

**IN THE SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

JUDICIAL WATCH, INC., )  
425 Third Street, S.W., Suite 800 )  
Washington, DC 20024, )  
 )  
Plaintiff, )  
 ) Civil Action No.  
v. )  
 )  
MURIEL BOWSER, in her official )  
capacity as Mayor of the District )  
of Columbia, )  
1350 Pennsylvania Avenue, N.W. )  
Washington, DC 20004, )  
 )  
and )  
 )  
DISTRICT DEPARTMENT OF )  
TRANSPORTATION, )  
55 M Street, S.E., Suite 400 )  
Washington, DC 20003, )  
 )  
and )  
 )  
DEPARTMENT OF PUBLIC WORKS, )  
2000 14th Street, N.W., )  
Washington, DC 20009, )  
 )  
Defendants. )  
-----)

**COMPLAINT**

Plaintiff Judicial Watch, Inc. brings this action against Defendants Muriel Bowser, in her official capacity as Mayor of the District of Columbia, District Department of Transportation, and Department of Public Works to compel compliance with the District of Columbia Freedom of Information Act, D.C. Code § 2-531. As grounds therefor, Plaintiff alleges as follows:

## **JURISDICTION AND VENUE**

1. The Court has jurisdiction over the persons and subject matter of this action pursuant to D.C. Code § 11-921.

## **PARTIES**

2. 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, Judicial Watch regularly requests records under federal and state “open records” laws, analyzes the responses and any records it receives, and disseminates its findings and the records to the public to inform them about their government.

3. Defendant Muriel Bowser is the Mayor of the District of Columbia. The Mayor is a public body subject to FOIA. *See* D.C. Code §§ 2-532 and 2-502(18A). Defendant Bowser has possession, custody, and control of records to which Plaintiff seeks access. Her office is headquartered at John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004. She is sued in her official capacity.

4. Defendant District Department of Transportation is an agency of the District of Columbia and a public body subject to FOIA. *See* D.C. Code §§ 2-532 and 2-502(18A). Defendant DDOT has possession, custody, and control of records to which Plaintiff seeks access. It is headquartered at 55 M Street, S.E., Suite 400, Washington, DC 20003.

5. Defendant Department of Public Works is an agency of the District of Columbia and a public body subject to FOIA. *See* D.C. Code §§ 2-532 and 2-502(18A). Defendant DPW

has possession, custody, and control of records to which Plaintiff seeks access. It is headquartered at 2000 14th Street, N.W., Washington, DC 20009.

### **STATEMENT OF FACTS**

6. On Friday, June 5, 2020, a team of artists, residents, District employees, and demonstrators painted “Black Lives Matter” on 16th Street, N.W.

7. The following day, Saturday, June 6, 2020, protesters painted “Defund the Police” next to the “Black Lives Matter” message on 16th Street, N.W. The protesters also painted over the three stars in the District’s crest such that the entire message read, “Black Lives Matter = Defund the Police.” According to a Fox5 news report on Sunday, June 7, 2020, District Department of Public Works employees repainted the stars on the crest. According to the same report, the District Department of Public Works also announced that the “Defund the Police” message would not be removed.

8. Subsequently, Judicial Watch sent a letter to Mayor Bowser requesting permission to paint its own message on a District street. In response, the Executive Office of the Mayor informed Judicial Watch that DDOT would review Judicial Watch’s painting request. The Executive Office of the Mayor also stated that Judicial Watch’s painting request “is unlikely to be approved on an active roadway because the paint would conflict with road markings.” It further noted that “Black Lives Matter Plaza,” in reference to the two blocks on 16th Street, N.W. between H and K Streets where the two messages had been painted on the street surface, “is closed to traffic at this time and thus avoiding that hurdle.”

9. In light of these events, Judicial Watch sent a series of FOIA requests to the Executive Office of the Mayor, the Department of Public Works, the District Department of

Transportation, and the Metropolitan Police Department to learn more about the painting of “Black Lives Matter” and “Defund the Police.”

