

**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 STATE,)
 The Executive Office)
 Office of the Legal Adviser, Room 5519)
 2201 C Street, NW)
 Washington, D.C. 20520,)
)
 Defendant.)
 _____)

Civil Action No.

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of State 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 organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street S.W., Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission,

Plaintiff regularly requests records from federal agencies pursuant to FOIA. Plaintiff analyzes the responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant U.S. Department of State is an agency of the United States Government and is headquartered at 2201 C Street NW, Washington, D.C. 20520. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On or about May 13, 2015, Defendant posted on its website emails recently returned by former Secretary Hillary Clinton. Two of the emails are attached as Exhibit A.

6. On July 6, 2015, Plaintiff submitted a FOIA request to Defendant seeking access to the attached emails in their native format. Specifically, with respect to the first email (STATE-SCB0045090 – 92), Plaintiff requested the email as it was sent by Ms. Huma Abedin from her AbedinH@state.gov email address. With respect to the second email (STATE-SCB0045193 – 94), Plaintiff requested the email as it was received by Mr. Jacob Sullivan at his sullivanjj@state.gov email address. To the extent Defendant could not produce the emails in their native format, Plaintiff requested that Defendant produce any records identifying the information contained in the email headers of the two emails.

7. By letter dated July 9, 2015, Defendant acknowledged receipt of the FOIA request and assigned the request Case Control Number 2015-11661.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with the FOIA request within twenty (20) working days of receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination.

9. Defendant's determination regarding Plaintiff's FOIA request was due by August 6, 2015 at the latest.

10. As of the date of this complaint, Defendant has failed to: (i) determine whether to comply with the FOIA request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

11. 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 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 records responsive to Plaintiff's FOIA request, 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 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 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: August 31, 2015

Respectfully submitted,

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
Washington, DC 20024
(202) 646-5172

Counsel for Plaintiff

Exhibit A

RELEASE IN
FULL

From: Abedin, Huma <AbedinH@state.gov>
Sent: Sunday, August 21, 2011 9:26 AM
To: H
Subject: Jeff update

Contrast between Benghazi and reports from the West: Here in Benghazi since Thursday, I have joined our representative, Chris Stevens, in meetings with a large number of representatives from the TNC, civil society, UN organizations and NGOs, and the diplomatic corps. While we had no idea that our trip would correspond with significant military advances in the east and the start of the coordinated Tripoli uprising dubbed "Operation Mermaid Dawn," the timing gave us the opportunity to note the contrast between the relative bureaucratic quiet here compared to hyped-up activity in western Libya. Clearly, some coordination is underway between Benghazi and the west: Ali Tarhouni, recently promoted to Deputy Prime Minister in a still-to-be-completed cabinet reshuffle, previewed the Tripoli uprising with us, down almost to the minute. Yet one feels that, to a large extent, TNC officials are observers and chroniclers rather than the authors of the unfolding developments to the west. (In a telling anecdote, just after confiding in us the plans for Tripoli about to unfold, Tarhouni turned off his ringing cell phone, to concentrate on talking to us in a leisurely manner.) What TNC officials told us to a large extent was sensible and mostly reassuring in its content -- and the TNC just issued a directive reiterating its policy to treat combatants according to the Geneva conventions and observe human rights -- but their comments fell mostly in the category of passive analysis rather than aggressive forward thinking. Washington has task forces in focused on Tripoli; Benghazi does not.

While there's a sense in the air that the final battles have begun, that palpable anticipation does not seem to have translated into the type of stepped-up bureaucratic activity that one would expect. After meeting with us for nearly two hours on Thursday, TNC Executive Committee chair (and PM-equivalent) Mahmoud Jibril returned to Doha rather than head any kind of war room here. I was on the ground far longer than Jibril, giving another cameo appearance here. Tarhouni confided that there is no plan for when or how the TNC would relocate quickly to Tripoli, should Tripoli fall. TNC Chairman Mustafa Abduljalil (who remains by all accounts a unifying figure here) is a humble, retiring leader, which after Qadhafi's flamboyance is part of the attraction for Libyans but which does not make him naturally think of how to project TNC authority and symbolism quickly to the newly liberated areas. The question is, when Tripoli falls, do the extensive plans that the TNC has made about the post-Qadhafi transitional structures have any relevance for Tripoli? I do not want to overplay this: the flags being raised in the western towns are the flags used here. Our visit to the military command center demonstrated that there is active information flow (if not exactly command and control) passing between east and west. Tarhouni and others who visit western towns, usually from Tunis, describe support there and from tribal leaders across Libya. No other groups are claiming to have established or planned for an alternative civilian authority to compete with the TNC. Still, in our engagement with TNC officials, we will need to remind them continually of the imperative to nurture their legitimacy and authority and to prevent a political vacuum that others could fill -- especially after Tripoli falls and the TNC is here, not there.

