

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 09-2312 (HHK)
)	
UNITED STATES SECRET SERVICE,)	
)	
Defendant.)	

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Federal Rule of Civil Procedure 56, hereby moves for partial summary judgment against Defendant U.S. Secret Service (“Secret Service”). As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF LAW

I. Introduction.

At issue here is whether Secret Service visitor logs are agency records subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. To date, every court that has reached this issue has concluded that the requested documents are agency records and must be processed in response to a properly submitted FOIA request. As no disputes of material fact exist as to the nature of the records, summary judgment as to this straightforward legal issue should be entered now.

II. Factual Background.

On August 10, 2009, Plaintiff sent a FOIA request to the Secret Service seeking access to “[a]ll visitor logs and/or other records concerning visits made to the White House from January 20, 2009 to the present.” *See* Exh. 1 (Declaration of Thomas J. Fitton (“Fitton Decl.”) ¶ 2). On October 8, 2009, the Secret Service responded by letter stating that the agency interpreted the FOIA request to encompass “Access Control Records System (ACR) records and/or Workers Visitors Entry System (WAVES) records” and asserted that the requested records “are not agency records subject to the FOIA.” *Id.* at ¶ 3. The Secret Service further claimed that the records are “governed by the Presidential Records Act, 44 U.S.C. § 2201 *et seq.*, and remain under the exclusive legal custody and control of the White House Office and the Office of the Vice President.” *Id.*

Plaintiff subsequently sent a timely administrative appeal letter to the Secret Service, demonstrating in particular that the Secret Service’s claim that the requested records are not agency records subject to FOIA has been fully litigated and rejected repeatedly. Fitton Decl. ¶ 4. Following the Secret Service’s denial of the administrative appeal, this lawsuit was filed on December 7, 2009. *Id.*

III. Argument.

A. Applicable Legal Standards.

In FOIA litigation, as in all litigation, summary judgment is appropriate only when the pleadings and declarations demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed.R.Civ.P. 56(c). In FOIA cases, agency decisions to “withhold or

disclose information under FOIA are reviewed de novo by this court.” *Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp. 2d 252, 256 (D.D.C. 2004). In reviewing a motion for summary judgment under FOIA, a court must view the facts in the light most favorable to the requestor. *Weisberg v. United States Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984).

As set forth by the U.S. Supreme Court, materials requested under FOIA are “agency records” if they are (1) either created or obtained by the agency, and (2) under agency control at the time the FOIA request is made. *Dep’t of Justice v. Tax Analysts* 492 U.S. 136, 144-45 (1989). Importantly, the burden falls on the agency to establish that documents are not agency records. 492 U.S. at 142 n.3 (“The burden is on the agency to demonstrate, not the requestor to disprove, that the materials sought are not ‘agency records’ . . .”) (citing S. Rep. No. 813, 89th Cong., 1st Sess., 8 (1965)).

B. Secret Service Visitor Logs Are “Agency Records” Subject to FOIA.

The Secret Services refuses to acknowledge FOIA’s applicability in this case despite the fact that every court that has considered the issue has concluded that Secret Service visitor logs are agency records under FOIA. *CREW v. U.S. Dep’t of Homeland Security*, 527 F. Supp. 2d 76, 89 (D.D.C. 2007); *CREW v. U.S. Dep’t of Homeland Sec.*, 592 F. Supp. 2d 127 (D.D.C. 2009) (reaffirming same conclusion as to agency records); *accord The Washington Post v. U.S. Dep’t of Homeland Sec.*, 459 F. Supp. 2d 61, 72 (D.D.C. 2006) (on motion for preliminary injunction, holding plaintiff had likelihood of success because White House visitor records sought are agency records subject to FOIA) (voluntarily dismissed). In reviewing this case, this Court should be guided by this directly relevant and persuasive precedent. Since no material facts are at issue, partial summary judgment is proper as to this straightforward legal issue.

1. The Records Were “Created or Obtained” By the Secret Service.

Secret Service visitor logs are created by the Secret Service in furtherance of the agency’s statutorily mandated protective function. *CREW v. U.S. Dep’t of Homeland Sec.*, 527 F. Supp. 2d at 88 (“The Secret Service’s affidavits show that the visitor records were “created or obtained” by the Secret Service.”) (citation omitted). The requested records are generated by two electronic systems the Secret Service uses to monitor visitors to the White House – the Worker and Visitor Entrance System (“WAVES”) and the Access Control Records System (“ACR”). WAVES records include information White House pass holders provide in advance to the Secret Service – the proposed visitor’s identifying information (name, date of birth, social security number), time and location of the scheduled appointment, name of the person submitting the request, name of the recipient of the visitor, date of the request, and type of visitor expected (*e.g.*, press, temporary worker), as well as any additional information the Secret Service adds as a result of a background check. *CREW v. U.S. Dep’t of Homeland Sec.*, 527 F. Supp. 2d at 80. ACR records are created when a visitor swipes his or her pass upon entering or exiting the White House Complex, and include the visitor’s name and badge number, the time and date of his or her entry and exit, and the specific post that recorded the swipe. *Id.*

In a thorough and comprehensive review of the issue, the Honorable Royce C. Lamberth concluded that visitor logs are “created or obtained” by the Secret Service – indicating agency record status based on the process by which the visitor records are generated, 527 F. Supp. 2d at 90-91 – and that they “are created primarily for the agency’s use.” *Id.* at 91. The identical conclusion was reached in *The Washington Post v. U.S. Dep’t of Homeland Sec.*, 459 F. Supp. 2d 61, 69 (D.D.C. 2006) (Urbina, J) (on a motion for preliminary injunction, plaintiff had likelihood

of success that visitor logs were created or obtained by the Secret Service). Based on the undisputed facts of how visitor logs are generated, the requested records are “created or obtained” by the Secret Service, and the first prong of the *Tax Analysts* test is satisfied here.