Executive Office of the Mayor

10. On June 8, 2020, Judicial Watch submitted a FOIA request to the Executive Office of the Mayor seeking access to records concerning, regarding, or relating to the cost of painting “Black Lives Matter” on the pavement of 16th Street, N.W. between K and H Streets.

11. By email dated June 8, 2020, the Executive Office of the Mayor acknowledged receiving Judicial Watch’s June 8, 2020 FOIA request and assigned it Request Number 2020-FOIA-05775.

12. On June 10, 2020, Judicial Watch submitted a second FOIA request to the Executive Office of the Mayor seeking access to communications between the Office of the Mayor and non-D.C. government individuals and/or organizations concerning, regarding, or relating to the painting of “Black Lives Matter” on the pavement of 16th Street, N.W. between K and H Streets and renaming the same section of street “Black Lives Matter Plaza.”

13. By email dated June 10, 2020, the Executive Office of the Mayor acknowledged receiving Judicial Watch’s June 10, 2020 FOIA request and assigned it Request Number 2020-FOIA-05854.

14. On June 19, 2020, Judicial Watch submitted a third FOIA request to the Executive Office of the Mayor seeking access to

- A. Emails or text messages of Mayor Bowser or any other employee of the Executive Office of the Mayor about the painting of “Black Lives Matter” on 16<sup>th</sup> Street, N.W. between H and K Streets.
- B. Emails or text messages of Mayor Bowser or any other employee of the Executive Office of the Mayor about the approval or acquiescence of painting “Defund the Police” on 16<sup>th</sup> Street, N.W. between I and K Streets.

- C. Records identifying the policy or procedure for painting slogans on District streets.
- D. Records identifying the policy or procedure for closing District streets to allow for painting slogans on District streets.
- E. Emails or text messages of Mayor Bowser or any other employee of the Executive Office of the Mayor about Judicial Watch's request to paint "Because No One Is Above The Law!" on District streets.
- F. Records, including emails and text messages, about the coordination of the team of artists, residents, District employees, and demonstrators who painted "Black Lives Matter" on 16th Street, N.W. between H and K Streets.

The time period for this request is from May 29, 2020 through June 5, 2020.

15. By email dated June 19, 2020, the Executive Office of the Mayor acknowledged receiving Judicial Watch's June 19, 2020 FOIA request and assigned it Request Number 2020-FOIA-06026.

16. As of the date of this Complaint, the Executive Office of the Mayor has failed to substantively respond to Judicial Watch's three FOIA requests. Specifically, the Executive Office of the Mayor 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.

Department of Public Works

17. On June 8, 2020, Judicial Watch submitted a FOIA request to DPW seeking access to records concerning, regarding, or relating to the cost of painting "Black Lives Matter" on the pavement of 16th Street, N.W. between K and H Streets.

18. By email dated June 8, 2020, DPW acknowledged receiving Judicial Watch's June 8, 2020 FOIA request and assigned it Request Number 2020-FOIA-05774.

19. By email dated June 23, 2020, DPW again acknowledged receipt of Judicial Watch's June 8, 2020 FOIA request and informed Judicial Watch that FOIA allows for an agency to extend the time period to respond to the request. DPW however did not invoke the extension.

20. On June 19, 2020, Judicial Watch submitted a second FOIA request to DPW seeking access to:

- A. Records, including emails and text messages, about the coordination of the team of artists, residents, District employees, and demonstrators who painted "Black Lives Matter" on 16th Street, N.W. between H and K Streets.
- B. Emails or text messages of any DPW employee about removing or leaving "Defund the Police" on 16th Street, N.W. between I and K Streets.

The time period for this request is from May 29, 2020 through June 5, 2020.

21. By email dated June 19, 2020, DPW acknowledged receiving Judicial Watch's June 19, 2020 FOIA request and assigned it Request Number 2020-FOIA-06027.

