

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

)	
ELECTRONIC PRIVACY INFORMATION)	
CENTER,)	
)	
Plaintiff,)	
)	Civil Action No. 18-942 (TJK)
v.)	
)	
FEDERAL TRADE COMMISSION,)	
)	
Defendant.)	

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant Federal Trade Commission (“Defendant”), by and through undersigned counsel, respectfully submits the following answer to Plaintiff’s Complaint (“Complaint”) filed on March 23, 2018. All allegations in the Complaint, including relief sought, are denied except when specifically admitted. Defendant admits, denies, or otherwise avers as follows:

SPECIFIC RESPONSES

Answering specifically each paragraph of the Complaint, using the same headings and numbering used in the Complaint, Defendant answers as follows:

COMPLAINT FOR INJUNCTIVE RELIEF¹

1. This paragraph contains Plaintiff’s characterization of this action, to which no response is required. To the extent a response is required, the allegations are denied.

2. This paragraph contains Plaintiff’s characterization of this action and conclusions of law, to which no response is required. To the extent a response is required, the allegations are

¹ Where Defendant has included the headings from the Complaint it has done so merely for ease of reference. Defendant does not thereby admit the accuracy of those headings.

denied.

JURISDICTION AND VENUE

3. This paragraph contains Plaintiff's conclusions of law concerning jurisdiction, to which no response is required. To the extent a response is required, the allegations are denied.

4. This paragraph contains Plaintiff's conclusions of law concerning venue, to which no response is required. However, Defendant admits that venue is proper in this jurisdiction.

PARTIES

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

6. Defendant admits the allegations in this paragraph.

FACTS

The 2012 FTC Consent Order Against Facebook

7. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore denies them.

8. This paragraph contains Plaintiff's characterization of a self-styled "Complaint, Request for Investigation, Injunction, and Other Relief," to which no response is required. Defendant respectfully refers the Court to that document for a complete and accurate statement of its contents.

9. This paragraph contains Plaintiff's characterization of materials released by Defendant (a Preliminary Order, a Final Order, and a press release), to which no response is required. Defendant respectfully refers the Court to those materials for a complete and accurate statement of their contents.

10. This paragraph contains Plaintiff's characterization of the proposed settlement agreement between Facebook, Inc. and Defendant, to which no response is required. Defendant

respectfully refers the Court to the referenced settlement for a complete and accurate statement of its contents.

Reporting Requirements of the 2012 FTC Consent Order

11-14. These paragraphs contain Plaintiff's characterization of the 2012 FTC Consent Order, to which no response is required. Defendant respectfully refers the Court to the referenced document for a complete and accurate statement of its contents. Cambridge Analytica

15. This paragraph contains Plaintiff's characterization of a pair of press releases authored by Facebook, to which no response is required. Defendant respectfully refers the Court to the referenced documents for a complete and accurate statement of their content.

16. Defendant is without sufficient information to admit or deny Plaintiff's characterization in paragraph 16 of Cambridge Analytica's and Facebook's activities.

17. This paragraph contains Plaintiff's conclusions of law concerning violations of the 2012 FTC Consent Order, to which no response is required.

18. Defendant admits that the Consent Order required privacy assessments on the stated dates. Otherwise, this paragraph contains Plaintiff's characterization of Cambridge Analytica, to which no response is required. To the extent a response is required, the allegations are denied.

19. Defendant admits that EPIC filed a FOIA request with the FTC on the stated date and respectfully refers the Court to the referenced document for a complete and accurate statement of its contents.

20. Defendant admits that the FTC announced an investigation to determine whether Facebook violated the 2012 Consent Order on the stated date. Defendant respectfully refers the Court to the cited press release for a complete and accurate statement of its contents.

21. Defendant admits that Mark Zuckerberg testified publicly to Congress on the stated dates. Otherwise, this paragraph contains Plaintiff's characterization of the activities of lawmakers and law enforcement officials, to which no response is required.

22-23. Defendant admits the allegations in these paragraphs.

24. The allegation that "[t]here is a clear public interest in the release" of the records Plaintiff seeks is a conclusion of law to which no response is required. The FTC is without sufficient information as to form a belief as to the truth or falsity of any other allegations contained in this paragraph. As such, the FTC denies these allegations.

EPIC's FOIA Request

25-28. Defendant admits the allegations in these paragraphs, but denies that each fully describes the cited document; thus, Defendant respectfully refers the Court to the referenced document for a complete and accurate statement of its contents.

29. Defendant admits the allegations in this paragraph, but Defendant's letter reply to Plaintiff's FOIA request speaks for itself and is the best evidence of its contents; thus, Defendant respectfully refers the Court to the referenced document for a complete and accurate statement of its contents.

