

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

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

Plaintiff,

vs.

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

Defendant.

Civil Action No.:

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 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.

STATEMENT OF FACTS

5. On February 16, 2022, Plaintiff submitted a FOIA request to the Office of the Secretary of Defense (“OSD”), seeking access to the following public records:

1. All emails sent to and from Secretary of Defense Lloyd Austin (on his official government/military email accounts or non-government email accounts, in his own name or using an alias) relating to the Defense Medical Epidemiology Database, DMED, Sen. Ron Johnson, and/or vaccines.
2. All emails sent to and from Deputy Secretary of Defense Kathleen H. Hicks (on her official government/military email accounts or non-government email accounts, in her own name or using an alias) relating to the Defense Medical Epidemiology Database, DMED, Sen. Ron Johnson, and/or vaccines.
3. All emails sent to and from Chairman of the Joint Chiefs of Staff Gen. Mark Milley (on his official government/military email accounts or non-government email accounts, in his own name or using an alias) relating to the Defense Medical Epidemiology Database, DMED, Sen. Ron Johnson, and/or vaccines.
4. All emails sent to and from Vice Chairman of the Joint Chiefs of Staff Gen. John Hyten (on his official government email account or non-government email accounts, in his own name or using an alias) relating to the Defense Medical Epidemiology Database, DMED, Sen. Ron Johnson, and/or vaccines.
5. All emails sent to and from Defense Department Public Affairs Officer Major Charlie Dietz (on his official government email account or non-government email accounts, in his own name or using an alias) relating to the Defense Medical Epidemiology Database, DMED, Sen. Ron Johnson, and/or vaccines.

6. All reports, memoranda, studies, analyses, directives, and electronic communications produced by or sent to and from officials who maintain the Defense Medical Epidemiology Database relating to the accuracy of or changes to be made to data contained in the Defense Medical Epidemiology Database.

The time frame of the request for was identified as “January 24, 2022 to present.”

6. OSD confirmed receipt of Plaintiff’s request that same day and assigned the request Case No 22-F-0606.

7. On February 17, 2022, the U.S. Department of Defense (“DOD”) formally acknowledged Plaintiff’s request and asserted unusual circumstances would prevent it from responding in the statutory 20-day time period.

8. As of the date of this Complaint, DOD 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 it 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)

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 1, 2022. 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 the 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 the 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: October 7, 2022

Respectfully submitted,

/s/ Meredith Di Liberto

Meredith Di Liberto

D.C. Bar No. 487733

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