

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,)	
)	
)	
Plaintiff,)	Civil Action No. 1:15-cv-667 (CRC)
)	
v.)	
)	
UNITED STATES DRUG ENFORCEMENT ADMINISTRATION,)	
)	
)	
Defendant.)	

DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to Local Civil Rule 7(h)(1) of the Rules of the United States District Court for the District of Columbia, defendant Drug Enforcement Administration (“Defendant” or “DEA”) hereby submits the following response to the statement of material facts submitted by Plaintiff Electronic Privacy Information Center with its cross-motion for summary judgment, *see* Pl.’s Statement of Material Facts Not in Dispute and Response to Defendant’s Statement of Facts Not in Dispute, ECF No. 18-5.

1. Paragraphs 1 through 6 of Plaintiff’s statement of material facts respond to Defendant’s Statement of Material Facts Not in Dispute, ECF No. 17-2, submitted in support of Defendant’s motion for summary judgment. Defendant hereby incorporates its prior Statement of Material Facts Not in Dispute herein in opposition to Plaintiff’s cross-motion and disputes Plaintiff’s disagreement in paragraphs 2, 3, 5, and 6 with the matters described therein.

2. The matters discussed in paragraphs 7 and 8 of Plaintiff’s statement of material facts are not relevant to the question of whether DEA conducted an adequate search for records responsive to Plaintiff’s request to DEA under the Freedom of Information Act (“FOIA”), 5

U.S.C. § 552. Defendant does not dispute that the website of the Department of Justice's Office of Privacy and Civil Liberties ("OPCL") contains a document entitled Privacy Impact Assessments Official Guidance and that page 3 of the document contains the statement, "The SCOP for each component is required to review and prepare a draft PIA for OPCL review and CPCLO signature."

3. Defendant does not dispute the factual contentions made in paragraphs 9 and 10 of Plaintiff's statement of material facts but Defendant disputes the relevance of those contentions. OPCL is not an office within DEA but an entirely separate Department of Justice component. The DEA's SCOP has delegated the day-to-day creation, coordination, and completion of privacy documentation, including PIAs, to the CIOSU, and the CIOSU is responsible for transmitting, publishing online, and storing record copies of final DEA PIAs. Second Declaration of Katherine L. Myrick ¶ 6.

4. The matters discussed in paragraphs 11 through 15 of Plaintiff's statement of material facts are properly characterized not as factual contentions but as Plaintiff's legal interpretations of the E-Government Act of 2002 and OMB Guidance for Implementing the Privacy Provisions of the E-Government Act 2002. Defendant disputes Plaintiff's characterizations to the extent they are inconsistent with the referenced documents. Plaintiff's contentions in these paragraphs are not relevant to the question of whether DEA conducted an adequate search for records responsive to Plaintiff's request to DEA under the FOIA.

5. Defendant does not dispute the factual contentions made in paragraph 16 of Plaintiff's statement of material facts. Plaintiff's contentions in this paragraph are not relevant to the question of whether DEA conducted an adequate search for records responsive to Plaintiff's request to DEA under the FOIA. OMB is not an office within DEA but an entirely separate

agency of the federal government.

6. Defendant does not dispute the factual contentions made in paragraphs 17 and 18 of Plaintiff's statement of material facts.

7. Defendant disputes the notion set forth in paragraph 19 of Plaintiff's statement of material facts that Plaintiff submitted a FOIA request for determination letters or requested that DEA conduct a search for determination letters. *See* Plaintiff's FOIA Request, Exhibit A (ECF No. 17-4) to Declaration of Katherine L. Myrick. Instead, DEA voluntarily provided determination letters that it had already found when searching for records responsive to Part 2 of Plaintiff's FOIA request, after Plaintiff agreed to accept those letters instead of the records identified in Part 2 of Plaintiff's request. Declaration of Katherine L. Myrick ¶¶ 25-26, ECF No. 17-3. The record contains no indication that Plaintiff asked DEA to conduct a search for determination letters, or that Plaintiff mentioned any expectation that DEA would conduct a search for determination letters at any time before filing its opposition to DEA's motion for summary judgment.

8. After Plaintiff filed its opposition to DEA's motion for summary judgment, DEA conducted a search for determination letters. Second Declaration of Katherine L. Myrick ¶ 7. The search did not locate any additional determination letters. *Id.*

9. The matters discussed in paragraphs 20 through 22 of Plaintiff's statement of material facts are not relevant to the question of whether DEA conducted an adequate search for records responsive to Plaintiff's request to DEA under the FOIA. Defendant disputes Plaintiff's characterizations of programs referenced in these paragraphs. The record contains no indication that final DEA PIAs exist or are required for any of these programs. Defendant has previously explained, in another FOIA case brought by Plaintiff, that "[a]lthough DEA uses and partly funds

Hemisphere, Hemisphere is not a DEA program.” *EPIC v. DEA*, No. 14-cv-317, Def.’s Mem. in Opp. to Pl.’s Mot. for Summary Judgment and Reply Mem. in Support of Def.’s Mot. for Summary Judgment, ECF No. 20, at 5 (D.D.C. filed Dec. 22, 2014).

March 9, 2016

Respectfully submitted,

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