

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

ELECTRONIC PRIVACY INFORMATION
CENTER

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 16-1402 (ABJ)

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, U.S. Department of Justice (DOJ), by and through undersigned counsel, hereby answers Plaintiff Electronic Privacy Information Center's ("EPIC") Complaint as follows:

1. Paragraph 1 of the Complaint merely characterizes Plaintiff's lawsuit under the Freedom of Information Act (FOIA) and contains legal conclusions to which no response is required. To the extent a response is deemed required, Defendant denies the allegations, except to admit that Plaintiff's lawsuit was filed pursuant to FOIA, 5 U.S.C. § 552.

2. Paragraph 2 characterizes Plaintiff's lawsuit as one brought under FOIA. To the extent a response is deemed required, Defendant denies the allegations, except to admit that Plaintiff's lawsuit was filed pursuant to FOIA.

JURISDICTION AND VENUE

3. This paragraph contains jurisdictional allegations, not averments of fact for which an answer is required. To the extent an answer is deemed required, Defendant admits

that this Court has subject matter jurisdiction over a proper action under FOIA, 5 U.S.C. § 552(a)(4)(B). The Defendant admits that this Court has personal jurisdiction over Defendant DOJ.

4. This paragraph contains allegations regarding the venue of this action, not averments of fact for which an answer is required. To the extent an answer is deemed required, Defendant admits that venue would be proper in this district under 5 U.S.C. § 552(a)(4)(B) for a proper FOIA action.

PARTIES

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

6. Defendant admits the allegations in this paragraph.

FACTS¹

7. Defendant admits the allegations in this paragraph.

8. Defendant admits the allegations in this paragraph.

9. Defendant admits that the Office of the Inspector General (OIG) describes its findings and recommendations in reports. This Paragraph characterizes the cited website, which speaks for itself. Defendant refers the Court to that website as best evidence and for accurate information. To the extent that this Paragraph mischaracterizes the cited website, Defendant denies the allegations.

¹ Where Defendant has included the headings from the Complaint in this answer, it has done so merely for ease of reference. By including those headings, Defendant does not admit the truth or accuracy of those headings.

10. This paragraph contains statements of opinion, rather than factual averments, to which no response is required. To the extent that an answer may be deemed required, Defendant admits that OIG reports are routinely published, and Defendant avers further that the OIG's mission includes enhancing accountability and transparency within the DOJ.

11. This Paragraph characterizes the cited report, which speaks for itself. Defendant refers the Court to that the report as best evidence and for accurate information. To the extent that this Paragraph mischaracterizes the cited report, Defendant denies the allegations.

12. This Paragraph characterizes the cited Congressional hearing, which speaks for itself. Defendant refers the Court to that hearing transcript as best evidence and for accurate information. To the extent that this Paragraph mischaracterizes the hearing, Defendant denies the allegations.

13. Defendant admits the allegations in this paragraph.

14. This paragraph contains statements of opinion, rather than factual averments, to which no response is required. To the extent that an answer may be deemed required, Defendant avers that the current OIG practice is generally to publish reports in full. However, when OIG reports containing, for example, national security information protected from disclosure by executive order, or law enforcement sensitive information protected from disclosure to safeguard the public, the reports generally are issued in full to DOJ leadership and members of Congress, and redacted versions of such reports are often published. Defendant avers further that it was a past practice of the OIG to publish executive summaries of audits conducted of DOJ grant recipients. The OIG changed that practice in 2010, and

since 2010 OIG has published in full its audit reports of DOJ grant recipients. Defendant finally avers that in regard to OIG audit reports of grant recipients from before 2010, the OIG practice is to review and publish full versions of those reports for which only an executive summary was previously published upon OIG's receipt of a request for any such report.

EPIC's FOIA Request

15. Defendant admits that the OIG received a FOIA request from Plaintiff dated November 4, 2015.

16. Defendant admits the allegations in this paragraph, but respectfully refers the Court to the cited document for a full, fair, and accurate account of its contents.

17. Defendant admits that EPIC's request sought "news media" status, but respectfully refers the Court to the cited document for a full, fair, and accurate account of its contents.

18. Defendant admits that EPIC's request sought a waiver of all duplication fees, but respectfully refers the Court to the cited document for a full, fair, and accurate account of its contents.

