

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES CAPITOL POLICE,

Defendant.

Case No. 1:21-cv-00401-KBJ

**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Defendant United States Capitol Police hereby moves the Court to enter summary judgment in Defendant’s favor pursuant to Rule 56 of the Federal Rules of Civil Procedure. Attached in support of this motion are a statement of material facts as to which there is no genuine dispute, a memorandum of points and authorities, and the Declaration of James W. Joyce. A proposed order is also attached.

Dated: August 6, 2021

Respectfully submitted,

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**DEFENDANT’S STATEMENT OF MATERIAL FACTS  
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Rule 7(h)(1) of the Rules of the United States District Court for the District of Columbia, Defendant states the following material facts as to which there can be no genuine issue:

1. The U.S. Capitol Police (USCP) is a law enforcement agency and is part of the Legislative Branch. Joyce Decl. ¶ 2; Compl. ¶ 4, ECF No. 1.
2. By letter dated January 21, 2021, Plaintiff submitted to the USCP a request asserting a common law right of access to public records and seeking three categories of information. Joyce Decl. ¶ 3 & Ex. A.
3. By email dated February 11, 2021, the USCP responded to Plaintiff’s request by declining to provide the requested information. The USCP’s response noted that the requested categories of information were not “public records.” Joyce Decl. ¶ 4 & Ex. B. .
4. The Capitol Police Board consists of the House Sergeant at Arms, the Senate Sergeant at Arms, and the Architect of the Capitol. Joyce Decl. ¶¶ 6, 11.
5. The Chief of the Capitol Police is an *ex officio*, non-voting member of the Capitol Police Board, and is not authorized to speak on behalf of the Board. Joyce Decl. ¶¶ 11, 12.

6. The USCP Executive Team consists of the Chief of the Capitol Police, the Assistant Chief of Police – Protective and Intelligence Operations, the Assistant Chief of Police – Uniformed Operations, the Chief Administrative Officer, and the General Counsel. Joyce Decl. ¶ 6.

7. The emails of the principal, voting members of the Capitol Police Board are not maintained in email servers to which the USCP has access. Joyce Decl. ¶ 11.

8. None of the emails located by the USCP in response to Plaintiff's first requested category of information were created or kept to memorialize or record any official action by the USCP. Joyce Decl. ¶¶ 7, 8.

9. The emails that the USCP located that are responsive to Plaintiff's first requested category of information include correspondence regarding situational security updates, recommendations on security measures for the Capitol and Members of Congress, updates and recommendations on police personnel issues, scheduling for upcoming USCP meetings and conference calls, draft documents and statements, and updates about news media reports. Joyce Decl. ¶ 7.

10. None of the emails located by the USCP in response to Plaintiff's second requested category of information were created or kept to memorialize or record any official action by the USCP. Joyce Decl. ¶ 12.

11. The emails that the USCP located in response to Plaintiff's second requested category of information, insofar as they concern the security of the Capitol on January 6 at all, primarily concern Inauguration preparations, concerns and condolences regarding officer injuries and fatalities, personal correspondence about Chief Steven Sund's resignation and Acting Chief Pittman's elevation, and fencing. Joyce Decl. ¶ 12.

12. When the USCP takes an official action, it has existing processes in place to memorialize that action that do not consist of sending or receiving emails. Joyce Decl. ¶ 8.

13. The USCP's camera security system, including footage recorded by it within the Capitol and sought by Plaintiff, is solely for national security and law enforcement purposes. Joyce Decl. ¶ 14.

14. Access to video footage from the USCP's camera security system is limited to narrow circumstances and strictly controlled by USCP policy. Joyce Decl. ¶¶ 14-15 & Exs. C, D.

15. The USCP has not made any public disclosures of video footage from January 6 from its camera security system. Joyce Decl. ¶ 17.

16. There are currently pending criminal investigations and prosecutions of individuals involved in the events at the U.S. Capitol on January 6, 2021. Joyce Decl. ¶¶ 10, 16.

17. There are currently pending congressional investigations into the events at the U.S. Capitol on January 6, 2021. Joyce Decl. ¶¶ 10, 16.

18. The USCP has strong interests in maintaining the confidentiality of the requested email correspondence, which include enabling the free flow of information among USCP officials and between those officials and the Capitol Police Board and congressional stakeholders; ensuring that the USCP's security methods, techniques, and responses during an incident such as January 6 are not revealed to the public; and preserving the integrity of ongoing congressional and criminal investigations. Joyce Decl. ¶¶ 9-10.

19. The USCP has strong interests in maintaining the confidentiality of the requested video footage, which include adhering to its strict policy limiting disclosure of any video footage to narrowly prescribed circumstances; ensuring that certain sensitive security details about the layout of the Capitol are not revealed to the public; and preserving the integrity of ongoing congressional and criminal investigations. Joyce Decl. ¶¶ 14-15, 18, 20.

Dated: August 6, 2021

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

In this case, Plaintiff Judicial Watch seeks from the United States Capitol Police (USCP) internal email correspondence and sensitive video surveillance footage from the insurrection attempt at the U.S. Capitol on January 6, 2021. USCP is part of the Legislative Branch, which is not subject to the Freedom of Information Act (FOIA). 5 U.S.C. §§ 551(1)(A), 552(f)(1). Plaintiff therefore brings this suit not under FOIA but under an asserted “common law right of access to public records.” Compl. at 1, ECF No. 1. But judgment for Defendant is warranted for multiple reasons.

First, Plaintiff has sought to sue an agency of the Legislative Branch without identifying an unequivocal congressional waiver of sovereign immunity, as is required for this Court to have jurisdiction. Plaintiff’s suit thus fails for a lack of subject matter jurisdiction. Second, even if Plaintiff could overcome sovereign immunity, Plaintiff lacks any right to the materials it has requested because they are not “public records” cognizable under the common law right of access.

As the name implies, the common law right of access to public records has been recognized to “bestow[] upon the public a right of access to *public* records and documents.” *Wash. Legal Found. v. U.S. Sent’g Comm’n*, 89 F.3d 897, 902 (D.C. Cir. 1996) (*WLF II*) (emphasis added). Internal email correspondence of the senior-most officials in the USCP and surveillance video footage from the USCP’s security camera system are in no sense “public records” under the governing test in the D.C. Circuit. Initially, for one category of emails Plaintiff has requested—emails between the Capitol Police Board and three agencies in the Executive Branch—the USCP, which is separate from its overseeing Board, does not have access in the first instance. And for the USCP to search its own servers for the possibility of finding emails forwarded from the Board would impose an unreasonable burden on the USCP, particular when Plaintiff can simply submit

a FOIA request to any of the three Executive agencies for responsive emails. In any event, what email communications responsive to Plaintiffs' request the USCP does possess are the communications of USCP leadership in the moment of one of the most serious attacks on the Capitol in U.S. history. The USCP is aware of no court that has required this type of correspondence—whether internal or to the Capitol Board or congressional stakeholders—to be made available to the public on a wholesale basis, and this Court should not be the first. The USCP's video surveillance footage, meanwhile, is maintained strictly for national security and law enforcement purposes, not for public broadcast as Plaintiff would have it. Plaintiff has no common law right to access any of the materials it has sought, and the USCP is therefore entitled to summary judgment

## **BACKGROUND**

### **I. THE U.S. CAPITOL POLICE**

The U.S. Capitol Police is a law enforcement agency within the Legislative Branch. It is charged with safeguarding the Congress and its Members, employees, and visitors, and congressional buildings and grounds from crime, disruption, and terrorism. The mission of the USCP is to protect and secure Congress so it can fulfill its constitutional and legislative responsibilities in a safe, secure, and open environment.