2. The Records Are “Under Agency Control.”

It is also beyond dispute that Secret Service visitor logs are under agency control. Again, it useful to refer to the careful analysis undertaken by Judge Lamberth in *CREW v. U.S. Dep’t of Homeland Sec.*, 527 F. Supp. 2d 76, 92 (D.D.C. 2007). After applying the relevant law, Judge Lamberth “ha[d] no difficulty concluding the visitor records are under the Secret Service’s control.” *Id.* at 97.¹ While the Secret Service claimed no intention to control the records, its “historical use of the visitor records suggests that it does in fact control the records.” *Id.* Accordingly, the Court held “use trumps intent.” *Id.* As Judge Lamberth reasoned, “[b]ecause the Secret Service creates, uses and relies on, and stores the visitor records, ‘in the legitimate conduct of its official duties,’ they are under its control.” *Id.* at 98 (citing *Tax Analysts*, 492 U.S. at 145). *See also CREW v. U.S. Dep’t of Homeland Sec.*, 592 F. Supp. 2d 127 (D.D.C. 2009)

¹ To determine whether documents sought are under agency control, a court must balance four factors under a totality of the circumstances test: (1) “the intent of the document’s creator to retain or relinquish control over the records,” (2) “the ability of the agency to use and dispose of the records as it sees fit,” (3) “the extent to which the agency personnel have read or relied upon the document,” and (4) “the degree to which the document was integrated into the agency’s record system or files.” *United We Stand Am. v. IRS*, 359 F.3d 595, 599 (D.C. Cir. 2004); *Consumer Fed’n of Am. v. Dep’t of Agric.*, 455 F.3d 283, 287 (D.C. Cir. 2006) (noting that the court’s totality of the circumstances test seeks to vindicate Congress’ purpose “to open agency action to the light of public scrutiny”)(internal quotation omitted). Put more simply, the U.S. Supreme Court has described “agency control” in the following way: “[b]y control we mean that the material have come into the agency’s possession in the legitimate conduct of its official duties.” *Tax Analysts*, 492 U.S. at 145.

(reaffirming same conclusion as to agency records); *accord Washington Post*, 459 F. Supp. 2d 61.

Further compelling evidence of the Secret Service's control over the visitor logs is that agency has in fact have provided them to Plaintiff and other parties previously. In response to prior FOIA requests, the Secret Service plainly had "control" over the records at issue such that it provided them to Judicial Watch and other FOIA requestors. *See* Fitton Decl. ¶ 5; Exh. 2 (Declaration of Kathy J. Lyerly, Civ. Action No. 06-0310 (D.D.C.), at ¶ 14, 19). *See also* Exh. 3 (Declaration of Kathy J. Lyerly, Civ. Action No. 06-0883 (D.D.C.), at ¶ 23 ("[T]he Secret Service released to CREW, on May 10, 2006 and July 7, 2006, its WAVES and ACR data/records concerning Jack Abramoff.")).

In those instances, the Secret Service had sufficient "control" to produce WAVES and ACR records, including records discovered in searches of the agency's computer hard drives. At no time did the Secret Service suggest that it had less than full control over its use and disposition of the records, which were currently in its possession. For example, in describing its search for records responsive to one of Judicial Watch's prior FOIA requests, Ms. Lyerly stated:

the FOI/PA Office conducted a search for responsive information. This search was conducted under the direction of the Secret Services Presidential Protective Division by personnel who conduct FOIA searches as part of their regular responsibilities.

Exh. 2 at ¶ 9. Ultimately, in *Judicial Watch v. Secret Service*, Civ. Action No. 06-310 (D.D.C.), the Secret Service agreed to be bound by a court-ordered stipulation that required the agency – not the White House or any other entity – to produce the visitor logs, an action that plainly demonstrates the agency's ability to use and dispose of the records as it sees fit. Exh. 4 (Joint

Stipulation and Agreed Order, Civ. Action No. 06-0310 (D.D.C.), produced documents responsive to Judicial Watch's January 20, 2006 FOIA request). Pursuant to the terms of the joint stipulation and agreed order, on May 10, 2006, the Secret Service produced, without redactions or claims of exemption, all documents located in response to Judicial Watch's January 20, 2006 FOIA request. By entering into a binding stipulation, the Secret Service clearly conceded that it had sufficient "control" over the records at issue to comply with the terms of the stipulation. Moreover, by ultimately producing the requested records to Judicial Watch, the Secret Service demonstrated that it had the requisite control over the records.²

As directly relevant and persuasive precedent and the agency's own actions make clear, the Secret Service has control of the requested records. Accordingly, the requested visitor logs are clearly "agency records" subject to FOIA, and Plaintiff is entitled to prompt processing of its FOIA request.

CONCLUSION

For the reasons set forth above, the Court should grant Plaintiff's motion for partial summary judgment.

