

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

JUDICIAL WATCH, INC., )  
425 Third Street, S.W., Suite 800 )  
Washington, DC 20024, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
U.S. DEPARTMENT OF HOMELAND )  
SECURITY, )  
601 South 12th Street )  
Arlington, VA 22202, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No.  
  
Case: 1:10-cv-02054  
Assigned To : Sullivan, Emmet G.  
Assign. Date : 12/2/2010  
Description: FOIA/Privacy Act

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Homeland Security 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 425 Third Street, S.W., Suite 800, 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 requests access to the public records of 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 601 South 12th Street, Arlington, VA 22202. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

#### **STATEMENT OF FACTS**

5. On October 12, 2010, Plaintiff sent a FOIA request to Defendant seeking access to a report/memorandum prepared at the direction of the United States Secretary of Homeland Security Janet Napolitano related to Carlos Marinelly-Montano, an unlawfully present alien charged with killing a Benedictine nun and injuring two others in an August 2010 drunk driving incident in Prince William County, Virginia. Marinelly-Montano had two prior drunk driving convictions and had been turned over to federal immigration officials by Prince William County police in 2008. He had been released from federal custody, however, and had been awaiting a deportation hearing for nearly two years at the time of the August 2010 incident.

6. By letter dated October 21, 2010, Defendant acknowledged receipt on October 13, 2010 of Plaintiff's October 12, 2010 FOIA request. Also in its letter, Defendant invoked a ten-day extension for responding to Plaintiff's October 12, 2010 FOIA request pursuant to 5 U.S.C. § 552(a)(6)(A).

7. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant was required to respond within thirty (30) working days of October 13, 2010, or by November 26, 2010.

8. As of the date of this Complaint, Defendant has failed to produce any records responsive to the request or demonstrate that responsive records are exempt from production.

Nor has it indicated whether or when any responsive records will be produced. In short, Defendant has failed to respond to the request in any manner.

9. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its October 12, 2010 FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
**(Violation of FOIA, 5 U.S.C. § 552)**

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

12. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, 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) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's October 12, 2010 FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (2) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's October 12, 2010 FOIA request; (3) 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 (4) grant Plaintiff such other relief as the Court deems just and proper.

Dated: December 1, 2010

Respectfully submitted,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read "Paul J. Orfanedes", written over a horizontal line.

Paul J. Orfanedes

(D.C. Bar No. 429716)

425 Third Street, S.W., Suite 800

Washington, DC 20024

(202) 646-5172

*Attorneys for Plaintiff*