

**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,)	Civil Action No.
)	
v.)	
)	
OFFICE OF THE DIRECTOR OF)	
NATIONAL INTELLIGENCE)	
Washington, DC 20511)	
)	
and)	
)	
CENTRAL INTELLIGENCE AGENCY,)	
Office of General Counsel)	
Washington, DC 20505,)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendants Office of the Director of National Intelligence (“ODNI”) and Central Intelligence Agency (“CIA”) 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 agencies' responses to its requests and disseminates both its findings and the requested records to the public to inform them about "what their government is up to."

4. Defendant ODNI is an agency of the United States Government. The ODNI has possession, custody, and control of records to which Plaintiff seeks access. The ODNI is headquartered in Washington, DC 20511.

5. Defendant CIA is an agency of the U.S. Government and is headquartered in Langley, Virginia. The CIA has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. On April 23, 2018, Plaintiff submitted a FOIA request to the ODNI, via certified mail (Certified Mail Tracking No. 7017 1000 0000 2547 0808), seeking access to the following:

All records of communication, including emails (whether on .gov or non-.gov email accounts), text messages and instant chats, between officials in the office of the Director of National Intelligence, including but not limited to James Clapper, and employees, representatives and contractors of CNN.

The time frame for the requested records is May 2016 through May 2017.

7. According to the U.S. Postal Service' tracking system, Plaintiff's FOIA request was delivered to the ODNI on April 30, 2018.

8. ODNI has not acknowledged receipt of Plaintiff's FOIA request and has provided no response to date.

9. On April 23, 2018, Plaintiff submitted a related FOIA request to the CIA via certified mail seeking access to records about and communications between the CIA, the ODNI and CNN employees and/or contractors.

10. By letter dated July 19, 2018, the CIA acknowledged that it received Plaintiff's FOIA request on May 4, 2018.

11. Plaintiff's FOIA request consists of three subparts. By letter dated October 31, 2018, the CIA informed Plaintiff that the CIA deemed subpart 1 of Plaintiff's FOIA request overly broad and lacking specificity. In response, Plaintiff agreed to narrow the scope of subpart 1 and modified its request to seek the following records:

1) All records of communication, including emails (whether on .gov or non-.gov email accounts), text messages and instant chats, between officials in the office of the Director of Central Intelligence, including but not limited to DCI John Brennan, and employees, representatives and contractors of CNN. The time frame for the requested records is May 2016 through May 2017.

2) All records of communication, including emails (whether on .gov or non-.gov email accounts), text messages and instant chats, between DCI John Brennan and DNI James Clapper regarding the collection of memos known as the "Steele Dossier". The time frame for records requested in this bullet item is May 2016 through January 2017.

3) All records of communication, including emails (whether on .gov or non-.gov email accounts), text messages and instant chats, between DCI John Brennan and DNI James Clapper regarding the news network CNN. The time frame for records requested in this bullet item is May 2016 through January 2017.

12. The CIA acknowledged Plaintiff's revised request by letter dated December 12, 2018 and informed Plaintiff that its "officers will begin the search and will advise [Plaintiff] should they encounter any problems or if they cannot begin the search without additional information or clarification."

13. To date, Plaintiff has not received any other communication from the CIA in response to its request.

14. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the ODNI and the CIA were required to determine whether to comply with Plaintiff's request within (20) working days after its receipt of the request and to notify Plaintiff immediately of its determination, the records thereof, and the right to appeal any adverse determination. The ODNI's determination was due by May 29, 2018, (20) twenty working days after receipt of Plaintiff's FOIA request. At the very latest, the CIA's determination was due by January 11, 2019, (20) twenty working days after it acknowledged receipt of Plaintiff's modified request.

15. As of the date of this Complaint, the ODNI and the CIA 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)

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

17. Plaintiff is being irreparably harmed by reason of Defendants' violations of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to comply with FOIA.

18. To trigger FOIA's administrative exhaustion requirement, Defendants were required to determine whether to comply with Plaintiff's requests within the time limits set by FOIA. Accordingly, the ODNI's determination was due by May 29, 2018, (20) twenty working days from the date of receipt of Plaintiff's FOIA request, and the CIA's determination was due at the very latest by January 11, 2019, (20) twenty working days from the date it acknowledged receipt of Plaintiff's modified FOIA request. By these dates, Defendants were required to: (i)

gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendants 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 Defendants failed to determine whether to comply with Plaintiff's FOIA requests within the time 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 Defendants to search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that they employed search methods reasonably calculated to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendants to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (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)(5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 20, 2019

Respectfully submitted,

/s/ Ramona R. Cotca
Ramona R. Cotca (D.C. Bar No. 501159)
JUDICIAL WATCH, INC.

Counsel for Plaintiff