

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

JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 500
Washington, DC 20024,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
425 I Street, NW
2nd Floor ULLICO Building
Washington, DC 20536

and

FEDERAL BUREAU OF
INVESTIGATION
935 Pennsylvania Ave., NW
Washington, DC 20535

Defendants.

Civil Action No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., hereby files this Complaint to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Judicial Watch, Inc. 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. Judicial Watch, Inc. is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024.

4. Defendant Department of Homeland Security ("DHS") is an agency of the United States government. DHS has its principal place of business in the District of Columbia. DHS is in possession, custody and control over records to which Judicial Watch, Inc. seeks access.

5. Defendant Federal Bureau of Investigation ("FBI") is an agency of the United States government. FBI has its principal place of business in the District of Columbia. FBI is in possession, custody and control over records to which Judicial Watch, Inc. seeks access.

STATEMENT OF FACTS

6. On October 8, 2003, Judicial Watch, Inc. sent DHS and FBI, by facsimile and by certified U.S. mail, return receipt requested, a FOIA request seeking access to any and all records concerning or relating to the following subjects:

a. The decision to allow subjects of the Kingdom of Saudi Arabia, including but not limited to members of the House of Saud and/or members of the Bin Laden family, to leave the United States within 10 days of the terrorist attacks of September 11, 2002.

b. Flights containing subjects of the Kingdom of Saudi Arabia, including but not limited to members of the House of Saud and/or members of the Bin Laden family, allowed to leave the United States between September 11, 2001 and September 15, 2003.

c. A September 13, 2001 flight between Raytheon Airport Services, Tampa International Airport and Blue Grass Airport in Lexington Kentucky.

d. The decision to allow subjects of the United Kingdom of Saudi Arabia, including but not limited to members of the House of Saud and/or members of the

Bin Laden family, to leave the United States by airplane after September 11, 2001 without being interviewed by the FBI.

e. All communication between the CIA, and/or FBI, and or FAA and/or the State Department and the Executive Office of the President (EOP) and/or the Office of the Vice President and/or any agent or representative of President George W. Bush concerning the decision to allow subjects of the Kingdom of Saudi Arabia, including but not limited to members of the House of Saud and/or members of the Bin Laden family, to leave the United States by airplane after September 11, 2001.

f. A list of all subjects of [the] Kingdom of Saudi Arabia, including but not limited to members of the House of Saud and/or members of the Bin Laden family, permitted to leave the United States between September 11, 2001 and October 1, 2001.

Judicial Watch, Inc.'s February 27, 2004 FOIA request also sought a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II), 5 U.S.C. § 552(a)(4)(A)(iii), and 5 C.F.R. § 16.11(k)(2)(i) - (iv). Judicial Watch, Inc.'s October 8, 2003 FOIA request also sought expedited production of the requested documents within twenty (20) business days. A copy of Judicial Watch, Inc.'s October 8, 2003 FOIA request is attached hereto as Exhibit 1 and is incorporated herein by reference.

7. On October 10, 2003, Judicial Watch, Inc. sent DHS and FBI, by facsimile and by certified U.S. mail, return receipt requested, a supplement to its October 8, 2004 FOIA request. This supplement corrected two typographical errors contained in Judicial Watch, Inc.'s October 8, 2004 request. A copy of Judicial Watch, Inc.'s October 10, 2003, FOIA supplement is attached hereto as Exhibit 2 and is incorporated herein by reference.

Defendant FBI

8. On or about October 9, 2003, Judicial Watch, Inc. received a letter from David M. Hardy of Defendant FBI's Records Management Division, acknowledging Defendant FBI's receipt

of Judicial Watch, Inc.'s October 8, 2003 FOIA request. The letter did not include any responsive documents or contain any definitive statement as to when Judicial Watch, Inc. could expect to receive responsive documents from Defendant FBI.

