

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

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	
Plaintiff,)	Civil Action No.:
)	
vs.)	
)	
U.S. DEPARTMENT OF DEFENSE,)	
1400 Defense Pentagon)	
Washington, DC 20301-1400,)	
)	
Defendant.)	
)	

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 or about March 11, 2024, the Superintendent of the United States Military Academy (“USMA”), Lieutenant General Steve Gilland, released “A Message to The Long Grey Line” (available at <https://www.westpoint.edu/news/press-releases/west-point-mission-statement-update-0>), declaring a new USMA mission statement. The new mission statement lacked the traditional USMA motto - “Duty, Honor, Country.” The change, and specifically the removal of the motto, garnered media attention as several alumni voiced their concern regarding the change.

6. On March 11, 2024, Plaintiff submitted a FOIA request to the USMA, a component of Defendant, seeking access to the following public records:

1. All documents which form the basis upon which the decision was made to remove the phrase “Duty, Honor, Country” from the United States Military Academy Mission Statement, according to various reports (such as <https://armedforces.press/report-west-point-to-remove-duty-honor-country-from-official-mission-statement/>).
2. All emails between the following USMA officials and other email accounts ending in .mil or .gov regarding the removal of “Duty, Honor, Country” from the USMA Mission Statement: Superintendent LTG Steve Gilland, MG Lori Robinson, and BG Shane Reeves.

The timeframe for the request was identified as “March 2023 to present.”

7. The request was submitted to the USMA's FOIA officer via the email address (usarmy.westpoint.id-training.mbx.foia-pa@mail.mil) provided on the FOIA Program and Office of the Registrar web pages on the USMA website (<https://www.westpoint.edu>) and as instructed by those pages. Further, 32 C.F.R. § 286.3(a) states that Defendant's FOIA process is decentralized and to "make a request for records, a requester should write directly to the DoD Component that maintains the records being sought." Plaintiff had used that same email address to submit FOIA requests to USMA in the past, and Plaintiff did not receive an error message stating that its email did not go through.

8. On May 14, 2024, Plaintiff sent a follow up email to the same address to which the request was sent, inquiring about the status of the request. Like with the request, Plaintiff did not receive an error message stating that its follow-up email did not go through.

9. On information and belief, USMA received the request the same day it was sent, March 11, 2024.

10. As of the date of this Complaint, Defendant has failed to: (i) respond to Defendant's request (ii) produce the requested records or demonstrate that the records are lawfully exempt from disclosure; (iii) notify Plaintiff of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings; or (iv) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

12. Defendant is in violation of FOIA.

13. 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.

14. Plaintiff has no adequate remedy at law.

15. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request by April 8, 2024, at the latest. 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: June 17, 2024

Respectfully submitted,

/s/ Patrick O. Francescon
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