Pursuant to statute, the USCP is headed by the Chief of the Capitol Police, and carries out its mission under the direction of the Capitol Police Board. 2 U.S.C. §§ 1901, 1961(a), 1969(a). The Board consists of the Sergeant at Arms of the U.S. Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol. *Id.* § 1961. Since 2003, the Chief of the Capitol Police has served on the Board in an *ex officio*, non-voting capacity. *See* Pub. L. No. 108-7, div. H, § 1014(a)(2), 117 Stat. 361 (2003).

These three members of the Board are not employees or otherwise part of the USCP; rather, the Sergeants at Arms are officers of their respective houses of Congress and the Architect of the Capitol serves both Congress and the Supreme Court. *See District of Columbia v. United States*, 67 Fed. Cl. 292, 326 (2005) (“The Capitol Police is an entity created by Congress and overseen by the Capitol Police Board, which consists of the Sergeant of Arms of the United States Senate, the Sergeant of Arms of the House of Representatives, and the Architect of the Capitol.”). Additional oversight of the USCP is conducted by committees in both the House of Representatives and the Senate.

## **II. PLAINTIFF’S REQUEST TO THE USCP**

On January 21, 2021, Plaintiff Judicial Watch requested from the USCP copies of the following three categories of information under an asserted common law right of access to public records:

1. Email communications between the U.S. Capitol Police Executive Team and the Capitol Police Board concerning the security of the Capitol on January 6, 2021. The timeframe of this request is from January 1, 2021 through January 10, 2021.
2. Email communications of the Capitol Police Board with the Federal Bureau of Investigation, the U.S. Department of Justice, and the U.S. Department of Homeland Security concerning the security of the Capitol on January 6, 2021. The timeframe of this request is from January 1, 2021 through January 10, 2021.
3. All video footage from within the Capitol between 12pm and 9pm on January 6, 2021.

*See* Declaration of James W. Joyce (Joyce Decl.) ¶ 3, Ex. A. By email dated February 11, 2021, the USCP declined to provide the requested information, stating that “[t]he email communications and video footage information requested . . . are not public records.” Joyce Decl., Ex. B.

Shortly after, on February 16, 2021, Plaintiff filed the instant action, asserting a common

law right of access to the requested materials. *See* Compl. In its Complaint, Plaintiff asks the Court to declare the USCP in violation of Plaintiff’s asserted common law right of access; issue a writ of mandamus compelling the USCP to release the requested materials; and award attorney’s fees and costs. *Id.* at 3. The USCP timely answered the Complaint on May 25, 2021. *See* ECF No. 10.

### **LEGAL STANDARD**

Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” “Although a court should draw all inferences from the supporting records submitted by the nonmoving party, the mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment.” *Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96, 112 (D.D.C. 2003) (citation omitted). Rather, the dispute must concern a question of fact that is material, meaning that it is “capable of affecting the substantive outcome of the litigation.” *Id.* The dispute must also be genuine, meaning that it is “supported by sufficiently admissible evidence such that a reasonable trier-of-fact could find for the nonmoving party.” *Id.*

### **ARGUMENT**

Summary judgment should be entered in favor of the USCP for multiple reasons. First, Plaintiff has not identified a waiver of sovereign immunity, and the Court therefore lacks jurisdiction. Second, even if sovereign immunity did not bar this suit, Plaintiff lacks any right to the materials it has requested because they are not “public records” cognizable under the common law right of access. Third, even if Plaintiff had sought “public records,” the USCP’s interests in confidentiality would outweigh any public interest in those materials.

## I. SOVEREIGN IMMUNITY BARS THIS ACTION.

“The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress.” *Block v. North Dakota*, 461 U.S. 273, 287 (1983); *see also United States v. Mitchell*, 463 U.S. 206, 212 (1983) (“It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.”). That immunity “extends to the United States Congress when it is sued as a branch of the government,” *McLean v. United States*, 566 F.3d 391, 401 (4th Cir. 2009), and encompasses agencies within the Legislative Branch, *see Cofield v. United States*, 64 F. Supp. 3d 206, 213-14 (D.D.C. 2014) (“[S]overeign immunity bars any claim for money damages against the United States (including the U.S. Senate) and its agencies.”).

Accordingly, to proceed with this suit, Plaintiff must identify a waiver of sovereign immunity that is “unequivocally expressed in statutory text.” *Lane v. Peña*, 518 U.S. 187, 192 (1996) (a waiver of sovereign immunity “will not be implied”). Yet Plaintiff has identified no such unequivocal waiver that would permit this action. Nor can Plaintiff rely on its conclusory claim to mandamus jurisdiction under 28 U.S.C. § 1361, *see* Compl. ¶ 1. “It is well settled that [section 1361] does not by itself waive sovereign immunity.” *WLF II*, 89 F.3d at 901.

Plaintiffs may also assert that the *Larson-Dugan* exception to sovereign immunity applies here. “Under this exception, ‘suits for specific relief against officers of the sovereign’ allegedly acting ‘beyond statutory authority or unconstitutionally’ are not barred by sovereign immunity.” *Pollack v. Hogan*, 703 F.3d 117, 120 (D.C. Cir. 2012) (quoting *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689 (1949)); *see also Dugan v. Rank*, 372 U.S. 609, 621-22 (1963). But Plaintiff has not identified any “officer of the sovereign” upon whom is allegedly



imposed some non-discretionary statutory or constitutional duty to disclose the requested records.<sup>1</sup> Because sovereign immunity bars this suit, USCP is entitled to summary judgment due to a lack of subject matter jurisdiction.

## II. PLAINTIFF’S CLAIMS LACK MERIT

Even if the Court concludes that it does have jurisdiction to hear this action, the USCP is entitled to summary judgment on the merits. For one of the two categories of emails Plaintiff has requested—communications between the Capitol Police Board and the FBI, DOJ, and DHS—the USCP does not have a means to search the Board’s emails. And in any event, Plaintiff may request such emails by submitting a FOIA request to the three Executive Branch agencies at issue. As for the remaining materials Plaintiff has requested, none are “public records” under the D.C. Circuit’s governing test. And even if they were, compelling reasons exist for the USCP to maintain the confidentiality of its internal correspondence surrounding the January 6 attack and its video surveillance footage from the insurrection itself.

### A. **The USCP does not possess or control the email repositories for the Capitol Police Board, and any responsive communications are in any event available through an alternative mechanism.**

Plaintiff’s second category of requested information is for “[e]mail communications of the Capitol Police Board with the Federal Bureau of Investigation, the U.S. Department of Justice, and the U.S. Department of Homeland Security concerning the security of the Capitol on January 6, 2021.” Joyce Decl. ¶ 3, Ex. A. But the USCP does not have possess or have access to the email

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<sup>1</sup> Notwithstanding Plaintiff’s failure to identify—and name as a defendant—any public official owing some duty in their official capacity, should the Court find it necessary to evaluate the merits of Plaintiff’s claims in order to determine whether sovereign immunity applies, it should, for the reasons discussed *infra*, nonetheless dispose of the Complaint on these threshold grounds. See, e.g., *WLF II*, 89 F.3d at 902 (evaluating merits of common law access claim to decide sovereign immunity question when “the question of jurisdiction merges with the question on the merits”); *Judicial Watch v. Schiff*, 474 F. Supp. 3d 305, 313-14 (D.D.C. 2020) (same), *aff’d* 998 F.3d 989 (D.C. Cir. 2021).

repositories for Capitol Police Board members, and is therefore not in position to reasonably search for records responsive to this category of materials. As explained above, the Board is comprised of three officials who, while they oversee the USCP's execution of its mission in their capacity as Board members, are not employees, officials, or otherwise part of the USCP itself. *See* Joyce Decl. ¶ 11. Board members are not provided uscp.gov email addresses, and their email communications are not stored on the USCP's email servers. *Id.* Plaintiff plainly has no right to compel the USCP to produce records which the USCP does not possess and to which it has no access. By analogy to the Freedom of Information Act, the USCP "need not produce records maintained by another federal government agency or obtain records from any other sources." *Callaway v. U.S. Dep't of Treasury*, 893 F. Supp. 2d 269, 275 (D.D.C. 2012); *cf. Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980) (FOIA "only obligates [an agency] to provide access to those [documents] which it in fact has created and retained").

