

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	Civil Action No.
<i>Plaintiff,</i>)	
v.)	
)	
U.S. DEPARTMENT OF VETERANS)	
AFFAIRS)	
810 Vermont Avenue NW)	
Washington, DC 20420,)	
)	
<i>Defendant.</i>)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Veterans Affairs 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 SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, integrity, and accountability 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

agencies' responses and disseminates both 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 Veterans Affairs is an agency of the United States Government headquartered at 810 Vermont Avenue NW, Washington, DC 20420. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On June 19, 2017, Plaintiff submitted a FOIA request to the U.S. Department of Veterans Affairs Greater Los Angeles Healthcare System ("VAGLAHS"), a component of Defendant, seeking access to records related to authorization for the Brentwood School to use routes through VAGLAHS's West LA Campus for hauling in connection with a construction project at the school.

6. Plaintiff's request included a copy of the notice from the Brentwood School, dated May 22, 2017, which provided a hauling schedule to commence on or about July 21, 2017. Specifically, Plaintiff requested the following records:

1. All records of communications (letters, email, etc.) with the Brentwood School concerning or relating to use of the VAGLAHS's West LA Campus for construction hauling.
2. All information or documentation relied on or considered by the VAGLAHS in approving use of the VAGLAHS's West LA Campus for construction hauling by the Brentwood School.
3. All records documenting or memorializing approval of the VAGLAHS's West LA Campus for construction hauling by the Brentwood School.
4. All records concerning or relating to the volume, number, size, times (dates and hours), and frequency of construction trucks that are anticipated to pass through the VAGLAHS's West LA Campus during the Brentwood School construction project.

5. All records concerning or relating to the impact of the construction trucks on veterans who reside at or use the VAGLAHS's West LA Campus.
6. All records concerning or relating to any compensation or reimbursement paid or to be paid by the Brentwood School to the VAGLAHS or the U.S. Department of Veterans Affairs for use of the West LA Campus for construction hauling.

7. By letter dated July 10, 2017, Defendant acknowledged receipt of Plaintiff's request on June 19, 2017 and assigned it FOIA Request No. 17-09812-F.

8. Defendant's acknowledgement letter, signed by FOIA Officer Jenelle Happy, asserted that Plaintiff's request did not reasonably describe the records sought and asked for a "valid time frame" for its search of the information requested.

9. Plaintiff's request included the public notice and construction schedule outlining the proposed time frame for the project. *See* Plaintiff's FOIA Request attached hereto as Exhibit 1. Plaintiff's request described in detail the records it was seeking. Regardless, Plaintiff responded to Defendant's July 10, 2017 letter on July 17, 2017 via electronic mail specifying that it was seeking "information about the construction project at the Brentwood School that began or a (sic) least was scheduled to being last month." The "hauling – through agreed upon VA route" was scheduled to commence on Friday, July 21, 2017.¹

10. By letter dated July 28, 2017, Defendant sent a second letter acknowledging receipt of Plaintiff's request on June 19, 2017 stating that it would search for records responsive to Plaintiff's request gathered or created on or before July 20, 2017. Evidently, the time frame for Defendant's search was abundantly clear.

¹ It is Plaintiff's understanding that the project was delayed and commenced on August 4, 2017. However, this delay does not affect the time frame for a search of information responsive to Plaintiff's request for records related to the project.

11. As of the date of this Complaint, Defendant has 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 Defendant 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

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

13. Plaintiff is being irreparably harmed because of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

14. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiff's request within the applicable time limit provisions of 5 U.S.C. § 552(a)(6). At a minimum, Defendant was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant 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). Even allowing for the tolling of the twenty-day time period permitted for the agency to seek information from the requester, Defendant was required to issue its determination on or about July 25, 2017.² 5 U.S.C. §552(a)(6)(A).

² Defendant acknowledged receiving Plaintiff's request on June 19, 2017 requiring determination by or before July 18, 2017. Defendant arguably "tolled" the twenty-day time period on July 10, 2017 when it requested Plaintiff provide a "valid time frame" for its search. Plaintiff provided the requested information in its July 17, 2017 letter

15. Because Defendant 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 to conduct searches 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: August 7, 2017

Respectfully submitted,

/s/ Lauren M. Burke

Lauren M. Burke

D.C. Bar No. 1028811

JUDICIAL WATCH, INC.

