

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAR 17 2010

Clerk, U.S. District and
Bankruptcy Courts

JUDICIAL WATCH, INC.,)
501 School Street, S.W., Suite 700)
Washington, DC 20024,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF HEALTH)
AND HUMAN SERVICES,)
200 Independence Avenue, S.W.)
Washington, DC 20201,)
)
Defendant.)
_____)

Case: 1:10-cv-00443
Assigned To : Huvelle, Ellen S.
Assign. Date : 3/17/2010
Description: FOIA/Privacy Act

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Health and Human Services 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 is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W.,

Suite 700, Washington, D.C. 20024. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest mission, Plaintiff regularly serves FOIA requests on federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government and is headquartered at 200 Independence Avenue, S.W., Washington, D.C. 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. At an August 21, 2008 town hall meeting in Chester, Virginia, presidential candidate Barack Obama promised the nation that, to achieve health care reform, "I'm going to have all the negotiations around a big table. We'll have doctors and nurses and hospital administrators. Insurance companies, drug companies -- they'll get a seat at the table, they just won't be able to buy every chair. But what we will do is, we'll have the negotiations televised on C-SPAN, so that people can see who is making arguments on behalf of their constituents, and who are making arguments on behalf of the drug companies or the insurance companies. And so, that approach, I think is what is going to allow people to stay involved in this process."

6. In a startling breach of his campaign promise, between January 1, 2010 and January 15, 2010, President Obama, Vice President Biden, Health and Human Services Secretary Sebelius, and White House Office of Health Reform Director DeParle met behind closed doors with various groups to reach accord on health care reform before a final vote occurred in the U.S. House of Representatives. One group of individuals was senior officials of major unions. A

second group consisted of Senate Majority Leader Reid and House Speaker Pelosi and other members of Congress.

7. Because President Obama and Secretary Sebelius held closed door negotiations at the White House, the public was denied the transparency President Obama had promised as a candidate.

8. In order to try to restore some minimal degree of transparency to the negotiations over health care reform, on January 15, 2010, Plaintiff sent a FOIA request to Defendant seeking access to all records of Kathleen Sebelius, Secretary of Health and Human Services, concerning meetings with the White House on health care legislation for the period of January 1, 2010 to January 15, 2010.

9. Defendant acknowledged receipt of Plaintiff's FOIA request by letter dated January 19, 2010.

10. On January 21, 2010 and March 12, 2010, Defendant informed Plaintiff that neither the Office of Health Reform nor the Office of the Executive Secretariat located any records responsive to Plaintiff's January 15, 2010 FOIA Request. Nonetheless, the request is still pending with the Immediate Office of the Secretary and the Office of the Secretary, Scheduling Office, the two components that will mostly likely locate records of Secretary Sebelius.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to Plaintiff's FOIA request within twenty (20) working days of receipt, or by February 23, 2010.

12. As of the date of the Complaint, Defendant has failed to produce any records responsive to Plaintiff's FOIA request or demonstrate that responsive records are exempt from

production. Nor has Defendant indicated when or whether any responsive records will be produced.

13. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i) or extend that time limit pursuant to 5 U.S.C. § 552(a)(6)(B)(i), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its January 15, 2010 FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA)

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Defendant has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's January 15, 2010 FOIA request within the time limit required by 5 U.S.C. § 552(a)(6)(A)(i) and by failing to demonstrate that any withheld records responsive to this same request are exempt from production.

16. 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 conform its conduct to the requirements of the law.

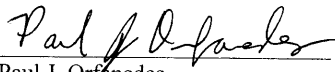
WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's January 15, 2010 FOIA request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably

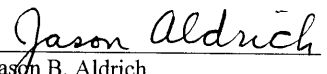
incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 17, 2010

Respectfully submitted,

JUDICIAL WATCH, INC.


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