the law.") Furthermore, *The Hill* has recognized Judicial Watch as one of the top watchdog organizations in the country.² In addition to the *Hill's* recognition, Judicial Watch has also been awarded press credentials and membership in journalism organizations.

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 promote transparency, accountability and integrity in government, politics and the law. Its loyalty is to the truth and to the public. It uses litigation to access the truth and its publications to inform the public.

² <http://thehill.com/business--lobby/lobby-league-31-watchdogs-2005-02-16.html>

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Records necessarily pertain to a government activity as NEA provides government funding to artists. If NEA's mission becomes political, then government funding too could become a political tool. Disclosure will contribute to understanding the controversy. Some claim that NEA's mission has not strayed political and that the call was a simple misunderstanding. Others claim that an NEA employee made a mistake and it does not reflect upon the agency. Disclosure will contribute significantly to public understanding of the controversy as well as the necessary separation between politics and agency work. A broad audience will likely be interested in the records as the story has already garnered much attention and people are demanding to know more.

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 an article to a broad audience in one of its publications.

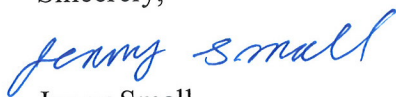
In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under the OPEN Government Act of 2007, Section 6(b).

Given these 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 \$350.00 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.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

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 us immediately at 202-646-5181 or jsmall@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,



Jenny Small
Judicial Watch, Inc.
Researcher

ⁱ "Principles of Journalism" Pew Research Center's Project for Excellence in Journalism.
<<http://www.journalism.org/resources/principles>>.