

**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, )

v. )

U.S. DEPARTMENT OF ENERGY )  
1000 Independence Avenue, S.W. )  
Washington, DC 20585-0001, )

and )

U.S. ENVIRONMENTAL )  
PROTECTION AGENCY )  
1200 Pennsylvania Avenue, N.W. )  
Washington, DC 20460, )

Defendants. )

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Civil Action No.

**Case: 1:10-cv-00246**  
**Assigned To : Kennedy, Henry H.**  
**Assign. Date : 2/18/2010**  
**Description: FOIA/Privacy Act**

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff Judicial Watch, Inc. brings this action against Defendants U.S. Department of Energy and U.S. Environmental Protection Agency 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 U.S. Department of Energy (“Energy”) is an agency of the United States government and is headquartered at 1000 Independence Avenue, S.W., Washington, DC 20585-0001. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant U.S. Environmental Protection Agency (“EPA”) is an agency of the United States government and is headquartered at 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

## STATEMENT OF FACTS

6. On December 28, 2009, Plaintiff sent FOIA requests to Energy and EPA seeking access to records related to the influence of Carol Browner, Director of the White House Office of Energy and Climate Change Policy, on creating environmental policy such as national fuel standards and mandatory caps on automobile emissions. Specifically, Plaintiff sought any and all records of communications, contacts, or correspondence between Ms. Browner and Energy or EPA concerning, regarding, or relating to:

A. Negotiations and/or discussions among the auto industry, the State of California, and agencies of the United States with respect to fuel-standards/auto emissions for the time period between January 20, 2009 and June 1, 2009; and

B. Negotiations/discussions with respect to cap and trade legislation for the time period between June 1, 2009 and October 1, 2009.

7. The FOIA request to Energy was sent by certified U.S. mail, return-receipt requested. According to U.S. Postal Service records, the FOIA request was received by Energy on January 4, 2010.

8. On January 7, 2010, Energy acknowledged receipt and informed Plaintiff that its FOIA request was assigned to the Office of the Executive Secretariat, the Office of Energy Efficiency and Renewable Energy, and the Office of Policy and International Affairs.

9. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Energy was required to respond to Plaintiff's December 28, 2009 FOIA request within twenty (20) working days of receipt of the request, or by February 5, 2010. As of the date of this Complaint, Energy 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, Energy has failed to respond to the request in any manner.

10. The FOIA request to EPA was sent via facsimile. On December 29, 2009, EPA acknowledged receipt and informed Plaintiff that its FOIA request was forwarded to the Office of Air and Radiation for processing.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), EPA was required to respond to Plaintiff's December 28, 2009 FOIA request within twenty (20) working days of receipt of the request, or by January 29, 2010. As of the date of this Complaint, EPA 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, Energy has failed to respond to the request in any manner.

12. Because Energy and EPA have failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) or extend that time limit pursuant to 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its December 28, 2009 FOIA requests. 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
(Violation of FOIA)

13. Plaintiff realleges paragraphs 1 through 12 as if fully stated herein.

14. Defendants have violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's December 28, 2009 requests within the twenty (20) day time period required by 5 U.S.C. § 552(a)(6)(A)(i) and by failing to demonstrate that any withheld records responsive to this same request are exempt from production.

15. Plaintiff is being irreparably harmed by reason of Defendants' violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform their conduct to the requirements of the law.

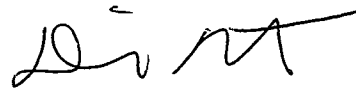
WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendants' failure to comply with FOIA to be unlawful; (2) order Defendants to search for and produce any and all non-exempt records responsive to Plaintiff's December 28, 2009 request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendants from continuing to withhold any and all non-exempt records responsive to the

request; (4) grant Plaintiff an award of attorneys' 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: February 18, 2010

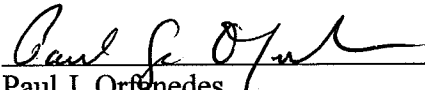
Respectfully submitted,

JUDICIAL WATCH, INC.



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David F. Rothstein  
D.C. Bar No. 450035



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