

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<b>THE WASHINGTON POST</b>	)	
1150 15 <sup>th</sup> Street, N.W.	)	
Washington, DC 20071,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	
<b>DEPARTMENT OF HOMELAND</b>	)	
<b>SECURITY,</b>	)	
Washington, DC 20528,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202. Plaintiff seeks injunctive and declaratory relief 1) to invalidate a determination by defendant Department of Homeland Security that records sought by plaintiff are not subject to disclosure under the FOIA; 2) to preserve the records sought by plaintiff pending the resolution of this lawsuit; and 3) to compel the expedited disclosure of the requested records.

**Jurisdiction and Venue**

2. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201(a) & 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

### **The Parties**

3. Plaintiff WP Company LLC d/b/a The Washington Post (the “Post”) publishes a newspaper with a daily average paid circulation of approximately 724,240 and a Sunday average paid circulation of approximately 960,680. The Post’s principal place of business is in the District of Columbia.

4. Defendant Department of Homeland Security (“DHS”) is a department of the Executive Branch of the government of the United States. DHS is an “agency” within the meaning of 5 U.S.C. § 552(f). The United States Secret Service is a component of defendant DHS.

### **The Post’s FOIA Request, Request for Expedited Processing, and Correspondence with the Secret Service**

5. By letter to the Secret Service dated June 12, 2006, the Post requested under the FOIA copies of agency records. Specifically, the Post requested:

a) All records and visitor logs, including WAVES and/or ACR records, from October 2004 to present, reflecting or concerning the entries and/or exits of any persons who sought or were scheduled to visit the following people in the Office of the Vice President: Vice President Cheney; David Addington, I. Lewis “Scooter” Libby, C. Dean McGrath, Steven Schmidt, John Hannah, Eric Edelman, Ron Christie, Victoria Nuland, Aaron Friedberg, Stephen Yates Samantha Ravich, and David Wurmser. Pertaining to the WAVES records, this request includes, but is not limited to, the portion of the WAVES records that lists the name of the person who is visiting, the room number visited, and the name of the person who arranged the visit with the Secret Service; [and]

b) All records and visitor logs, including WAVES and/or ACR records, from October 2004 to present, reflecting or concerning the entries and/or exits of any persons, other than the members of the Cheney family, visiting the vice-president’s residence. Pertaining to the WAVES records, this request includes, but is not limited to, the portion of the WAVES records that lists the name of the person who is visiting, where the person went and the name of the person who arranged the visit with the Secret Service.

6. In its letter to the Secret Service dated June 12, 2006, the Post requested “expedited processing” of its FOIA request, noting that there is “an urgency to inform the public” about the activities reflected in the requested records for two distinct reasons. First, the Post asserted that the requested records “will help the public understand the degree to which lobbyists and special interest representatives may have influenced policy decisions of the Bush administration and in particular the positions taken by the Office of the Vice President.” The Post noted that “[t]he relationship between administration officials and lobbyists has emerged as a significant issue in the wake of the ongoing scandals involving lobbyists Jack Abramoff as well as various members of Congress, and of course in the controversy over Vice President Cheney’s role in setting federal energy policy.” Second, the Post asserted that “[t]he vice-president’s office – and the contacts it had – is under scrutiny in the CIA-leak case currently under investigation by special prosecutor Patrick Fitzgerald.” The Post noted that “[t]he public interest in the CIA leak case will only intensify as Scooter Libby’s criminal trial approaches.”

7. With respect to the specific need for an expedited response to its FOIA request, the Post stated in its letter of June 12, 2006, to the Secret Service that “the consequences of delaying a response would compromise a significant public interest. With the midterm elections looming, any delay in processing this request would deprive the public of its ability to make its views known in a timely fashion either at the polls, by lobbyist or through other contacts with public officials.”

8. By letter to the Post dated June 16, 2006, the Secret Service issued its initial determination to deny the Post’s request for expedited processing of its FOIA request. The Secret Service stated that “[i]f you disagree with our determination, you have the

right of administrative appeal within 35 days ....” The agency further stated: “Please be advised we are processing your request. Your continued patience is appreciated.”

9. By letter to the Secret Service dated July 12, 2006, the Post appealed the agency’s initial determination to deny its request for expedited processing. In its appeal letter, the Post reiterated that the “urgency [for expedited disclosure] stems from both the pendency of the mid-term elections and the commencement of Mr. Libby’s criminal trial early next year,” and noted that “[g]iven that the election will occur first (in early November), our right to expedited process of [our] FOIA request will effectively be lost if the requested material is not processed and released prior to the election.”

10. By letter to the Post dated August 31, 2006, the Secret Service issued its decision on the Post’s appeal and stated that “it is the determination of the Secret Service that your appeal is granted and that expedited treatment is appropriate in this matter.” The agency further stated that “the Secret Service’s Freedom of Information and Privacy Acts Office has initiated a search for records.”

11. By letter to the Secret Service dated September 5, 2006, counsel for the Post inquired about the status of the Post’s FOIA request. Counsel noted that the “request was received by the Secret Service on June 12, and has now been pending without response for approximately 60 working days,” and stated that “[i]n light of the fact that the agency now agrees that the request is legally entitled to expedited processing, such a delay is unacceptable.” Counsel requested from the agency “either your assurance that processing will be completed immediately or ‘credible evidence’ that such action is ‘truly not practicable.’”

12. On September 6, 2006, Letita Huff of the Secret Service called counsel for the Post in response to counsel's inquiry concerning the status of the Post's FOIA request. Ms. Huff stated that the agency was "continuing" to work on the request, and that given the "scale" of the request, it would take the agency some time to complete its processing. Ms. Huff refused to provide counsel for the Post even an estimated completion date.

13. By letter to the Post dated September 20, 2006 (but not received by the Post until October 2), the Secret Service asserted as follows:

The records you seek are not agency records subject to the FOIA. These records are governed by the Presidential Records Act, 44 U.S.C. § 2201 et seq., and remain under the exclusive legal custody and control of the White House and the Office of the Vice President. Accordingly, the United States Secret Service lacks the authority to provide such records in response to your request.

The Secret Service did not inform the Post of any right of administrative appeal with respect to its determination.

### **CAUSE OF ACTION**

#### **Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records**

14. Plaintiff repeats and realleges paragraphs 1-13.
15. The Post has exhausted the applicable and available administrative remedies with respect to the Secret Service's determination of its FOIA request.
16. Defendant DHS and its component, the Secret Service, have wrongfully withheld the requested records from the Post.
17. The Post is entitled to injunctive and declaratory relief with respect to the release and disclosure of the requested documents.

**Requested Relief**

WHEREFORE, plaintiff prays that this Court:

- A. issue a declaration that the records sought by the Post in this action constitute “agency records” subject to the Freedom of Information Act;
- B. order defendant DHS and its component, the Secret Service, to preserve the records sought by the Post in this action pending final disposition of this litigation;
- C. order defendant DHS and its component, the Secret Service, to process immediately the requested records in their entirety;
- D. order defendant DHS and its component, the Secret Service, upon completion of such expedited processing, to disclose the requested records in their entirety and make copies available to plaintiff;
- E. provide for expeditious proceedings in this action;
- F. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- G. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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