

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ELECTRONIC PRIVACY)
INFORMATION CENTER)
1718 Connecticut Avenue, N.W.)
Suite 200)
Washington, DC 2009,)
)
Plaintiff,)
)
v.	Civil No. 15-cv-00289 CKK)
)
DEPARTMENT OF HOMELAND SECURITY)
Washington, DC 20528,)
)
Defendant.)
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DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, the Department of Homeland Security ("DHS" or "the Department"), by and through its undersigned counsel, hereby answers the Complaint as follows.

FIRST DEFENSE

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

SECOND DEFENSE

In response to the specifically-enumerated paragraphs, as set forth in the Complaint, defendant admits, denies and otherwise avers as follows:

1. This paragraph in part contains plaintiff's characterization of this action, to which no response is

required. To the extent a response is required, defendant admits that this is an action brought under the Freedom of Information Act ("FOIA") and that plaintiff seeks the relief specified therein. Defendant admits that plaintiff requested agency records through a letter dated October 20, 2014, which defendant received on February 6, 2015.

2. First sentence: This sentence contains plaintiff's characterization of this action, to which no response is required. To the extent a response is required, defendant denies. Second sentence: Aver that plaintiff's FOIA request is the best evidence of its content. Third sentence: This sentence contains plaintiff's characterization of this action, to which no response is required. To the extent a response is required, defendant denies.

Jurisdiction and Venue

3. This paragraph sets forth plaintiff's legal conclusions, to which no response is required.

PARTIES

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of plaintiff's allegations in paragraph 4, with the exception of the allegations in the last sentence, which consist of plaintiff's characterization of a court decision, to which no response is required because it constitutes a legal conclusion.

5. Admit.

FACTS

6. This paragraph contains plaintiff's characterization of the Department's Privacy Impact Assessment Update for the Future Attribute Screening Technology (FAST)/Passive Methods for Precision Behavioral Screening. Defendant avers that the referenced Privacy Impact Assessment Update is the best evidence of its contents.

7. Deny.

8. This paragraph contains plaintiff's characterization of the Department's Privacy Impact Assessment Update for the Future Attribute Screening Technology (FAST)/Passive Methods for Precision Behavioral Screening. Defendant admits that the plaintiff in part has accurately listed that FAST collected video images, audio recordings, cardiovascular signals, electrodermal activity and respiratory measurements, but denies plaintiff's characterization that FAST collected information to include pheromones. Defendant respectfully refers the Court to the referenced Privacy Impact Assessment Update for a full and accurate description of its contents.

9. This paragraph contains plaintiff's characterization of the Department's Privacy Impact Assessment for the Future Attribute Screening Technology (FAST)Project. Defendant denies plaintiff's characterization of this document. Defendant

respectfully refers the Court to the referenced Privacy Impact Assessment for a full and accurate description of its contents.

10. Deny.

11. Admit to the first clause of the sentence; deny the second clause of the sentence.

12. Deny.

13. This paragraph contains plaintiff's characterization of a May 27, 2011 news publication along with quoted excerpts. With regards to the first quote, defendant admits that plaintiff accurately quoted the article but denies that plaintiff accurately characterized that DHS provided that quote to the author of the article. With regards to the second quote, defendant admits that plaintiff accurately quoted the article. Defendant respectfully refers the Court to the referenced May 27, 2011 news publication for a full and accurate description of its contents.

14. Deny.

15. This paragraph contains plaintiff's characterization of a news article published April 2, 2013. Defendant avers that the referenced article is the best evidence of its contents.

16. Deny.

17. Deny.

18. Plaintiff sets forth a legal conclusion, to which no response is required; if a response is deemed required, deny.

EPIC's FOIA Request

19. Defendant incorporates by reference its responses to paragraphs 1-18 above.

20. Deny, except to admit that defendant received a FOIA request from plaintiff dated October 20, 2014.

21. Deny.

22. Admit.

23. Admit.

24. Admit that plaintiff sought a waiver of fees but deny as a conclusion of law that EPIC's request qualifies for a fee waiver under the FOIA.

25. This sentence sets forth plaintiff's legal conclusions, to which no response is required; if a response is deemed required, deny.

26. Admit that defendant and plaintiff spoke via telephone regarding EPIC's request. Deny that the call took place on February 24, 2014. The phone call took place on February 24, 2015.

27. Deny.

EPIC has Constructively Exhausted its Administrative Remedies

28. Defendant incorporates by reference its responses to paragraphs 1-27 above.

29. Deny.

30. This sentence sets forth plaintiff's legal conclusions, to which no response is required; if a response is deemed required, deny.

31. This sentence sets forth plaintiff's legal conclusions, to which no response is required; if a response is deemed required, deny.

32. This sentence sets forth plaintiff's legal conclusions, to which no response is required; if a response is deemed required, deny.

Count I

Violation of FOIA: Failure to Comply with Statutory Deadlines

33. Defendant incorporates by reference its responses to paragraphs 1-33 above.

34. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

35. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

Count II

Violation of FOIA: Unlawful Withholding of Agency Records

36. Defendant incorporates by reference its responses to paragraphs 1-35 above.

37. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny, except to admit that no responsive documents have been produced to plaintiff.

38. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

39. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

40. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

Count III

Violation of FOIA: Failure to Grant News Media Fee Status

41. Defendant incorporates by reference its responses to paragraphs 1-40 above.

42. Admit.

43. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

44. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

45. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

Count IV

Violation of FOIA: Failure to Grant a Fee Waiver

46. Defendant incorporates by reference its response to paragraphs 1-45 above.

47. Deny.

48. Deny.

49. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

50. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

51. This paragraph contains a legal conclusion to which no response is required. To the extent a response is deemed required, deny.

Requested Relief

The remainder of the Complaint is a prayer for relief to which no answer is required, but insofar as an answer is deemed required, defendant denies that plaintiff is entitled to the requested relief or any relief whatsoever.

Each and every allegation not heretofore expressly admitted
or denied is denied.

Respectfully submitted,

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