

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
CENTER FOR DEMOCRACY AND)	
TECHNOLOGY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 21-0134 (CKK)
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY, et al.,)	
)	
Defendants.)	
<hr/>)	

ANSWER

Defendants United States Department of Homeland Security (“DHS”), United States Customs and Border Protection (“CBP”) and United States Citizenship and Immigration Services (“USCIS”) respectfully answer plaintiff Center for Democracy and Technology’s complaint (the “Complaint”), ECF No. 1, in this Freedom of Information Act (“FOIA”) case as follows:

The first unnumbered paragraph contains Plaintiff’s characterization of itself, to which no response is required.

1. Paragraph 1 contains Plaintiff’s characterization of itself, this action, the relief it seeks and its FOIA requests, to which no response is required. The FOIA requests speak for themselves and are the best evidence of their contents. To the extent any response is required, denied.

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2. To the extent the last sentence of this paragraph purports to characterize statements made by Defendant DHS, the cited source speaks for itself and is the best evidence of its contents.

3. Paragraph 3 contains Plaintiff's characterization of why it made these FOIA requests and this action, to which no response is required. To the extent any response is required, denied.

4. Paragraph 4 consists of Plaintiff's conclusions of law, to which no response is required. To the extent a response is required, Defendants admit that this Court has subject matter jurisdiction and that venue can be found in this judicial district.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.

6. Defendant DHS admits only that it is a federal agency within the meaning of 5 U.S.C. § 552(f). DHS avers that its FOIA operations are decentralized and that DHS has not received a FOIA request from Plaintiff that is the subject of this action.

7. Defendant CBP admits that it is a component of DHS and a federal agency within the meaning of 5 U.S.C. § 552(f). The remainder of paragraph 7 consists of Plaintiff's conclusions of law, to which no response is required.

8. Defendant USCIS admits that it is a component of DHS and a federal agency within the meaning of 5 U.S.C. § 552(f). The remainder of paragraph 8 consists of Plaintiff's conclusions of law, to which no response is required.

9-10. Paragraphs 9-10 contain Plaintiff's characterization of the FOIA, to which no response is required. The FOIA speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the FOIA for a complete and accurate statement of its contents.

11. Defendant DHS admits that on February 1, 2011, it issued a System of Records Notice for a system of records titled, "Department of Homeland Security Office of Operations

Coordinating and Planning—004 Publicly Available Social Media Monitoring and Situational Awareness Initiative System of Records.” The remainder of paragraph 11 contains Plaintiff’s characterization of that Notice, to which no response is required. That Notice speaks for itself and is the best evidence of its contents. Defendant DHS respectfully refers the Court to 76 Fed. Reg. 5603 (2011) for a complete and accurate statement of its contents.

12. Paragraph 12 contains allegations that are immaterial to this action, to which no response is required.

13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

14. Admitted that Plaintiff submitted a FOIA request to Defendant CBP on August 14, 2019, that a copy of that request is included in Exhibit A to the Complaint and that Defendant CBP acknowledged this request as CBP-2019-076482. The remainder of paragraph 14 contains Plaintiff’s characterization of this FOIA request, to which no response is required. Plaintiff’s request speaks for itself and is the best evidence of its contents. Defendant CBP respectfully refers the Court to the referenced request for a complete and accurate statement of its contents.

15. Admitted that Plaintiff submitted a second FOIA request to Defendant CBP on September 10, 2019, that a copy of that request is included in Exhibit B to the Complaint and that Defendant CBP acknowledged this request as CBP-2019-083584. The remainder of paragraph 15 contains Plaintiff’s characterization of this FOIA request, to which no response is required. That request speaks for itself and is the best evidence of its contents. Defendant CBP respectfully refers the Court to the referenced request for a complete and accurate statement of its contents.

16. Admitted Plaintiff submitted a FOIA request to Defendant USCIS on August 27, 2019, that a copy of that request is included in Exhibit C to the Complaint and that Defendant USCIS acknowledged the request on September 12, 2019, and assigned it control number COW2019501245. The remainder of paragraph 16 contains Plaintiff's characterization of this FOIA request, to which no response is required. That request speaks for itself and is the best evidence of its contents. Defendant USCIS respectfully refers the Court to the referenced request for a complete and accurate statement of its contents.

17. Admitted.

18. Defendants USCIS and CBP admit that no release of records has been made to date. The remainder of paragraph 18 consists of Plaintiff's conclusions of law, to which no response is required; to the extent a response is required, denied.

19. Paragraph 19 consists of Plaintiff's conclusions of law, to which no response is required.

20. Defendants repeat and restate each and every response heretofore made with the same force and effect as if the same were set forth fully herein.

21. Denied that Plaintiff submitted to Defendant DHS any of the FOIA requests that are the subject of this case. The remainder of paragraph 21 contains Plaintiff's characterization of its FOIA requests, to which no response is required. The FOIA requests speak for themselves and are the best evidence of their contents. Defendants respectfully refer the Court to those requests for a complete and accurate statement of their contents.

22. Denied as to DHS. Admitted that Defendants USCIS and CBP have not produced any responsive records to date. The remainder of paragraph 22 consists of Plaintiff's conclusions of law, to which no response is required; to the extent a response is required, denied.

23. Paragraph 23 consists of Plaintiff's conclusions of law, to which no response is required; to the extent a response is required, denied. Defendants currently lack knowledge or information sufficient to form a belief as to the truth of whether there is a legal basis, such as any applicable FOIA exemption(s), to withhold any records responsive to these requests.

24. Paragraph 24 consists of Plaintiff's conclusions of law, to which no response is required. To the extent a response is required, denied.

25. Paragraph 25 consists of Plaintiff's conclusions of law and requests for relief, to which no response is required. To the extent a response is required, denied.

The remainder of the Complaint consists of Plaintiff's requests for relief, to which no response is required. To the extent a response is required, Defendants deny that Plaintiff is entitled to the relief requested.

* * *

Defendants hereby deny each and every allegation in the Complaint not expressly admitted or qualified above.

DEFENSE

Defendants reserve their right to amend, alter and supplement the defense contained in this Answer as the facts and circumstances giving rise to the Complaint become known to defendants through the course of the litigation.

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

Dated: March 11, 2021

Respectfully submitted,

CHANNING D. PHILLIPS, D.C. Bar #415793
Acting United States Attorney

BRIAN P. HUDAK
Acting Chief, Civil Division

By: /s/ Marsha W. Yee
MARSHA W. YEE
Assistant United States Attorney
Civil Division
United States Attorney's Office
555 4th Street, N.W.
Washington, D.C. 20530
Telephone: (202) 252-2539
Email: Marsha.Yee@usdoj.gov

Counsel for Defendants