

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

JUDICIAL WATCH, INC., )  
425 Third Street SW, Suite 800 )  
Washington, DC 20024, )

Plaintiff, )

v. )

Civil Action No.

CENTRAL INTELLIGENCE AGENCY, )  
Office of General Counsel )  
Washington, DC 20505, )

and )

U.S. DEPARTMENT OF DEFENSE, )  
1400 Defense Pentagon )  
Washington, DC 20301, )

and )

U.S. DEPARTMENT OF ENERGY, )  
1000 Independence Avenue SW )  
Washington, DC 20585, )

and )

U.S. DEPARTMENT OF JUSTICE, )  
950 Pennsylvania Avenue NW )  
Washington, DC 20530, )

and )

OFFICE OF THE DIRECTOR OF )  
NATIONAL INTELLIGENCE, )  
Washington, DC 20511, )

and )

U.S. DEPARTMENT OF STATE, )  
The Executive Office )  
Office of the Legal Adviser, Suite 5.600 )  
600 19<sup>th</sup> Street NW )  
Washington, DC 20522, )

and )

U.S. DEPARTMENT OF THE )  
 TREASURY, )  
 1500 Pennsylvania Avenue NW )  
 Washington, DC 20220, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**COMPLAINT**

Plaintiff, Judicial Watch, Inc. brings this action against Defendants Central Intelligence Agency, U.S. Department of Defense, U.S. Department of Energy, U.S. Department of Justice, Office of the Director of National Intelligence, U.S. Department of State and U.S. Department of the Treasury 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 Central Intelligence Agency (“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.

5. Defendant U.S. Department of Defense (“DOD”) 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 1400 Defense Pentagon, Washington, DC 20301.

6. Defendant U.S. Department of Energy (“DOE”) is an agency of the United States Government and is headquartered at 1000 Independence Avenue SW, Washington, DC 20585. On information and belief, DOE has possession, custody, and control of records to which Plaintiff seeks access.

7. Defendant U.S. Department of Justice (“DOJ”) is an agency of the U.S. Government and is headquartered at 950 Pennsylvania Avenue NW, Washington, DC 20530. Defendant has possession, custody, and control of public records to which Plaintiff seeks access.

8. Defendant Office of the Director of National Intelligence (“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.

9. Defendant U.S. Department of State (“State”) is an agency of the U.S. Government headquartered at 2201 C Street NW, Washington, DC 20520. The State Department has possession, custody, and control of records to which Plaintiff seeks access.

10. Defendant U.S. Department of the Treasury (“Treasury”) is an agency of the United States Government headquartered at 1500 Pennsylvania Avenue NW, Washington, DC 20220. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

**STATEMENT OF FACTS**

11. On September 1, 2020, Plaintiff served FOIA requests on seven agencies seeking access to records about agency officials' requests to "unmask" the identity of former National Security Advisor Lieutenant General Michael. T. Flynn (USA-Ret.) in intelligence reports. The "unmasking requests" were submitted by the officials to the National Security Agency. Specifically, Plaintiff's FOIA request sought "unmasking" requests made by the following officials at the agencies and on or for the dates indicated:

**CIA**

John Brennan	Dec. 14 & 15, 2016
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**DIA**

Dep. Asst. Dir., Nat'l Media Exploitation Ctr.	Dec. 15, 2016
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**DOE**

Elizabeth Sherwood-Randall	Dec. 15, 2016
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**FBI**

James Comey	Dec. 15, 2016
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**ODNI**

James Clapper	Dec. 2, 2016 to Jan. 7, 2017
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Michael Dempsy	Jan. 7, 2017
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Stephanie O'Sullivan	Jan. 7, 2017
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**State**

Kelly Degnan	Dec. 6, 2016
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John R. Phillips	Dec. 6, 2016
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John Christenson	Dec. 15, 2016
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Douglas Lute Dec. 15, 2016

Lee Litzenberger Dec. 15, 2016

Tamir Waser Dec. 15, 2016

**Treasury**

Jacob Lew Dec. 14 & 15, 2016

Mike Neufeld Dec. 14, 2016

Arthur McGlynn Dec. 14, 2016

Nathan Sheets Dec. 14, 2016

Adam Szubin Dec. 14, 2016

Sarah Raskin Dec. 14, 2016

12. On September 2, 2020, Plaintiff served a second FOIA request on Treasury seeking access to an “unmasking” request made by Treasury official Patrick Conlon on December 14, 2016.

13. All of Plaintiff’s FOIA requests were submitted electronically either by email or via the agencies’ respective online FOIA portals.

