



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 U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530-0001. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

#### **STATEMENT OF FACTS**

5. On February 23, 2011, Attorney General Eric Holder issued a statement announcing that Defendant would not defend the constitutionality of Section 3 of the Defense of Marriage Act (“DOMA”) as applied to same-sex married couples in two recently-filed cases, *Pederson v. Office of Personnel Management*, Case No. 2010-cv-1750 pending in the U.S. District Court for the District of Connecticut, and *Windsor v. United States*, Case No. 2010-cv-8435, pending in the U.S. District Court for the Southern District of New York. Attorney General Holder also announced that Defendant would not defend the constitutionality of Section 3 of DOMA as applied to same-sex married couples in any other pending or future litigation of the issue.

6. Following Attorney General Holder’s announcement, Plaintiff sent a series of FOIA requests to Defendant seeking records about the decision not to defend Section 3 of DOMA and the February 23, 2011 announcement.

#### **The February 24, 2011 Request**

7. On February 24, 2011, Plaintiff sent a FOIA request to the Office of Information Policy, a component of Defendant, seeking access to the following:

- a) Any and all communications, contacts or correspondence between the Office of the Attorney General (AG), the Office of the Deputy

Attorney General (DAG), or the Office of the Associate Attorney General (Assoc. AG) and any individuals or entities outside the government concerning *Pedersen v. Office of Personnel Management* and *Windsor v. United States*, including but not limited to, communications concerning the Department of Justice's (DOJ) defense of the Defense of Marriage Act (DOMA) in *Pedersen v. Office of Personnel Management* and *Windsor v. United States*.

- b) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG and members of the United States Congress concerning *Pedersen v. Office of Personnel Management* and *Windsor v. United States*, including but not limited to, communications concerning the DOJ's defense of DOMA in *Pedersen v. Office of Personnel Management* and *Windsor v. United States*.
- c) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG and the White House and/or Executive Office of the President concerning *Pedersen v. Office of Personnel Management* and *Windsor v. United States*, including but not limited to, communications concerning the DOJ's defense of DOMA in *Pedersen v. Office of Personnel Management* and *Windsor v. United States*.
- d) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG and any individuals or entities outside the government concerning the February 23, 2011 "Statement of the Attorney General on Litigation Involving the Defense of Marriage Act."
- e) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG and members of the United States Congress concerning the February 23, 2011 "Statement of the Attorney General on Litigation Involving the Defense of Marriage Act."
- f) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG and the White House and/or Executive Office of the President concerning the February 23, 2011 "Statement of the Attorney General on Litigation Involving the Defense of Marriage Act."

The time frame for this request is October 1, 2010 to February 24, 2011. "Entities outside of the government," includes, but is not limited to, non-governmental organizations (NGOs), any plaintiffs in *Pedersen v. Office of Personnel Management* or *Windsor v. United States*, and advocacy groups, to include, but not limited to:

- The American Civil Liberties Union (ACLU)
- The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
- Center for American Progress;
- Freedom to Marry;
- Gay and Lesbian Advocates and Defenders (GLAD);
- The Gay and Lesbian Alliance Against Defamation (GLAAD)
- The Human Rights Campaign;
- Lambda Legal;
- Marriage Equality USA;
- Moveon.org;
- Rainbow/PUSH Coalition; and
- Service Employees International Union (SEIU).

8. By letter dated March 18, 2011, Defendant acknowledged receipt of Plaintiff's FOIA request on March 2, 2011. Defendant also stated in its March 18, 2011 letter that it was granting itself a ten day extension of time to respond to the request pursuant to 5 U.S.C. § 552(a)(6)(B)(i).

9. By reason of the ten day extension of time, Defendant's response to Plaintiff's February 24, 2011 request was due within thirty working days of March 2, 2011 or by April 13, 2011.

#### **The February 28, 2011 Request**

10. On February 28, 2011, Plaintiff similarly sent a FOIA request to the Office of Information Policy seeking access to the following:

- a) Any and all communications, contacts or correspondence between the Office of the Attorney General (AG), the Office of the Deputy

Attorney General (DAG), or the Office of the Associate Attorney General (Assoc. AG), and the law firm Boies, Schiller & Flexner LLP, including David Boies, concerning *Pedersen v. Office of Personnel Management* and *Windsor v. United States*, including but not limited to communications concerning the Department of Justice's defense of the Defense of Marriage Act (DOMA) in *Pedersen v. Office of Personnel Management* and *Windsor v. United States*.

- b) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG, and the law firm Gibson, Dunn & Crutcher LLP, including Theodore Olson, concerning *Pedersen v. Office of Personnel Management* and *Windsor v. United States*, including but not limited to communications concerning the Department of Justice's defense of DOMA in *Pedersen v. Office of Personnel Management* and *Windsor v. United States*.
- c) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG, and the law firm Boies, Schiller & Flexner LLP, including David Boies, concerning the enclosed February 23, 2011 "Statement of the Attorney General on Litigation Involving the Defense of Marriage Act."
- d) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG, and the law firm Gibson, Dunn & Crutcher LLP, including Theodore Olson, concerning the enclosed February 23, 2011 "Statement of the Attorney General on Litigation Involving the Defense of Marriage Act."

The time frame for this request is October 10, 2010 to February 28, 2011.

11. By letter dated March 18, 2011, Defendant acknowledged receipt of Plaintiff's February 28, 2011 FOIA request on March 8, 2011. Defendant also stated in its March 18, 2011 letter that it was granting itself a ten day extension of time to respond to the request pursuant to 5 U.S.C. § 552(a)(6)(B)(i).

12. By reason of the ten day extension of time, Defendant's response to Plaintiff's February 28, 2011 request was due within thirty working days of March 8, 2011 or by April 19, 2011.

**The March 1, 2011 Request**

13. On March 1, 2011, Plaintiff also sent a FOIA request via certified mail to Defendant's Referral Unit seeking access to the following:

- a) Any and all communications among DOJ officials and/or employees concerning *Pedersen v. Office of Personnel Management* and *Windsor v. United States*, including but not limited to communications concerning the Department of Justice's defense of (DOMA) in *Pedersen v. Office of Personnel Management* and *Windsor v. United States*.
- b) Any and all communications, contacts or correspondence between the Office of the AG, the Office of the DAG, or the Office of the Assoc. AG, and the law firm Boies, Schiller & Flexner LLP, including David Boies, concerning the enclosed February 23, 2011 "Statement of the Attorney General on Litigation Involving the Defense of Marriage Act."

14. On information and belief, Defendant received Plaintiff's March 1, 2011 FOIA request on March 07, 2011.

15. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant was required to respond to Plaintiff's March 1, 2011 FOIA request within twenty working days of March 7, 2011 or by April 4, 2011.

16. As of the date of this Complaint, Defendant has failed to produce any records responsive to any of Plaintiff's three FOIA requests or demonstrate that responsive records are exempt from production. Nor has it indicated whether or when any responsive records will be

produced. In fact, Defendant has failed to respond to any of the three requests in any substantive manner.

17. Because Defendant has 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 three FOIA requests. 5 U.S.C. § 552(a)(6)(C).

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

18. Plaintiff realleges paragraphs 1 through 17 as if fully stated herein.

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

20. 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 conduct a search for any and all responsive records to Plaintiff's three FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's three FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's three FOIA requests and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's three FOIA requests; (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.

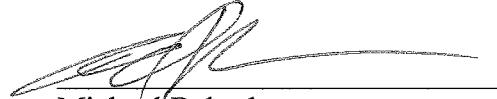
Dated: April 29, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.



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