

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

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
950 Pennsylvania Avenue NW)	
Washington, DC 20530-0001,)	
)	
Defendant.)	
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COMPLAINT

Plaintiff Judicial Watch, Inc. (“Plaintiff”) brings this action against the U.S. Department of Justice (“Defendant” or “DOJ”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. 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, 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 the Freedom of Information Act

(“FOIA”). Plaintiff 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. Defendant 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, N.W., Washington, DC 20530-0001.

STATEMENT OF FACTS

5. On December 17, 2018, Plaintiff submitted a FOIA request to the office of Special Counsel Robert Muller seeking access to the following records:

1. All records related to the issuance, handling, servicing, alteration, and/or disposition of the hardware, software and contents of mobile phones issued to FBI officials Peter Strzok and Lisa Page for their use while they served on the investigative team of Special Counsel Robert Mueller.
2. All records of communication, including but not limited to emails (whether on government or non-.gov email accounts and whether using real names or aliases), text messages, instant chats, and Lync messages, sent to or from FBI officials relating to the issuance, handling, servicing, alteration, and/or disposition of the hardware, software and contents of mobile phones issued to FBI officials Peter Strzok and Lisa Page for their use while they served on the investigative team of Special Counsel Robert Mueller.

The time frame for the requested records was identified as “May 1, 2017 to the present.” An identical version of the request was sent to Defendant’s FOIA/PA Mail Referral Unit, the component designated by Defendant to receive FOIA requests, that same day.

6. Plaintiff also sent an identical version of the request to the FBI, another component of Defendant, also on December 17, 2018.

7. According to U.S. Postal Service records, the requests sent to the Special Counsel’s office and the FOIA/PA Mail Referral Unit were received on December 26, 2018.

Neither the Special Counsel's office nor the FOIA/PA Mail Referral Unit acknowledged receipt of the requests.

8. The FBI acknowledged receipt of the request by letter dated December 27, 2018. The FBI assigned the request FOIAPA Request No. 1425039-000.

9. By letter dated April 3, 2019, the FBI advised Plaintiff that it forwarded the request to Defendant's Office of Information Policy ("OIP") for handling and direct response. Plaintiff has not received any further communication from either the FBI or OIP about the request.

10. As of the date of this Complaint, Defendant has not: (i) produced the requested records or demonstrated that the requested records are lawfully exempt from production; (ii) notified Plaintiff of the scope of any responsive records they intend to produce or withhold and the reasons for any withholdings; or (iii) informed Plaintiff that it may appeal any adequately specific, adverse determination.

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

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

12. Defendant is in violation of FOIA.

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

14. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request within the time limits set by FOIA. Even using the FBI's April 3, 2019 referral letter as the starting point for the response period, Defendant's determination was due by May 1, 2019 at the latest.

15. Because Defendant failed to make a final determination on Plaintiff's request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

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 the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's 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 the 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: September 9, 2019

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

D.C. Bar No. 429716

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Counsel for Plaintiff