

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

JUDICIAL WATCH, INC.,)
 425 Third Street SW, Suite 800)
 Washington, DC 20024,)
)
Plaintiff,)
)
 v.)
)
 U.S. DEPARTMENT OF STATE,)
 The Executive Office)
 Office of the Legal Adviser, Suite 5.600)
 600 19th Street NW)
 Washington, DC 20522,)
)
Defendant.)
 _____)

Civil Action No.

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of State 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 requests records from federal agencies pursuant to FOIA. Plaintiff analyzes the responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant U.S. Department of State is an agency of the United States Government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is located at 600 19th Street NW, Washington, DC 20522.

STATEMENT OF FACTS

5. On May 29, 2019, Plaintiff submitted a FOIA request to Defendant for communications about requests by U.N. Ambassador Samantha Powers to “unmask” the identities of U.S. citizens whose names appear in intelligence reports concerning Russian interference in the 2016 presidential election, among other records. Specifically, Plaintiff sought:

1. Any and all requests for information, analyses, summaries, assessments, transcripts, or similar records submitted to any Intelligence Community member agency by former United States Ambassador to the United Nations Samantha Powers concerning, regarding, or relating to the following:
 - a. Any actual or suspected effort by the Russian government or any individual acting on behalf of the Russian government to influence or otherwise interfere with the 2016 presidential election.
 - b. The alleged hacking of computer systems utilized by the Democratic National Committee and/or the Clinton presidential campaign.
 - c. Any actual or suspected communication between any member of the Trump presidential campaign or transition team and any official or employee of the Russian

government or any individual acting on behalf of the Russian government.

- d. The identities of U.S. citizens associated with the Trump presidential campaign or transition team who were identified pursuant to intelligence collection activities.
2. Any and all records or responses received by former United States Ambassador to the United Nations Samantha Powers and/or any employee, staff member, or representative of United States Mission to the United Nations in response to any request described in part 1 of this request.
3. Any and all records of communication between any official, employee, or representative of any Intelligence Community member agency and former United States Ambassador to the United Nation Samantha Powers and/or any employee, staff member, or representative of the United States Mission to the United Nations concerning, regarding, or relating to any request described in part 1 of this request.

The time frame of the request was identified as “January 1, 2016 through the present.”

6. By letter dated August 6, 2019, Defendant acknowledge receipt of the request and advised Plaintiff that it had assigned the request Tracking Number F-2019-06795.

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

8. In 2018, Plaintiff filed a lawsuit against State for failure to respond to an identical request, albeit dated October 31, 2017. *See Judicial Watch, Inc. v. U.S. Dep’t of State*, Case No. 18-0300 (TJK) (D. District of Columbia) (filed Feb. 8, 2018). On March 3, 2019, the Court

awarded summary judgment in State's favor, finding under *Glomar* that State need not disclose whether responsive records existed.

9. On May 13, 2020, the Director of National Intelligence released a newly declassified memorandum and accompanying list identifying officials who submitted requests to the National Security Agency ("NSA") to "unmask" the identity of former National Security Advisor Michael T. Flynn in NSA foreign intelligence reports. The list demonstrates that, between November 30, 2016 and January 11, 2017, Ambassador Powers submitted seven requests to "unmask" Flynn's identity in such NSA foreign intelligence reports and that all seven requests were approved. Copies of the declassified memorandum and list are attached hereto as Exhibit A.

10. On information and belief, based on the timing of Ambassador Powers' unmasking requests, at least some of the requests likely concerned intelligence reports about Russian interference in the 2016 presidential election and therefore relate to the subject matter of Plaintiff's FOIA request. Accordingly, Defendant's earlier *Glomar* response has been superseded by intervening events.

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

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

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

13. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiff's request by July 8, 2019 at the latest. At a minimum, Defendant was required to: (i) gather and review the requested documents; (ii)

determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination; and (iv) make the records available promptly thereafter. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

14. Because Defendant failed to determine whether to fully comply with Plaintiff's request within the time required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's New FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's New FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records to Plaintiff's New FOIA 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 Plaintiff's New FOIA request; (4) grant Plaintiff an award of attorneys' 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 24, 2020

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

D.C. Bar No. 429716

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