22. By email dated June 24, 2020, DPW again acknowledged receipt of Judicial Watch's June 19, 2020 FOIA request and informed Judicial Watch that FOIA allows for an agency to extend the time period to respond to the request. DPW however did not invoke the extension.

23. As of the date of this Complaint, DPW has failed to substantively respond to Judicial Watch's two FOIA requests. Specifically, DPW 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.

District Department of Transportation

24. On June 19, 2020, Judicial Watch submitted a FOIA request to DDOT seeking access to records, including emails and text messages, about the closure of 16th Street, N.W. between H and K Streets. Judicial Watch also specified that it sought records created from June 4, 2020 through June 18, 2020.

25. By email dated June 19, 2020, DDOT stated, “However, in order to begin processing your request, please provide the names of the District Department of Transportation (DDOT) employees whose e-mails you wish to be searched. Please also provide the phone numbers for the DDOT employees whose texts you are seeking.”

26. By email dated June 22, 2020, Judicial Watch responded:

In light of the D.C. Court of Appeals ruling in *FOP v. District of Columbia*, 139 A.3d 853 (2016), we believe the hold placed on our request is improper. You have not provided us with any reason whatsoever for why a search for records responsive to our request cannot be conducted at this time. We have asked DDOT to search for responsive emails and text messages for a limited time period on a narrow topic. Our request could not be more reasonable.

27. By email dated June 23, 2020, DDOT informed Judicial Watch that it would “initiate a request for an e-mail search for DDOT emails, within the date range, with the search terms ‘Closure of 16th Street, N.W.,’ ‘800 Block,’ and ‘900 Block.’” DDOT also stated, “Furthermore, DDOT is unable to request a search for text messages via telephone records without the individual names or individual telephone numbers. We do not maintain nor does DDOT have access to the repository for the telephone text records. In order to forward a request to search for phone records we require the requester to provide this information in their request.”

28. By email dated July 14, 2020, DDOT informed Judicial Watch that it “located 616 pages of public records held by DDOT that are responsive to your FOIA request” and that

“615 pages of these records have not been provided to you because, although responsive, they are exempt in their entirety from being disclosed due to deliberative process privilege (internal discussions).”

29. On July 15, 2020, Judicial Watch administratively appealed to the Executive Office of the Mayor DDOT’s withholding of 615 pages responsive to Judicial Watch’s FOIA request.

30. As of the date of this Complaint, DDOT has not searched for nor produced text messages responsive to Judicial Watch’s FOIA request. Nor has it: (1) 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.

31. Also as of the date of this Complaint, the Executive Office of the Mayor has failed to make a determination concerning Judicial Watch’s administrative appeal of DDOT’s withholding of 615 pages responsive to Judicial Watch’s FOIA request.

**COUNT I**  
**(Violation of FOIA)**

32. Plaintiff realleges paragraphs 1 through 31 as if fully stated herein.

33. Defendants are in violation of FOIA.

34. Plaintiff is being irreparably harmed by Defendants’ violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to comply with the law.

35. Pursuant to FOIA, Defendants Bowser, DPW, and DDOT (with respect to text messages) were required to either make the requested public records accessible or notify Plaintiff of its determinations not to make the requested public records or any part thereof accessible and

the reasons therefor within 15 business days or by July 13, 2020, at the latest. D.C. Code § 2-532(c)(1).

36. Defendant Bowser was required to make a determination concerning Plaintiff's administrative appeal of DDOT's withholding of 615 pages responsive to Judicial Watch's FOIA request within 10 business days or by July 29, 2020. D.C. Code § 2-537(a).

37. Because Defendants have failed to make final determinations on Plaintiff's requests and administrative appeal within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. D.C. Code §§ 2-532(e)(1) and 2-537(a)(1).

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 it employed search methods reasonably likely to lead to the discovery of records responsive to the 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* 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 the FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to D.C. Code § 2-537(c); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: July 30, 2020

Respectfully submitted,

/s/ Michael Bekesha  
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