

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

**NATIONAL SECURITY ARCHIVE** )  
2130 H Street, N.W., Suite 701 )  
The Gelman Library )  
Washington, DC 20037, )

Plaintiff, )

v. )

C. A. No. \_\_\_\_\_

**DEPARTMENT OF JUSTICE** )  
950 Pennsylvania Avenue, N.W. )  
Washington DC 20530, )

Defendant. )

\_\_\_\_\_ )

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff National Security Archive seeks injunctive and other appropriate relief for the processing and release of agency records requested by plaintiff from the Criminal Division of defendant Department of Justice. Specifically, plaintiff seeks disclosure of a report documenting the work of the defendant’s Office of Special Investigations, the preparation of which was authorized by former Attorney General Janet Reno in 1999.

**Jurisdiction and Venue**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

### **Parties**

3. Plaintiff National Security Archive, founded in 1985, is an independent non-governmental research institute and library. The Archive collects and publishes declassified documents obtained through the Freedom of Information Act. The Archive also serves as a repository of government records on a wide range of topics pertaining to the national security, foreign, intelligence, and economic policies of the United States. The Archive won the 1999 George Polk Award, one of U.S. journalism's most prestigious prizes, for – in the words of the citation – “piercing the self-serving veils of government secrecy, guiding journalists in the search for the truth and informing us all.” It also was awarded the 2005 Emmy Award for outstanding achievement in news and documentary research. The Archive is a representative of the news media as defined in 5 U.S.C. § 552(a)(4)(a)(ii).

4. Defendant Department of Justice (“DOJ”) is a Department of the Executive Branch of the United States Government. DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f).

### **Plaintiff's FOIA Request and DOJ's Decision to Withhold the Requested Material**

5. By letter sent by facsimile to defendant DOJ's Criminal Division on October 7, 2009, plaintiff requested under the FOIA “[a] report documenting the work of the Office of Special Investigations (OSI), the preparation of which was authorized by former Attorney General Janet Reno in 1999.” Plaintiff noted that “[t]he report was prepared by Judy Feigin, a career DOJ attorney, and edited by Mark Richard, former Deputy Assistant Attorney General of the Criminal Division.”

6. By letter to plaintiff dated November 18, 2009, defendant DOJ's Criminal Division responded to plaintiff's FOIA request and indicated that it had located a responsive record: a report titled, "The Office of Special Investigations: Striving for Accountability in the Aftermath of the Holocaust." The letter further informed plaintiff that the report was being withheld from disclosure in its entirety under FOIA Exemption 5 on the ground that it is "deliberative and pre-decisional." In addition, the Criminal Division claimed that certain "portions" of the report are exempt from disclosure under Exemptions 6 and 7(C) & (E).

7. By letter to defendant DOJ's Office of Information Policy ("OIP") dated January 13, 2010, counsel for plaintiff appealed the Criminal Division's decision to withhold the requested record.

8. By letter to plaintiff's counsel dated February 3, 2010, OIP stated that plaintiff's "administrative appeal from the action of the Criminal Division was received by this Office on January 21, 2010."

9. On March 9, 2010, plaintiff's counsel telephoned OIP to ascertain the status of plaintiff's administrative appeal. A member of the OIP staff, Michael Sherman, indicated that there was a "backlog" of pending appeals and that he was unable to estimate a date by which OIP would respond to plaintiff's appeal.

10. To date, defendant DOJ has not responded to plaintiff's administrative appeal, nor has the agency disclosed agency records responsive to plaintiff's FOIA request.

11. Defendant DOJ has violated the applicable statutory time limit for the processing of administrative appeals concerning responses to FOIA requests.

12. Plaintiff has exhausted the applicable administrative remedies.

13. Defendant DOJ has wrongfully withheld the requested records from plaintiff.

**CAUSE OF ACTION**

**Violation of the Freedom of Information Act for  
Wrongful Withholding of Agency Records**

14. Plaintiff repeats and realleges paragraphs 1-13.

15. Defendant DOJ has wrongfully withheld agency records requested by plaintiff.

16. Plaintiff has exhausted the applicable administrative remedies with respect to Defendant DOJ's wrongful withholding of the requested records.

17. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested records.

**Requested Relief**

WHEREFORE, plaintiff prays that this Court:

- A. order defendant DOJ to disclose the requested records in their entirety and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ David L. Sobel  
DAVID L. SOBEL  
D.C. Bar No. 360418

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Counsel for Plaintiff

I  
10-754  
RMC

CIVIL COVER SHEET

JS-44  
(Rev. 1/05 DC)

<p><b>I (a) PLAINTIFFS</b></p> <p>National Security Archive</p> <hr/> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>DC</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <hr/> <p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</p> <p>David L. Sobel 1818 N Street, N.W., Suite 410 Washington, DC 20036 202-246-6180</p>	<p><b>DEFENDANTS</b></p> <p>Department of Justice</p> <hr/> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <hr/> <p>ATTORNEYS (IF KNOWN)</p> <p>Case: 1:10-cv-00754 Assigned To : Collyer, Rosemary M. Assign. Date : 5/11/2010 Description: FOIA/Privacy Act</p>																								
<p><b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U S Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<p><input type="radio"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><b>Social Security:</b></p> <p><input type="checkbox"/> 861 HIA ((1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g)</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g)</p> <p><b>Other Statutes</b></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input type="radio"/> <b>E. General Civil (Other)</b>      OR      <input type="radio"/> <b>F. Pro Se General Civil</b></p>		
<p><b>Real Property</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><b>Personal Property</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>Bankruptcy</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>Prisoner Petitions</b></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><b>Property Rights</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>Federal Tax Suits</b></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p>	<p><b>Forfeiture/Penalty</b></p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 RR &amp; Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p><b>Other Statutes</b></p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p>
<p><input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act</p>		<p>3</p>

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation)  *(If pro se, select this deck)*	<input checked="" type="radio"/> <b>I. FOIA/PRIVACY ACT</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

**V. ORIGIN**

1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi district Litigation  
  7 Appeal to District Judge from Mag. Judge

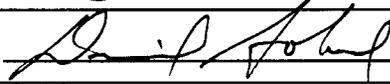
**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**

5 U S C § 552, wrongful withholding of agency records

**VII. REQUESTED IN COMPLAINT**       CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      DEMAND \$ \_\_\_\_\_      Check YES only if demanded in complaint

**JURY DEMAND:**      YES       NO

**VIII. RELATED CASE(S) IF ANY**      (See instruction)      YES       NO       If yes, please complete related case form.

DATE 5/11/10      SIGNATURE OF ATTORNEY OF RECORD 

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II
- IV. CASE ASSIGNMENT AND NATURE OF SUIT. The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case
- VI. CAUSE OF ACTION Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause
- VIII. RELATED CASES, IF ANY. If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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