² Further compelling evidence of agency control is found in the Secret Service's past responses to civil discovery. In 1998, in response to a subpoena in *Alexander v. FBI*, Civil Action No. 96-2123 (D.D.C.), the Secret Service produced WAVES logs from 1996. Fitton Decl. ¶ 6.

Dated: February 22, 2010

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Paul J. Orfanedes
D.C. Bar No. 429716

/s/ James F. Peterson
D.C. Bar No. 450171
501 School Street, S.W., Suite 700
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199

Attorneys for Plaintiff

§ 2201 *et seq.*, and remain under the exclusive legal custody and control of the White House Office and the Office of the Vice President.” Fitton Decl. ¶ 3.

4. Plaintiff subsequently sent a timely administrative appeal letter to the Secret Service, demonstrating in particular that the Secret Service’s claim that the requested records are not agency records subject to FOIA has been fully litigated and rejected repeatedly. Fitton Decl. ¶ 4. Following the Secret Service’s denial of the administrative appeal, this lawsuit was filed on December 7, 2009.

5. The Secret Service provided visitor logs to Judicial Watch in response to a FOIA request dated January 20, 2006. Fitton Decl. ¶ 5. Pursuant to a court-ordered stipulation, the Secret Service produced visitor logs to Judicial Watch responsive to this request on May 10, 2006. *Id.*

6. The Secret Service produced visitor logs in response to a civil discovery request in 1998. Fitton Decl. ¶ 6. As counsel for the plaintiffs in *Alexander v. FBI*, Civil Action No. 96-2123 (D.D.C.), Judicial Watch obtained WAVES logs created in 1996 in response to a subpoena issued in that case. *Id.*

Dated: February 22, 2010

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Paul J. Orfanedes
D.C. Bar No. 429716

/s/ James F. Peterson
D.C. Bar No. 450171
501 School Street, S.W., Suite 700
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199

Attorneys for Plaintiff

EXHIBIT 1

§ 2201 *et seq.*, and remain under the exclusive legal custody and control of the White House Office and the Office of the Vice President.” *See* Attachment 2.

4. Judicial Watch subsequently sent a timely administrative appeal letter to the Secret Service, demonstrating in particular that the Secret Service’s claim that the requested records are not agency records subject to FOIA has been fully litigated and rejected repeatedly. *See* Attachment 3. Following the Secret Service’s denial of the administrative appeal (*see* Attachment 4), this lawsuit was filed on December 7, 2009.

5. Judicial Watch obtained visitor logs from the Secret Service in response to a January 20, 2006 FOIA request. Pursuant to a court-ordered stipulation, the Secret Service produced visitor logs to Judicial Watch responsive to that request on May 10, 2006.

6. Judicial Watch obtained visitor logs in response to a civil discovery request in 1998. As counsel for the plaintiffs in *Alexander v. FBI*, Civil Action No. 96-2123 (D.D.C.), Judicial Watch obtained WAVES logs created in 1996 in response to a subpoena issued in that case.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing statements are true and correct to the best of my knowledge and belief.

2/22/10
Date



Thomas J. Fitton
President
Judicial Watch, Inc.

ATTACHMENT 1



**Judicial
Watch™**
*Because no one
is above the law!*

August 10, 2009

VIA CERTIFIED MAIL

United States Secret Service
Communications Center (FOI/PA)
245 Murray Lane
Building T-5
Washington, D.C. 20223

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

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

- 1) All official visitors logs and/or other records concerning visits made to the White House from January 20, 2009 to present.

For purposes of this request, the term "White House" includes any office or space on White House grounds.

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

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

¹ President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act," January 21, 2009; <http://www.whitehouse.gov/the_press_office/FreedomofInformationAct>

U.S. Secret Service

August 10, 2009

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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. 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, 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.

U.S. Secret Service

August 10, 2009

Page 3 of 4

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).

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).

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's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. 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 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.

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.

U.S. Secret Service

August 10, 2009

Page 4 of 4

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 202-646-5172 or tmillspaw@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,

A handwritten signature in black ink, appearing to read "Tegan Millspaw", written in a cursive style.

Tegan Millspaw
Judicial Watch

ATTACHMENT 2



DEPARTMENT OF HOMELAND SECURITY
UNITED STATES SECRET SERVICE
WASHINGTON, D.C. 20223

Freedom of Information and Privacy Acts Branch
Communications Center
245 Murray Lane, S.W.
Building T-5
Washington, D.C. 20223

OCT -8 2009

Tegan Millspaw
Judicial Watch
501 School Street, S.W.
5th Floor
Washington, D.C. 20024

File Number: 20090685

Dear Ms. Millspaw:

Reference is made to your Freedom of Information Act (FOIA) request, dated August 10, 2009, received by the United States Secret Service (Secret Service) on August 20, 2009, for "any and all agency records concerning. . .[a]ll official visitors logs and/or other records concerning visits made to the White House from January 20, 2009 to present."

Please note that we are interpreting your request to encompass Access Control Records System (ACR) records, and/or Workers and Visitors Entry System (WAVES) records.

It is the government's position that the categories of records that you requested are not agency records subject to the FOIA. Rather, these records are records governed by the Presidential Records Act, 44 U.S.C. § 2201 et seq., and remain under the exclusive legal custody and control of the White House Office and the Office of the Vice President.

