

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

JUDICIAL WATCH, INC.  
501 School Street, S.W., Suite 500  
Washington, DC 20024,

Plaintiff,

v.

DEPARTMENT OF THE ARMY  
Office of the General Counsel  
104 Army Pentagon  
Washington, DC 20310-0104

Defendant.

CASE NUMBER 1:04CV00301

JUDGE: Ricardo M. Urbina

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 02/25/2004

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., hereby files this Complaint to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Judicial Watch, Inc. 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. Judicial Watch, Inc. 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 500, Washington, DC 20024.

4. Defendant Department of the Army (“DOA”) is an agency of the United States government. DOA has its principal place of business in the District of Columbia. DOA is in possession, custody and control over records to which Judicial Watch, Inc. seeks access.

### **STATEMENT OF FACTS**

#### **Judicial Watch, Inc.’s April 6th, 2003 FOIA Request**

5. On April 6th, 2003, Judicial Watch, Inc. sent DOA, by facsimile and by certified U.S. mail, return receipt requested, a FOIA request seeking access to any and all records concerning or relating to the following subjects:

- a. The decision of the U.S. Army to grant an Iraqi oil well firefighting contract to Kellog, Brown and Root (KBR).
- b. The decision to grant the contract to KBR without a bidding process.
- c. The decision to request KBR to draft and/or “draw up” contingency plans for existing oil well fires in Iraq.
- d. The time limit(s) and dollar limit(s) of the contract.

Judicial Watch, Inc.’s April 6th, 2003, FOIA request also sought a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II), 5 U.S.C. § 552(a)(4)(A)(iii), and 32 C.F.R. § 518.84(a)-(e). A copy of Judicial Watch, Inc.’s FOIA request is attached hereto as Exhibit 1 and is incorporated herein by reference.

6. On or about April 21st, 2003, Judicial Watch, Inc. received a letter from Bruno C. Leuyer of DOA’s Freedom of Information and Privacy Acts Office, acknowledging DOA’s receipt of Judicial Watch, Inc.’s April 6th, 2003 FOIA request and stating that the request was being referred to DOA’s Office of General Counsel. The letter did not include any responsive documents or contain

any statement as to when Judicial Watch, Inc. could expect to receive responsive documents from DOA.

7. On or about May 7th, 2003, Judicial Watch, Inc. received a letter from the U.S. Army Corps of Engineers (“Corps”), an entity within and acting at the direction of DOA, stating that Judicial Watch, Inc.’s April 6th, 2003 FOIA request had been referred to the Corps by DOA. The letter also stated that another portion of Judicial Watch, Inc.’s April 6th, 2003 FOIA request had been referred to Army Material Command (“AMC”). However, the letter did not include any responsive documents or contain any statement as to when Judicial Watch, Inc. could expect to receive responsive documents from DOA.

8. On or about May 21st, 2003, Judicial Watch, Inc. received a letter from AMC, an entity within and acting at the direction of DOA and the Corps, stating that Judicial Watch, Inc.’s April 6th, 2003 request was being referred to the U.S. Central Command. The letter did not include any responsive documents or contain any statement as to when Judicial Watch, Inc. could expect to receive responsive documents from DOA.

9. Because it still had not received a single document or any other substantive response to its April 6th, 2003 FOIA request, on August 16th, 2003 Judicial Watch, Inc. sent a letter to U.S. Central Command and the Corps requesting an update as to the status of its April 6th, 2003 FOIA request. At no point did DOA invoke the provisions set forth in 5 U.S.C. § 552(a)(6)(B) for extending the time limits to respond to Judicial Watch, Inc.’s April 6th, 2003 FOIA request.

10. On or about September 3rd, 2003, Judicial Watch, Inc. received a letter from the Corps responding to its August 16th, 2003 request for a status update. The letter stated that Judicial Watch, Inc.’s April 6th, 2003 FOIA request was being processed, but it still did not contain an

estimate as to when Judicial Watch, Inc. could expect a substantive response to its April 6th, 2003 FOIA request.

11. On September 5th, 2003, DOA finally responded to Judicial Watch, Inc.'s April 6th, 2003 FOIA request. A copy of DOA's September 5th, 2003 response is attached hereto as Exhibit 2 and is incorporated herein by reference. DOA's September 5th, 2003 response stated that DOA had located numerous documents, but was withholding them pursuant to FOIA Exemption 1 (5 U.S.C. §552 (b)(1)).