We've talked a lot about Tripoli and whether a battle for the capital could be avoided, which we argued would be the best solution. One of the TNC's assets is the moral distinction between what the Libya that the TNC aspires to promote and how Qadhafi has treated Libya's citizens. The world's attention will focus on a battle for Tripoli, we cautioned, and acts of brutality and revenge and potential internal fights among competing militias will blur that moral distinction even more than the assassination of TNC Chief of Staff Abdulfatah Younis already did. The damage to the TNC's credibility could be irreparable. We also noted that a TNC-led negotiation that succeeds in winning Tripoli without a fight would underscore the TNC leadership far more dramatically than a successful militia assault only vaguely connected to the Benghazi leadership. The TNC officials heard us out patiently, but they clearly were not in the mood to negotiate. They feel confident about the current military situation, and they remain convinced that Qadhafi simply will not give up no matter how high the pressure. If anything, their positions have hardened in recent weeks, with Abduljalil telling us that the TNC will no longer contemplate Qadhafi staying in Libya once he is out of power. Salf Qadhafi is seen in the same category as his father. I do not believe that anything short of a significant change -- Qadhafi's departure, a military

setback that punctures the TNC's current confidence, NATO insisting on a pause in operations in favor of negotiations -- will persuade the TNC leadership that it is in their interest right now to offer Qadhafi a peaceful way out. Tarhouni also acknowledged with his trademark candor that, to the Libyan people right now, negotiations would appear weak and not a satisfactory climax to the revolution. They do have a point that, despite signs of desperation around Qadhafi (e.g., Mohammed Ismail's multiple attempts to contact Gene Cretz and me), there is no indication that Qadhafi himself is prepared to throw in the towel. There is real fear that, should Qadhafi somehow make it from Tripoli to Sebha, a guerilla war could persist for years, with supplies and mercenaries smuggled across the Saharan border.

Among other topics, we pushed the TNC officials hard on starting a high-profile discussion immediately on the reconciliation which is part of the TNC's platform. We noted that the many victims of Qadhafi's 42-year rule will be less likely to pursue individual acts of revenge if they are assured that there will be some form to address grievances through rule-of-law accountability. The same message should also appeal to average Libyans who for whatever reason remained as part of Qadhafi's regime to the end but who have no blood on their hands and might otherwise fear retribution. TNC officials refer approvingly to the South African and Moroccan models, and they reiterated their commitment for an inclusive process for Libya's future that welcomes all but the most notorious individuals around Qadhafi. Yet they still seem to rely largely on (variously described) luck, tribal discipline, and the "gentle character" of the Libyan people as the best assurances against abuse and revenge killings. We will continue to push on this.

Benghazi remained full of chatter about the Abdulfatah Younis assassination. With tribal visits and investigation committees and cabinet changes, the TNC addressed the immediate crisis sufficiently effectively that the initial tension and gunfire quickly dissipated. But the assassination highlighted two realities of Libyan life that TNC officials had previously tried to downplay: tribes and militias. Rather than denying the tribal affiliations of Libyans, TNC officials are now looking to the tribes as part of the solution in enforcing discipline and preventing the type of widescale looting and pillaging that destroyed Benghazi's security infrastructure in March. Tribes, we heard, can also be a corrective balance to Islamist leanings. On reining in the militias, we heard no good answers. Some people (Tarhouni, TNC National Security Advisor Bazama, some civil society representatives) spoke frankly about the problem, including the Islamist leanings of the most powerful. The Islamist militias deserve more discussion in other channels, but a couple of people noted that the Younis assassination had an upside in making scrutiny of this issue imperative. Others seemed to rely, again, on luck or tried to avert their eyes from the problem that militias could post on the Day After. There was widespread disdain for Qatar's role in encouraging certain militia elements, and I will be able to cite lots of concern here when I go to Doha later. Qatar's role, too, is a subject better discussed elsewhere.

We also discussed humanitarian and financial needs. Tarhouni and Jibril noted that the TNC's financial needs increase as more territory falls under rebel control; they are worried that, if they can't provide electricity to newly liberated towns or fund other services there, disenchantment with the TNC will grow. Tarhouni agreed to reach out to the Indians to discuss Libya's outstanding debts, to see if he can help us get India's hold on the frozen asset proposal lifted. Briefed on South Africa's objections, Jibril understood the need for continued outreach to Africa (although part of our South Africa problem may derive from Jibril's poor relations with Zuma, with Jibril telling us that he recently accused Zuma of making Nelson Mandela feel ashamed); Abdulrahman Shalgam will go to the August 25-26 AU Summit and Jibril did not rule out attending himself. I've spoken several times to UAE Foreign Minister Abdullah bin Zayed since arriving here, and the UAE has finally responded positively to our soft collateral proposal for a loan to the TNC, which may be our fastest way of getting funds here, assuming we can come up with a letter that meets the UAE's needs and passes the scrutiny of the U.S. interagency process.

My traveling companions, Bill Roebuck (NEA/MAG director) and Ben Fishman from the NSS, start their return trip today. I will go on to Cairo, Doha, and Abu Dhabi, where, inter alia, I will have more Libya discussions, including seeing Jibril again in Doha. With NileSat continuing to broadcast Qadhafi's propaganda, the Libyan anger over Egypt's role approaches if not exceeds annoyance with Qataar. We are also checking on how to get from Cairo back here, should I need to join Chris here in the coming days.