It is true that the Chief of the Capitol Police serves as an *ex officio* member of the Board, without voting privileges. Joyce Decl. ¶¶ 11, 12. In that capacity, however, the Chief has no authority to speak on behalf of the Board. *Id.* ¶ 12. The Chief is, moreover, appointed by, and serves at the pleasure of, the Board. *See* 2 U.S.C. § 1971 ("The Capitol Police shall be headed by a Chief who shall be appointed by the Capitol Police Board and shall serve at the pleasure of the Board."). Any email communications between the Chief and the FBI, DOJ, or DHS thus would not have been responsive to Plaintiff's request for email communications "of the Capitol Police Board." *Id.*, Ex. A.

Notwithstanding that Plaintiff lacks any legal right to these materials, the USCP has out of an abundance of caution searched for emails between the Chief (or Acting Chief) of Police and the three specified federal agencies from January 1 to January 10, 2021. Joyce Decl. ¶ 12. Of the very emails from that search that might reasonably be considered "concerning the security of the Capitol

on January 6, 2021,” *see id.*, Ex. A, none are “public records,” for the reasons set forth more fully below. *Id.* ¶ 12. Those emails are routine correspondence between the Chief and various law enforcement partners regarding Inauguration preparations, concerns and condolences for officer injuries and fatalities, personal correspondence about Chief Steven Sund’s resignation and Acting Chief Pittman’s elevation, and fencing. *Id.* None of these emails was intended to memorialize any official USCP action. *Id.*; *see infra* Section II.B.

It is possible that the USCP might possess an email between a Capitol Police Board member and the FBI, DOJ, or DHS, if a USCP employee was copied on or forwarded such an email. *See* Joyce Decl. ¶ 11. But identifying any such emails would entail a broader, more burdensome search, one that might encompass the entire agency. Such a burdensome search should not be required when Plaintiff may seek these records directly from the specified Executive agencies through the Freedom of Information Act. As the D.C. Circuit has explained, where a statutory scheme, such as FOIA, provides an available mechanism for requesting the sought-after information, “[t]he appropriate device is a Freedom of Information Act request addressed to the relevant agency,” rather than a request under the common law. *United States v. El-Sayegh*, 131 F.3d 158, 163 (D.C. Cir. 1997) (citing *Nixon v. Warner Comm’ns, Inc.*, 435 U.S. 589, 605-06 (1978) (existence of statutory disclosure mechanism weighs against court-mandated disclosure)). In *El-Sayegh*, the D.C. Circuit rejected a common law right of access claim against the Judicial Branch, reasoning that the statutory mechanism for disclosure applicable to the Executive Branch (*i.e.*, FOIA) was the proper course. So too here should the Court reject an attempted common law claim against the Legislative Branch when Congress has already supplied a remedy through FOIA. Because “FOIA provides an extensive statutory regime for [Plaintiff] to request the information [it] seek[s] . . . [t]hat scheme preempts any preexisting common law right,” and Plaintiff’s claim cannot proceed with respect to this category of information. *Ctr. for Nat’l Sec. Stud. v. Dep’t of*

*Justice*, 331 F.3d 918, 936-37 (D.C. Cir. 2003).

**B. None of the requested materials are “public records” subject to the common law right of access.**

Plaintiff’s demand for certain emails of Capitol Police senior leadership and surveillance video footage from January 6 (Plaintiff’s first and third categories of requested information) fails because those materials are not “public records” to which Plaintiff has any right. The D.C. Circuit has established a two-step process to govern whether the common law right of access applies: First, the court determines “whether the document sought is a ‘public record.’” *Wash. Legal Found. v. U.S. Sent’g Comm’n*, 17 F.3d 1446, 1451 (D.C. Cir. 1994) (*WLF I*). If so, the court then “proceed[s] to balance the government’s interest in keeping the document secret against the public’s interest in disclosure.” *Id.* at 1451-52. Any cognizable public interest in the document is thus relevant solely at the second step, and does not factor into the analysis of whether the document is a “public record” in the first place.

Plaintiff’s requests here—for certain emails of the USCP Executive Team<sup>2</sup> and surveillance video footage gathered by the USCP for law enforcement purposes—fails to satisfy either step, and the asserted common law right of access therefore does not apply. Lacking any “right to demand disclosure of the requested” materials, the USCP is entitled to summary judgment on Plaintiff’s claim. *Judicial Watch*, 474 F. Supp. 3d at 319.

1. *Emails between the USCP Executive Team and the Capitol Police Board are not public records*

Plaintiff’s first requested category—email communications between the USCP Executive Team and the Capitol Police Board concerning the security of the Capitol on January 6—does not

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<sup>2</sup> The USCP Executive Team—the subject of Plaintiff’s first requested category—consists of the Chief of the Capitol Police; the Assistant Chief, Protective and Intelligence Operations; the Assistant Chief, Uniformed Operations; the Chief Administrative Officer; and the General Counsel. *See* Joyce Decl. ¶ 6.

consist of public records. As explained in the Joyce Declaration, these emails were not created or kept in order to memorialize any official USCP action or decision. Joyce Decl. ¶ 8. Indeed, when USCP takes an official action or other decision of legal significance, it has established processes for doing so that do not entail email correspondence. *Id.* ¶ 8. Rather, the emails at issue are the stuff of everyday agency communication, albeit sent and received during an extraordinary period surrounding the Capitol insurrection. They include, for example, correspondence regarding situational security updates, recommendations on security measures for the Capitol and members of Congress, updates and recommendations on police personnel issues, scheduling for upcoming USCP meetings and conference calls, draft documents and statements, and updates about news media reports. *Id.* ¶ 7.