The White House and the Office of the Vice President retain authority to direct the discretionary release of the White House visitor records, and have announced a policy for discretionary releases. Therefore, your request is being referred to White House Counsel's office for consideration pursuant to this policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Ulmer".

Craig W. Ulmer
Special Agent in Charge
Freedom of Information and
Privacy Acts Officer

ATTACHMENT 3



Judicial Watch

Because no one is above the law!

VIA CERTIFIED U.S. MAIL and E-MAIL

November 3, 2009

United States Secret Service (MNO)
ATTN: Information Quality Officer
245 Murray Drive, Bldg. 410
Washington, DC 20223
E-mail: IQO@secretsservice.gov
(Art. No.: 70083230000326080725)

**Re: FREEDOM OF INFORMATION ACT APPEAL,
FOIA Request #20090685**

Dear Sir/Madam:

On August 10, 2009, Judicial Watch, Inc. sent a Freedom of Information Act (FOIA) request to the U.S. Secret Service seeking access to the following public records:

- 1) All official visitors logs and/or other records concerning visits made to the White House from January 20, 2009 to present.

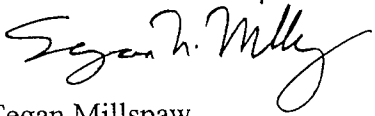
In a response dated October 8, 2009, Craig W. Ulmer, Special Agent in Charge, advised Judicial Watch, Inc. that had determined the requested records were not subject to FOIA and that the request would not be processed as a result. *See* October 8, 2009 Letter, attached.

This letter appeals the determination of Mr. Ulmer. The assertion that White House visitor logs are not agency records subject to FOIA has been litigated and rejected repeatedly. *Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Homeland Security*, 527 F. Supp.2d 76, 89 (D.D.C. 2007) ("To the contrary, the Court concludes that these visitor records at the White House Complex and Vice-President's Residence are created (or obtained) and controlled by the Secret Service and are therefore 'agency records' under our circuit's case law"); *see also Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Homeland Security*, 592 F. Supp.2d 111, 124 (D.D.C. 2009); *Washington Post v. U.S. Dep't of Homeland Security*, 459 F. Supp.2d 61, 71-12 (D.D.C. 2006).

Judicial Watch, Inc. thus respectfully appeals Mr. Ulmer's denial of the request and asks that the requested records be processed and produced pursuant to FOIA without further delay.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read "Tegan H. Millspaw". The signature is fluid and cursive, with the first name "Tegan" and last name "Millspaw" clearly distinguishable.

Tegan Millspaw

Enclosure



DEPARTMENT OF HOMELAND SECURITY
UNITED STATES SECRET SERVICE
WASHINGTON, D.C. 20223

Freedom of Information and Privacy Acts Branch
Communications Center
245 Murray Lane, S.W.
Building T-5
Washington, D.C. 20223

OCT -8 2009

Tegan Millspaw
Judicial Watch
501 School Street, S.W.
5th Floor
Washington, D.C. 20024

File Number: 20090685

Dear Ms. Millspaw:

Reference is made to your Freedom of Information Act (FOIA) request, dated August 10, 2009, received by the United States Secret Service (Secret Service) on August 20, 2009, for "any and all agency records concerning. . .[a]ll official visitors logs and/or other records concerning visits made to the White House from January 20, 2009 to present."

Please note that we are interpreting your request to encompass Access Control Records System (ACR) records, and/or Workers and Visitors Entry System (WAVES) records.

It is the government's position that the categories of records that you requested are not agency records subject to the FOIA. Rather, these records are records governed by the Presidential Records Act, 44 U.S.C. § 2201 et seq., and remain under the exclusive legal custody and control of the White House Office and the Office of the Vice President.

The White House and the Office of the Vice President retain authority to direct the discretionary release of the White House visitor records, and have announced a policy for discretionary releases. Therefore, your request is being referred to White House Counsel's office for consideration pursuant to this policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Ulmer".

Craig W. Ulmer
Special Agent in Charge
Freedom of Information and
Privacy Acts Officer

ATTACHMENT 4



U.S. Department of Homeland Security
UNITED STATES SECRET SERVICE
DEC - 3 2009

Tegan Millspaw
Judicial Watch
501 School Street, S.W.
Suite 725
Washington, D.C. 20024

File Number: 20090685

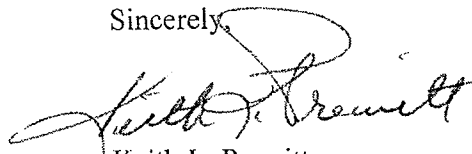
Dear Ms. Millspaw:

Reference is made to your appeal dated November 3, 2009, through which you appeal the United States Secret Service's response to your August 10, 2009 Freedom of Information Act (FOIA) request for "any and all agency records concerning. . .[a]ll official visitors logs and/or other records concerning visits made to the White House from January 20, 2009 to present."

The Secret Service maintains its position as stated in the October 8, 2009 response to your request. In that letter, we stated that "[i]t is the government's position that the categories of records that you requested are not agency records subject to the FOIA. Rather, these records are records governed by the Presidential Records Act, 44 U.S.C. § 2201 et seq., and remain under the exclusive legal custody and control of the White House Office and the Office of the Vice President." You were also notified that the request was being referred to White House Counsel's office for consideration pursuant to the discretionary release policy.

