

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

JUDICIAL WATCH, INC.,)
 425 Third Street SW, Suite 800,)
 Washington, DC 20024,)
)
 and)
)
 THE DAILY CALLER NEWS FOUNDATION,)
 1920 L Street, N.W., Suite 200,)
 Washington, DC 20036,)
)
 Plaintiffs,)
)
 v.)
)
 U.S. DEPARTMENT OF JUSTICE,)
 950 Pennsylvania Avenue, N.W.,)
 Washington, DC 20530-0001,)
)
 Defendant.)
 _____)

Civil Action No.

COMPLAINT

Plaintiffs Judicial Watch, Inc. and The Daily Caller News Foundation bring this action against Defendant U.S. Department of Justice to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. As grounds therefor, Plaintiffs allege 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. Judicial Watch seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Judicial Watch regularly requests records from federal agencies pursuant to FOIA. Judicial Watch 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. Plaintiff The Daily Caller News Foundation has its principal place of business at 1920 L Street, N.W., Suite 200, Washington, DC 20036. Founded in 2011 by Tucker Carlson, a 20-year veteran of print and broadcast media, and Neil Patel, former chief policy adviser to Vice President Dick Cheney, DCNF is a 501(c)(3) non-profit organization providing original investigative reporting from a team of professional reporters that operates for the public benefit. DCNF’s website reaches approximately three million unique monthly visitors and its content, which is available without charge to any eligible news publisher, is published by The Daily Caller, Yahoo News, Business Insider and a growing host of other media outlets, reaching a combined audience estimated in excess of 30 million readers.

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

STATEMENT OF FACTS

6. On May 22, 2017, Judicial Watch submitted a FOIA request to the Federal Bureau of Investigation, a component of Defendant, seeking:

- A. Any and all records (sometimes referred to as “memoranda to the file,” “memoranda for record,” and other variants) written or ordered written by FBI Director James Comey summarizing his conversations with any of the following individuals: Barack Obama, Joe Biden, Hillary Clinton,

Senator Chuck Schumer, Representative Nancy Pelosi, and Senator John McCain.

- B. Any and all handwritten notes used as the basis for preparing any records responsive to [part A].

The time frame for the requested records is September 4, 2013 to May 9, 2017.

7. By letter dated May 25, 2017, the FBI acknowledged receiving Judicial Watch's FOIA request and informed Judicial Watch that it had assigned the request FOIAPA Request Number 1374674-000.

8. On February 16, 2018, DCNF submitted a FOIA request to the FBI seeking "records that identify and describe all meetings between former FBI Director James Comey and President Barack Obama."

9. By letter dated February 26, 2018, the FBI acknowledged receiving DCNF's FOIA request and informed DCNF that it had assigned the request FOIAPA Request Number 1396901-000.

10. 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 Plaintiffs of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiffs that they may appeal any adequately specific, adverse determinations.

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiffs reallege paragraphs 1 through 10 as if fully stated herein.

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

13. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiffs' FOIA requests within the time limits set by FOIA. Accordingly, Defendant's determination with respect to Judicial Watch's FOIA request was due by June 23, 2017, and Defendant's determination with respect to DCNF's FOIA request was due by March 26, 2018. At a minimum, Defendant was obligated to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiffs the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiffs that they 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 failed to determine whether to comply with Plaintiffs' FOIA requests, Plaintiffs are deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiffs respectfully request that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiffs' FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiffs' FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiffs' FOIA requests 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 Plaintiffs' FOIA requests; (4) grant Plaintiffs 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 Plaintiffs such other relief as the Court deems just and proper.

Dated: April 25, 2018

Respectfully submitted,

/s/ Michael Bekesha _____

Michael Bekesha

D.C. Bar No. 995749

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