

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

JUDICIAL WATCH, INC.,)
425 Third Street, S.W., Suite 800)
Washington, DC 20024,)
Plaintiff,) Civil Action No.
v.)
U.S. DEPARTMENT OF DEFENSE,)
950 Pennsylvania Avenue, N.W.)
Washington, DC 20530,)
Defendant.)

)

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against the 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), 5 U.S.C. § 552a(g)(1)(d) 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. Judicial Watch, Inc. seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. Using public records laws like FOIA, it regularly requests records from federal agencies, analyzes the agencies’

responses and any responsive records it receives, and disseminates both its findings and the requested records to the public to inform Americans about “what their government is up to.”

4. Defendant U.S. Department of Defense is an agency of the United States government and is headquartered at 1400 Defense Pentagon, Washington, D.C. 20301. The U.S. Air Force, a component of Defendant, has possession, custody, and control of records to which Plaintiffs seek access.

STATEMENT OF FACTS

5. On February 13, 2023, the U.S. House Committee on Armed Services and U.S. House Committee on Oversight and Accountability informed the public that the Department of the Air Force had improperly disclosed the unredacted records of at least 11 Republican congressional candidates, who are veterans of the U.S. Air Force, to the research firm Due Diligence Group.

6. On March 7, 2023, Plaintiff submitted a request to the Department of the Air Force, a component of Defendant, seeking the access to the following records:

1. All personnel records of Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, including unmodified original digital documents, released to any individual or entity from January 1, 2019 to March 7, 2023.
2. All records, including but not limited to communications, FOIA requests, and SF-180 requests, concerning or relating to the release of personnel records of Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, to any individual or entity from January 1, 2019 to March 6, 2023.
3. All records of administrative or punitive action taken against any individuals involved with the release of personnel records of Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, from January 1, 2019 to March 7, 2023 .

4. All reports of investigation concerning or relating to the release of personnel records of Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky.
5. All communications with any representative or employee of The New York Times concerning or relating to Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, from January 1, 2019 to March 7, 2023.
6. All communications with any representative or employee of Due Diligence Group, LLC ("DDG") concerning or relating to Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, from January 1, 2019 to March 7, 2023.
7. All communications with any representative or employee of The Washington Post concerning or relating to Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, from January 1, 2019 to March 7, 2023.
8. All communications with any representative or employee of The Associated Press concerning or relating to Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, from January 1, 2019 to March 7, 2023.
9. All communications with any representative or employee of Politico concerning or relating to Anna Paulina Luna, also known as Anna Paulina Mayerhofer and/or Anna Paulina Gamberzky, from January 1, 2019 to March 7, 2023.

7. By email dated March 23, 2023, the Air Force acknowledged receipt of Plaintiff's request on March 14, 2023 and advised Plaintiff that the request had been assigned case number 2023-02654-F. The Air Force also represented to Plaintiff that it would respond to the request by April 25, 2023.

8. As of the date of this Complaint, the Air Force has failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (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 1
(Violation of FOIA, 5 U.S.C. § 552)

9. Plaintiff realleges paragraphs 1 through 9 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 its FOIA obligations.
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 FOIA request by April 11, 2023, at the latest.
14. 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 conduct a search for any and all records responsive to Plaintiff's request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's 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 request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E) and 5 U.S.C. § 552a(g)(3)(B); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: June 2, 2023

Respectfully submitted,

JUDICIAL WATCH, INC

/s/ Kathryn Blankenberg
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