

**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 DEFENSE, |) | |
| 1400 Defense Pentagon |) | |
| Washington, DC 20301-1400, |) | |
| |) | |
| 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 20301-1400.

STATEMENT OF FACTS

5. On May 18, 2021, Plaintiff submitted a FOIA request to the Office of the Secretary of Defense/Joint Staff (“OSD/JS”), via email, seeking access to:

Any and all records regarding, concerning, or related to any actual or proposed program to monitor the social media accounts of service members or other Department of Defense employee for extremist content or activity. This request includes, but is not limited to, the following:

Any and all related records of communication between any official, employee, or representative of the Department of Defense and any other individual or entity.

Any and all records related to any actual or proposed grants or contracts related to the program.

Any and all related records mentioning or referring to the private contractor Babel Street.

Any and all related legal analyses, decisions, or determinations drafted or issued by the Office of General Counsel.

6. Plaintiff specifically requested that the search for records potentially responsive to this request include, but not be limited to, any physical files or information management systems utilized by Bishop Garrison and/or any other member of the countering extremism working group led by Mr. Garrison. The time frame of the request was identified as January 1, 2021 to the present.

7. Defendant confirmed receipt of Plaintiff's request on May 19, 2021 by an email sent on May 21, 2021 and advised Plaintiff that the request had been assigned FOIA case number 21-F-1026. Defendant's acknowledgement asserted that it was invoking FOIA's 10-day extension of time provision due to "unusual circumstances."

8. As of the date of this Complaint, Defendant 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 July 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: August 11, 2021

Respectfully submitted,

/s/ James F. Peterson

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