

**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 February 19, 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. All emails regarding the deployment of US troops around the Capitol complex in Washington, DC sent to and from Secretary of Defense Lloyd Austin, Deputy Secretary Kathleen H. Hicks, Joint Chiefs Chairman Gen. Mark A. Milley, and/or Vice Chairman Gen. John E. Hyten.

The time frame of the request was identified as “Jan. 6, 2021 to Feb. 19, 2021.”

6. OSD/JS confirmed receipt of Plaintiff’s request by email later that same day, February 19, 2021, and advised Plaintiff that the request had been assigned tracking number 21-F-0612.

7. On February 24, 2021, OSD/JS advised Plaintiff that it was invoking FOIA’s 10-day extension of time provision for “unusual circumstances.”

8. As of the date of this Complaint, OSD/JS has failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

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

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

10. Defendant is in violation of FOIA.

11. 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.

12. Plaintiff has no adequate remedy at law.

13. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request by April 2, 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: May 11, 2021

Respectfully submitted,

*/s/ Lauren M. Burke*

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Lauren M. Burke

D.C. Bar No. 1028811

JUDICIAL WATCH, INC.

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