Please be advised that any decision on appeal, including a finding of no record, is subject to judicial review in the District Court of the district where the complainant resides, has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Sincerely,



Keith L. Prewitt
Deputy Director

EXHIBIT 2

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

JUDICIAL WATCH,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 06-310 (JGP)
UNITED STATES SECRET SERVICE,)	
)	
Defendant.)	

DECLARATION OF KATHY J. LYERLY
SPECIAL AGENT IN CHARGE, LIAISON DIVISION AND
FREEDOM OF INFORMATION AND PRIVACY ACTS OFFICER,
UNITED STATES SECRET SERVICE

I, Kathy J. Lyerly, hereby make the following declaration:

1. I am the Special Agent in Charge of the Liaison Division and the Freedom of Information and Privacy Acts (FOI/PA) Officer for the United States Secret Service (hereinafter Secret Service), which is a component of the Department of Homeland Security (DHS). I have been the Secret Service FOI/PA Officer since December 28, 2003, and have been employed with the Secret Service as a Special Agent (GS-1811) since October 26, 1987.
2. DHS regulations, Title 6, Code of Federal Regulations, Section 5.4, and Appendix A, II(I)(3), vest authority in the FOI/PA Officer, Secret Service, to make initial determinations as to whether to grant Freedom of Information Act (FOIA), 5 U.S.C. § 552, requests for Secret Service records (68 FR 4056, 4058, and 4069).
3. As the Secret Service's FOI/PA Officer, I am familiar with plaintiff's FOIA

request to the Secret Service. Under my direction, the Secret Service conducted a search for documents responsive to plaintiff's request. That search produced two records, both of which were released in full without redactions or claims of exemptions. A chronological description of the correspondence in this matter and the processing of plaintiff's FOIA request is set forth below.

4. By letter to the Secret Service dated January 20, 2006, and received January 23, 2006, plaintiff submitted a FOIA request for records "concerning, relating to, or reflecting . . . [a]ll White House visitor logs from January 1, 2001 to present that reflect the entries and exit(s) of lobbyist Jack Abramoff from the White House."

5. By letter dated February 2, 2006, I acknowledged receipt of plaintiff's FOIA request and advised plaintiff that a search for records responsive to the request was being conducted.

6. There are two interrelated systems – collectively termed the White House Access Control System – for controlling and monitoring access to the White House Complex: the Worker and Visitor Entrance System ("WAVES") and the Access Control Records System ("ACR").

7. ACR records consist of records generated when a pass holder, worker, or visitor swipes his or her permanent or temporary pass over one of the electronic pass readers located at entrances to and exits from the White House Complex. ACR records include information such as the pass holder's name and badge number, the time and date of the swipe, and the post at which the swipe was recorded.

8. WAVES records consist of records generated when information is submitted to

the Secret Service about workers and visitors whose business requires their presence at the White House Complex. WAVES records include information additional to that in the ACR records.

9. In response to plaintiff's request, the FOI/PA Office conducted a search for responsive information. This search was conducted under the direction of the Secret Service's Presidential Protective Division by personnel who conduct FOIA searches as part of their regular responsibilities. The Secret Service searched both the ACR records and the WAVES records for any and all records responsive to plaintiff's FOIA request.

10. It has been the longstanding practice of the Secret Service to transfer WAVES records on CD-ROM to the White House every 30 to 60 days. Except as noted in paragraph 11 below, once the Secret Service transferred the WAVES records, the Secret Service ensured that those records were erased from its computer system.

11. In October 2004, at the request of the National Archives and Records Administration, the Secret Service began temporarily retaining its own copy of the WAVES records that it transferred to the White House. As such, the Secret Service has in its possession WAVES records dating back only to October 2004.

12. ACR records are stored in a searchable database. Records are searchable by visitor name. In this case, the Secret Service searched the ACR database by searching for records generated from January 1, 2001 to the date of the search that had the name "Jack Abramoff" in the visitor field. The Secret Service does not keep ACR records anywhere other than in this searchable database.

13. WAVES records are stored in a searchable form on CD-ROMs. Records are

searchable by visitor name. In this case, the Secret Service explored the WAVES CD-ROMs by searching for records generated from October 2004 to the date of the search that had the name "Abramoff" in the visitor field. As noted in paragraph 11, the Secret Service only has in its possession WAVES records dating from October 2004.

14. The Secret Service's search of the ACR records produced two pages of records responsive to plaintiff's FOIA request. These records show that Mr. Abramoff visited the White House Complex on March 6, 2001 and January 20, 2004. The two pages of ACR records responsive to plaintiff's FOIA request have slightly different formats because the ACR system changed somewhat between 2001 and 2004.

15. The Secret Service's search of the WAVES records maintained by the Secret Service produced no WAVES records responsive to plaintiff's FOIA request.

16. There are a variety of reasons why ACR records are not comprehensive as to entries and exits. For example, guests who visit the complex in a prearranged group for an official function or reception may not appear on the ACR records. In some of those instances visitors are granted entry without going through the turnstiles.

17. No other documents responsive to plaintiff's FOIA request were found in the search.

18. No document located in response to plaintiff's request has been withheld in part or in whole.

19. Pursuant to the terms of a joint stipulation and agreed order, on May 10, 2006, defendant produced, without redactions or claims of exemptions, all documents located in response to plaintiff's January 20, 2006 FOIA request.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing statements are true and correct to the best of my knowledge and belief.

