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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, Plaintiff, vs. U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF JUSTICE, and U.S. DEPARTMENT OF STATE, Defendants.	17 Civ. 7572 (ALC) ECF Case **ANSWER TO FIRST AMENDED COMPLAINT**

Defendants the United States Department of Homeland Security ("DHS"), United States Customs and Border Protection ("CBP"), United States Citizenship and Immigration Services ("USCIS"), United States Department of Justice ("DOJ"), United States Immigration and Customs Enforcement ("ICE"), and United States Department of State ("State" and collectively with the other defendants, "Defendants"), by their attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby answer the first amended complaint of plaintiff Knight First Amendment Institute at Columbia University ("Plaintiff") upon information and belief as follows:

INTRODUCTION

1. Paragraph 1 of the first amended complaint consists of Plaintiff's characterization of this action, to which no response is required.

2. Paragraph 2 of the first amended complaint consists of Plaintiff's characterization of the basis for this action, to which no response is required. To the extent a response is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations stated therein.

3. Paragraph 3 of the first amended complaint consists of Plaintiff's characterization of the basis for this action, to which no response is required. To the extent a response is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations stated therein, and respectfully refer the Court to Executive Order 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017), for a true and complete statement of its contents.

4. Paragraph 4 of the first amended complaint consists of Plaintiff's characterization of the basis for this action, to which no response is required. To the extent a response is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations stated therein, and respectfully refer the Court to Executive Order 13,780, 82 Fed. Reg. 13,209, 13,215 (Mar. 6, 2017), for a true and complete statement of its contents.

5. Paragraph 5 of the first amended complaint consists of Plaintiff's characterization of the basis for this action, to which no response is required. To the extent a response is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations stated therein, and respectfully refer the Court to 82 Fed. Reg. 20,956, 20,957 (May 4, 2017), 82 Fed. Reg. 43,556, 43,557 (Sept. 18, 2017), for a true and complete statement of their contents.

6. Paragraph 6 of the first amended complaint consists of Plaintiff's characterization of the basis for this action, to which no response is required.

7. Admit that each Defendant received a Freedom of Information Act ("FOIA") request from Plaintiff on or about August 7, 2017. With specific regards to DOJ's Offices of Information Policy (OIP) and Public Affairs (PAO), Defendant admits that DOJ-OIP received a FOIA request from Plaintiff on or about August 7, 2017. However, Defendant avers that DOJ-PAO is not a designated point-of-contact for receiving initial FOIA requests; rather, pursuant to Department FOIA regulations, DOJ-PAO is a designated point-of-contact for the sole purpose of adjudicating requests for expedited processing of FOIA requests. *See* 28 C.F.R. §16.5(e)(2) (2017). Defendants respectfully refer the Court to those FOIA requests for a true and complete statement of their contents, attached hereto as Exhibit A.

8. ICE admits that it responded to the FOIA request on September 29, 2017, and respectfully refers the Court to the cited correspondence for a true and complete statement of their contents, attached hereto as Exhibit B.

9. ICE admits that it responded to the administrative appeal on February 6, 2018, and respectfully refers the Court to the cited correspondence for a true and complete statement of their contents, attached hereto as Exhibit C.

10. DHS, CBP, USCIS, DOJ, and State admit the allegations contained in paragraph 9 of the first amended complaint.

11. Paragraph 11 of the first amended complaint consists of Plaintiff's characterization of this action, to which no response is required.

JURISDICTION AND VENUE

12. Paragraph 12 of the first amended complaint contains statements of jurisdiction and conclusions of law to which no response is required.

13. Paragraph 13 of the first amended complaint contains statements of venue and conclusions of law to which no response is required.

PARTIES

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the first amended complaint.

15. Paragraph 15 contains Plaintiff's assertion that DHS constitutes an "agency" within the meaning of 5 U.S.C. § 552(f) and has possession and control over some or all of the requested records, which is a legal conclusion to which no response is required.

16. Paragraph 16 contains Plaintiff's assertion that DOJ constitutes an "agency" within the meaning of 5 U.S.C. § 552(f) and has possession and control over some or all of the requested records, which is a legal conclusion to which no response is required.

17. Paragraph 17 contains Plaintiff's assertion that State constitutes an "agency" within the meaning of 5 U.S.C. § 552(f) and has possession and control over some or all of the requested records, which is a legal conclusion to which no response is required.

FACTUAL ALLEGATIONS

The FOIA Request

18. DHS, CBP, USCIS, DOJ (specifically, DOJ components the Office of Legal Counsel ("DOJ-OLC") and Office of Information Policy ("DOJ-OIP")), ICE and State each admit that it received a FOIA request from Plaintiff on or about August 7, 2017.

19. Paragraph 19 of the first amended complaint consists of Plaintiff's characterization of this action, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Plaintiff's FOIA requests for a true and complete statement of their contents.

20. Paragraph 20 of the first amended complaint consists of Plaintiff's characterization of the basis for this action, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the cited statutory provisions for a true and complete statement of their contents.

21. Paragraph 21 of the first amended complaint consists of Plaintiff's characterization of the basis for this action, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the cited statutory provisions for a true and complete statement of their contents.

22. Paragraph 22 of the first amended complaint consists of Plaintiff's characterization of its FOIA requests, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Plaintiff's FOIA requests for a true and complete statement of their contents.

23. Paragraph 22 of the first amended complaint consists of Plaintiff's characterization of its FOIA requests, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Plaintiff's FOIA requests for a true and complete statement of their contents.