Chris and his tiny staff are doing a heroic job in representing our interests here. I am especially appreciative to DS for all the work done to support my trip. I also want to highlight the work that Pat Kennedy's M family and NEA/EX did in establishing living and working quarters for Chris and his team. Thanks to a lot of creativity and hard work, the

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Case No. F-2015-04841
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STATE DEPT. - PRODUCED TO HOUSE SELECT BENGHAZI COMM.
SUBJECT TO AGREEMENT ON SENSITIVE INFORMATION & REDACTIONS. NO FOIA WAIVER.

environment for American staff here is significantly improved over what I saw two months ago when we were located in the downtown Tibesty Hotel.

-- Jeff

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STATE-SCB0045092

RELEASE IN
FULL

From: H <hrod17@clintonemail.com>
Sent: Saturday, July 7, 2012 8:20 AM
To: 'sullivanjj@state.gov'
Subject: Fyi

Another report---

SOURCE: Sources with direct access to the Libyan National Transitional Council, as well as the highest levels of European Governments, and Western Intelligence and security services.

1. As of the morning of July 6, an individual with access to the information stated in confidence that Libyan National Transitional Council (NTC) President Mustafa Abdel Jalil remains committed to a transfer of power to a popularly elected government; however, he is prepared to extend the life of the NTC as a guarantor of stability for the Libyan people following the July 7, 2012 election for seats in a 200-member General National Congress (GNC). Jalil realizes that 2.7 million Libyans have registered to vote and are generally anxious to replace the increasingly unpopular NTC. That said, Jalil expects the voting to lead to a period of confusion and he will not abandon his authority until the results are fixed.

2. Jalil is also frustrated by the fact that during its eight-month tenure of the administration of Prime Minister Abdel Rahman el-Keib - who was appointed by the NTC -- was unable to provide solutions for Libya's long list of needs: a functioning justice system, a reconciliation process for officials who served the old administration, the disarming of militia, building functional national security forces, rebuilding destroyed areas, and delivering basic services such as healthcare.

3. At the same time, outside of the oil sector, much of Libya's economy is stagnant, and in the opinion of Western security officials, lacks the government's go-ahead to restart public sector infrastructure contracts. In addition, international advisers and foreign investors are reluctant to return to an environment where the government will not sign long term agreements and cannot guarantee security.

4. (Source Comment: According to an extremely sensitive source, Jalil continues to believe that this chaotic situation should not be surprising. He regularly points out that eight months is not a sufficient amount of time to build functioning institutions from the remnants of the regime of former dictator Muammar al Qaddafi. The old regime featured a dysfunctional bureaucracy, idiosyncratic rule, and anti-institutionalism. Additionally, Jalil now realizes that due to pronounced incompetence and a lack of will to take unpopular decisions the el-Keib government also failed to make progress in the few areas where it could have achieved meaningful change. The towns of Sirte and Tawargha are representative of the situation in the countryside where people lost their homes in the conflict and have been living in temporary camps with limited ability to register and vote in their home district. Jalil has been urged by contacts in the French and Italian Governments to guarantee the rights of people across the country. In particular, he has serious concerns as to whether or not supporters of former dictator Muammar al Qaddafi in his hometown of Sirte will be included in the future political processes of the new Libya; if they are not allowed to vote by local militiamen. At the same time, the fighting between Libyan Arabs and Tebu tribesmen in the Kufra area threatens to prevent any voting there. Jalil has been warned that the NTC regulations now state that members of the National Army are not allowed to vote or run for office, which is a disincentive for armed militia brigade members to become legitimate soldiers.)

5. This well informed individual believes that despite these flaws, the new government created by the July 7 election will eventually have the mandate to take the difficult decisions that can create a reconciliation process. Jalil will work to maintain order in this transition period, and finally reach his goal of creating a situation where the government can rebuild homes and restore sufficient law and order; allowing those in Sirte, Tawargha, Kufra, and throughout the rest of the country to live in their hometowns, establishing a situation where a true civil society can develop.

6. Jalil, in conversations with the leaders of the Muslim Brotherhood (MB), and separately with liberal leader Ali Tarhouni, has acknowledged that the central government's top priority must be security and that the NTC has been unable to provide it. That said, Jalil and Minister of Defense Ousama al-Juwali have pledged to provide 30,000 to 40,000 security personnel for election day to prevent similar incidents to the July 1 attack on Benghazi's election headquarters. In that case eastern federalists entered the building, where ballot papers were burned and ballot boxes destroyed. Similarly, these federalist forces are suspected of the attack on July 5 that burned down Ajdabiya's main storage centre for election materials.

7. In the opinion of this individual, although those responsible for the Benghazi attack were pro-federalist, it has not been proven that they were members of the self-appointed Cyrenaican National Council (CNC), whose military arm set up a roadblock in Wadi al-Ahmar on Libya's major east-west highway to demand that Cyrenaica get as many seats in the GNC as Tripolitania. Thus far, neither the CNC nor any other group has publicly stated that they intend to use violence to disrupt the elections. (Note: Under the current system Tripolitania will have 120 seats in the GNC, Cyrenaica (Barqa) 62, and Fezzan in the South 18.)