425 Third Street S.W., Suite 800

Washington, DC 20024

Tel: (202) 646-5172

Email: lburke@judicialwatch.org

Counsel for Plaintiff

sent via email which lifted the "tolling" period and provided Defendant with six days to make its determination. 5 U.S.C. §552(a)(6)(A)(ii)(II).

EXHIBIT 1



**Judicial
Watch**

*Because no one
is above the law!*

VIA EMAIL (glafoia@va.gov)
AND CERTIFIED MAIL

June 19, 2017

Jenelle Happy, Freedom of Information Act Officer
VA Greater Los Angeles Healthcare System
11301 Wilshire Blvd.
Los Angeles, CA 90073

Re: Freedom of Information Act Request

Dear Ms. Happy:

It is Judicial Watch, Inc's understanding that the VA Greater Los Angeles Healthcare System ("VAGLAHS") has authorized the Brentwood School to use routes through VAGLAHS's West LA Campus for hauling in connection with a construction project at the school. *See* attached notice from the Brentwood School, dated May 22, 2017. We understand that the hauling will commence on or about July 21, 2017. Accordingly, we ask that the VAGLAHS produce the following records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"):

1. **All records of communications (letters, email, etc.) with the Brentwood School concerning or relating to use of the VAGLAHS's West LA Campus for construction hauling.**
2. **All information or documentation relied on or considered by the VAGLAHS in approving use of the VAGLAHS's West LA Campus for construction hauling by the Brentwood School.**
3. **All records documenting or memorializing approval of the VAGLAHS's West LA Campus for construction hauling by the Brentwood School.**
4. **All records concerning or relating to the volume, number, size, times (dates and hours), and frequency of construction trucks that are anticipated to pass through the VAGLAHS's West LA Campus during the Brentwood School construction project.**

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5. **All records concerning or relating to the impact of the construction trucks on veterans who reside at or use the VAGLAHS's West LA Campus.**
6. **All records concerning or relating to any compensation or reimbursement paid or to be paid by the Brentwood School to the VAGLAHS or the U.S. Department of Veterans Affairs for use of the West LA Campus for construction hauling.**

Please determine whether you will comply with this request within the time limits required by FOIA and notify us immediately of your determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency or his or her designee. 5 U.S.C. § 552(a)(6)(i). Please also produce all responsive records in an electronic format ("pdf" is preferred), if convenient. We also are willing to accept a "rolling production" of responsive records if it will facilitate a more timely production.

Judicial Watch also hereby requests a waiver of both search and duplication fees. We are entitled to a waiver of search fees because we are a "representative of the news media." See 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Cause of Action v. Federal Trade Comm.*, 799 F.3d 1108 (D.C. Cir. 2015); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989). For more than twenty years, Judicial Watch has used FOIA and other investigative tools to gather information about the operations and activities of government, a subject of undisputed public interest. We submit over 400 FOIA requests annually. Our personnel, which includes experienced journalists and professional writers on staff and under contract, use their editorial skills to turn this raw information into distinct works. These works are then disseminated to the public through multiple channels, including our monthly newsletter, which has a circulation of over 500,000, email updates, which are distributed to over 1,000,000 unique email addresses, investigative bulletins, special reports, and our www.judicialwatch.org website and *Corruption Chronicles* blog. We also disseminate our work via social media, including Facebook and Twitter, among other means. We also have authored books, including *Corruption Chronicles* by Tom Fitton (Threshold Editions, July 24, 2012) and *Clean House* by Tom Fitton (Threshold Editions, Aug. 30, 2016). In 2012, we produced a documentary film, "District of Corruption," directed by Stephen K. Bannon. Our "news media" status has been confirmed in court rulings. See, e.g., *Judicial Watch, Inc. v. U.S. Dep't of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000). As a tax exempt, 501(c)(3) non-profit corporation, we have no commercial interests and do not seek the requested records for any commercial use. Rather, we intend to use the requested records as part of our on-going investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

Judicial Watch also is entitled to a waiver of both search fees and duplication fees because "disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records undoubtedly will shed light on "the