5/16/06
Date

Kathy J. Lysterly
Kathy J. Lysterly
Special Agent in Charge, Liaison Division and
Freedom of Information and Privacy Acts Officer
United States Secret Service

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendant.

Civil Action No. 06-883 (JGP)

DEMOCRATIC NATIONAL COMMITTEE,

Plaintiff,

v.

UNITED STATES SECRET SERVICE,

Defendant.

Civil Action No. 06-842 (JGP)

DECLARATION OF KATHY J. LYERLY
SPECIAL AGENT IN CHARGE, LIAISON DIVISION AND
FREEDOM OF INFORMATION AND PRIVACY ACTS OFFICER,
UNITED STATES SECRET SERVICE

I, Kathy J. Lyerly, hereby make the following declaration:

1. I am the Special Agent in Charge of the Liaison Division and the Freedom of Information and Privacy Acts (FOI/PA) Officer for the United States Secret Service (hereinafter "Secret Service"), which is a component of the Department of Homeland Security ("DHS"). I

have been the Secret Service FOI/PA Officer since December 28, 2003, and have been employed with the Secret Service as a Special Agent (GS-1811) since October 26, 1987.

2. DHS regulations, Title 6, Code of Federal Regulations, Section 5.4, and Appendix A, II(I)(3), vest authority in the FOI/PA Officer, Secret Service, to make initial determinations as to whether to grant Freedom of Information Act (FOIA), 5 U.S.C. § 552, requests for Secret Service records (68 FR 4056, 4058, and 4069).

3. As the Secret Service's FOI/PA Officer, I am familiar with Citizens for Responsibility and Ethics in Washington's ("CREW's") FOIA request to the Secret Service. At my request, the Secret Service conducted a search for documents responsive to CREW's request. That search uncovered 356 pages of responsive records which were redacted (to protect individuals' privacy and the security of the White House Complex) and, on September 20, 2006, released. (The White House Complex refers to the White House, the Eisenhower Executive Office Building ["EEOB"], the secured grounds encompassing the White House and the EEOB, and the New Executive Office Building.) A description of the correspondence in this matter and the processing of CREW's FOIA request is set forth below.

4. In a letter dated February 2, 2006, and received February 16, 2006, CREW submitted to the Secret Service, a component of DHS, a FOIA request for "all records relating to any visit that any and all of the following individuals made to the White House [including any office, wherever located, in the Executive Office of the President ("EOP")] or the residence of the Vice President from January 1, 2001, to the present . . . : Jack Abramoff, Michael Scanlon, Neil Volz, Tony Rudy, Shawn Vassell, Kevin Ring, Edwin Buckham, [and] Patrick Pizzella."

5. In a letter dated March 1, 2006, I acknowledged receipt of CREW's

FOIA request and advised CREW that a search for records responsive to the request was being conducted.

6. There are two interrelated systems – collectively termed the White House Access Control System – for controlling and monitoring access to the White House Complex: the Worker and Visitor Entrance System (“WAVES”) and the Access Control Records System (“ACR”). The Vice President’s residence is not a part of the White House Complex, and the Secret Service does not use WAVES or ACR at that site.

7. ACR records consist of records generated when a pass holder, worker, or visitor swipes his or her permanent or temporary pass over one of the electronic pass readers located at entrances to and exits from the White House Complex. ACR records include information such as the pass holder’s name and badge number, the time and date of the swipe, and the post at which the swipe was recorded.

8. WAVES records consist of records generated when information is submitted by a White House pass holder to the Secret Service about workers and visitors who need access to the White House Complex to conduct business or attend social events. WAVES records include the following information submitted by the pass holder: the visitor’s name, date of birth, and Social Security number; the time and location of the planned visit; the name of the pass holder submitting the request; and the date of the request. They may also include limited information from background checks performed by the Secret Service and coded instructions to Secret Service officers. Once a visit takes place, WAVES records are typically updated electronically with information showing the actual time and place of the visitor’s entry into and exit from the White House Complex.

9. The Secret Service controls and monitors access to the Vice President's residence through the use of two access lists – a daily access list for individuals with appointments or work orders, and a permanent access list for those individuals who regularly access the facility. The Secret Service receives requests from the Vice President's staff to allow entry for individuals with appointments or work orders at the facility. The Secret Service conducts background checks on individuals for whom there has been a request for admission, and if there is no information of protective interest, the Secret Service places the name on a daily access list. A permanent access list is also maintained listing those individuals who regularly access the facility. All individuals are logged in by the Uniformed Division officer working at the gate where the individual arrives.

10. In response to CREW's February 2, 2006 FOIA request, the Secret Service has conducted three searches for records. The first two searches were for records of visits to the White House Complex, and the third search was for records of visits to the Vice President's residence. The first search was conducted by the Secret Service's Presidential Protective Division ("the PPD search"). Secret Service employees under the direction of the Secret Service's Office of Inspection performed the second search ("the Inspection team search"). Secret Service Uniformed Division officers assigned to the Vice President's residence conducted searches of visits to the Vice President's residence.

11. The individuals who performed the PPD search conduct FOIA searches as part of their regular responsibilities. The PPD searched both the ACR records and the WAVES CD-ROMs for any and all records responsive to CREW's February 2, 2006 FOIA request.

