

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT,

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY, *et al.*,

Defendants.

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Civil Action No. 23-1395 (RC)

ANSWER

Defendants, Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”), U.S. Customs and Border Protection (“CBP”), and U.S. Citizenship and Immigration Services (“USCIS”) (collectively “Defendants”), hereby answer Plaintiff’s Complaint, ECF No. 1. Defendants deny each allegation of the Complaint not expressly admitted in its Answer and admit, deny, or otherwise respond to the numbered paragraphs of the Complaint as follows:

1. The allegations contained in Paragraph 1 consist of Plaintiff’s characterizations of this action to which no response is required. To the extent a response is required, Defendants admit only that Plaintiff purports to bring this action pursuant to the Freedom of Information Act (“FOIA”) and Declaratory Judgment Act and deny any remaining allegations.

JURISDICTION AND VENUE¹

2. The allegations contained in Paragraph 2 consist of legal conclusions to which no

¹ For ease of reference, Defendants refer to Plaintiff’s headings and titles, but to the extent those headings could be construed to contain factual allegations, those allegations are denied.

response is required. To the extent a response is required, Defendants admit that this Court has jurisdiction subject to the terms and conditions of FOIA and pursuant to 5 U.S.C. § 552(a)(4)(B).

3. The allegations contained in Paragraph 3 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants admit that venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B).

4. The allegations contained in Paragraph 4 consist of legal conclusions, to which no response is required. To the extent any response is required, Defendants deny the allegations.

PARTIES

5. Defendants lack sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 5.

6. Defendant DHS admits that it is a federal agency within the meaning of 5 U.S.C. § 552(f)(1) and that the DHS Headquarters' Privacy Office receives and processes FOIA requests for the following DHS Headquarters Offices, the Office of the Executive Secretary; the Science and Technology Directorate; the Management Directorate; the Office of Strategy, Policy, and Plans; the Office of Operations Coordination; Office of Partnership and Engagement; Privacy Office; Center for Prevention Programs and Partnerships; Office of the General Counsel; Office of Legislative Affairs; Office of Public Affairs; Office of the Citizenship and Immigration Services Ombudsman; Office of the Immigration Detention Ombudsman; and Office of the Secretary. DHS Headquarters' Privacy Office also receives and processes FOIA requests on behalf of one DHS component, the Cybersecurity and Infrastructure Security Agency. Defendant DHS further admits that, based on the language of the request, it may maintain possession, custody, and control over some records that may be relevant to Plaintiff's request, to the extent that such records exist.

7. Defendant ICE admits that it is a component of DHS, headquartered in Washington, DC. Defendant ICE further admits that, based on the language of the request, it may maintain possession, custody, and control over some records that may be relevant to Plaintiff's request, to the extent that such records exist.

8. Defendant CBP admits that it is a component of DHS, headquartered in Washington, DC. Defendant CBP further admits that, based on the language of the request, it may maintain possession, custody, and control over some records that may be relevant to Plaintiff's request, to the extent that such records exist.

9. Defendant USCIS admits that it is a component of DHS, headquartered in Washington, DC. Defendant USCIS further admits that, based on the language of the request, it may maintain possession, custody, and control over some records that may be relevant to Plaintiff's request, to the extent that such records exist.

STATEMENT OF FACTS

10. Defendants DHS, ICE, CBP, and USCIS admit that Plaintiff submitted a FOIA Request to DHS dated September 30, 2019. The Request speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the Request and deny the allegations to the extent they are inconsistent with the Request.

11. The allegations contained in Paragraph 11 purport to characterize the Request which speaks for itself and is the best evidence of its contents. Defendant DHS respectfully refers the Court to the Request and denies the allegations to the extent they are inconsistent with the Request.

12. The allegations contained in Paragraph 12 purport to characterize the Request which speaks for itself and is the best evidence of its contents. Defendant ICE respectfully refers

the Court to the Request and denies the allegations to the extent they are inconsistent with the Request.

13. The allegations contained in Paragraph 13 purport to characterize the Request which speaks for itself and is the best evidence of its contents. Defendant CBP respectfully refers the Court to the Request and denies the allegations to the extent they are inconsistent with the Request.

14. The allegations contained in Paragraph 14 purport to characterize the Request which speaks for itself and is the best evidence of its contents. Defendant USCIS respectfully refers the Court to the Request and denies the allegations to the extent they are inconsistent with the Request.

15. The allegations contained in Paragraph 15 purport to characterize the Request which speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the Request and deny the allegations to the extent they are inconsistent with the Request.