30. Defendant admits the allegations in this paragraph, but denies that it fully describes the cited document; thus, Defendant respectfully refers the Court to the referenced document for a complete and accurate statement of its contents.

31. Defendant admits that the referenced e-mail message did not provide "the date on which a determination is expected to be dispatched." The remaining assertions of paragraph 31 are conclusions of law, which require no response. To the extent a response is required, the assertions are denied.

32. Paragraph 32 constitutes Plaintiffs' characterizations of its actions on April 21, 2018, and no response is required. To the extent a response is required, Defendant admits that Plaintiff sought to bifurcate its FOIA request, admits to Richard Gold's and Jonathan Hill's statements as characterized by Plaintiff, and denies all other allegations.

33. Paragraph 33 constitutes Plaintiffs' characterizations of Mr. Hill's statements on April 21, 2018, and no response is required. To the extent a response is required, Defendant admits to the content of the *Frequently Requested Records: Facebook* webpage as characterized by Plaintiff, admits that Mr. Hill stated that the FTC is re-reviewing the records and reprocessing them, admits that Mr. Hill did not guarantee that the agency would continue to apply the same exemptions applied in previous productions of documents, and denies all other allegations.

34. Paragraph 34 constitutes Plaintiff's characterization of the records posted to the content of the *Frequently Requested Records: Facebook* webpage, and no response is required. To the extent a response is required, Defendant admits that the agency made multiple assertions of FOIA Exemptions 3 and 4, 5 U.S.C. § 552(b)(3) and (b)(4).

35. Defendant admits that the content of the *Frequently Requested Records: Facebook* webpage is responsive to a portion of Plaintiff's request, and denies all other allegations in Paragraph 35.

36. Paragraph 36 constitutes conclusion of law and Plaintiffs' characterization of a cited case and cited statutory provisions to which no response is required. To the extent a response is required, the cited case and statutory provisions speak for themselves, and Defendant denies all remaining allegations.

37. Defendant admits the allegations in this paragraph.

EPIC's Constructive Exhaustion of Administrative Remedies

38. Defendant admits that Plaintiff filed its Complaint 32 days after the FTC received its FOIA Request.

39-40. Defendant denies the allegations in these paragraphs.

Count I

Violation of FOIA: Failure to Comply with Statutory Deadlines

41. Paragraph 41 of the complaint purports to repeat and incorporate paragraphs 1-35. Defendant answers those paragraphs above.

42-43. Defendant denies the allegations in these paragraphs.

Count II

Violation of FOIA: Unlawful Withholding of Agency Records

44. Paragraph 44 of the complaint purports to repeat and incorporate paragraphs 1-35. Defendant answers those paragraphs above.

45-46. Defendant denies the allegations in this paragraph.

47. The assertions of paragraph 47 are conclusions of law, which require no response. To the extent a response is required, the assertions are denied.

Requested Relief

The remainder of the Complaint consists of Plaintiff's prayer for relief, to which no response is required. To the extent that a response is deemed necessary, Defendant denies that Plaintiff is entitled to any of the relief requested in this Section, or to any relief whatsoever.

FIRST DEFENSE

The Complaint should be dismissed in whole or in part for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

The information requested in Plaintiff's Freedom of Information Act ("FOIA") request is exempt in whole or in part under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

THIRD DEFENSE

The Court lacks subject matter jurisdiction over any requested relief that exceeds the relief authorized by the FOIA, 5 U.S.C. § 552.

FOURTH DEFENSE

1. The Court lacks jurisdiction over Plaintiff's claim that the FTC failed to process its requests because those claims are moot. Even where, as here, an agency grants expedited status, the FOIA does not permit requesters to "bifurcate" requests into unilaterally prioritized components. The FTC has responded to the FOIA request at issue in this case, and continues to process responsive records. Moreover, because Defendant has already "conduct[ed] a reasonable search for all responsive records ... take[n] all reasonable steps to release nonexempt records," and has already agreed "to disclose to Plaintiff all responsive, non-exempt records ... without the assessment of search fees," Defendant has provided almost all of the requested relief.

2. To the extent Plaintiff challenges the sufficiency of the FTC's response to the FOIA request at issue in this case, Plaintiff failed to exhaust its administrative remedies.

3. Plaintiff is not a prevailing party and is not entitled to attorney's fees.

Defendant reserves the right to raise any other affirmative defense that may later become evident.

WHEREFORE, Defendant having fully answered, requests that Plaintiff's Complaint be dismissed, that costs be assessed against Plaintiff, and that Defendant be awarded any other relief deemed just and proper.

Dated: May 24, 2018

Respectfully Submitted,

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