

**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,)	Civil Action No.
)	
v.)	
)	
U.S. DEPARTMENT OF HOUSING)	
AND URBAN DEVELOPMENT,)	
451 Seventh Street, S.W.)	
Washington, DC 20410,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc., by and through its undersigned counsel, brings this action against Defendant United States Department of Housing and Urban Development 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 United States Department of Housing and Urban Development (“HUD”) is an agency of the United States and is headquartered at 451 Seventh Street, S.W., Washington, DC 20410. Defendant HUD has possession, custody, and control of public records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On July 22, 2013, Plaintiff sent two FOIA requests to HUD via certified mail and facsimile. The first FOIA request (the “Mt. Holly request”) sought access to the following public records:

- 1) Any and all records regarding the case pending in the Supreme Court as of the date of this request of *Township of Mt. Holly v. Mt. Holly Gardens Citizens in Action, Inc.*, including but not limited to communications regarding the possibility of settlement between the parties. This request applies to records regarding this case during any state of its proceedings.

The time frame of the Mt. Holly request was identified as being from January 3, 2011 until the date of the request, July 22, 2013.

6. The second FOIA request (the “Magner request”) sought access to the following public records:

- 1) Any and all records regarding the case dismissed from the Supreme Court on February 14, 2012 of *Magner v. Gallagher*, including but not limited to communications regarding the dismissal of the case.

The time frame of the Magner request was identified as being from September 1, 2010 to the date of the request, July 22, 2013.

7. On August 6, 2013, a representative of HUD, Deena Jih, contacted Plaintiff by telephone asking for clarification of the Magner request, mistakenly believing that the Magner request duplicated another FOIA request sent by Plaintiff on April 4, 2012. Plaintiff informed the HUD representative that the time frames of the two requests were different, and, in particular, that the prior request had sought records up to and including April 4, 2012 and that the Magner request sought records from April 4, 2012 to July 22, 2013. The HUD representative advised Plaintiff that, in response to the Magner request, HUD would search for and produce any responsive records from the April 4, 2012 to July 22, 2013 time period.

8. On August 7, 2013, HUD sent separate letters of acknowledgment separately acknowledging receipt of both the Mt. Holly request and the Magner request.

9. Defendant HUD was required to determine whether to comply with Plaintiff's requests within twenty (20) working days after receipt of the requests, pursuant to 5 U.S.C. § 552(a)(6)(A). Pursuant to this same provision, Defendant also was required to notify Plaintiff immediately of the determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency.

10. As of the date of this Complaint, Defendant HUD has failed to make a determination about whether it will comply with either the Mt. Holly request or the Magner request, notify Plaintiff of any determination, or notify Plaintiff of its right to appeal any adverse determination to the head of the agency. Moreover, Defendant HUD has failed to produce any records responsive to either request, indicate when any responsive records will be produced, or demonstrate that responsive records are exempt from production.

11. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)-(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to the Mt. Holly request and the Magner request, pursuant to 5 U.S.C. § 552(a)(6)(C).

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

12. Plaintiff realleges paragraphs 1 through 11 as if fully stated herein.

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

14. 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 this Honorable Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA requests, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's 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 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 under the circumstances herein.

Dated: September 23, 2013

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Paul J. Orfanedes

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