In *WLF II*, the D.C. Circuit rejected the sweeping definition of “public records” for which Plaintiff here implicitly advocates. The court declined to adopt a definition of “public record” that would “include almost every document recorded, generated, or produced by public officials whether or not required by law to be made, maintained or kept on file.” 89 F.3d at 904 (quoting *Higg-A-Rella, Inc. v. Cnty. of Essex*, 660 A.2d 1163, 1168 (1995) (quotation marks omitted)). Such a definition would “impose . . . the most demanding possible disclosure obligation.” *Id.* at 905. Instead, the court adopted a narrower definition: “a government document created and kept for the purpose of memorializing or recording an official action, decision, statement, or other matter of legal significance, broadly conceived.” *Id.* It specifically carved out “documents that are preliminary, advisory, or, for one reason or another, do not eventuate in any official action or decision being taken.” *Id.*

The requested emails are not the sort of documents that are intentionally created to “memorializ[e]” or “record[]” some official action by the USCP. *Id.* Indeed, the USCP has determined that none of the emails in this category were created to memorialize or record some

official USCP action, nor have they been kept for that purpose. Joyce Decl. ¶ 8. Even if these emails eventually formed the basis for some future USCP action—a hypothetical Plaintiff has nowhere alleged—the D.C. Circuit’s definition of “public record” does not “encompass the preliminary materials upon which an official relied in making a decision or other writings incidental to the decision itself.” *WLF II*, 89 F.3d at 905. Defendant is aware of no precedent that would mandate the wholesale disclosure of the requested email correspondence from a law enforcement agency, and Defendant has located no court decision holding such emails to be public records subject to disclosure. For this Court to conclude otherwise would institute “the most demanding possible disclosure obligation” that the D.C. Circuit rejected. *Id.*

Even when confronted with materials that are far less preliminary or unofficial than the email correspondence at issue here, courts have found them outside the definition of “public records.” A subpoena issued by the House Permanent Select Committee on Intelligence is not a public record. *Judicial Watch*, 474 F. Supp. 3d at 315-16, *aff’d on other grounds* 998 F.3d 989. Nor are a sentencing advisory committee’s memoranda on policy matters, drafts of sentencing guideline proposals, or letters on internal administrative matters. *WLF II*, 89 F.3d at 900, 906. The same goes for final investigative reports prepared by congressional staff for the House Appropriations Committee. *Pentagen Techs. Int’l, Ltd. v. Comm. on Appropriations*, 20 F. Supp. 2d 41, 45 (D.D.C. 1998). The requested email correspondence does not fall within the scope of a “public record” to which any common law right of access could apply, and Plaintiff’s claim therefore fails on the merits.

2. *USCP video footage from within the Capitol on January 6 is not a public record*

Plaintiff’s third request, for nine hours of “all video footage from within the Capitol” on January 6, 2021, likewise falters at the first step of the D.C. Circuit’s two-part test because the

USCP's surveillance video footage is not a "public record." As an initial matter, the USCP is aware of no authority holding that law enforcement surveillance video footage should be considered a public record subject to mandatory disclosure. Nor would such a conclusion make sense. Raw surveillance footage by definition does not memorialize or record any official action, but instead simply provides a recording of *everything* that occurs within a camera system's view. Moreover, longstanding USCP policy dictates that the USCP camera system, including footage recorded by it within the Capitol and sought by Plaintiff, is solely for national security and law enforcement purposes. *See* Joyce Decl. ¶¶ 13-14 & Ex. C, USCP Directive 1000.002, *Retrieval of Archived Video* (Directive 1000.002). Like many video surveillance systems, the USCP camera system is designed "to provide situational awareness to USCP personnel, supporting national security, and legitimate law enforcement purposes." *See* Directive 1000.002 at 1-2. It is not, and never has been, intended to record some official government action for the purpose of memorializing that action.

Accordingly, the USCP does not publicize any of its surveillance video footage, and what limited footage its policy does make available to approved individuals is on a tightly controlled application basis. For example, a request for video footage from the USCP's camera system must be submitted through written application by a USCP employee for a specific law enforcement purpose, and be approved by either of two USCP Assistant Police Chiefs. *See* Joyce Decl. ¶ 14; Directive 1000.002; Joyce Decl., Ex. D, Form CP-411. Even when a request for footage is approved, the footage must be viewed within the presence of USCP personnel, or subject to strict control by the USCP. *See* Joyce Decl. ¶¶ 14-15; *see also* Directive 1000.002 at 1 (advising that "[v]ideo footage received through an approved request should not be delivered, copied, or transmitted to anyone other than necessary parties (e.g., court, General Counsel) without approval from the COO"). In line with its Directive, the USCP has consistently taken a restrictive approach

to releasing video footage, including in cases that involve serious crimes or national security, such as the January 6 footage sought here by Plaintiff. Joyce Decl. ¶ 15.

It is true that the USCP has made certain authorized disclosures of video footage from the Capitol on January 6 to Congress and to non-congressional entities, such as the FBI, the Washington D.C. Metropolitan Police Department, and federal prosecutors. *Id.* ¶ 16. Those disclosures, however, have all been in support of Congress and those other entities' pursuit of investigations into the events of January 6, whether for purposes of impeachment proceedings, oversight investigations, or criminal prosecutions. To the extent that there have been any public releases of that footage, it has not been by the USCP. *Id.* ¶ 17.

Because video footage from within the Capitol on January 6 is not a "public record," Plaintiff has no common law right of access to that material.

**C. Even if Plaintiff had sought "public records," there are compelling reasons the requested materials should not be disclosed.**

Assuming *arguendo* that the requested materials are "public records," Plaintiff nonetheless has no right to access them because Plaintiff cannot show any public interest in disclosure that outweighs the USCP's countervailing interests against release. Plaintiff in its Complaint does not allege with any particularity what the public interest in the requested material might be, choosing instead to rely on a conclusory assertion. *See* Compl. ¶ 11 (bare allegation that "[t]he public interest in the requested communications and video footage outweighs Defendant's interest in keeping them secret"). The USCP would of course not deny that there is strong public interest in the events of January 6 generally, but it is "not sufficient for the plaintiffs to show [public] interest in only the general subject area of the request." *ACLU of N. Cal. v. DOJ*, No. C 04-447 PJH, 2005 WL 588354, at \*13 (N.D. Cal. Mar. 11, 2005) (FOIA case assessing applicability of Exemption 7(C)). Plaintiff must instead articulate a public interest in the actual requested documents that



outweighs the need for confidentiality. By analogy to the interest balancing that courts conduct under the FOIA when considering requests for law enforcement records, “[t]he fact that [Plaintiff] has provided evidence that there is some media interest in [the January 6 attack on the Capitol] as an umbrella issue does not satisfy the requirement that [it] demonstrate interest in the specific subject” of its request for USCP emails. *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 355 F. Supp. 2d 98, 102 (D.D.C. 2004).

Even if a cognizable public interest could be derived from Plaintiff’s conclusory allegation in the Complaint, it is outweighed by the USCP’s interests in maintaining confidentiality. Plaintiff’s request for the email correspondence of the USCP’s Executive Team with the Capitol Police Board covers internal communications between members of USCP leadership, members of the Capitol Police Board, and congressional stakeholders. *See* Joyce Decl. ¶ 7. For the USCP to function and properly execute its mission, its leadership must be able to communicate, including by email, without fear or apprehension that those messages will be made public merely upon request. *See id.* ¶ 9. This is especially so during rapidly unfolding, dangerous events such as the January 6 attack on the Capitol. *Id.* Court-ordered disclosure of these emails would undoubtedly chill those important communications. Furthermore, the USCP’s response to the events of January 6 is currently the subject of congressional inquiry by, among other bodies, the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol. *See* H. Res. 503 (117th Cong.) (June 30, 2021); *id.* § 3(1) (Select Committee’s purposes include, *inter alia*, to investigate “facts and causes relating to the preparedness and response of the United States Capitol Police”). And more broadly, the events of January 6 are the subjective of multiple concurrent criminal investigations. Releasing the requested email correspondence to the public could frustrate the investigation of the House Select Committee or other congressional committees, and could also be expected to compromise ongoing criminal proceedings against those who attacked the Capitol.

See Joyce Decl. ¶ 10.

