

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
DISTRICT OF COLUMBIA,)	
John A. Wilson Building)	
1350 Pennsylvania Avenue, N.W.,)	
Washington, DC 20004,)	
)	
Defendant.)	
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COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant District of Columbia to compel compliance with the District of Columbia Freedom of Information Act, D.C. Code § 2-531. As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the persons and subject matter of this action pursuant to D.C. Code § 11-921.

PARTIES

2. 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, Judicial Watch regularly requests records under federal and state “open records” laws, analyzes the responses

and any records it receives, and disseminates its findings and the records to the public to inform them about their government.

3. Defendant is the District of Columbia government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. *See Kane v. District of Columbia*, 180 A.3d 1073, 1078-1079 (D.C. 2018). Defendant is headquartered at John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004.

STATEMENT OF FACTS

4. On September 10, 2019, Plaintiff submitted a FOIA request to the Office of the Advisory Neighborhood Commission, a public body within the District, seeking access to:

- A. Emails and/or texts of Commissioner Rhonda Hamilton concerning “Square 653 Row Houses;” Square 653 – Lots 52-54, 60-66, 68, 69, and 827;” “Old Southwest” Historic District, which is bounded by M Street, S.W., South Capitol Street, S.W., Q Street, S.W., and Canal/2nd Street, S.W.; and/or Office of Planning Case Number 17-11. This request seeks emails from both Commissioner Hamilton’s official government email account as well as her personal email account (misrhonda@yahoo.com). The timeframe for this request is from January 1, 2017 to the present.
- B. Emails and/or texts of Commissioner Gail Fast concerning “Square 653 Row Houses;” Square 653 – Lots 52-54, 60-66, 68, 69, and 827;” “Old Southwest” Historic District, which is bounded by M Street, S.W., South Capitol Street, S.W., Q Street, S.W., and Canal/2nd Street, S.W.; and/or Office of Planning Case Number 17-11. This request seeks emails from both Commissioner Fast’s official government email account as well as her personal email account (fasthgail@gmail.com). The timeframe for this request is from January 1, 2017 to the present.

5. By email dated September 16, 2019, Gottlieb Simon, the Executive Director of the OANC, acknowledged receiving Plaintiff’s request.

6. On or about September 17, 2019, Plaintiff spoke with Mr. Simon concerning the request. Mr. Simon once again acknowledged receiving the request and informed Plaintiff that he would begin processing the request.

7. By email dated October 21, 2019, Plaintiff requested a status update concerning the request. Later that day, Mr. Simon informed Plaintiff that a response “shouldn’t be too much longer.”

8. On October 28, 2019, Plaintiff again requested a status update concerning the request. Because Plaintiff did not receive a response from Mr. Simon, Plaintiff followed up by telephone and email on November 4, 2019. Later that day, Mr. Simon emailed Plaintiff and informed it that “it’s been taking Commissioner Hamilton a lot of time to find all the messages that are responsive to the search request. The messages are in her private email account so there isn’t much that I can do to assist her. I do know that she has been working on it steadily, it’s just going very slowly for her.”

9. Communications made or received by government officials, including ANC commissioners, are communications of the OANC, regardless of whether such communications are associated with a personal email account. *Vining v. District of Columbia*, 2014 D.C. Super. LEXIS 14, *7 (D.C. Sup. Ct. July 9, 2014). The OANC therefore is obligated to produce emails from personal email accounts that are responsive to Plaintiff’s request. *Id.*

10. As of the date of this Complaint, the OANC has not: (i) produced the requested records or demonstrated that the requested records are lawfully exempt from production; (ii) notified Plaintiff of the scope of any responsive records they intend to produce or withhold and the reasons for any withholdings; or (iii) informed Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of FOIA)

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

12. Defendant is in violation of FOIA.

13. 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.

14. Pursuant to FOIA, Defendant was required to either make the requested public records accessible or notify Plaintiff of its determination not to make the requested public records or any part thereof accessible and the reasons therefor within 15 business days or by October 7, 2019. D.C. Code § 2-532(c)(1).

15. Because Defendant failed to make a final determination on Plaintiff's request within the time limit set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. D.C. Code § 2-532(e)(1).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's 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 attorneys' fees and other litigation costs reasonably incurred in this action pursuant to D.C. Code § 2-537(c); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 8, 2019

Respectfully submitted,

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street S.W., Suite 800
Washington, DC 20024
Phone: (202) 646-5172
Fascimile: (202) 646-5199
Email: mbekesha@judicialwatch.org

Counsel for Plaintiff



Superior Court of the District of Columbia
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
Telephone: (202) 879-1133 Website: www.dccourts.gov

Judicial Watch, Inc.

 Plaintiff

vs.

Case Number _____

District of Columbia

 Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Michael Bekesha

Clerk of the Court

Name of Plaintiff's Attorney

Judicial Watch, Inc.

By _____

Address

425 Third Street, S.W., Suite 800, Washington, DC 20024

Deputy Clerk

(202) 646-5172

Date _____

Telephone

如需翻译, 请打电话 (202) 879-4828

Veuillez appeler au (202) 879-4828 pour une traduction

Đề có một bài dịch, hãy gọi (202) 879-4828

법역을 원하 시면, (202) 879-4828 로 전화 주십시오. የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation
 Veá al dorso la traducción al español