

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

JUDICIAL WATCH, INC.,	)	
501 School Street, S.W., Suite 700	)	
Washington, DC 20024,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
FEDERAL COMMUNICATIONS	)	
COMMISSION	)	
445 12 <sup>th</sup> Street, S.W.	)	
Washington, DC 20554,	)	
	)	
Defendant.	)	
<hr style="width:40%; margin-left:0;"/>		

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., brings this action against Defendant Federal Communications Commission (“FCC”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). 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 is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 700, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest mission, Plaintiff

regularly serves FOIA requests on federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States government and is headquartered at 445 12<sup>th</sup> Street, S.W., Washington, DC 20554. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

#### **STATEMENT OF FACTS**

5. On February 13, 2009, Plaintiff sent a FOIA request to Defendant, seeking access to the following records:

- a. Any records concerning the decision to delay the transition to digital television until June 12, 2009.
- b. Any and all records of communication between the Federal Communications Committee and the White House concerning the delays in the transition to digital television.

6. Defendant acknowledged receipt of Plaintiff's FOIA request by letter dated February 25, 2009 and assigned the request number 2009-192. Defendant also stated in the February 25, 2009 letter that it was granting Plaintiff's request for a fee waiver. However, Defendant's February 25, 2009 letter did not include any responsive records or state with specificity when Plaintiff could expect to receive a substantive response.

7. On or about May 8, 2009, Plaintiff received a letter from Joel Kaufman, Associate General Counsel for Defendant. The letter stated that Defendant had located records responsive to Part One of the request and that it would be producing some responsive records and withholding others. The letter also stated that Defendant was required to "consult with the White House" with respect to Part Two of the request and that it was "unable to respond to this part of your FOIA

request until we receive instructions from the White House.” In any event, Defendant’s May 8, 2009 letter included no responsive records or documents or an estimate of when Plaintiff could expect to receive a substantive response to its request, in violation of 5 U.S.C. § 552(a)(6)(B)(i).

8. On May 15, 2009, Plaintiff submitted an administrative appeal of Defendant’s May 8, 2009 letter.

9. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), Defendant was required to respond to Plaintiff’s May 15, 2009 appeal on or before June 15, 2009. To date, however, Plaintiff has not received a substantive response to its May 15, 2009 appeal letter.

10. On June 16, 2009, Plaintiff finally received a response to Part One of its request, accompanied by a letter from Laurence H. Schecker of Defendant’s Office of General Counsel. No records were produced in response to Part Two of Plaintiff’s request. Nor did Mr. Schecker’s letter include an estimate as to when Plaintiff could expect to receive records responsive to Part Two of its request, in further violation of 5 U.S.C. § 552(a)(6)(B)(i).

11. In addition, Defendant’s June 16, 2009 response to Part One of Plaintiff’s request was deficient because the responsive records produced by Defendant had been redacted, in some cases heavily, and Defendant made no effort to identify with specificity which FOIA exemption was being claimed for each redacted portion or otherwise reasonably segregate releaseable material.

12. Because of the deficiencies in Defendant’s June 16, 2009 response, Plaintiff submitted a second administrative appeal on June 29, 2009.

13. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), Defendant was required to respond to Plaintiff’s June 29, 2009 appeal on or before July 28, 2009. To date, however, Plaintiff has not received any response to its June 29, 2009 appeal letter.

14. Because Defendant failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its February 13, 2009 FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
**(Violation of FOIA)**

15. Plaintiff realleges paragraphs 1 through 14 as if fully stated herein.

16. Defendant has violated FOIA by failing to identify with specificity which FOIA exemption was being claimed for each redacted portion of the records Defendant has produced in response to Part One of Plaintiff's February 13, 2009 request or otherwise reasonably segregate releaseable material from those records, as required by 5 U.S.C. § 552(b).

17. Defendant also has violated FOIA by failing to produce any and all non-exempt records responsive to Part Two of Plaintiff's February 13, 2009 request within the time limits required by 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B).

18. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

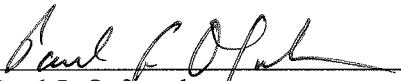
WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's February 13, 2009 request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of

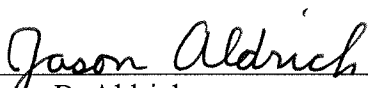
attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: August 6, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.

  
\_\_\_\_\_  
Paul J. Orfanedes  
D.C. Bar No. 429716

  
\_\_\_\_\_  
Jason B. Aldrich  
D.C. Bar No. 495488  
Suite 700  
501 School Street, S.W.  
Washington, DC 20024  
(202) 646-5172

*Attorneys for Plaintiff*