USCP also has a strong interest in maintaining confidentiality of the requested security video footage. First, that footage is likewise the subject of concurrent investigations by multiple investigative entities, *see id.* ¶ 16, and its disclosure to the public could jeopardize the integrity of those investigations. Second, disclosure of the footage could also reveal the locations of USCP surveillance cameras, Capitol entry and exit points, and Members' office locations, as well as certain security techniques and methods employed by USCP on January 6. *Id.* ¶¶ 18, 20. Release of that information could enable or encourage prospective wrongdoers to commit future unauthorized actions against the Capitol complex. *Id.*; *see also* Directive 1000.002 at 2 (“Retrieving, using, or duplicating archived video footage in cases not related to national security or significant law enforcement operations . . . could expose the location of [USCP’s] CCTV cameras or identify [USCP’s] surveillance tactics. This presents a threat to national security, as making this information public could be utilized by a potential adversary.”). Third and finally, the Capitol Police Board has designated at least some of the footage requested to be “security information” whose public disclosure is prohibited by federal statute, and it may similarly designate additional footage in the future. *See* Joyce Decl. ¶ 20; 2 U.S.C. § 1979.<sup>3</sup>

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<sup>3</sup> Section 1979(b) provides, in pertinent part:

Notwithstanding any other provision of law, any security information in the possession of the Capitol Police may be released by the Capitol Police to another entity, including an individual, only if the Capitol Police Board determines in consultation with other appropriate law enforcement officials, experts in security preparedness, and appropriate committees of Congress, that the release of the security information will not compromise the security and safety of the Capitol buildings and grounds or any individual whose protection and safety is under the jurisdiction of the Capitol Police.

2 U.S.C. § 1979(b).

**CONCLUSION**

For the foregoing reasons, the Court should enter summary judgment in favor of Defendant U.S. Capitol Police on all of Plaintiff's claims.

Dated: August 6, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

JOHN R. GRIFFITHS  
Director  
Federal Programs Branch

MARCIA BERMAN  
Assistant Director  
Federal Programs Branch

/s/ M. Andrew Zee  
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*Counsel for Defendant*

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES CAPITOL POLICE,

Defendant.

Case No. 1:21-cv-00401-KBJ

**DECLARATION OF JAMES W. JOYCE**

I, James W. Joyce, declare as follows:

1. I am a Senior Counsel in the Office of the General Counsel, General Law Division, for the U.S. Capitol Police (USCP or Department). In this position, I provide general legal advice and legal assistance on, among many other things, criminal matters, constitutional matters, appropriations and procurement matters, matters concerning tort claims, and the overall operations of the Department. I have worked for the USCP in the Office of the General Counsel since November 2004.

2. As part of my duties, together with the USCP's Public Information Office, I oversee the USCP's responses to requests by members of the public for USCP information. Although the USCP is not subject to the Freedom of Information Act (FOIA) because it is part of the Legislative Branch, *see* 5 U.S.C. §§ 551(1)(A), 552(f)(1) (excluding the Legislative Branch from an "agency" subject to the requirements of FOIA), the USCP nonetheless occasionally receives FOIA and FOIA-like requests for incident reports, arrest reports, video footage, and other documents, records, and information. (The USCP also receives official requests for information from its oversight committees in Congress, the Capitol Police Board, and other official entities. I am not generally responsible for responding to such requests, and they are not the subject of this Declaration.)

3. By letter dated January 21, 2021, Plaintiff Judicial Watch submitted a request to USCP, which is attached to this Declaration as Exhibit A. Asserting a common law right of access to public records, Plaintiff requested three categories of information, as follows:

1. Email communications between the U.S. Capitol Police Executive Team and the Capitol Police Board concerning the security of the Capitol on January 6, 2021. The timeframe of this request is from January 1, 2021 through January 10, 2021.

2. Email communications of the Capitol Police Board with the Federal Bureau of Investigation, the U.S. Department of Justice, and the U.S. Department of Homeland Security concerning the security of the Capitol on January 6, 2021. The timeframe of this request is from January 1, 2021 through January 10, 2021.

3. All video footage from within the Capitol between 12pm and 9pm on January 6, 2021.

The request is the subject of the instant litigation, *Judicial Watch v. U.S. Capitol Police*, No. 21-cv-00401 (D.D.C.).

4. On behalf of the USCP, I responded to Plaintiff's request by email on February 11, 2021. The response, which is attached to this Declaration as Exhibit B, stated that the USCP declined to provide the requested information because they are not "public records."

5. This Declaration provides information broken down by each of the three categories of information requested, in support of the USCP's determination to decline to disclose any of the requested information.

**Category No. 1: Email communications between the USCP Executive Team  
and the Capitol Police Board**

6. The USCP conducted a search for emails between members of the USCP Executive Team (the Capitol Police Chief, the Assistant Chief of Police – Protective and Intelligence Operations, the Assistant Chief of Police – Uniformed Operations, the Chief Administrative Officer, and the General Counsel) and the Capitol Police Board (the House Sergeant at Arms, the Senate Sergeant at Arms, and the Architect of the Capitol) for the January 1 to January 10, 2021

time period. Because the General Counsel is on the Executive Team, many of the internal USCP Executive Team communications involving the General Counsel tend to include privileged information. Because there were resignations from some of these positions during that period, the number of custodians searched was larger than the number of positions. The USCP's search returned approximately 271 emails, the majority of which were duplicates of one another.

7. I reviewed these emails for responsiveness to Plaintiff's first requested category of information, and concluded that, although certain communications broadly concerned security of the Capitol on January 6, 2021, none of them constitute "public records"—even in the context of the case law that Plaintiff relies upon for its asserted common law right of access. These emails instead consist of, for example, correspondence regarding situational security updates, recommendations on security measures for the Capitol and Members of Congress, updates and recommendations on police personnel issues, scheduling for upcoming USCP meetings and conference calls, draft documents and statements, and updates about news media reports. None of these emails have been publicly disclosed. These emails were in the nature of correspondence among the USCP's Executive Team with one or more members of the Capitol Police Board, and occasionally with congressional stakeholders before, during, and in the aftermath of the events of January 6, 2021.

8. None of the emails I reviewed were intended to memorialize or record any official action by the USCP. Nor will any of these emails be kept for that purpose. To the extent that the USCP takes official action, it has existing processes in place to create and keep official records of that action. None of those existing processes to memorialize official USCP action consist of sending or receiving emails.

9. Were these emails to be publicly disclosed by order of this Court, I believe it would impair the USCP's ability to execute its mission of protecting the U.S. Capitol and the Congress. USCP personnel, including leadership on the Executive Team, depend on the confidentiality of their internal communications and their communications with the Capitol Police Board in order to express views and opinions and make recommendations that are candid and frank, and that may

differ from the ultimate course of action taken by the USCP. Were these emails to be disclosed to the public, I believe it would chill USCP personnel from communicating as fully and candidly in the future as they would otherwise do in order to execute their security function. Public disclosure of internal email communications that were never intended beyond their original audience could, in the future, impede the free flow of information within the USCP and between the USCP and the Capitol Police Board, during critical security incidents like the January 6, 2021 attack. Public disclosure of these emails could also unduly reveal the methods, techniques, and responses that the USCP employs for Capitol security and during a violent event such as occurred on January 6. Any disclosure of such emails, now or in the future, could compromise current and future security efforts by revealing those methods, techniques, and responses to individuals and groups that wish to disrupt, attack, or harm the Capitol or the Congress.

10. Public disclosure of these emails could also interfere with the multiple congressional and criminal investigations underway regarding the events of January 6. I am aware of congressional investigations into those events by, among other congressional committees, the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol, and of criminal investigations and prosecutions of individuals who participated in the attack on the Capitol. Making public the internal communications of USCP leadership and the Capitol Police Board, now or in the future, could make subjects of those (or any future) investigations aware of confidential USCP information, and thereby impede efforts to investigate and, if necessary, prosecute or otherwise respond to criminal acts or other wrongdoing during the attack. Even if the subject matter of these emails is not currently the subject of any investigation, it may become the subject of future inquiry and investigation.