16. Defendant CBP admits the allegations contained in Paragraph 16.

17. Defendant DHS admits the allegations contained in Paragraph 17, to the extent that DHS assigned tracking number 202-HQFO-00012 to Plaintiff's FOIA Request. Defendant denies the remaining allegations and avers that it assigned a tracking number to Plaintiff's FOIA request on October 9, 2019.

18. The allegations contained in Paragraph 18 purport to characterize a March 22, 2023, message from American Oversight to DHS which speaks for itself and is the best evidence of its contents. Defendant DHS respectfully refers the Court to the March 22, 2023, DHS response and denies the allegations to the extent they are inconsistent with the message.

19. The allegations contained in Paragraph 19 purport to characterize a March 22, 2023, message from American Oversight to DHS which speaks for itself and is the best evidence of its contents. Defendant DHS respectfully refers the Court to the March 22, 2023, DHS response and denies the allegations to the extent they are inconsistent with the message.

20. The allegations contained in Paragraph 20 purport to characterize DHS's March 22, 2023, acknowledgement which speaks for itself and is the best evidence of its contents. Defendant DHS respectfully refers the Court to DHS's March 22, 2023, acknowledgement and denies the allegations to the extent they are inconsistent with the March 22, 2023, acknowledgement.

21. Defendants DHS and CBP admit the allegations contained in Paragraph 21.

22. Defendants ICE and USCIS admit the allegations contained in Paragraph 22.

Exhaustion of Administrative Remedies

29. The allegations contained in Paragraph 29 consist of legal conclusions to which no response is required.²

30. The allegations contained in Paragraph 30 consist of legal conclusions to which no response is required.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records

23. Defendants incorporate their responses to the foregoing paragraphs as if set forth fully herein.

24. The allegations contained in Paragraph 24 consist of legal conclusions to which no response is required.

² Defendants note that Plaintiff has misnumbered paragraphs 29 and 30. For ease of reference, Defendants have followed Plaintiff's paragraph numberings.

25. The allegations contained in Paragraph 25 consist of legal conclusions to which no response is required.

26. The allegations contained in Paragraph 26 consist of legal conclusions to which no response is required.

27. The allegations contained in Paragraph 27 consist of legal conclusions to which no response is required.

28. The allegations contained in Paragraph 28 consist of legal conclusions to which no response is required.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

29. Defendants incorporate their responses to the foregoing paragraphs as if set forth fully herein.

30. The allegations contained in Paragraph 30 consist of legal conclusions to which no response is required.

31. The allegations contained in Paragraph 31 consist of legal conclusions to which no response is required.

32. The allegations contained in Paragraph 32 consist of legal conclusions to which no response is required.

33. The allegations contained in Paragraph 33 consist of legal conclusions to which no response is required.

34. The allegations contained in Paragraph 34 consist of legal conclusions to which no response is required.

35. The allegations contained in Paragraph 35 consist of legal conclusions to which no response is required.

REQUESTED RELIEF

The remaining portions of the Complaint contain Plaintiff's request or prayer for relief to which no response is required. To the extent that a response is required, Defendants deny that Plaintiff is entitled to the relief requested or to any relief whatsoever.

DEFENSES

Defendants alleges the following additional defenses to the Complaint. In asserting these defenses, Defendants do not assume the burden to establish any fact or proposition where that burden is properly imposed upon Plaintiff. Defendants reserve the right to amend, alter, and supplement the defenses contained in this Answer as facts and circumstances giving rise to this Complaint become known to Defendants through the course of this litigation.

FIRST DEFENSE

This Court lacks subject matter jurisdiction over any of Plaintiff's requests for relief that exceed the relief authorized by FOIA.

SECOND DEFENSE

Plaintiff is not entitled to compel the production of any record or portion of any record protected from disclosure by one or more of the exclusions or exemptions to the FOIA or the Privacy Act, 5 U.S.C. § 552a.

THIRD DEFENSE

Plaintiff is neither eligible for nor entitled to attorney's fees or costs in this matter.

FOURTH DEFENSE

Defendants' actions or inactions did not violate the FOIA or any other statutory or regulatory provision.

FIFTH DEFENSE

Defendants have not improperly withheld records requested by Plaintiff under FOIA.

Dated: July 26, 2023
Washington D.C.

Respectfully submitted,

MATTHEW M. GRAVES,
D.C. Bar # 481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

By: /s/ Dedra S. Curteman
DEDRA S. CURTEMAN
IL Bar #6279766
Assistant United States Attorney
601 D St. N.W.
Washington, D.C. 20530
Telephone: (202) 252-2550
dedra.curteman@usdoj.gov

Counsel for Defendants