

**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.:
)	
vs.)	
)	
U.S. DEPARTMENT OF DEFENSE,)	
1400 Defense Pentagon)	
Washington, DC 20301,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Defense 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, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly serves FOIA requests on federal agencies, analyzes the responses it receives, and

disseminates its findings and any 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 1400 Defense Pentagon, Washington, DC 20301.

STATEMENT OF FACTS

5. On January 11, 2021, Plaintiff submitted a FOIA request to the Office of the Secretary of Defense/Joint Staff (“OSD/JS”), via the OSD/JS FOIA Requester Service Center’s online FOIA portal, seeking access to the following public records:

1. Any and all records regarding, concerning, or related to the telephone call between House Speaker Nancy Pelosi and General Mark Milley on or about January 8, 2021. This request includes, but is not limited to, any and all transcripts, recordings, and/or summaries of the call, as well as any other records produced in preparation for, during, and/or pursuant to the call.
2. Any and all additional records of communication between Gen. Milley and House Speaker Nancy Pelosi between November 1, 2020 and the present.

6. OSD/JS confirmed receipt of Plaintiff’s request by email later that same day, January 11, 2021, and advised Plaintiff that the request had been assigned tracking number #21-F-0417.

7. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records or demonstrate that the records are lawfully exempt from disclosure; (ii) notify Plaintiff of the scope of any responsive records Defendant 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)

8. Plaintiff realleges paragraphs 1 through 7 as if fully stated herein.

9. Defendant is in violation of FOIA.

10. 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.

11. Plaintiff has no adequate remedy at law.

12. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request by February 9, 2021. 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 search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA 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 Plaintiff's FOIA request; (4) grant Plaintiff an award of attorney's 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: March 5, 2021

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

D.C. Bar No. 429716

JUDICIAL WATCH, INC.

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