**Category No. 2: Email communications of the Capitol Police Board  
with the FBI, DOJ, and DHS**

11. The Capitol Police Board is comprised of the Sergeant at Arms of the U.S. House of Representatives, the Sergeant at Arms of the Senate, and the Architect of the Capitol. These

three congressional officers are not employees, officials, or otherwise part of the USCP. The Capitol Police Chief is also an *ex officio*, non-voting member of the Board. Emails of the House Sergeant at Arms, the Senate Sergeant at Arms, and the Architect of the Capitol are not housed on the USCP's email servers, but such emails rather are kept on separate email servers to which USCP lacks access (for example, house.gov or senate.gov or aoc.gov). In addition, the House Sergeant at Arms, the Senate Sergeant at Arms, and the Architect of the Capitol are not provided uscp.gov email addresses. The USCP and its Office of Information Services do not have possession of, or access to, the emails of the three principals of Capitol Police Board, which would, if they exist, be responsive to Plaintiff's second requested category. Based on my understanding, it is theoretically possible that such emails may have included or been sent onward to USCP employees and then the USCP would have access to them, but a search to locate any such hypothetical emails would likely entail searching the emails of a large number of USCP employees, an unreasonably broad and burdensome search. Also based on my understanding, it would then require USCP personnel, none of which are dedicated full-time to responding to public records requests, to manually review all located emails for potential responsiveness to Plaintiff's request. To the extent any such emails were located, any portions of the email that did not involve communication between the Board and the specified agencies would then likely need to be withheld or redacted. This process would impose a substantial burden on the USCP, which, to reiterate, does not have personnel, other than myself, trained or allocated to respond to public records requests. Unlike the USCP's counterpart law enforcement agencies in the Executive Branch, which I understand have significant personnel and resources to implement their obligations under the FOIA, the USCP is not subject to the FOIA.

12. While the USCP does have possession of emails of the Chief of the Capitol Police, the Chief is an *ex officio*, non-voting member of the Capitol Police Board who is not authorized to send or receive emails on behalf of the Board. Thus, insofar as the Chief communicated by email with the FBI, DOJ, or DHS concerning the security of the Capitol on January 6, those emails would not have been "of the Capitol Police Board" and therefore responsive to Plaintiff's second requested category of information. Notwithstanding the Chief's *ex officio*, non-voting role on the



Capitol Police Board, the USCP searched for emails from the Chief (or Acting Chief) to or from the FBI, DOJ, or DHS from January 1 to January 10, 2021. I reviewed approximately 214 emails located by that search, the majority of which were duplicates of one another. These emails primarily concern Inauguration preparations, concerns and condolences regarding officer injuries and fatalities, personal correspondence about Chief Steven Sund's resignation and Acting Chief Pittman's elevation, and fencing. Insofar as any of these emails could be considered to "concern[] the security of the Capitol on January 6," and therefore be responsive to the second requested category, they are not public records subject to disclosure. Moreover, none of these emails were intended or kept for the purpose of memorializing or recording any official USCP action.

**Category No. 3: Video footage from within the Capitol**

13. Plaintiff's third requested category is all video footage from within the Capitol between 12:00 p.m. and 9:00 p.m. on January 6, 2021. No Capitol Grounds security video could constitute "public records" under any circumstances—even in the context of the case law that Plaintiff relies upon for its asserted common law right of access. The USCP has an extensive system of cameras on the Capitol Grounds, which are part of a sophisticated closed circuit video (CCV) system. Such cameras are resident both inside and outside the buildings on Capitol Grounds including the U.S. Capitol itself. This CCV system provides the backbone of the security for the Capitol Grounds. The CCV system is monitored by sworn police officers 24-7 in the USCP Command Center and is relied upon to provide real time information regarding any incident occurring on the Grounds. Access to this USCP CCV system is strictly limited. Because the system is a closed circuit, access to the cameras only occurs from dedicated USCP workstations and monitors located in a handful of locations on Capitol Grounds. The USCP system is not "in the cloud" and may not be monitored or hacked by anyone not connected via a dedicated USCP workstation and monitor.

14. The disclosure of any footage from these security cameras is strictly limited and subject to a policy that regulates the release of such footage. Per Department Directive 1000.002,

*Retrieval of Archived Video*, which is attached as Exhibit C to this Declaration, the release of *any* footage from the Department's CCV system must be approved by either of the two Assistant Chiefs of Police,<sup>1</sup> the Department's second highest sworn officer. The Directive notes that, "[t]he Capitol Police Board [which oversees the USCP] directed that cameras would only be used for matters related to national security and legitimate law enforcement purposes (*e.g.*, serious crimes). The [Assistant Chief of Police] is the sole authority for the approval of any and all requests for archived video footage." The Directive goes on to note that, "[v]ideo footage received through an approved request shall not be delivered, copied, or transmitted to anyone other than necessary parties (*e.g.*, court, General Counsel) without approval from the [Assistant Chief of Police]." There is a specific Department form, CP-411, attached as Exhibit D to this Declaration, which must be completed and signed by several officials, including either Assistant Chief of Police, before any camera footage can be released.

15. The USCP has consistently taken a restrictive view of releasing camera footage in all cases including those involving serious crimes or national security. The USCP for example regularly denies providing video to civil plaintiffs who may have been involved in vehicular accidents on Capitol Grounds, except in rare cases involving serious injuries or death. The USCP is also often asked for camera footage related to non-USCP administrative investigations. The USCP generally does not provide that footage. The Department will, however, allow investigators from agencies with which we regularly work, such as the Architect of the Capitol, to view such footage in the presence of a USCP employee. Even a Member of Congress looking to view footage of our officers' interactions with his staff had to come to our office and to view the footage with our employees present.

16. In response to requests from congressional committees and law enforcement agencies, the USCP has provided security camera footage from the attempted insurrection at the

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<sup>1</sup> The attached Directive 1000.002 predates the establishment of two Assistant Chief positions, and its reference to the "Chief of Operations" is now understood to refer to either of the two Assistant Chiefs, one for Uniformed Operations and one for Protective and Intelligence Operations.

Capitol on January 6 to the Senate Rules Committee, the Committee on House Administration, the Senate Homeland Security and Government Affairs Committee, the House Impeachment managers, the FBI, the U.S. Attorney's Office for the District of Columbia (USAO-DC), and the D.C. Metropolitan Police Department (MPD). When the Department provided its CCV camera footage to the FBI, the USAO-DC, and MPD, it did so subject to several restrictions. The footage was: (a) to remain in the legal control of the USCP; (b) not to be subject to the FOIA; and (c) to be returned to the USCP at the conclusion of any investigation. These restrictions did not apply to any footage used as evidence or discovery as part of any prosecution of any criminal offense.

17. The Department has not provided its January 6 camera security footage to any entity other than those listed above. Any public release of this footage, to the extent there has been one, is not because of any authorized release by the USCP. (Note that the use of footage by the House Impeachment managers during the impeachment trial of former President Trump was permitted since, as a part of the Legislative Branch, the House Impeachment managers have a right to use footage from our cameras for impeachment processes similar to what would be shown in a court of law.) It is important to note the wealth of publicly available footage that comes from non-USCP sources such as social media posts, footage recovered from indicted or arrested insurrectionists and footage from body worn cameras from other police departments that responded on January 6, 2021. Notably, published footage that contains sound is not from the USCP, as our CCV system does not record sound. Further, USCP officers do not wear body cameras, and thus any published body-worn camera footage is from other police departments.

