

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No. 17-cv-00029
v.)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
)	

**PLAINTIFF’S MOTION FOR PRESERVATION ORDER
AND REQUEST FOR EXPEDITED CONSIDERATION**

Plaintiff Judicial Watch, Inc., by counsel, respectfully submits this motion for an order requiring Defendant U.S. Department of Justice to preserve the records at issue in this Freedom of Information Act case. Pursuant to LCvR 7(f), Plaintiff requests a hearing on this motion. As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

1. This is an action under FOIA seeking agency records currently residing in the gmail email account of Peter Kadzik, the Assistant Attorney General for Legislative Affairs. Plaintiff submitted two FOIA requests on November 7, 2016 and filed its Complaint on January 5, 2017 after Defendant failed to respond to Plaintiff’s FOIA requests within the time limits set by FOIA.
2. The records at issue are in the physical possession of Assistant Attorney General Kadzik. With the upcoming change in administrations on January 20, 2017, it is likely that he will leave government service on or around that date.
3. As of November 26, 2014, “[a]n officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer

or employee- (1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or (2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.” 44 U.S.C. § 2911. Because Plaintiff does not know if this has occurred or what, if any, other steps Defendant has taken to preserve the records responsive to Plaintiff’s FOIA request, Plaintiff is concerned that after Assistant Attorney General Kadzik leaves government employment, Defendant will no longer have control over the actions of this official.

4. An order requiring Defendant to take steps to preserve the agency records at issue is consistent with an agency’s recordkeeping responsibilities to retain and manage government records subject to the Federal Records Act. 44 U.S.C. §§ 2101-18. If the agency official is permitted to leave his employment while retaining agency records in his gmail email account, it risks creating a situation comparable to that of former Secretary of State Hillary Clinton. In that instance, it is undisputed that only a portion of Secretary Clinton’s emails eventually were returned to the agency.

5. Plaintiff respectfully requests expedited consideration of this motion in light of the likely imminent departure from government service of Assistant Attorney General Kadzik.

6. Pursuant to LCvR 7(m), on January 5, 2017, undersigned counsel contacted in person and by email Marcia Berman, Assistant Director, Civil Division, Federal Programs Branch, and asked whether Defendant would oppose this motion. At the time of filing, Ms. Berman indicated that Defendant does not yet have a position. In addition to properly serving the Complaint in accordance with the Federal Rules of Civil Procedure, undersigned counsel also is sending a copy of the Complaint and this motion to Ms. Berman via email.

Dated: January 5, 2017

Respectfully submitted,

/s/ Michael Bekesha

Michael Bekesha

D.C. Bar No. 995749

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Counsel for Plaintiff

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_____)	

[PROPOSED] PRESERVATION ORDER

In order to ensure that the agency records at issue in this litigation are preserved throughout the pendency of this litigation, it is hereby

ORDERED that Defendant shall take all necessary and reasonable steps to preserve all agency records in the gmail email account of Assistant Attorney General for Legislative Affairs Peter Kadzik. Defendant shall advise the Court of the steps it has taken to preserve such records no later than January ____, 2017.

Date

United States District Judge