

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

JUDICIAL WATCH, INC.,)
425 Third Street SW, Suite 800)
Washington, DC 20024,)

Plaintiff,)

v.)

Civil Action No.:

U.S. DEPARTMENT OF DEFENSE,)
1400 Defense Pentagon)
Washington, DC 20301,)

and)

CENTRAL INTELLIGENCE AGENCY)
Office of General Counsel)
Washington DC 20505,)

Defendants.)

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendants U.S. Department of Defense and Central Intelligence Agency 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 that seeks to promote transparency, integrity, and accountability in government and fidelity to the

rule of law. As part of its educational mission, Plaintiff regularly requests records under FOIA, analyzes the responses and any records it receives, and disseminates its findings and the records to the American public to inform them about “what their government is up to.” *U.S. Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 795 (1989). Plaintiff is incorporated under the laws of the District of Columbia and is headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024.

4. Defendant U.S. Department of Defense is an agency of the United States Government and is headquartered at 1400 Defense Pentagon, Washington, DC 20301. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant Central Intelligence Agency is an agency of the United States Government and is headquartered in Langley, Virginia. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. On December 11, 2015, Plaintiff submitted identical FOIA requests to the Department of Defense (“DOD”) and the Central Intelligence Agency seeking the following:

Any and all documents, records, and/or communications concerning, regarding, or related to memoranda drafted by Stephen W. Preston, former C.I.A. General Counsel; Mary B. DeRosa, former National Security Council Legal Adviser; Jeh C. Johnson, former Pentagon General Counsel; and then-Rear Admiral James W. Crawford III, former Joint Chiefs of Staff Legal Adviser, regarding options, authority, rationale, details, analysis, legal factors, policy concerns, opinions, and conclusions for the search, raid, capture, and/or killing of Osama bin Laden in 2011. Relevant documents, records, and/or communications include, but are not limited to:

- a. A memorandum written by former Pentagon General Counsel Jeh C. Johnson concerning any violation of Pakistani sovereignty in seeking, capturing, and/or killing Osama bin Laden in 2011;

- b. A memorandum written by former C.I.A. General Counsel Stephen W. Preston regarding when the administration must alert congressional leaders about the raid, capture, and/or killing of Osama bin Laden in 2011;
- c. A memorandum written by former National Security Council Legal Adviser Mary B. DeRosa concerning a Navy SEAL team going into a raid with the intention of killing as a default option during the search, raid, capture and/or killing of Osama bin Laden in 2011;
- d. A memorandum written by former National Security Council Legal Adviser Mary B. DeRosa regarding plans for detaining Osama bin Laden in the event of his capture;
- e. A memorandum written by former Joint Chiefs of Staff Legal Adviser then-Rear Admiral James W. Crawford III regarding options and/or plans for Osama bin Laden's burial.

7. By letter dated December 21, 2015, Defendant DOD acknowledged receiving Plaintiff's request and advised Plaintiff that the request had been assigned case number 16-F-0312.

8. By letter dated January 13, 2016, Defendant CIA acknowledged receiving Plaintiff's request on December 24, 2015 and advised Plaintiff that the request had been assigned reference number F-2016-00740.

9. As of the date of this Complaint, Defendants have failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records Defendants intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552 – Defendant DOD)

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

11. Defendant DOD is violating FOIA by failing to search for and produce all records responsive to Plaintiff's request or demonstrate that the requested records are lawfully exempt from production.

12. Plaintiff is being irreparably harmed by reason of Defendant DOD's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant DOD is compelled to comply with FOIA.

13. To trigger FOIA's administrative exhaustion requirement, Defendant DOD was required to determine whether to comply with Plaintiff's request within twenty (20) working days of receiving the request. Accordingly, Defendant DOD's determination was due on or about January 21, 2016. At a minimum, Defendant DOD was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant DOD intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

14. Because Defendant DOD failed to determine whether to comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant DOD to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request;

(2) order Defendant DOD 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 DOD 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.

COUNT II
(Violation of FOIA, 5 U.S.C. § 552 – Defendant CIA)

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

16. Defendant CIA is violating FOIA by failing to search for and produce all records responsive to Plaintiff's request or demonstrate that the requested records are lawfully exempt from production.

17. Plaintiff is being irreparably harmed by reason of Defendant CIA's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant CIA is compelled to comply with FOIA.

18. To trigger FOIA's administrative exhaustion requirement, Defendant CIA was required to determine whether to comply with Plaintiff's request within twenty (20) working days of receiving the request on December 24, 2015. Accordingly, Defendant CIA's determination was due on or about January 26, 2016. At a minimum, Defendant CIA was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant CIA intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

19. Because Defendant CIA failed to determine whether to comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant CIA to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant CIA 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 CIA 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: February 24, 2016

Respectfully submitted,

/s/ Lauren M. Burke
Lauren M. Burke
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