18. The USCP strongly opposes the public release of any of its camera security footage from January 6, 2021. The USCP is aware of efforts made before January 6, 2021, including by those who attacked the Capitol, to gather information regarding the interior of the U.S. Capitol, including references to the tunnels below Capitol Grounds and maps of the Capitol Building's layout, which information is generally not publicly available.<sup>2</sup> Our concern is that providing to

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<sup>2</sup> The Architect of the Capitol treats its "blueprints" of the Capitol as "security information" under 2 U.S.C. § 1979.

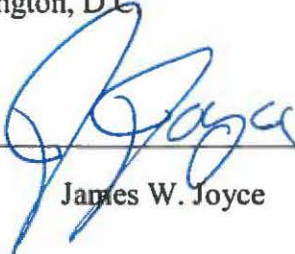
the public unfettered access to hours of extremely sensitive information, when a subset of individuals and groups have already shown a desire to interfere with the democratic process, will result in the layout of the U.S. Capitol being collected, exposed, and passed on to those who might wish to interfere with the security of the Capitol and Congress in the future.

19. Pursuant to 2 U.S.C. § 1979, USCP information designated as “security information” may only be released with the approval of the Capitol Police Board. Security information is defined as information that:

- (1) is sensitive with respect to the policing, protection, physical security, intelligence, counterterrorism actions, or emergency preparedness and response relating to Congress, any statutory protectee of the Capitol Police, and the Capitol buildings and grounds; and
- (2) is obtained by, on behalf of, or concerning the Capitol Police Board, the Capitol Police, or any incident command relating to emergency response.

20. At this juncture, the USCP in consultation with the Capitol Police Board has designated some of the footage as “security information,” as that footage relates to evacuation of Members of Congress from their respective chambers on January 6. The USCP cannot rule out the possibility that additional sections of footage or even all of the footage, will be deemed, in the aggregate, to constitute “security information” under 2 U.S.C. § 1979. The ability of members of the public to copy or disseminate such footage would provide prospective attackers or others with a clear picture of the interior of the Capitol, including entry and exit points, office locations, and the relation of crucial chambers and offices (such as the Speaker’s Office or Majority Leader’s Office) to other areas of the Capitol.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this 6th day of August, at Washington, D.C.

  
James W. Joyce

# **Exhibit A**



**Judicial  
Watch**<sup>®</sup>  
*Because no one  
is above the law!*

January 21, 2021

VIA Electronic Mail (PIO@uscg.gov)

United States Capitol Police  
Attn: Information Officer  
119 D Street, NE  
Washington, DC 20510

**Re: Records Request**

Dear Information Officer:

On January 6, U.S. Capitol Police were outnumbered to rioters as thousands successfully breached the Capitol building. According to USCP Asst. Chief Sean Gallagher, the siege is in part from a lack of reinforcements and an uncoordinated response between local police and the FBI.<sup>1</sup>

Remarks by senior members of Capitol Police suggest minimal to no communication between various levels of government in preparation for the pro-Trump rally. To educate the public about the U.S. Capitol Police's knowledge of security concerns and actions on January 6, Judicial Watch requests that you produce copies of:

- 1. Email communications between the U.S. Capitol Police Executive Team and the Capitol Police Board concerning the security of the Capitol on January 6, 2021. The timeframe of this request is from January 1, 2021 through January 10, 2021.**
- 2. Email communications of the Capitol Police Board with the Federal Bureau of Investigation, the U.S. Department of Justice, and the U.S. Department of Homeland Security concerning the security of the Capitol on January 6, 2021. The timeframe of this request is from January 1, 2021 through January 10, 2021.**
- 3. All video footage from within the Capitol between 12pm and 9pm on January 6, 2021.**

This is a request for public records under the common-law right of public access to government records. Under the common-law right of public access, members of the public have the right to examine government records when the public interest in disclosure is greater than that in government secrecy. The legislative branch is subject to the common-law right of public access. *Washington Legal Foundation v. U.S. Sentencing Commission*, 89 F.3d 897 (D.C. Cir. 1996).

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1

<https://www.nbcnews.com/news/us-news/capitol-police-official-tells-congress-he-saw-no-fbi-intelligence-n1254075>

Letter to USCP Information Officer

January 21, 2021

Page 2 of 2

Please provide the requested records or otherwise indicate whether you intend to comply with this request by February 11, 2021.

Sincerely,

A handwritten signature in black ink, appearing to be the initials 'KB' with a stylized flourish above the 'B'.

Kara Bell  
Judicial Watch, Inc.

# **Exhibit B**



**From:** Joyce, James W.  
**Sent:** Thursday, February 11, 2021 12:56 PM  
**To:** info@JudicialWatch.org  
**Cc:** PIO; Moore, Anne  
**Subject:** Judicial Watch Request  
**Attachments:** Judicial Watch Public Records Request 1-21-2021.pdf

Dear Ms. Bell,

We decline to provide the information requested in the attached January 21, 2021 Records Request. The email communications and video footage information requested in the attached are not public records.

Sincerely,

James W. Joyce  
Senior Counsel  
Office of the General Counsel  
General Law Division  
United States Capitol Police  
Main: (202) 593-3619  
Desk: (202) 593-3628  
Cell: (202) 369-9390  
Fax: (202) 593-4477  
Email: james.joyce@uscg.gov

THE INFORMATION CONTAINED IN THIS MESSAGE MAY BE LEGALLY PRIVILEGED AND CONFIDENTIAL If you have received this document in error, you are advised not to read this email or any accompanying attachments, and not to disseminate, distribute or copy this message and/or attachments. Please immediately notify our office by telephone at (202) 593-3619 if you have received this document in error and delete it from your system.

# **Exhibit C**

Directive



Retrieval of Archived Video

Directive #: 1000.002
Initiating Unit: Security Services Bureau
CALEA: N/A

Effective Date: 02/06/2015
Review Date: 1st February

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Authority and Coverage

14 The Chief of Police is the chief executive officer of the
15 United States Capitol Police (USCP) and is
16 responsible for the day-to-day operation and
17 administration of the USCP.

18 This policy may be revised at the discretion of the
19 Chief of Police, consistent with applicable law, rule,
20 and regulation.

Definition(s)

22 CP-411 Request for Copy/Review of Video
23 Recordings. A form created by the USCP to
24 document and control the request and dissemination
25 or archived video footage.

General Policy

27 The Department must maintain appropriate internal
28 controls on the use and duplication of archived video
29 footage to ensure the chain of custody for all copied
30 video footage. In support of national security and
31 legitimate law enforcement purposes, the Department
32 adjudicates any and all requests for recorded security

33 camera video footage to include the dissemination of
34 footage through established channels. Prescribed law
35 enforcement purposes for the CP-411 include:
36 required for court, subpoena, Office of Professional
37 Responsibility (OPR), or training, but may include any
38 authorized investigation. This policy will identify the
39 parties that are able to request video (USCP sworn
40 officials or their civilian equivalent) and the role of the
41 Security Services Bureau (SSB) and Chief of
42 Operations (COO) in assuring that any request for
43 disseminating archived video follows an appropriate
44 business purpose.

45 The USCP was tasked by its statutory oversight
46 committees to expand the video retrieval capabilities of
47 the Capitol Complex. The design, installation, and
48 maintenance of this system are delegated to the SSB.
49 The Capitol Police Board directed that cameras would
50 only be used for matters related to national security
51 and legitimate law enforcement purposes (e.g., serious
52 crimes). The COO is the sole authority for the approval
53 of any and all requests for archived video footage, with
54 the exception of the Office of the Inspector General
55 (OIG) which has the ability to duplicate archived video
56 footage for its own investigations.

