

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|----------------------------------|---|--------------------------------|
| ELECTRONIC PRIVACY INFORMATION |) | |
| CENTER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 14-1311 (APM) |
| v. |) | |
| |) | |
| FEDERAL BUREAU OF INVESTIGATION, |) | |
| |) | |
| Defendant. |) | |

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant, the United States Department of Justice (“DOJ” or “Defendant”), by and through its undersigned attorneys, respectfully submits the following answer to Plaintiff’s Complaint (“Complaint”) filed on August 1, 2014, and states as follows:

FIRST DEFENSE

Defendant reserves the right to amend this Answer to assert any other matter that constitutes an avoidance or affirmative defense under Fed. R. Civ. P. 8(c).

SECOND DEFENSE

Defendant denies each and every allegation contained in the Complaint except as hereinafter may be expressly admitted.

THIRD DEFENSE

Plaintiff is not entitled to compel the production of records protected from disclosure by one or more of the exemptions to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

FOURTH DEFENSE

The Federal Bureau of Investigation (“FBI”) is not an “agency” within the meaning of the FOIA, 5 U.S.C. § 552(f)(1), and is, therefore, not a proper party defendant.

FIFTH DEFENSE

Plaintiff has failed to state a claim as a matter of law.

* * *

DEFENDANT’S RESPONSES TO THE NUMBERED PARAGRAPHS

In response to the Complaint, all allegations in the Complaint, including relief sought, are denied except when specifically admitted. Defendant admits, denies, or otherwise avers as follows:

Preliminary Statement¹

1. Paragraph 1 contains Plaintiff’s preliminary statement to which no response is required and contains legal conclusions to which no response is required; to the extent a response is required, Defendant admits that Plaintiff has brought a suit seeking injunctive and other relief seeking the release of records from the FBI, but avers that Plaintiff is not entitled to any relief.

2. Defendant denies the first sentence of Paragraph 2. In response to the second sentence of Paragraph 2, Defendant respectfully refers to Plaintiff’s FOIA request for a full and accurate statement of its content as that document speaks for itself, but otherwise admits the allegations in the second sentence of Paragraph 2. The third sentence of Paragraph 2 contains a prayer for relief and legal conclusion to which no response is required; to the extent a response is

¹ For ease of reference, Defendant refers to Plaintiff’s headings and titles, but to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

deemed required, Defendant denies the allegations in the third sentence of Paragraph 2 and avers that Plaintiff is not entitled to any relief.

Jurisdiction and Venue

3. Paragraph 3 contains Plaintiff's allegation concerning the jurisdiction and venue for this case to which no response is required; to the extent a response is required, Defendant admits that this Court is a proper jurisdiction for claims brought pursuant to FOIA and that this is a proper venue.

Parties

4. Defendant is without sufficient knowledge or information to form a belief as to the allegations in Paragraph 4, and on that basis denies them.

5. In response to Paragraph 5, Defendant admits that the FBI is a component of DOJ, however, denies that the FBI is an "agency" within the meaning of the FOIA, 5 U.S.C. § 552(f)(1), and the FBI is, therefore, not a proper party defendant.

Background

6. In response to Paragraph 6, the first sentence of Paragraph 6 contains Plaintiff's legal conclusions to which no response is required and a reference to a statute; that statute speaks for itself. Defendant denies any remaining allegations in the first sentence of Paragraph 6. The second sentence of Paragraph 6 contains a partial quotation to a statute; that statute speaks for itself, but Defendant admits that Plaintiff's partial quotations appear accurate. The second sentence of Paragraph 6 contains Plaintiff's legal conclusions to which no response is required; to the extent a response is deemed required, Defendant admits the allegations in the second sentence of Paragraph 6, but avers that the allegations have no relevance to the legal issues in this case. The third sentence of Paragraph 6 contains a citation to a statute; that statute speaks

for itself. The third sentence of Paragraph 6 contains Plaintiff's legal conclusions to which no response is required; to the extent a response is deemed required, Defendant admits the allegations in the third sentence of Paragraph 6, but avers that the allegations have no relevance to the legal issues in this case.

7. In response to Paragraph 7, Defendant admits that the DOJ provides guidance on privacy assessments, but the remainder of the allegations in Paragraph 7 are Plaintiff's legal conclusions to which no response is required; to the extent a response is deemed required, the remaining allegations are denied.

8. In response to Paragraph 8, Defendant admits that the DOJ Office of Privacy and Civil Liberties provides guidance on privacy assessments, but the remainder of the allegations in Paragraph 8 are Plaintiff's legal conclusions to which no response is required; to the extent a response is deemed required, the remaining allegations are denied.

9. Paragraph 9 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent Paragraph 9 contains any factual allegations, Defendant admits the allegations in Paragraph 9.

10. Paragraph 10 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent Paragraph 10 contains any factual allegations, Defendant admits the allegations in Paragraph 10.

11. Paragraph 11 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent Paragraph 11 contains any factual allegations, Defendant admits the allegations in Paragraph 11.

12. The first sentence of Paragraph 12 contains Plaintiff's legal conclusions to which no response is required; to the extent a response is deemed required, Plaintiff admits the

allegations in the first sentence of Paragraph 12. The second sentence of Paragraph 12 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent the second sentence of Paragraph 12 contains any factual allegations, Defendant admits the allegations in the second sentence of Paragraph 12.

13. The first clause of Paragraph 13 contains Plaintiff's legal conclusions to which no response is required; to the extent a response is deemed required, Plaintiff admits the allegations in the first clause of Paragraph 13. The second clause of Paragraph 13 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent the second clause of Paragraph 13 contains any factual allegations, Defendant admits the allegations in the second clause of Paragraph 13.

14. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in the first sentence of Paragraph 14, and on that basis denies the allegations in the first sentence of Paragraph 14. The second sentence of Paragraph 14 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent the second sentence of Paragraph 14 contains any factual allegations, Defendant admits the allegations in the second sentence of Paragraph 14.

15. Paragraph 15 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent Paragraph 15 contains any factual allegations, Defendant admits the allegations in the second sentence of Paragraph 15.

16. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in the Paragraph 16, and on that basis denies the allegations in Paragraph 16.

17. Defendant admits the allegations in Paragraph 17.

18. Paragraph 18 contains a quotation from a publicly-available document. That document speaks for itself. To the extent Paragraph 18 contains any factual allegations, Defendant admits the allegations in Paragraph 18.

19. Paragraph 19 contains a quotation from a publicly-available document. That document speaks for itself. To the extent Paragraph 19 contains any factual allegations, Defendant admits the allegations in Paragraph 19.

20. Paragraph 20 contains a citation to a publicly-available document. That document speaks for itself. To the extent Paragraph 20 contains any factual allegations, Defendant admits the allegations in Paragraph 20.

21. Paragraph 21 contains a citation to a publicly-available document. That document speaks for itself. To the extent Paragraph 21 contains any factual allegations, Defendant admits the allegations in Paragraph 21.

22. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in the Paragraph 22, and on that basis denies the allegations in Paragraph 22.

23. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in the Paragraph 23, and on that basis denies the allegations in Paragraph 23.

24. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in the Paragraph 24, and on that basis denies the allegations in Paragraph 24.

25. Paragraph 25 contains a quotation from a publicly-available document on DOJ's website. That document speaks for itself. To the extent Paragraph 25 contains any factual allegations, Defendant admits the allegations in the second sentence of Paragraph 25.

26. Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in the Paragraph 26, and on that basis denies the allegations in Paragraph 26.

EPIC's June 4, 2014 FOIA Request

27. In response to Paragraph 27, Defendant incorporates by reference its responses to Paragraphs 1-26 as if set forth fully here.

28. In response to Paragraph 28, Defendant admits that it received EPIC's FOIA request via fax, but lacks sufficient knowledge or information to admit or deny the remaining allegations contained in the Paragraph 28, and on that basis denies the remaining allegations in Paragraph 28.

29. In response to Paragraph 29, Defendant admits that the request seeking the information referenced was submitted to the FBI, but respectfully refers the Court to the request for its accurate contents.

30. Defendant admits the allegations in Paragraph 30.

32. Defendant admits that EPIC sought waiver of all duplication fees, but Defendant denies the remaining allegations in Paragraph 32.²

33. Defendant admits the allegations in Paragraph 33, but avers that by letter dated August 20, 2014, that the FBI made a determination relating to Plaintiff's request for a fee waiver and respectfully refers the Court to the letter for its accurate content.

² The Complaint does not have a Paragraph numbered 31.

EPIC has Constructively Exhausted its Administrative Remedies

34. In response to Paragraph 34, Defendant incorporates by reference its responses to Paragraphs 1-33 as if set forth fully here.

35. Defendant admits the allegation in Paragraph 35, but avers that the FBI, by letter dated December 15, 2014, made its first interim release and made subsequent monthly releases. The FBI made its last interim release on January 15, 2016.

36. Paragraph 36 contains citations to a federal statute and federal regulation. The statute and the regulation speak for themselves and to the extent Paragraph 36 contains Plaintiff's legal conclusions, no response is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 36.

37. Paragraph 37 contains citations to a federal statute and federal regulation. The statute and the regulation speak for themselves and to the extent Paragraph 37 contains Plaintiff's legal conclusions, no response is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 37. Specifically, Defendant denies the remainder of Paragraph 37 and avers that the regulation cited by Plaintiff does not provide the relief claimed.

Count I

Violation of FOIA: Failure to Comply with Statutory Deadlines

38. In response to Paragraph 38, Defendant incorporates by reference its responses to Paragraphs 1-37 as if set forth fully here.

39. Defendant denies the allegations in Paragraph 39.

40. Defendant denies the allegations in Paragraph 40.

41. Defendant denies the allegations in Paragraph 41.

Count II

Violation of FOIA: Unlawful Withholding of Agency Records

42. In response to Paragraph 42, Defendant incorporates by reference its responses to Paragraphs 1-41as if set forth fully here.

43. Defendant denies the allegations in Paragraph 43.

44. Defendant denies the allegations in Paragraph 44.

45. Defendant denies the allegations in Paragraph 45.

46. Defendant denies the allegations in Paragraph 46.

Relief Requested

The allegations contained in these paragraphs consist of Plaintiff's request for relief, to which no response is required, but insofar as an answer is deemed required, the FBI denies that Plaintiff is entitled to the requested relief or to any relief whatsoever. Each and every allegation not heretofore expressly admitted or denied is denied.

WHEREFORE, having answered, Defendant requests judgment or relief against Plaintiff as follows:

1. That the claim against Defendant is dismissed with prejudice and that the Plaintiff takes nothing and is granted no relief.
2. That Defendant be awarded its costs and disbursements incurred in defending this matter;
and
3. Such other and further relief, including declaratory, equitable relief and damages, to which it is entitled.

Dated: March 10, 2016
Washington, DC

Respectfully submitted,

CHANNING D. PHILLIPS, D.C. Bar #415793
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092
Chief, Civil Division

By: _____ /s/

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