14. The names of officials and the dates identified in Plaintiff’s requests were taken directly from a list prepared by NSA on May 4, 2020. The list was declassified by Acting Director of National Intelligence Richard A. Grenell on May 8, 2020 and made public by Grenell on May 13, 2020. A copy of the list and accompanying cover letter signed by Grenell is attached as Exhibit 1.

15. The agencies acknowledged receipt of Plaintiff’s requests on the dates specified in the following chart and assigned the requests the agency file numbers indicated. Treasury treated Plaintiff’s September 1, 2020 request as multiple requests but consolidated one of Plaintiff’s September 1, 2020 requests with Plaintiff’s September 2, 2020 requests:

<u>Agency</u>	<u>Acknowledgment</u>	<u>Agency File No.</u>
CIA	September 4, 2020	F-2020-02171
DIA	September 11, 2020	FOIA-001139-2020
Energy	September 8, 2020	HQ-2020-01087-F
FBI	September 28, 2020	1475172-000
ODNI	September 9, 2020	DF-2020-00345
State	September 8, 2020	F-2020-08245
Treasury (Lew)	September 2, 2020	2020-09-006
Treasury (Neufeld)	September 2, 2020	2020-09-008
Treasury (McGlynn)	September 3, 2020	2020-09-007
Treasury (Sheets)	September 3, 2020	2020-09-010
Treasury (Szubin)	September 3, 2020	2020-09-011
Treasury (Raskin)	September 3, 2020	2020-09-006
Treasury (Conlon)	September 4, 2020	2020-09-008

16. Only Treasury invoked FOIA's 10-day extension of time provision for "unusual circumstances."

17. As of the date of this Complaint, none of the agencies has made a determination about whether it will comply with Plaintiff's FOIA requests, notified Plaintiff of any determination, or notified Plaintiff of its right to appeal any adverse determination to the head of the agency. Nor has any agency produced any records responsive to the requests, indicated when any responsive records will be produced, or demonstrated that responsive records are exempt from production.

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

18. Plaintiff realleges paragraphs 1 through 17 as if fully stated herein.

19. Defendants are in violation of FOIA.

20. 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.

21. Plaintiff has no adequate remedy at law.

22. To trigger FOIA's administrative exhaustion requirement, Defendants were required to make final determinations on Plaintiff's requests by October 29, 2020 at the latest. Because Defendants failed to make final determinations on Plaintiff's requests 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 Defendants to search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably calculated to uncover all 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 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); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 16, 2020

Respectfully submitted,

*/s/ Paul J. Orfanedes*

Paul J. Orfanedes

D.C. Bar No. 429716

JUDICIAL WATCH, INC.

425 Third Street SW, Suite 800

Washington, DC 20024

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Email: [porfanedes@judicialwatch.org](mailto:porfanedes@judicialwatch.org)

*Counsel for Plaintiff*



**EXHIBIT 1**

UNCLASSIFIED

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC

**MAY 13 2020**

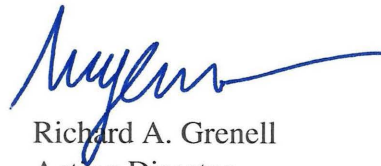
The Honorable Charles E. Grassley  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
United States Senate  
Washington, DC 20510

Senators Grassley and Johnson,

On 8 May 2020 I declassified the enclosed document, which I am providing to you for your situational awareness.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Grenell", with a long horizontal flourish extending to the right.

Richard A. Grenell  
Acting Director

Enclosure

UNCLASSIFIED

~~SECRET//NOFORN~~



NATIONAL SECURITY AGENCY  
FORT GEORGE G. MEADE, MARYLAND 20755-6000


4 May 2020

MEMORANDUM FOR DIRECTOR OF NATIONAL INTELLIGENCE

SUBJECT: ~~(S//NF)~~ Follow-up Unmasking Requests *re* Former National Security Advisor

~~(S//NF)~~ Per your email request of 3 May 2020, I am providing a revised list of identities of any officials who submitted requests to the National Security Agency at any point between 8 November 2016 and 31 January 2017, to unmask the identity of former National Security Advisor, Lieutenant General Michael T. Flynn (USA-Ret). The original list was in alphabetical order; the revised list is in chronological order, including the date the request was received.

~~(U//FOUO)~~ Consistent with the original response, dated 1 May 2020, this information is provided pursuant to the oversight authorities vested with the Director of National Intelligence, and a copy of this correspondence will be provided to the Secretary of Defense.