9. On or about October 27, 2003, Judicial Watch, Inc. received a second letter from Mr. Hardy on behalf of Defendant FBI. The October 27, 2003 letter stated that responsive documents existed, but that Judicial Watch, Inc.'s request had been denied because the requested documents were allegedly exempt from production pursuant to 5 U.S.C. §552(b)(7)(A).

10. On October 31, 2003, Judicial Watch, Inc. sent Defendant FBI, by facsimile and by certified U.S. mail, return receipt requested, a letter appealing Defendant FBI's denial of Judicial Watch, Inc.'s October 8, 2003 FOIA request.

11. On or about November 12, 2003, Judicial Watch, Inc. received a letter from Priscilla Jones of the Department of Justice ("DOJ"), acknowledging Defendant FBI's receipt of Judicial Watch, Inc.'s October 31, 2003 FOIA appeal.

12. Because it had not received any response to its October 31, 2003, FOIA appeal, on or about January 27, 2004, Judicial Watch, Inc. sent a letter to DOJ requesting an update as to the status of its October 31, 2003 FOIA appeal.

13. On or about January 30, 2004, Judicial Watch, Inc., received a letter from Richard L. Huff of DOJ denying Judicial Watch's October 31, 2003 FOIA appeal.

Defendant DHS

14. On or about October 15, 2003, Judicial Watch, Inc. received a letter from Elizabeth Withnell of Defendant DHS, acknowledging Defendant DHS's receipt of Judicial Watch, Inc.'s

October 8, 2003 FOIA request. The October 15, 2003 letter denied Judicial Watch, Inc.'s request on the ground that DHS did not possess any responsive documents.

15. On October 27, 2003, Judicial Watch, Inc. sent Defendant DHS, by facsimile and by certified U.S. mail, return receipt requested, a letter appealing Defendant DHS's denial of Judicial Watch, Inc.'s October 8, 2003 FOIA request.

16. Because it had not received any response to its October 27, 2003, FOIA appeal, on or about February 4, 2004, Judicial Watch, Inc. sent a letter to DHS via Express Mail requesting an update as to the status of its October 27, 2003 FOIA appeal.

17. On or about February 5, 2004, Judicial Watch, Inc., received a letter from Stephen Bodolay of DHS concerning Judicial Watch's October 27, 2003 FOIA appeal. Mr. Bodolay's letter stated that Judicial Watch's October 8, 2003 FOIA request was being forwarded to several components within DHS. However, the February 5, 2004 letter did not contain an estimate as to when Judicial Watch, Inc., could expect to receive a substantive response to its October 8, 2003 FOIA request.

18. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), Defendant DHS was required to make a determination regarding Judicial Watch, Inc.'s October 27, 2003 FOIA appeal by November 25, 2003. However, as of September 23, 2004, Defendant DHS failed to make a final determination regarding Judicial Watch, Inc.'s October 27, 2003 FOIA appeal or to turn over any responsive documents to Judicial Watch, Inc. In addition, as of September 23, 2004, DHS failed to invoke the provisions set forth in 5 U.S.C. § 552(a)(6)(B) for extending the time limits to respond to Judicial Watch, Inc.'s October 8, 2003 FOIA request.

19. Because DHS failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A) or extend those time limit provisions pursuant to 5 U.S.C. § 552(a)(6)(B), Judicial Watch, Inc. is deemed to have exhausted any and all administrative remedies with respect to its October 8, 2003 FOIA request. 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA)

20. Plaintiff realleges paragraphs 1 through 19 as if fully stated herein.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendants' failure to comply with FOIA to be unlawful; (2) enjoin Defendants from continuing to withhold records responsive to Plaintiff's October 8, 2003 FOIA request and order Defendants to produce all responsive records improperly withheld from Plaintiff without further delay; (4) award Plaintiff attorneys fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant such other relief as the Court deems just and proper.

Respectfully submitted,

JUDICIAL WATCH, INC.



Paul J. Orfanedes
D.C. Bar No. 429716
Meredith Cavallo
D.C. Bar No. 487733
Suite 500
501 School Street, S.W.
Washington, DC 20024
(202) 646-5172

Attorneys for Plaintiff