57 In addition, this policy identifies the expectations for
58 accessing and using video footage. This policy does
59 not apply to the use of video as an operational aid
60 (e.g., supporting the USCP Command Center
61 Operations during an incident). Instead, this policy is
62 intended to safeguard against the transfer of archival
63 video for non-operational activities (e.g., as an aid to
64 officers in filing reports). Video footage received
65 through an approved request should not be delivered,
66 copied, or transmitted to anyone other than necessary
67 parties (e.g., court, General Counsel) without approval
68 from the COO.

69 The USCP, through SSB, maintains a sophisticated
70 closed circuit television system (CCTV) system that
71 includes cameras strategically placed throughout the
72 Capitol Complex to provide situational awareness to

1 USCP personnel, supporting national security, and  
2 legitimate law enforcement purposes.

### 3 Requesting Archived Video Footage

4 The CP-411 must be routed through the chain of  
5 command and ultimately approved by the COO. A  
6 requesting official must also have signed the signature  
7 sheet acknowledging they have received and reviewed  
8 this policy and relevant standard operating  
9 procedures. Requests for archived video footage via  
10 the CP-411 must be made at least at the level of  
11 Sergeant (or their civilian equivalent) and should be  
12 reviewed and approved by the relevant Deputy Chief  
13 (or civilian equivalent) before it is sent to the Office of  
14 the COO for official approval. The COO will forward  
15 the request to the SSB upon approval.

### 16 Accessing Archived Video Footage

17 Workstations, as well as the requisite access  
18 privileges for access to archived video footage from  
19 the Video Management System (VMS), are issued by  
20 the SSB to officials (mostly at the rank of Captain and  
21 above) in the Operational Bureaus. In addition, the  
22 SSB provides access privileges to any individual in  
23 organizations that frequently require video footage for  
24 operational purposes, including the USCP Command  
25 Center, Communications, the Criminal Investigations  
26 Section, OGC, OPR, OIG, and SSB. Archived video  
27 can be used for operational activities, including  
28 supporting Command Center Operations during an  
29 incident or supporting USCP investigation. USCP  
30 personnel should not use or reference archived video  
31 in their reports which are used in court proceedings  
32 unless they have written approval from the COO.

33 Retrieving, using, or duplicating archived video footage  
34 in cases not related to national security or significant  
35 law enforcement operations (e.g., traffic stops,  
36 accident reporting), could expose the location of our  
37 CCTV cameras or identify our surveillance tactics. This  
38 presents a threat to national security, as making this  
39 information public could be utilized by a potential  
40 adversary.

41 Video footage should be used only in the prescribed  
42 manner documented in the CP-411 within the strict  
43 controls outlined in this policy. If the reason for a  
44 request or usage of the video footage changes,  
45 another CP-411 form should be completed and

46 provided through the proper chain of command to  
47 amend the initial CP-411.

## 48 Responsibilities/Procedures

### 49 Security Services Bureau

50 SSB is responsible for the following:

- 51 1. Process an approved request and schedule a time  
52 for the requesting official to pick-up the video  
53 footage. Only the requesting official or an alternate  
54 designated in writing by the requesting official may  
55 pick up the video.
- 56 2. Assign a request tracking number to ensure  
57 accountability and proper internal controls and  
58 record all video requests and custody transfers  
59 with the assigned tracking number in an approved  
60 location. Any changes to the original request will  
61 require a new CP-411.
- 62 3. Stores video footage for 30 days per system  
63 capabilities. Officials should be aware that system  
64 maintenance or malfunctions may make video  
65 unavailable prior to the 30 days. For this reason,  
66 video retrieval requests should be made promptly.  
67 SSB will maintain an archive of any approved  
68 video footage requests.

## 69 Additional Information

70 Retrieval, use, or duplication of archived video footage  
71 would not be in compliance with the intent of Congress  
72 when it established the VMS.

## 73 Cancellation

74 None.

## 75 Appendices

76 None.

77  
78



**Kim C. Dine**  
Chief of Police

# **Exhibit D**



**UNITED STATES CAPITOL POLICE  
REQUEST FOR VIDEO RECORDINGS**

(Please Type or Print Legibly)

| TO BE COMPLETED BY REQUESTING EMPLOYEE   |   |                      |            |
|--|---|----------------------|------------|
| 1. TYPE OF RECORDING   | <input type="checkbox"/> REVIEW <input type="checkbox"/> CD/DVD <input type="checkbox"/> PHOTO/SHOT   |                      |            |
| 2. REASON FOR REQUEST  | <input type="checkbox"/> COURT <input type="checkbox"/> SUBPOENA <input type="checkbox"/> TRAINING <input type="checkbox"/> OPR <input type="checkbox"/> OGC/OEC<br><input type="checkbox"/> OTHER (explain)<br>_____ |                      |            |
| 3. REQUEST DATE  |   | 4. DATE NEEDED       |            |
| 4. TYPE OF EVENT   | 5. EVENT DATE AND TIME  | 6. LOCATION OF EVENT | 7. CAMERAS |
|  |   |                      |            |
| 8. VIDEO START DATE  |   | 10. VIDEO END DATE   |            |
| 9. VIDEO START TIME  |   | 11. VIDEO END TIME   |            |
| 12. CFN  |   | 13. CCN              |            |
| 14. NAME AND UNIT OF OFFICER(S) INVOLVED   |   | 15. UNIT             |            |
|  |   |                      |            |
| 16. REQUESTING OFFICIAL  |   | 17. UNIT             |            |
|  |   |                      |            |
| 18. OFFICE PHONE   |   | 19. CELL PHONE       |            |
| 20. DESIGNATED ALTERNATE (PICK-UP)   |   | 21. UNIT             |            |
|  |   |                      |            |
| 22. OFFICE PHONE   |   | 23. CELL PHONE       |            |
| CHIEF OF OPERATIONS APPROVAL   |   |                      |            |
| 24. SIGNATURE  | 25. PRINTED NAME  | 26. DATE             |            |
|  |   |                      |            |
| TO BE COMPLETED BY SYSTEM OPERATIONS SECTION (SOS)   |   |                      |            |
| 27. SIGNATURE  | 28. PRINTED NAME  |                      |            |
|  |   |                      |            |
| 29. VIDEO REQUEST TRACKING NUMBER  | 30. DATE COMPLETED  |                      |            |
|  |   |                      |            |
| TO BE COMPLETED BY EMPLOYEE RECEIVING VIDEO  |   |                      |            |
| WARNING: UNAUTHORIZED USE, DUPLICATION OR DISSEMINATION OF INFORMATION CONTAINED ON THIS CD/DVD MAY RESULT IN APPROPRIATE ADVERSE ACTION |   |                      |            |
| 31. EMPLOYEE SIGNATURE   | 32. EMPLOYEE PRINTED NAME   | 33. DATE             |            |
|  |   |                      |            |

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES CAPITOL POLICE,

Defendant.

Case No. 1:21-cv-00401-KBJ

**[PROPOSED] ORDER**

Upon consideration of Defendant's Motion for Summary Judgment and all materials in the record, and good cause appearing, it is hereby

ORDERED that Defendant's motion is granted; and it is further

ORDERED that judgment be entered for Defendant on Count I of Plaintiffs' Complaint.

SO ORDERED.

Date:

\_\_\_\_\_  
United States District Judge