

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

)
AMERICAN IMMIGRATION COUNCIL,)
)
 Plaintiff,)
)
 v.) Civil Action No. 16-1050 (RJL)
)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY, *et al.*,)
)
 Defendants.)
)

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants, through counsel, the United States Attorney for the District of Columbia, herein answers the Complaint for Declaratory and Injunctive Relief (“Complaint”) as follows:

In answer to the numbered paragraphs of the Complaint, Defendants aver, object, and answer as follows:

INTRODUCTION

1. This paragraph contains a statement of the case to which an answer is not required. To the extent that an answer is deemed required, Defendants deny the allegations of this paragraph.
2. Defendants admit that U.S. Customs and Border Protection (“CBP”) is the largest law enforcement agency in the United States. Defendants further admit that the United States Border Patrol (“USBP”) is an organization within CBP, and that the USBP employed more than 20,000 agents in the 2015 fiscal year. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 2 and, therefore, deny same.

3. Upon information and belief, Defendants admit that Plaintiff published a report in May 2014 entitled: *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*. Defendants lack sufficient information to admit or deny the remaining allegations contained in paragraph 3 and, therefore, deny same.
4. Defendants lack sufficient information to admit or deny the allegations in paragraph 4 and, therefore, deny same.
5. Defendants admit that, on or about October 2, 2015, Plaintiff electronically filed a Freedom of Information Act (“FOIA”) request with CBP, seeking documentation and information regarding CBP’s complaint process and the actions taken by CBP in response to complaints against CBP’s agents and officers. Defendants lack sufficient information to admit or deny the allegations of this paragraph with respect to the Plaintiff’s motives for submitting a follow up FOIA request and, therefore, deny same.
6. Defendants admit that, on July 8, 2016, CBP provided responsive documents to Plaintiff’s October 2, 2015 FOIA request. To the extent this paragraph contains conclusions of law concerning alleged violations of FOIA an answer is not required. Defendants lack sufficient information to admit or deny the remaining allegations of paragraph 6 and, therefore deny same.

JURISDICTION AND VENUE

7. This paragraph contains conclusions of law concerning jurisdiction to which an answer is not required.
8. This paragraph contains conclusions of law concerning venue to which an answer is not required.
9. This paragraph contains conclusions of law to which an answer is not required.

THE PARTIES

10. This paragraph contains conclusions of law concerning tax status to which an answer is not required. To the extent that an answer is deemed required, Defendants lack sufficient information to admit or deny the allegations of this paragraph and, therefore, deny same.
11. Defendants lack sufficient information to admit or deny the allegations of this paragraph and, therefore, deny same.
12. Defendants lack sufficient information to admit or deny the allegations of this paragraph and, therefore, deny same.
13. Defendants lack sufficient information to admit or deny the allegations of this paragraph and, therefore, deny same.
14. Defendants lack sufficient information to admit or deny the allegations of this paragraph and, therefore, deny same.
15. Defendants admit that DHS is an executive branch department of the United States government and that it is an agency within the meaning of 5 U.S.C. § 552(f).
16. Defendants admit that DHS is responsible for administering and enforcing immigration laws, among other missions.
17. Admitted.
18. Admitted.
19. Admitted.
20. Defendants aver that CBP has the authority to inspect all persons seeking to enter or seeking admission to the United States.

21. Defendants aver that CBP enforces immigration and other U.S. laws at the border, which may result in includes the detention, arrest, removal, admission of, or a determination of inadmissibility for, aliens seeking to enter or be admitted into the United States..
22. Defendants state that this allegation is a statement of legal authorities to which no response is required.
23. Defendants admit that CBP has possession and control of some responsive records, which were released July 8, 2016.

THE IMMIGRATION COUNCIL'S 2015 FOIA REQUEST

24. Defendants admit that the Immigration Council submitted a FOIA request to CBP on October 2, 2015, but aver that the request, which is attached to the Plaintiff's Complaint, is the best source of evidence as to the substance of that request.

CBP'S FAILURE TO RESPOND AS REQUIRED

25. Admitted.
26. Admitted.
27. Admitted.
28. Admitted.
29. Admitted.
30. Admitted.
31. Admitted.
32. Defendants admit that, on or about July 8, 2016, Defendants responded to Plaintiff's October 2, 2015 FOIA request. Defendants deny any remaining allegations contained in paragraph 32 of Plaintiff's Complaint.