  
PAUL M. NAKASONE  
General, U.S. Army  
Director

Encl: a/s

~~Classified By: [REDACTED]  
Derived From: NSA/CSSM 1-52  
Dated: 20180110  
Declassify On: 20450401~~

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

(S//NF) Below is a list of recipients who may have received Lt. Gen Flynn's identity in response to a request processed between 8 November 2016 and 31 January 2017 to unmask an identity that had been generically referred to in an NSA foreign intelligence report. Each individual was an authorized recipient of the original report and the unmasking was approved through NSA's standard process, which includes a review of the justification for the request. Only certain personnel are authorized to submit unmasking requests into the NSA system. In this case, 16 authorized individuals requested unmaskings for [REDACTED] different NSA intelligence reports for select identified principals. While the principals are identified below, we cannot confirm they saw the unmasked information. This response does not include any requests outside of the specified time-frame.

(S//NF)

U.S. Ambassador to the United Nations - Samantha Power 30-Nov-16 2-Dec-16 7-Dec-16 14-Dec-16 (two requests) 23-Dec-16 11-Jan-17
Director for National Intelligence – James R. Clapper 2-Dec-16 28-Dec-16 7-Jan-17
Deputy Chief of Mission - Kelly Degnan 6-Dec-16
U.S. Ambassador to Italy and the Republic of San Marino - John R. Phillips 6-Dec-16
Director of the CIA – John O. Brennan 14-Dec-16 15-Dec-16
OIA Director - Patrick Conlon 14-Dec-16
Secretary of the Treasury – Jacob Lew 14-Dec-16 12-Jan-17
Acting Assistant Secretary Treasury - Arthur "Danny" McGlynn 14-Dec-16
Acting Deputy Assistant Secretary Treasury - Mike Neufeld 14-Dec-16
Deputy Secretary of the Treasury - Sarah Raskin 14-Dec-16
Under Secretary Treasury - Nathan Sheets 14-Dec-16

(S//NF)

~~Classified By: [REDACTED]  
Derived From: NSA/CSSM 1-52  
Dated: 20180110  
Declassify On: 20450501~~

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~~~(S//NF)~~

Acting Under Secretary Treasury - Adam Szubin 14-Dec-16
USNATO Defense Advisor (DEFAD) - Mr. Robert Bell 15-Dec-16
U.S. Representative to the NATO Military Committee - VADM Christenson 15-Dec-16
Director of the Federal Bureau of Investigation – James Comey 15-Dec-16
Chief Syria Group - [REDACTED] 15-Dec-16
Deputy Assistant Director of NEMC [REDACTED] 15-Dec-16
USNATO Office of the Defense Advisor (ODA) Policy Advisor for Russia - Lt. Col. Paul Geehreg 15-Dec-16
U.S. NATO [REDACTED] Advisor to Ambassador Douglas Lute - [REDACTED] 15-Dec-16
USNATO Deputy DEFAD - Mr. James Hursh 15-Dec-16
Chief Syria Group [REDACTED] 15-Dec-16
US Deputy Chief of US Mission to NATO (USNATO) - Mr. Litzenberger 15-Dec-16
US Permanent Representative (PermRep) to NATO - Ambassador Douglas Lute 15-Dec-16
USA - DOE-IN - Executive Briefer - [REDACTED] 15-Dec-16
USNATO Political Officer [REDACTED] - Mr. Scott Parrish 15-Dec-16
USA - DOE - Deputy Secretary of Energy - Elizabeth Sherwood-Randall 15-Dec-16
USA - DOE-IN - Executive Briefer - [REDACTED] 15-Dec-16
USNATO Political Advisor (POLAD) - Mr. Tamir Waser 15-Dec-16
COS [REDACTED] 16-Dec-16
CMO [REDACTED] 16-Dec-16
DCOS [REDACTED] 16-Dec-16
U.S. Ambassador to Russia - John Tefft 16-Dec-16
CMO [REDACTED] 16-Dec-16

~~(S//NF)~~~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

~~(S//NF)~~

U.S. Ambassador to Turkey - Ambassador Bass 28-Dec-16
Chief of Staff to the President of the United States – Denis McDonough 5-Jan-17
Deputy Director of National Intelligence for Intelligence Integration – Michael Dempsey 7-Jan-17
Principal Deputy Director of National Intelligence - Stephanie L. O'Sullivan 7-Jan-17
CIA/CTMC – [REDACTED] 10-Jan-17
Vice President of the United States – Joseph R. Biden 12-Jan-17

~~(S//NF)~~

~~SECRET//NOFORN~~