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operations or activities of the government.” *Cause of Action*, 799 F.3d at 1115 (quoting 5 U.S.C. § 552(a)(4)(A)(iii)). Disclosure also is “likely to contribute significantly to the public understanding” of those operations or activities because, among other reasons, Judicial Watch intends to disseminate both the records and its findings to “a reasonably broad audience of persons interested in the subject” via its newsletter, email updates, investigative bulletins, website, blog, and its other, regular distribution channels. *Cause of Action*, 799 F.3d at 1116 (quoting *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994)). Again, Judicial Watch does not seek the requested records for any commercial benefit or for its own “primary” benefit, but instead seeks them as part of its ongoing investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

In the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch agrees to pay up to \$300.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or crotaru@judicialwatch.org.

Thank you for your cooperation.

Sincerely,

JUDICIAL WATCH, INC.



Cristina Rotaru

Encl.



EAST CAMPUS: Middle School, 7-8 | Upper School, 9-12
109 South Barrington Place | Los Angeles, CA 90049
(310) 476-9633 | Fax (310) 476-4087

WEST CAMPUS: Lower School, K-6
12661 Sunset Boulevard | Los Angeles, CA 90049
(310) 471-1901 | Fax (310) 470-1929

May 22, 2017

Dear Neighbor,

As you most likely know, the Los Angeles City Council approved the Conditional Use Permit (CUP) for Brentwood School's 30-Year Education Master Plan. We take pride in being a reliable and good neighbor and, as part of this Education Master Plan, Brentwood School has agreed to reduce its peak hour vehicle trips by an unprecedented 40% from existing levels. We will do this through a combination of measures, including more stringent carpooling requirements, mandatory busing, and moving special events to evening and weekends. We have already begun implementing some of these measures, and we will add to them next year. In an effort to further reduce congestion along the Sunset Corridor, we are also partnering with Paul Revere Middle School to increase busing opportunities for their students.

The Education Master Plan will be developed in several phases over thirty years, with multi-year gaps between each phase. Currently, we are ready to commence Phase 1 on the East Campus, which is the development of a new Middle School Classroom Building and enclosed parking garage on the existing Middle School athletic field next to Sunset Boulevard. The athletic field will be replaced on top of the garage. As part of Phase 1, we will also relocate our main gate further from the intersection of Sunset Boulevard and Barrington Place. This will improve traffic flow at this intersection.

Pursuant to CUP Condition No. J.26.a, I am writing to notify you that we intend to commence construction on or after June 12, 2017. Attached please find a copy of the Phase 1 construction milestones and dates, including the various types of activities that will occur throughout this construction phase.

In addition, I would like to extend my personal invitation to you to attend our Groundbreaking Celebration from 12:00 to 2:00 p.m. on Sunday, June 11. If you would like to attend, please RSVP to gyoshimaru@bwscampus.com.

If you have questions prior to or at any time during construction, please contact our Director of Facilities, Victor Pesiri, at (310) 873-1136, or at vpesiri@bwscampus.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Riera".

Mike Riera, Ph.D.
Head of School

Brentwood School: Construction Milestones and Dates

2017

6/12-6/30	Mobilization—delivery of trailer for temporary offices, temporary fencing, and site logistics.
6/19-7/7	Demolition—clearing landscape and shed removal
7/10-8/11	Shoring
7/21-9/8	Hauling—through agreed upon VA route
9/4 - 10/13	Underground utilities and foundation work
10/2-12/15	Vertical construction of parking garage
12/18	Parking garage structure (continues through 4/20/2018)

2018

3/19-5/14	Structural steel work
4/20	Parking garage structure (continues from 12/18/2017)
5/14-6/1	Concrete podium
6/4-9/10	Wood framing
10/01	Interior construction (continues through 1/18/2019)
10/01	Site work and landscape (continues through 4/2019)

2019

1/18	Interior construction (continues from 10/01/2018)
4/2019	Site work and landscape (continues from 10/01/2018)
4/19	Substantial completion TCO
4/20-5/31	Commissioning and project close out

NOTE: Brentwood School is staging on site and hauling through VA.

Director of Facilities, Victor Pesiri, is our construction liaison and is available by phone at (310) 873-1136, or by email at vpesiri@bwscampus.com at all times for construction-related inquiries. Inquiries will be logged and addressed in a timely manner.