

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No. 12-1510 (JDB)
)	
v.)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

AMENDED COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Justice 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 Judicial Watch, Inc. is a not-for-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, Judicial Watch regularly requests access to records of federal, state, and local government agencies and officials and disseminates its findings to the public.

4. Defendant is an agency of the U.S. Government and is headquartered at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On June 22, 2012, Plaintiff submitted a FOIA request to the Office of Information Policy (“OIP”), a component of Defendant, seeking access to copies of the following records:

All records subject to the claim of executive privilege invoked by President Barack Obama on or about June 20, 2012, as referenced in the letter of Deputy Attorney General James M. Cole to the Honorable Darrell E. Issa, Chairman, Committee on Oversight and Government Reform of the U.S. House of Representatives, dated June 20, 2012. More specifically, the records requested herein are those records described by Deputy Attorney General Cole in his June 20, 2012 letter as “the relevant post-February, 2011, documents” over which “the President has asserted executive privilege.”

6. By letter dated August 6, 2012, OIP informed Plaintiff that a determination had been made to withhold records responsive to Plaintiff’s FOIA request in full pursuant to FOIA Exemption 5, citing the President’s assertion of executive privilege. OIP also informed Plaintiff that Plaintiff had the right to file an administrative appeal of this determination within 60 days. OIP did not indicate that a search for responsive records had been conducted. Nor did it state how many responsive records were being withheld from Plaintiff.

7. By letter dated August 7, 2012, Plaintiff administratively appealed the August 6, 2012 determination.

8. In two separate letters dated August 16, 2012, the Administrative Appeals Staff of OIP notified Plaintiff that it had received Plaintiff’s administrative appeal on August 13, 2012. OIP did not state whether a determination had been made with respect to Plaintiff’s administrative

appeal. Nor did OIP inform Plaintiff of any such determination or notify Plaintiff of the right to seek judicial review.

9. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), OIP was required to make a determination with respect to Plaintiff's administrative appeal within twenty (20) working days of OIP's receipt of the appeal, or by September 11, 2012.

10. As of the close of business September 12, 2012, Plaintiff had not received a determination from OIP with respect to Plaintiff's administrative appeal. Plaintiff filed its Complaint in this matter on that date.

11. On September 13, 2012, Plaintiff received, by mail, a letter from OIP concerning Plaintiff's administrative appeal. The letter was dated September 11, 2012, but the envelope in which the letter had been mailed was postmarked September 12, 2012.

12. In its letter, OIP informed Plaintiff that, pursuant to 5 U.S.C. 552(a)(6)(B)(i)-(iii), it had extended by ten (10) additional working days the date for making a determination with respect to Plaintiff's administrative appeal. Accordingly, OIP's determination with respect to the appeal was due on or before September 25, 2012.

13. To date, Plaintiff has not received OIP's determination with respect to Plaintiff's administrative appeal.

14. Because OIP has failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A)(ii) and 5 U.S.C. § 552(a)(6)(B)(i), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT I
(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 the 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 records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request 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 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: October 1, 2012

Respectfully submitted,

JUDICIAL WATCH, INC.

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