12. The PPD searched for ACR records in a searchable database in which ACR records are stored. The records are searchable by visitor name. In this case, the Secret Service searched the ACR database by searching for records that would have been generated from January 1, 2001 to the date of the search that had the name Michael Scanlon, Neil Volz, Tony Rudy, Shawn Vasell/Vassell, Kevin Ring, Edwin Buckham, or Patrick Pizzella in the visitor field.

13. It has been the longstanding practice of the Secret Service to transfer WAVES records on CD-ROM to the White House Office of Records Management every 30 to 60 days. The intent of the Secret Service was to ensure that, once transferred, the records were erased from its computer system. The Secret Service has temporarily retained, in a searchable form on CD-ROM, WAVES records generated since October 2004; the records can be searched by visitor name. In this case, the PPD explored the WAVES CD-ROMs by searching for records that had the name Michael Scanlon, Neil Volz, Tony Rudy, Shawn Vasell/Vassell, Kevin Ring, Edwin Buckham, or Patrick Pizzella in the visitor field. The Secret Service did not save on CD-ROM WAVES records for the relevant period (i.e., from January 2001 to the date of the search) generated before October 2004.

14. PPD ran its initial search in March 2006. The search results were reviewed, and several inconsistencies were noted compared to documents produced to the FOI/PA Office by PPD in response to search requests for other FOIA requests pertaining to some of the same individuals. In running an additional search, what appeared to be a WAVES record was discovered on the hard drive of a Secret Service computer located in the Information Technology Section of the PPD. Upon further examination, it appeared that certain WAVES data pre-dating

October 2004 existed on the hard drive of that computer and the hard drive of a second computer in the same office.

15. The PPD search yielded ACR and WAVES records for Michael Scanlon, Neil Volz, Shawn Vasell, Kevin Ring, and Patrick Pizzella. The PPD search yielded ACR records for Tony Rudy. The PPD search yielded no records for Shawn Vassell (as spelled in the February 2, 2006 CREW FOIA request) or Edwin Buckham.

16. The Inspection team searched the hard drives of two computers in the Information Technology Section of the PPD for records regarding visits to the White House Complex. The Inspection team was comprised of the following individuals: an Assistant Inspector in the Inspection Division, whose responsibilities include assessing the effectiveness of operations, quality of management and supervision, and adherence to policies, regulations, and procedures within Secret Service offices and divisions; an Assistant to the Special Agent in Charge in the Criminal Investigative Division (CID), who oversees all Information Technology programs for the Office of Investigations; a Special Agent in the CID and member of the Electronic Crimes Special Agent Program, who is a trained computer specialist and whose duties include forensic examination of computers associated with criminal investigations; and an Information Technology Specialist in the Information Resources Management Division, who is a computer specialist skilled in database design and architecture.

17. I have been advised that the Inspection team believes that the hard drive of the first computer contains multiple database files of varying degrees of WAVES data that pre-date October 2004. The team believes that the database files contain non-comprehensive WAVES data, with sizeable gaps in the report periods. The team also believes that the hard drive of the

second computer contains multiple database files of varying degrees of WAVES data that pre-date October 2004. The team further believes that the database files on this computer contain non-comprehensive WAVES data, with gaps in the report periods. The team believes that the validity of the pre-October 2004 WAVES data found on the hard drives of both computers cannot be assured, because some of the data appear to have been used for testing and development. The Inspection team further believes that the pre-October 2004 WAVES data found on the hard drives of the two computers appear to exist in a separate location from the folder where the WAVES CD-ROMs are made.

18. In addition, the Inspection team located on the hard drives of both computers WAVES data beginning in October 2004. The Inspection team has not examined these data in detail, but did search the data when the search of all Microsoft Access database files on both computers' hard drives was conducted as described in paragraph 21.

19. The Inspection team determined that WAVES data are on a server. According to standard procedure, every 30 to 60 days, data from that server are downloaded, along with entry/exit data from ACR records, to the hard drive on one of the PPD computers. This information is then used to create the WAVES CD-ROMs.

20. The Inspection team has found that the WAVES records on the server, older than 60 days, are purged daily and overwritten on the server. The Inspection team also found, however, that some pre-October 2004 WAVES data downloaded from the server to the two computers' hard drives remain on the hard drives.

21. The Inspection team searched these computers by conducting an automated

search through all Microsoft Access database files on both computers' hard drives for the names Michael Scanlon, Neil Volz, Tony Rudy, Shawn Vasell/Vassell, Kevin Ring, Edwin Buckham, and Patrick Pizzella. The program's search function searched the hard drives for all Microsoft Access database files, and examined each database file for all records containing the names Michael Scanlon, Neil Volz, Tony Rudy, Shawn Vasell/Vassell, Kevin Ring, Edwin Buckham, or Patrick Pizzella. The program created a report of each database file and any data found.

22. The Inspection team search yielded data/records regarding entry/exit to the White House Complex for the following individuals: Michael Scanlon, Neil Volz, Tony Rudy, Shawn Vasell, Kevin Ring, and Patrick Pizzella. No data/records of entry/exit to the White House Complex for Edwin Buckham or Shawn Vassell (as spelled in the February 2, 2006 CREW FOIA request) were discovered by the Inspection team.

23. Neither the PPD search nor the Inspection team search uncovered any WAVES or ACR data/records for Edwin Buckham or Shawn Vassell for the relevant time period. Both searches did reveal data/records for Shawn Vasell. Also, the Secret Service released to CREW, on May 10, 2006 and July 7, 2006, its WAVES and ACR data/records concerning Jack Abramoff. I have signed two declarations filed in Judicial Watch v. United States Secret Service, Civil Action No. 06-310, describing that search.

