

Testimony of Judicial Watch President Tom Fitton

Hearing of the House Government Reform and Oversight Subcommittee
on Information Policy, Census, and National Archives on
“Administration of the Freedom of Information Act: Current Trends”

March 18, 2010, 2154 Rayburn House Office Building at 2:00 p.m.

Good afternoon, I’m Tom Fitton, President of Judicial Watch. Judicial Watch is a conservative, nonpartisan educational foundation dedicated to promoting transparency, accountability and integrity in government, politics and the law. Essential to our mission is the Freedom of Information Act (FOIA). Judicial Watch used this tool effectively to root out corruption in the Clinton administration and to take on the Bush administration’s penchant for improper secrecy. Founded in 1994, Judicial Watch has nearly 16 years of experience in using FOIA to advance the public interest. Judicial Watch is perhaps the most active FOIA requestor and litigator operating today.

The American people were promised a new era of transparency by the Obama administration. Unfortunately, this promise has not been kept.

To be clear: the Obama administration is less transparent than the Bush administration.

We have well over 300 FOIA requests pending with the Obama administration, and we have filed over 20 FOIA lawsuits in federal court against this administration.

Administratively, agencies have put in place additional hurdles and stonewalled even the most basic FOIA requests. The Bush administration was tough and tricky, but the Obama administration is tougher and trickier.

The Obama administration continues to fight us tooth and nail in court. The Obama administration’s approach to FOIA is exactly the same as the Bush administration’s—so one can imagine that we don’t have an easy time litigating these issues in court against the Obama Justice Department.

Judicial Watch has been digging hard into the scandals behind the collapse of Fannie Mae and Freddie Mac and their role in helping trigger the global financial crisis. A key component of this investigation concerns the role political corruption played in the failure of adequate congressional oversight and the catastrophic collapse of these "government sponsored entities" in 2008. That is why we filed a [Freedom of Information Act \(FOIA\) lawsuit \(http://www.judicialwatch.org/judicial-watch-v-u-s-federal-housing-finance-agency\)](http://www.judicialwatch.org/judicial-watch-v-u-s-federal-housing-finance-agency) against the Obama administration to get hold of documents related to Fannie's and Freddie's campaign contributions over the last several election cycles.

Since American taxpayers are on the hook for trillions of dollars, potentially including at least \$400 billion alone for Fannie and Freddie, we deserve to know how and why this financial collapse occurred and who in Washington, D.C. is responsible.

Unfortunately the Obama administration disagrees.

In January, the Federal Housing Finance Agency (FHFA), the agency responsible for Fannie Mae and Freddie Mac, responded to our FOIA lawsuit by telling us that all of the documents we seek are not subject to FOIA.

Here is the exact language the Obama agency used in its recent court filing (<http://www.judicialwatch.org/files/documents/2010/jw-v-fhfa-defmem4sj-01292010.pdf>) : “...Any records created by or held in the custody of the Enterprises (Fannie Mae and Freddie Mac) reflecting their political campaign contributions or policies, stipulations and requirements concerning campaign contributions necessarily are private corporate documents. They are not 'agency records' subject to disclosure under FOIA.”

And here's why the Obama administration's reasoning is flat-out wrong, as detailed in a court motion (<http://www.judicialwatch.org/files/documents/2010/jw-fhfa-opp2sj-cm4sj-03052010.pdf>) we filed on March 5:

At issue in this Freedom of Information Act (“FOIA”) lawsuit is whether FHFA, the federal agency that has custody and control of the records of Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Company (“Freddie Mac”), must comply with a FOIA request for records relating to those previously independent entities. Until they were seized by FHFA in September 2008, Fannie Mae and Freddie Mac were private corporations with independent directors, officers, and shareholders. Since that time, FHFA, a federal agency subject to FOIA, has assumed full legal custody and control of the records of these previously independent entities. Hence, these records are subject to FOIA like any other agency records.

In addition to the problem of walling off FHFA's control of our nation's mortgage market through Fannie and Freddie from public accountability, the Obama Treasury Department is a black hole for basic information requests on the various government bailouts.

So I can't quite fathom how administration defenders can laud a new era transparency while over \$1 trillion in government spending is shielded from practical oversight and scrutiny by the American people.

The Subcommittee might also be interested to learn the truth behind the Obama White House's trumpeting of the Secret Service Department's release of White House visitor logs.

In fact, the Obama administration is refusing to release tens of thousands of visitor logs and has stated that these logs are not subject to the Freedom of Information Act.

So while the Obama administration attempts to take the "high ground" in the debate by releasing a select number of visitor logs, tens of thousands of other records continue to be withheld in defiance of FOIA law. Why release some and not all?

Last October Judicial Watch staff visited with senior White House official Norm Eisen, Special Counsel to the President for Ethics and Government, to discuss Judicial Watch's pursuit of the White House visitor logs. The White House encouraged us to publicly praise the Obama administration's commitment to transparency. However, the Obama team refused to abandon their legally indefensible contention that the Secret Service Department's White House visitor logs are not subject to FOIA law.

So we filed a lawsuit to ask the court to enforce the law.

As with Fannie and Freddie, the Obama administration continues to advance its ridiculous and bogus claim that the visitor logs "are not agency records subject to the FOIA." But the Obama administration doesn't have a legal leg to stand on. As we noted in our original complaint (<http://www.judicialwatch.org/files/documents/2009/jw-v-usss-complaint-12072009.pdf>) filed on December 7, 2009, the administration's claim "has been litigated and rejected repeatedly" by the courts. In fact, it has been rejected by every court that has considered it.

As our recent court filing notes:

At issue here is whether Secret Service visitor logs are agency records subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. To date, every court that has reached this issue has concluded that the requested documents are agency records and must be processed in response to a properly submitted FOIA request. As no disputes of material fact exist as to the nature of the records, summary judgment as to this straightforward legal issue should be entered now.

(<http://www.judicialwatch.org/files/documents/2010/jw-v-usss-mot4sj-02222010.pdf>)

Our brief also notes that the Secret Service had released White House visitor logs in response to previous FOIA requests (<http://www.judicialwatch.org/judicial-watch-v-u-s-secret-service>) from Judicial Watch and other parties.

So in two major transparency issues—on the bailouts and White House access—the Obama administration has come down on the side of secrecy. Releasing “high value data sets” from government bureaucracies is meaningless in the face of key decisions to keep politically explosive material out of the public domain.

As far as Judicial Watch is concerned, the Obama administration gets a failing grade on transparency for its first year or so in power.

Let me end by noting that a commitment to transparency should cut across partisan and ideological lines. The Founding Fathers understood the importance of knowing what our government is up to. John Adams wrote:

Liberty cannot be preserved without a general knowledge among the people . . . they have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge, I mean, of the characters and conduct of their rulers.

Thank you.