

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

ELECTRONIC PRIVACY)
INFORMATION CENTER,)
)
Plaintiff,)
)
v.)
)
UNITED STATES)
DEPARTMENT OF JUSTICE,)
)
Defendant.)
_____)

Case No. 1:13-cv-01961-KBJ

ANSWER

Defendant the United States Department of Justice (“DOJ”), by and through its undersigned counsel, answers plaintiff’s First Amended Complaint upon information and belief as follows:

FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The information that defendant has withheld, or will withhold, in response to plaintiff’s FOIA request is, or will be, properly withheld under exemptions to FOIA. *See* 5 U.S.C § 552(b).

THIRD DEFENSE

Defendant has exercised due diligence in processing plaintiff’s FOIA request and exceptional circumstances exist that necessitate additional time for the components of defendant to complete their processing of the FOIA request. *See* 5 U.S.C. § 552(a)(6)(c).

FOURTH DEFENSE

This Court lacks subject matter jurisdiction over some or all of plaintiff's claims at this time.

FIFTH DEFENSE

Using the same numbering system as the Complaint, defendant responds to the numbered paragraphs as follows:

1. This paragraph contains plaintiff's characterization of this action, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

2. This paragraph contains plaintiff's characterization of this action, not allegations of fact, to which no response is required.

3. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies except to admit the third sentence.

4. Defendant lacks knowledge or information sufficient to admit or deny the contents of this paragraph.

5. The first sentence of this paragraph contains conclusions of law, not allegations of fact, to which no response is required. Admits the second sentence.

6. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers the Court to the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. §§ 1801 *et seq.*, for a full and accurate statement of its contents.

7. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers

the Court to FISA and to the cited Senate Report, S. Rep. No. 95-604(I) (1977), 1977 WL 370363, for a full and accurate statement of their contents.

8. This paragraph contains conclusions of law based on a quotation from FISA, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers the Court to FISA for a full and accurate statement of its contents. *See, e.g.*, 50 U.S.C. § 1843.

9. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers the Court to FISA for a full and accurate statement of its contents. *See also* 18 U.S.C. § 3127(3) (defining “pen register” as used in Chapter 206 of Title 18, Part II, United States Code).

10. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers the Court to FISA for a full and accurate statement of its contents. *See also* 18 U.S.C. § 3127(4) (defining “trap and trace device” as used in Chapter 206 of Title 18, Part II, United States Code).

11. This paragraph is vague, and on that ground no response is required. This paragraph also appears to contain conclusions of law based on plaintiff’s interpretation of FISA, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers the Court to FISA for a full and accurate statement of its contents. *See, e.g.*, 50 U.S.C. § 1843. *See also* 18 U.S.C. § 3121 *et seq.*

12. This paragraph is vague, and on that ground no response is required. To the extent a response is deemed necessary, defendant denies except to admit that the bulk collection of Internet metadata was transitioned to the authority of FISA in July 2004 and was collected pursuant to section 402 of FISA; and to further admit that in December 2011, the United States

decided not to seek reauthorization of the bulk collection of Internet metadata from the Foreign Intelligence Surveillance Court.

13. This paragraph contains conclusions of law and plaintiff's characterization of FISA, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers the Court to FISA for a full and accurate statement of its contents. *See, e.g.*, 50 U.S.C. § 1846.

14. Admits, and further avers that the United States has released to the public Foreign Intelligence Surveillance Court opinions which discuss Pen Register/Trap and Trace devices and which were themselves provided to the referenced Congressional committees pursuant to 50 U.S.C. § 1871.

15. Paragraphs 1-14 above are hereby incorporated by reference as if set forth fully herein.

16. Defendant lacks knowledge or information sufficient to admit or deny the contents of this paragraph. Defendant avers that its National Security Division ("NSD"), Freedom of Information Act staff received plaintiff's FOIA request that is the subject of plaintiff's Complaint on October 18, 2013.

17. Defendant lacks knowledge or information sufficient to admit or deny the contents of this paragraph. Defendant avers that its NSD, Freedom of Information Act staff received plaintiff's FOIA request that is the subject of plaintiff's Complaint on October 18, 2013.

18. This paragraph contains plaintiff's characterization of its underlying FOIA request. Defendant denies except to respectfully refer the Court to plaintiff's FOIA request, attached as Exhibit A to plaintiff's Motion for Preliminary Injunction (ECF No. 3), for a full and accurate statement of its contents.

19. This paragraph contains plaintiff's characterization of its underlying FOIA request. Defendant denies except to respectfully refer the Court to plaintiff's FOIA request, attached as Exhibit A to plaintiff's Motion for Preliminary Injunction (ECF No. 3), for a full and accurate statement of its contents.

20. This paragraph contains plaintiff's characterization of its underlying FOIA request. Defendant denies except to respectfully refer the Court to plaintiff's FOIA request, attached as Exhibit A to plaintiff's Motion for Preliminary Injunction (ECF No. 3), for a full and accurate statement of its contents.

21. This paragraph contains plaintiff's characterization of its underlying FOIA request. Defendant denies except to respectfully refer the Court to plaintiff's FOIA request, attached as Exhibit A to plaintiff's Motion for Preliminary Injunction (ECF No. 3), for a full and accurate statement of its contents.

22. Admits. Defendant respectfully refers the Court to the cited letter itself, attached as Exhibit B to plaintiff's Motion for Preliminary Injunction (ECF No. 3), for a full and accurate statement of its contents.

23. Admits. Defendant respectfully refers the Court to the cited letter itself, attached as Exhibit C to plaintiff's Motion for Preliminary Injunction (ECF No. 3), for a full and accurate statement of its contents.

24. Admits. Defendant respectfully refers the Court to the cited letter itself, attached as Exhibit C to plaintiff's Motion for Preliminary Injunction (ECF No. 3), for a full and accurate statement of its contents.

25. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, defendant respectfully refers

the Court to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for a full and accurate statement of its contents.

26. Denies.

27. Paragraphs 1-26 above are hereby incorporated by reference as if set forth fully herein.

28. Denies except to admit that its NSD-Freedom of Information Act staff received plaintiff's cited FOIA request on October 18, 2013, and granted plaintiff's request for expedited processing on November 5, 2013.

29. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

30. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

31. Paragraphs 1-30 above are hereby incorporated by reference as if set forth fully herein.

32. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

33. This paragraph contains conclusions of law, not allegations of fact, to which no response is required.

34. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

35. Paragraphs 1-34 above are hereby incorporated by reference as if set forth fully herein.

36. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

37. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

38. This paragraph contains conclusions of law, not allegations of fact, to which no response is required.

39. This paragraph contains conclusions of law, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, denies.

The remainder of the Complaint consists of plaintiff's Prayer for Relief to which no response is required. To the extent a response is deemed necessary, defendant denies and avers that plaintiff is not entitled to any relief.

WHEREFORE, the Court should deny the Prayer for Relief, enter judgment dismissing plaintiff's Complaint and granting such further relief to defendant as this Court deems proper.

Dated January 22, 2013

Respectfully submitted,

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