24. CREW's February 2, 2006 FOIA request asks for records of visits of certain individuals to the Executive Office of the President ("EOP") whether the visits took place at the White House Complex or elsewhere. There are some EOP offices located outside of the White House Complex, but the Secret Service does not maintain or operate access systems at these sites.

25. The information in WAVES records submitted by a White House pass holder is provided to the Secret Service temporarily for two limited purposes: (1) to allow the Secret Service to perform background checks to determine whether, and under what conditions, to authorize the visitor's temporary admittance to the White House Complex; and (2) to allow the Secret Service to verify the visitor's admissibility at the time of the visit.

26. Once a visitor's visit to the White House Complex is complete, WAVES and ACR records have no continuing usefulness to the Secret Service, the Secret Service has no continuing interest in preserving or retaining them – indeed, prior to the temporary WAVES-retention practice begun in October 2004, the Secret Service's intent was to retain WAVES records only long enough to effectuate their orderly transfer to the White House – and the Secret Service does not control or direct the ultimate disposition or use of the records. The White House does have such a continuing interest and therefore the records are turned over to the White House Office of Records Management.

27. To search for potentially responsive records regarding the Vice President's residence, Secret Service Uniformed Division officers assigned to the Vice President's residence completed three separate computer-based searches and one hand search. First, the file server utilized by the Secret Service command post at the Vice President's residence was searched. This search was done by entering some portion of the requested names at issue and then allowing the system's search feature to run. A portion of the name, rather than the name in its entirety, was used to ensure that spellings close to the spelling provided by the requestor would be captured. Because of the breadth of the records contained on the file server, each name took approximately eight to nine hours to complete. Second, a search was run in Microsoft Outlook

on the three computers in the command post for email records potentially responsive to each request. These searches captured any reference to the requested name in the email subject line and the body of the email. For any email with an attachment, the attachment was opened and searched separately. The hard drives of these computers were also searched to determine whether any emails had been saved as separate documents onto the hard drives. Third, the access list database system that generates the daily and permanent access lists used at the gates was searched. This system is housed on the file server, and this third check was done in an effort to verify the results of the search of the file server. The access database was checked by opening up the basic tables it contains, sorting alphabetically by last name and then checking the sorted list against the request. Additionally, the entry logs were searched by hand.

28. Potentially responsive data then available on the computer system and all entry logs in the possession of the Secret Service were searched. No responsive records were found.

29. Prior to producing documents to CREW, the Secret Service redacted information from WAVES data/records to protect the privacy of individuals visiting the White House Complex and the security of the Complex. To protect the individuals' privacy, the Secret Service redacted their dates of birth and Social Security numbers from the WAVES data/records. And to protect the security of the Complex, the Secret Service redacted, from WAVES data/records, limited information from background checks performed by the Secret Service and coded instructions to Secret Service officers who work in the Complex.

30. Entries for Michael Scanlon were also redacted when information in the documents demonstrated that the entries did not refer to the Michael Scanlon referred to in CREW's request.

31. With the exception of the redactions noted in paragraphs 29 and 30, no document responsive to CREW's February 2, 2006 FOIA request has been withheld in part or in whole.

32. On September 20, 2006, all documents responsive to CREW's February 2, 2006 FOIA request with the redactions noted were produced to CREW.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing statements are true and correct to the best of my knowledge and belief.

9-21-06
Date

Kathy J. Lyerly
Kathy J. Lyerly
Special Agent in Charge, Liaison Division and
Freedom of Information and Privacy Acts Officer
United States Secret Service

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)

Plaintiff,)

v.)

UNITED STATES SECRET SERVICE,)

Defendant)

Case No. 1:06-CV-00310 (JGP)

JOINT STIPULATION AND AGREED ORDER

The parties, by counsel, hereby stipulate and agree as follows:

1. Plaintiff hereby withdraws its pending motion for summary judgment;
2. Defendant shall produce any and all documents responsive to Plaintiff's January 20, 2006 Freedom of Information Act request, without redactions or claims of exemption, on or before May 10, 2006.
3. Defendant shall have until and including May 15, 2006 to file any answer or otherwise respond to the Complaint.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

CARL NICHOLS
Deputy Assistant Attorney General

JOSEPH H. HUNT
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ELIZABETH J. SHAPIRO
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/s/
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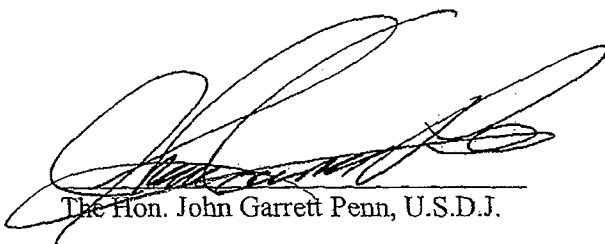
Attorneys for Defendant

IT IS SO ORDERED.

Dated: April 25, 2006

/s/
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Attorneys for Plaintiff


The Hon. John Garrett Penn, U.S.D.J.

[PROPOSED] ORDER

Defendant shall process Plaintiff's FOIA request promptly.

Henry H. Kennedy, Jr.
United States District Judge