

**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,)
 v.)
)
 U.S. DEPARTMENT OF STATE,)
 The Executive Office)
 Office of the Legal Adviser, Suite 5.600)
 600 19th Street, N.W.)
 Washington, DC 20522,)
)
 and)
)
 U.S. AGENCY FOR INTERNATIONAL)
 DEVELOPMENT,)
 1300 Pennsylvania Avenue, N.W.)
 Washington, DC 20534,)
)
 Defendants.)
 _____)

Civil Action No.

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendants U.S. Department of State and the U.S. Agency for International Development 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 State ("State Department") is an agency of the United States Government headquartered at 2201 C Street, N.W., Washington, DC 20520. The State Department has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant U.S. Agency for International Development ("USAID") is an agency of the United States Government headquartered at 1300 Pennsylvania Avenue, N.W., Washington, DC 20534. USAID has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. On October 5, 2018, Plaintiff submitted a FOIA request, via certified U.S. Mail, to Defendant U.S. Department of State ("State Department") seeking access to the following records:

a) Any and all records regarding, concerning or relating to any contracts, grants or other allocations/disbursements of funds by the State Department to any of the following nonprofit organizations in Poland:

- **Fundacja Batorego**
- **Federacja na rzecz Kobiet i Planowania Rodziny (also known as FEDERA)**
- **Kampania przeciw Homofobii**
- **Polskie Towarzystwo Prawa Antydyskryminacyjnego**

Such records shall include, but not be limited to proposals, contracts, requests for funding, payment authorizations, invoices, and similar budget records, as well as any and all related communications between State Department officials, employees or representatives and officials, employees or representatives of the U.S. Agency for International Development (“USAID”).

b) Any and all records of communication between any officials, employees or representatives of the State Department, including but not limited to U.S. Ambassador to Poland Paul W. Jones, and any officials, employees or representatives of the following organizations:

- **Fundacja Batorego, including but not limited to:**
- **Aleksander Smolar, President**
- **Mikołaj Aleksander Czeźnik, Member of the Board**
- **Anna Maria Materska Sosnowska, Member of the Board**
- **Edwin Władysław Bendyk, Member of the Board**
- **Jan Krzysztof Bielecki, Supervisory board**
- **Andrzej Rapaczyński, Supervisory board**
- **Marcin Król, Supervisory board**
- **Andrzej Marian Olechowski, Supervisory board**
- **Agnieszka Holland, Supervisory board**
- **Helena Łuczywo, Supervisory board**
- **Henryk Woźniakowski, Supervisory board**
- **Federacja na rzecz Kobiet i Planowania Rodziny (also known as FEDERA)**
- **Kampania przeciw Homofobii**
- **Polskie Towarzystwo Prawa Antydyskryminacyjnego**

c) Any and all assessments, evaluations, reports or similar records relating to the work of the aforementioned organizations.

d) Any and all records of communication transmitted via the State Department’s SMART system sent to or from any employee of the U.S. Government operating under the authority of the Chief of Mission in Warsaw that pertain to the aforementioned organizations.

The time frame for the requested records is January 1, 2015 to the present.

7. According to the U.S. Postal Service’s tracking system, Plaintiff’s FOIA request was delivered to the State Department on October 10, 2018.

8. On November 13, 2018, Plaintiff received an email from the State Department’s Office of Information, Programs and Services (IPS) with an attached letter dated November 8,

2018. The letter acknowledged receipt of Plaintiff's FOIA request on October 11, 2018 and notified Plaintiff that the request had been assigned FOIA Control Number F-2019-00364. The November 13, 2018 email was the last communication Plaintiff received from the State Department in connection with the subject FOIA request.

9. On October 5, 2018, Plaintiff submitted a FOIA request, via certified U.S. Mail, to Defendant U.S. Agency for International Development ("USAID") seeking access to the following records:

a) Any and all records regarding, concerning or relating to any contracts, grants or other allocations/disbursements of funds by USAID to any of the following nonprofit organizations in Poland:

- **Fundacja Batorego**
- **Federacja na rzecz Kobiet i Planowania Rodziny (also known as FEDERA)**
- **Kampania przeciw Homofobii**
- **Polskie Towarzystwo Prawa Antydyskryminacyjnego**

Such records shall include, but not be limited to proposals, contracts, requests for funding, payment authorizations, invoices, and similar budget records, as well as any and all related communications between USAID officials, employees or representatives and officials, employees or representatives of the U.S. State Department.

b) Any and all records of communication between any officials, employees or representatives of USAID and any officials, employees or representatives of the following organizations:

- **Fundacja Batorego, including but not limited to:**
- **Aleksander Smolar, President**
- **Mikołaj Aleksander Cześnik, Member of the Board**
- **Anna Maria Materska Sosnowska, Member of the Board**
- **Edwin Władysław Bendyk, Member of the Board**
- **Jan Krzysztof Bielecki, Supervisory board**
- **Andrzej Rapaczyński, Supervisory board**
- **Marcin Król, Supervisory board**
- **Andrzej Marian Olechowski, Supervisory board**
- **Agnieszka Holland, Supervisory board**
- **Helena Łuczywo, Supervisory board**
- **Henryk Woźniakowski, Supervisory board**

- **Federacja na rzecz Kobiet i Planowania Rodziny (also known as FEDERA)**
- **Kampania przeciw Homofobii**
- **Polskie Towarzystwo Prawa Antydyskryminacyjnego**

c) Any and all assessments, evaluations, reports or similar records relating to the work of the aforementioned organizations.

d) Any and all records of USAID communications transmitted via the State Department's SMART system sent to or from any employee of the U.S. Government operating under the authority of the Chief of Mission in Warsaw that pertain to the aforementioned organizations.

The time frame for the requests was identified as "January 1, 2015 to the present."

10. By e-mail dated October 10, 2018, the USAID acknowledged receipt of Plaintiff's FOIA request and notified Plaintiff that the request had been assigned tracking number F-00003-

19. By e-mail dated October 11, 2018, the USAID notified Plaintiff that a FOIA Specialist was assigned to the subject FOIA request. The October 11, 2018 e-mail was the last communication Plaintiff received from USAID in connection with the subject FOIA request.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the State Department and USAID 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 State Department's final determination and the USAID's final determination were due November 8, 2018.

12. As of the date of this Complaint, both the State Department and USAID 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 intend 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

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

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

15. To trigger FOIA's administrative exhaustion requirement, Defendants were required to determine whether to comply with Plaintiff's requests within twenty (20) working days of receiving the requests, or on or about November 8, 2018. At a minimum, 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 Comm'n*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

16. Because Defendants have failed to determine whether to comply with Plaintiff's requests 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 Defendants to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that they employed search methods reasonably likely 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 *Vaughn* indices 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 21, 2019

Respectfully submitted,

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

Counsel for Plaintiff