

**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 JUSTICE,)
950 Pennsylvania Ave., N.W.)
Washington, DC 20530-0001,)
)
Defendant.)
_____)

Case: 1:11-cv-01121
Assigned To : Howell, Beryl A.
Assign. Date : 6/17/2011
Description: FOIA/Privacy Act

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Justice (“DOJ”) 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 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. It has been reported that the decision not to seek indictments of the Council on American Islamic Relations (“CAIR”) and its co-founder Omar Ahmad, the Islamic Society of North America (“ISNA”), and the North American Islamic Trust (“NAIT”) was made by high-ranking officials at the DOJ over the objections of special agents and supervisors of the Federal Bureau of Investigation, as well as the prosecutors at the U.S. Attorney’s Office in Dallas.

6. Due to unanswered questions concerning potential political interference in that decisionmaking process and Defendant’s efforts to avoid public scrutiny of that interference, Plaintiff sent a series of FOIA requests to Defendant seeking records about the prosecution or declination of prosecution of Omar Ahmad.

The Office of Information Policy Request

7. On May 9, 2011, Plaintiff sent a FOIA request to the Office of Information Policy, a component of Defendant, seeking access to the following:

- a) The March 31, 2010 memorandum entitled “Declination of Prosecution of Omar Ahmad” from Attorney General David Kris to Acting Deputy Attorney General Gary Grindler.
- b) 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 Council on American-Islamic Relations (CAIR) or any CAIR affiliated groups concerning,

regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.

- 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 U.S. Congress concerning, regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.
- 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 White House or the Executive Office of the President concerning, regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.
- 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 the U.S. Attorney's Office for the Northern District of Texas concerning, regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.

The time frame for this request is January 20, 2009 to May 1, 2011.

8. By letter dated June 14, 2011, Defendant acknowledged receipt of Plaintiff's FOIA request on May 16, 2011.

9. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant's response to Plaintiff's May 9, 2011 request was due within twenty working days of May 16, 2011 or by June 14, 2011.

The National Security Division Request

10. On May 9, 2011, Plaintiff sent a FOIA request to the National Security Division, a component of Defendant, seeking access to the following:

- a) The March 31, 2010 memorandum entitled "Declination of Prosecution of Omar Ahmad" from Attorney General David Kris to Acting Deputy Attorney General Gary Grindler.
- b) Any and all communications, contacts or correspondence between the NSD and the Council on American-Islamic Relations (CAIR) or any CAIR affiliated groups concerning, regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.

- c) Any and all communications, contacts or correspondence between the NSD and the U.S. Congress concerning, regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.
- d) Any and all communications, contacts or correspondence between the NSD and the White House or the Executive Office of the President concerning, regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.
- e) Any and all communications, contacts or correspondence between the NSD and the U.S. Attorney's Office for the Northern District of Texas concerning, regarding, or relating to the prosecution or declination of prosecution of Omar Ahmad.

The time frame for this request is January 20, 2009 to May 1, 2011.

11. By letter dated May 13, 2011, Defendant acknowledged receipt of Plaintiff's FOIA request on that day.

12. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant's response to Plaintiff's May 9, 2011 request was due within twenty working days of May 13, 2011 or by June 13, 2011.

13. As of the date of this Complaint, Defendant has failed to produce any records responsive to Plaintiff's two 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 the two requests in any substantive manner.

14. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its two FOIA requests. 5 U.S.C. § 552(a)(6)(C).

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

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

16. Defendant is unlawfully withholding records requested by Plaintiff pursuant to

5 U.S.C. § 552.

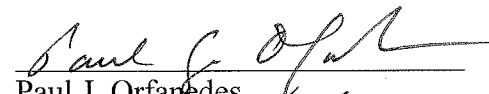
17. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.


WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all responsive records to Plaintiff's two FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's two FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's two 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 two 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: June 17, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.


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