12. On September 16th, 2003, Judicial Watch, Inc. sent DOA, by facsimile and by certified U.S. mail, return receipt requested, a letter appealing DOA's response to Judicial Watch, Inc.'s April 6th, 2003 FOIA request. A copy of Judicial Watch, Inc.'s FOIA appeal is attached hereto as Exhibit 3 and is incorporated herein by reference.

13. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), DOA was required to respond to Judicial Watch, Inc.'s September 16th, 2003 FOIA appeal by October 15th, 2003. However, as of February 24th, 2004, Judicial Watch, Inc. has received no response to its appeal other than a letter dated September 17th, 2003 acknowledging receipt of the appeal.

#### **Judicial Watch, Inc.'s June 16th, 2003 FOIA Request**

14. On June 16th, 2003, Judicial Watch, Inc. sent DOA, by facsimile and by certified U.S. mail, return receipt requested, a second FOIA request seeking access to any and all records concerning or relating to the following subjects:

- a. The decision of the U.S. Army to grant a contract to Kellog, Brown and Root (KBR) to restart Iraq's oil production leading up to and after the 2003 Iraq war (January 1st, 2003 through June 15th, 2003), including but not limited to:

– Contract costs, deadlines, compensation, spending limits, and bonus scales.

– Monthly cost overruns, costs per month, itemized reports of all activities billed to the U.S. Government concerning KBR’s (or any related subsidiary including the parent company of Halliburton) activities in Iraq between February 1st, 2003 to June 16th, 2003.

b. All information or correspondence related to the replacement of KBR’s original contract estimated to happen in or about August 2003.

– All correspondence dated between January 1st, 2003 and June 16th, 2003, related to the competitive bid/award process planned by the U.S. Government related to restarting oil production in Iraq.

– All correspondence to or from Lt. Col. Eugene Pawlik pertaining to his comments that the Corps would not meet the August timetable because of “all the requirements that are out there.” (Quoted in Washington Post, Halliburton Iraq Oil Work May Last Longer, June 13th, 2003).

Judicial Watch, Inc.’s June 16th, 2003, FOIA request also sought a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II), 5 U.S.C. § 552(a)(4)(A)(iii), and 32 C.F.R. § 518.84(a)-(e). A copy of Judicial Watch, Inc.’s FOIA request is attached hereto as Exhibit 4 and is incorporated herein by reference.

15. As of February 24th, 2004, Judicial Watch Inc. has received no substantive response to its June 16th, 2003 FOIA request.

16. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DOA was required to determine whether to comply with Judicial Watch, Inc.’s June 16th, 2003 FOIA request by July 15th, 2003. At that time, DOA also was required to notify Judicial Watch, Inc. of its determination, provide Judicial Watch, Inc. with the reasons for its determination, and inform Judicial Watch, Inc. of its right to administratively appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i).

17. As of February 24th, 2004, DOA failed to respond to Judicial Watch, Inc.'s June 16th, 2003 FOIA request in any substantive manner. It failed to produce records responsive to Judicial Watch, Inc.'s June 16th, 2003 FOIA request or claim that such records are exempt from production under 5 U.S.C. § 552(b). It failed to notify Judicial Watch, Inc. of any determination whether to comply with Judicial Watch, Inc.'s request and the reasons for any such determination. It also failed to inform Judicial Watch, Inc. of its right to take an administrative appeal from any adverse determinations.

18. In addition, as of February 24th, 2004, DOA failed to invoke the provisions set forth in 5 U.S.C. § 552(a)(6)(B) for extending the time limits to respond to Judicial Watch, Inc.'s June 16th, 2003 FOIA request.

19. Because DOA failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A) or extend those time limit provisions pursuant to 5 U.S.C. § 552(a)(6)(B), Judicial Watch, Inc. is deemed to have exhausted any and all administrative remedies with respect to its June 16th, 2003 FOIA request. 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
(Violation of FOIA)

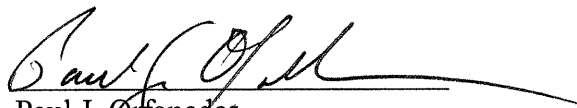
20. Plaintiff realleges paragraphs 1 through 20 as if fully stated herein.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) enjoin Defendant from continuing to withhold records responsive to Plaintiff's April 6th, 2003 and June 16th, 2003 FOIA requests and order Defendant to produce all responsive records improperly withheld from Plaintiff without further delay; (4)

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

Respectfully submitted,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read "Paul J. Orfanedes", written over a horizontal line.

Paul J. Orfanedes  
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Attorneys for Plaintiff