

**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 20301-1400,	)	
	)	
and	)	
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
950 Pennsylvania Avenue, NW	)	
Washington, DC 20530-0001,	)	
	)	
Defendants.	)	
	)	

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**COMPLAINT**

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Defense and the U.S. Department of Justice 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 U.S. Department of Defense (“Defendant”) is an agency of the United States government headquartered at 1400 Defense Pentagon, Washington, DC 20301-1400. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant U.S. Department of Justice (“DOJ”) 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 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

### **STATEMENT OF FACTS**

6. On January 6, 2020, U.S. Capitol Police Lieutenant Michael Byrd shot and killed U.S. Air Force veteran Ashley Babbitt outside the Speaker’s Lobby in the Capitol. Byrd reportedly was housed at Joint Base Andrews in Maryland after the shooting.

7. On July 25, 2022, Plaintiff sent a FOIA request to Joint Base Andrews (“JBA”), via email, seeking access to the following public records:

All records related to the billeting of US Capitol Police Lt. Michael Byrd at JBA from January 6, 2021 to the present, including but not limited to authorization papers, housing, meals, transportation, visitor logs, electronic communications between JBA officials and US Capitol Police officials, US Justice Department officials and any other military or government officials, electronic communications between JBA officials and Lt. Byrd.

The time frame of the request was identified as “January 6, 2021 to the present.”

8. Later that same day, Plaintiff received an email stating that the request had been delivered.

9. The following day, July 26, 2022, Plaintiff served a FOIA request on the Civil Rights Division (“CRD”) of the U.S. Department of Justice (“DOJ”), via the department’s online FOIA portal, seeking access to the following public records:

All DOJ Civil Rights Division (DOJ/CRD) records related to the billeting of US Capitol Police Lt. Michael Byrd at Joint Base Andrews from January 6, 2021 to the present, including but not limited to authorization papers, housing, meals, transportation, visitor logs, electronic communications between DOJ/CRD officials and Air Force officials, US Capitol Police officials, US Justice Department officials and any other military or government officials, and electronic communications between DOJ/CRD officials and Lt. Byrd.

The time frame of the request was identified as “January 6, 2021 to the present.”

10. Later that same day, DOJ’s online FOIA portal showed that the request had been received and was assigned FOIA Tracking Number FOIA-2022-01583.

11. Also on July 26, 2022, Plaintiff served a FOIA request on the Federal Bureau of Investigation (“FBI”), via the FBI’s online FOIA portal, seeking access to the following public records:

All records related to the billeting of US Capitol Police Lt. Michael Byrd at Joint Base Andrews from January 6, 2021 to the present, including but not limited to authorization papers, housing, meals, transportation, visitor logs, electronic communications between FBI officials and Air Force officials, US Capitol Police officials, US Justice Department officials and any other military or government officials, and electronic communications between FBI officials and Lt. Byrd.

The time frame of the request was identified as “January 6, 2021 to the present.”

12. The FBI is a component of the U.S. Department of Justice.

13. Later that same day, July 26, 2022, Plaintiff received an email from the FBI stating that the request had been received.

14. As of the date of this Complaint, JBA, CRD, and the FBI have 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 they intend 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)**

15. Plaintiff realleges paragraphs 1 through 14 as if fully stated herein.

16. Defendants are in violation of FOIA.

17. Plaintiff is being irreparably harmed by Defendants' violations of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to comply with the law.

18. Plaintiff has no adequate remedy at law.

19. To trigger FOIA's administrative exhaustion requirement, Defendants were required to make final determinations on Plaintiff's requests by August 23, 2022 at the latest. Because Defendants failed to make final determinations 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 Defendants to search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that they 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 the 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 the requests; (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: September 29, 2022

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

D.C. Bar No. 429716

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