THE IMMIGRATION COUNCIL'S ADMINISTRATIVE APPEAL

33. Defendants admit that the Immigration Council filed an administrative appeal with CBP dated January 6, 2016 regarding its 2015 FOIA Request.
34. Admitted.
35. Admitted.
36. Admitted.
37. Admitted.
38. Defendants admit that, in the four month period following January 14, 2016, Defendants did not communicate with Plaintiff. Defendants further admit that, on or about July 8, 2016, Defendants released records responsive to Plaintiff's October 2, 2015 FOIA request to Plaintiff.
39. This paragraph contains conclusions of law to which an answer is not required. To the extent a response is necessary, Defendants deny the allegations contained in paragraph 39 of Plaintiff's Complaint.
40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's Complaint.
41. This paragraph contains conclusions of law to which an answer is not required.

PLAINTIFF'S ENTITLEMENT TO A WAIVER OF PROCESSING FEES

42. Admitted.
43. Admitted.
44. Defendants lack sufficient information to admit or deny the Immigration Council's assumption. Defendants deny any remaining allegations contained in paragraph 44 of Plaintiff's Complaint.

45. This paragraph, including its subparts, constitutes a Prayer for Relief, to which a response is not required. To the extent a response is deemed required, Defendants specifically deny that Plaintiff is entitled to the relief requested or to any relief whatsoever.

FIRST CAUSE OF ACTION

Violation of Freedom of Information Act for Failure within the Time Required

46. Given that this paragraph incorporates earlier paragraphs into this section of the answer, no answer is required. Defendants incorporate the responses above herein.

47. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.

48. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.

49. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.

50. Defendants admit that, per the January 14, 2016 letter signed by Chief Shari Suzuki, Defendants informed Plaintiff that, within 20 days of January 14, 2016, CBP's FOIA Division would provide an estimate of the time required to respond to Plaintiff's October 2, 2015 FOIA request. Further answering, Defendants admit that Plaintiff was not provided an estimate of the length of time required to respond to Plaintiff's October 2, 2015 FOIA request within 20 days of January 14, 2016. To the extent this paragraph contains a conclusion of law, no answer is deemed required.

51. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.

SECOND CAUSE OF ACTION

Violation of Freedom of Information Act for Failure to Conduct a Reasonable Search and to Disclose Responsive Records

52. Given that this paragraph incorporates earlier paragraphs into this section of the answer, no answer is required. Defendants incorporate the responses above herein.
53. This paragraph contains conclusions of law to which an answer is not required.
54. Denied.
55. Denied.
56. Denied.
57. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.
58. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.

THIRD CAUSE OF ACTION

Violation of the Freedom of Information Act for Failure to Grant Plaintiff's Public Interest Fee Waiver Request

59. Given that this paragraph incorporates earlier paragraphs into this section of the answer, no answer is required. Defendants incorporate the responses above herein.
60. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.
61. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.
62. This paragraph contains a conclusion of law to which no answer is required. To the extent that a response is deemed required, denied.

PRAYER FOR RELIEF: A-F

Unnumbered Paragraphs A through F in the Complaint includes Plaintiff's prayer for relief, which do not require a response. To the extent that a response is required, Defendant denies that Plaintiff is entitled to the relief requested, including fees or costs, or to any relief whatsoever.

FIRST DEFENSE

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

SECOND DEFENSE

Plaintiff is not entitled to compel the production of records protected from disclosure by one or more of the exemptions to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

THIRD DEFENSE

Plaintiff has failed to exhaust his administrative remedies.

FOURTH DEFENSE

Defendant has, or may have, further and additional affirmative defenses that are not yet known to defendant, but which may become known through future discovery. Defendant reserves the right to later assert each and every affirmative defense.

GENERAL DENIAL

Defendant expressly denies all of the allegations in the Complaint that are not specifically admitted or otherwise qualified in this Answer.

WHEREFORE, having fully answered, Defendant respectfully prays that the Court enter judgment in Defendant's favor, for all costs incurred herein; and enter such other and further relief for Defendant as is appropriate.

August 9, 2016

Respectfully submitted,

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United States Attorney for the District of Columbia

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of August, I served a true and correct copy of the foregoing *Defendants' Answer to Plaintiff's Complaint* upon Plaintiff's counsel by first class United States mail, marked for delivery to:

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