

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

ELECTRONIC PRIVACY
INFORMATION CENTER,

Plaintiff,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendant.

Civil Action No. 18-0797 (CKK)

ANSWER

Defendant U.S. Immigration and Customs Enforcement (“ICE” or “Defendant”), through undersigned counsel, hereby answers the Complaint filed by Plaintiff Electronic Privacy Information Center (“Plaintiff”) as follows:

FIRST DEFENSE

As to some or all of the claims asserted in this action, Plaintiff has failed to state a claim upon which relief may be granted under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

SECOND DEFENSE

Plaintiff is not entitled to compel the production of responsive records protected from disclosure by one or more of the exemptions of FOIA.

Defendant has, or may have, additional affirmative defenses that are not known at this time but that may be ascertained. Defendant specifically preserves those and other affirmative defenses as they are ascertained.

1. Paragraph 1 contains Plaintiff's characterization of the case and requested remedies, to which no response is required. Insofar as an answer may be required, the allegations in the paragraph are denied.

2. Paragraph 2 contains Plaintiff's characterization of the case and conclusions of law, to which no response is required. To the extent that a response is required, deny.

Jurisdiction and Venue

3. Paragraph 3 contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, Defendant admits only that this Court has jurisdiction subject to the limitations of FOIA.

4. Paragraph 4 contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, Defendant admits only that venue is proper in the judicial district.

Parties

5. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5.

6. Admit.

Facts

7. The allegations contained in Paragraph 7 do not set forth a claim for relief or aver facts in support of a claim to which a response is required.

8. The allegations contained in Paragraph 8 do not set forth a claim for relief or aver facts in support of a claim to which a response is required.

9. The allegations contained in Paragraph 9 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. With respect to the information

contained at the website cited in footnote 1, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

10. The allegations contained in Paragraph 10 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, deny. With respect to the information contained at the website cited in footnote 2, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

11. The allegations contained in Paragraph 11 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, deny. With respect to the information contained at the website cited in footnote 3, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

12. The allegations contained in Paragraph 10 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, deny. With respect to the information contained at the websites cited in footnotes 4 and 5, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

13. The allegations contained in Paragraph 13 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, deny. With respect to the information contained at the website cited in footnote 6, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

14. The allegations contained in Paragraph 14 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, deny. With respect to the information contained at the website cited in footnote 7, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

15. The allegations contained in Paragraph 15 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, Defendant admits that on 2009, DHS released a Privacy Impact Assessment (“PIA”) pertaining to border searches. With respect to the information contained at the website cited in footnotes 8 and 9, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

16. The allegations contained in Paragraph 16 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, Defendant admits that on August 18, 2009, ICE issued Directive 10044.1, “Border Searches of Electronic Devices” (formerly numbered ICE Directive 7-6.1). With respect to the information contained at the website cited in footnotes 10 and 11, Defendant respectfully refers the Court to the website for a true and complete statement of its contents.

17. The allegations contained in this Paragraph 17 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. Defendant respectfully refers the Court to Directive 7-6.1 for a true and complete statement of its contents.

18. The allegations contained in this Paragraph do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is deemed necessary, deny.

EPIC's FOIA Request

19. Defendant admits that it received a FOIA request from Plaintiff dated June 13, 2017, and respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents.

20. Defendant admits that it received a FOIA request from Plaintiff dated June 13, 2017, and respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents.

21. Defendant admits that it received a FOIA request from Plaintiff dated June 13, 2017, and respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents.

22. Defendant admits that it acknowledged receipt of Plaintiff's FOIA request; assigned it tracking number 2017-ICFO-33419 via an e-mail dated June 20, 2017; and, in the email, granted Plaintiff's fee waiver request and denied the expedited processing request. Defendant respectfully refers the Court to the e-mail for a complete and accurate statement of its contents.

23. Defendant has no record of a July 17, 2017 FOIA request from Plaintiff regarding the denial for expedited processing in 2017-ICFO-33419; therefore, deny.

24. Admit.

EPIC's Constructive Exhaustion of Administrative Remedies

25. Defendant admits that more than 20 days have passed since ICE received Plaintiff's FOIA request.

26. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

27. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

28. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

Count I

Violation of FOIA: Failure to Comply With Statutory Deadlines¹

32. Defendant incorporates by reference its responses to Paragraphs 1 through 28 above.

33. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

34. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

Count II

Violation of FOIA: Unlawful Withholding of Agency Records

35. Defendant incorporates by reference its responses to Paragraphs 1 through 28 above.

36. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

37. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

¹ At this point, the consecutive paragraph numbers of Plaintiff's Complaint skip paragraphs 29-31 and continue at paragraph 32. Defendant's responses will mirror the numbers used by Plaintiff in its Complaint.

38. Defendant incorporates by reference its responses to Paragraphs 1 through 28 above.

39. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, deny.

Requested Relief

The remaining paragraph constitutes a prayer for relief to which no answer is required. To the extent a response is deemed required, Defendant denies that Plaintiffs are entitled to the relief requested, or to any relief whatsoever.

Each and every allegation not heretofore expressly admitted is denied.

WHEREFORE, having fully answered, Defendant prays that:

1. This Court enter judgment for Defendant and dismiss this action with prejudice; and
2. Defendant be granted such further relief as the Court may deem just and proper.

Dated: June 21, 2018

Respectfully Submitted,

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