

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

JUDICIAL WATCH, INC.,)
425 Third Street SW, Suite 800)
Washington, DC 20024,)
)
Plaintiff,)
)
vs.)
)
U.S. DEPARTMENT OF)
TRANSPORTATION,)
1200 New Jersey Avenue, SE)
Washington, DC 20590,)
)
Defendant.)
_____)

Civil Action No.:

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Transportation 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 Transportation is an agency of the United States Government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is headquartered at 1200 New Jersey Avenue SE, Washington, DC 20590.

STATEMENT OF FACTS

5. As a presidential candidate in 2020, Transportation Secretary Pete Buttigieg advocated for reforming the U.S. Supreme Court, including increasing the number of justices from nine to fifteen. In early July 2023, Secretary Buttigieg expressed widely reported criticism of the U.S. Supreme Court’s in *303 Creative LLC v. Elenis*, Case No. 21-476, issued on June 30, 2023.

6. On July 5, 2023, Plaintiff sent a FOIA request, via email, to the Departmental FOIA Office at Defendant U.S. Department of Transportation, seeking access to the following public records:

Records and communications of Secretary Pete Buttigieg, U.S. Department of Transportation, including emails, email chains, email attachments, text messages, WhatsApp messages, Signal messages, voice recordings, video recordings, statements, letters, memoranda, notes, or other form of record, regarding:

- 1. Lorie Smith, Web Designer, 303 Creative LLC**
- 2. 303 Creative LLC at al. v. Elenis et al.**
- 3. Supreme Court Justice Brett Kavanaugh**
- 4. Supreme Court Justice John Roberts**
- 5. Supreme Court overhaul from nine to fifteen justices.**

The time frame of the request was identified as “January 21, 2021, to the present.”

7. By letter dated July 10, 2023, Defendant acknowledged receiving the FOIA request and advised Plaintiff that the request had been assigned File No. OST-2023-0517.

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

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

9. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.

10. Defendant is in violation of FOIA.

11. Plaintiff is being irreparably harmed by Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

12. Plaintiff has no adequate remedy at law.

13. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make final determinations on Plaintiff's request by August 7, 2023, at the latest. Because Defendant failed to make a final determination on Plaintiff's request within the time limits set by FOIA and inform Plaintiff of that determination, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to

the request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: October 4, 2023

Respectfully submitted,

/s/ Jason B. Aldrich

Jason B. Aldrich

D.C. Bar No. 495488

JUDICIAL WATCH, INC.

425 Third Street SW, Suite 800

Washington, DC 20024

Tel: (202) 646-5172

Email: JAldrich@judicialwatch.org

Counsel for Plaintiff