19. Defendant admits the allegations in this paragraph, but respectfully refers the Court to the cited document for a full, fair, and accurate account of its contents.

20. Defendant admits that the OIG's acknowledgement letter did not address EPIC's request for "news media" status, and that such letter contained standard language relating to fees that may be charged. Defendant respectfully refers the Court to the cited document for a full, fair, and accurate account of its contents.

21. Defendant is without sufficient information to admit or deny the allegations of this paragraph and, therefore, denies the allegations. Defendant avers that it is the routine practice of the OIG to respond to status inquiry phone calls by informing requesters that it processes FOIA requests in chronological order by date of receipt and complexity, and that the OIG works diligently to process each request as quickly as possible.

22. Defendant admits on July 5, 2016, when Plaintiff filed its complaint, OIG had not made a determination in regard to Plaintiff's FOIA request. However, Defendant avers in the normal course of processing FOIA requests in chronological order by date of receipt and complexity, the OIG sent a response letter to the Plaintiff on November 17, 2015, acknowledging Plaintiff's FOIA request and informing Plaintiff of how the request would be processed. Defendant further avers that on August 26, 2016, the OIG sent a partial response letter accompanied by 51 pages from 17 reports deemed responsive to Plaintiff's FOIA request.

23. Under 5 U.S.C. § 552(a)(6)(A)(i) the method for calculating the number of days for FOIA processing purposes is specifically described. Defendant is unable to determine the basis for the alleged number of days EPIC's request has been pending and, therefore, denies the allegations.

24. This paragraph contains legal conclusions, rather than factual averments, to which no response is required. To the extent that an answer may be deemed required, Defendant denies the allegation.

25. This paragraph contains legal conclusions, rather than factual averments, to which no response is required. To the extent that an answer may be deemed required, Defendant denies the allegation.

26. This paragraph contains legal conclusions, rather than factual averments, to which no response is required.

COUNT 1

27. Defendant hereby incorporates the above responses to paragraphs 1 through 26.

28. This paragraph contains conclusions of law, rather than factual allegations, to which no response is required. To the extent that a response may be deemed required, Defendant admits on July 5, 2016, when Plaintiff filed its complaint, OIG had not made a determination in regard to Plaintiff's FOIA request. However, Defendant avers in the normal course of processing FOIA requests in chronological order by date of receipt and complexity, the OIG sent a response letter to the Plaintiff on November 17, 2015, acknowledging Plaintiff's FOIA request and informing Plaintiff of how the request would be processed. Defendant further avers that on August 26, 2016, the OIG sent a partial response letter accompanied by 51 pages from 17 reports deemed responsive to Plaintiff's FOIA request. In the August 26, 2016 response letter Defendant further informed Plaintiff that other potentially responsive records continued to be reviewed; cited applicable exemptions to the production of records; and informed Plaintiff that it may appeal its response to the request. Defendant respectfully refers the Court to the cited documents for a full, fair and accurate account of their content. The OIG continues to review responsive records and is processing these records in anticipation of potential release to Plaintiff.

29. This paragraph contains conclusions of law, rather than factual allegations, to which no response is required.

COUNT 2

30. Defendant hereby incorporates the above responses to paragraphs 1 through 26.

31. Defendant denies the allegation in this paragraph.

32. This paragraph contains conclusions of law, rather than factual allegations, to which no response is required.

33. Defendant denies that Plaintiff is entitled to any relief.

Requested Relief

The paragraph following paragraph 33 contains Plaintiff's prayer for relief to which no response is required. To the extent that a response may be required, Defendant denies that Plaintiff is entitled to the relief requested or to any other relief in this action.

Defendant denies any and all allegations contained in the Complaint not expressly admitted by the Defendant herein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

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

SECOND DEFENSE

Plaintiff is not entitled to an award of attorney's fees in this action.

THIRD DEFENSE

Some or all of the Defendant's records are exempt from access under the applicable provisions of the Privacy Act.

FOURTH DEFENSE

Some or all of the Defendant's records are exempt from disclosure under the applicable exemptions of the Freedom of Information Act.

FIFTH DEFENSE

To the extent that Plaintiff has not timely pursued necessary appeals under the Defendant's regulations, it has failed to exhaust administrative remedies.

September 8, 2016

Respectfully submitted,
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