24. Paragraph 22 of the first amended complaint consists of Plaintiff's characterization of its FOIA requests, to which no response is required. To the extent a response

is required, Defendants respectfully refer the Court to Plaintiff's FOIA requests for a true and complete statement of their contents.

ICE Responses and Administrative Appeal

25. ICE admits that it emailed Plaintiffs on August 23, 2017, and respectfully refers the Court to that email for a true and accurate statement of its contents, attached hereto as Exhibit D.

26. ICE admits that it responded to the FOIA request on September 29, 2017, and respectfully refers the Court to the cited correspondence for a true and complete statement of their contents, attached hereto as Exhibit B.

27. ICE admits that it responded to the FOIA request on September 29, 2017, and respectfully refers the Court to the cited correspondence for a true and complete statement of their contents, attached hereto as Exhibit B.

28. Paragraph 28 of the first amended complaint contains Plaintiff's characterization of this action and interpretation of ICE's FOIA response, to which no response is required. To the extent a response is required, ICE respectfully refers the Court to the cited correspondence for a true and complete statement of its contents, attached as Exhibit D to the first amended to complaint.

29. Paragraph 29 of the first amended complaint contains Plaintiff's characterization of this action and interpretation of ICE's FOIA response, to which no response is required. To the extent a response is required, ICE respectfully refers the Court to the cited correspondence for a true and complete statement of its contents, attached as Exhibit E to the first amended to complaint.

30. Admits the allegations contained in paragraph 30 of the first amended complaint.

31. ICE admits that it responded to the FOIA request on February 6, 2018, and respectfully refers the Court to the cited correspondence for a true and complete statement of their contents, attached as Exhibit F to the first amended complaint.

32. ICE admits that it responded to the FOIA request on February 13, 2018, and respectfully refers the Court to the cited correspondence for a true and complete statement of their contents, attached as Exhibit G to the first amended complaint.

33. ICE admits that it responded to the FOIA request on March 7, 2018, and respectfully refers the Court to the cited correspondence for a true and complete statement of their contents, attached as Exhibit H to the first amended complaint.

34. ICE denies the allegations contained in paragraph 24 of the first amended complaint.

Other Agency Responses

35. DHS admits the allegations in paragraph 35 of the first amended complaint.

36. CBP sent an acknowledgement letter to the Plaintiff on or about August 15, 2017. CBP admits the remaining allegations contained in paragraph 36 of the first amended complaint.

37. USCIS admits that it emailed Plaintiff on September 8, 2017, and September 18, 2017, seeking information related to its request and noting that Plaintiff's FOIA request was designated with the USCIS control number COW2017000956. USCIS admits the remaining allegations in paragraph 37 of the first amended complaint.

38. DOJ, Office of Information Policy, admits the allegations in paragraph 38 of the first amended complaint, and avers that it advised Plaintiff, in the letter dated August 17, 2017, that Plaintiff's FOIA request was being processed on an expedited basis because DOJ-OIP was already processing similar requests which had been granted expedition.

39. DOJ, Office of Legal Counsel, admits the allegations contained in the first and third sentences of paragraph 39 of the first amended complaint. DOJ, Office of Information Policy, admits the allegations contained in the second sentence of paragraph 39 of the first amended complaint, except avers that it provided a final response to Plaintiff's appeal on September 11, 2017, via electronic email, and that the email address to which OIP's final appeal response was sent appears to have been incorrect.

40. DOJ-OIP admits that PAO has not responded directly to Plaintiff. However, DOJ-OIP avers that pursuant to Department FOIA regulations, the Director of PAO, to whom Plaintiff directed a copy of the FOIA request, is designated as a point-of-contact solely for the purpose of requesting expedited processing of a FOIA request. *See* 28 C.F.R. §16.5(e)(2) (2017). OIP previously granted Plaintiff's request for expedited processing, and informed Plaintiff of this fact in its letter to Plaintiff, dated August 17, 2017.

41. State admits the allegations contained in paragraph 41 of the first amended complaint.

CAUSES OF ACTION

42. Deny the allegations in paragraph 1, under Causes of Action, of the first amended complaint.

43. Deny the allegations in paragraph 2, under Causes of Action, of the first amended complaint.

44. Deny the allegations in paragraph 3, under Causes of Action, of the first amended complaint.

45. Deny the allegations in paragraph 4, under Causes of Action, of the first amended complaint.

46. Deny the allegations in paragraph 5, under Causes of Action, of the first amended complaint.

PRAYER FOR RELIEF

The remainder of the first amended complaint contains Plaintiffs' Prayer for Relief, to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief they seek.

DEFENSES

Any allegations not specifically admitted, denied, or otherwise answered are hereby denied. For further defenses, Defendants allege as follows:

FIRST DEFENSE

The complaint should be dismissed because Plaintiff's request calls for an unreasonably burdensome search.

SECOND DEFENSE

The Court lacks subject matter jurisdiction over this action to the extent that Plaintiff failed to exhaust administrative remedies.

THIRD DEFENSE

The first amended complaint should be dismissed to the extent that a search for responsive agency records would significantly interfere with the operation of Defendants' automated systems. *See* 5 U.S.C. § 552(a)(3)(C).

FOURTH DEFENSE

Defendants have exercised due diligence in processing Plaintiff's FOIA requests and exceptional circumstances exist that necessitate additional time for Defendants to continue their processing of the FOIA requests. *See* 5 U.S.C. § 552(a)(6)(C).

FIFTH DEFENSE

To the extent that any responsive document is exempt from disclosure under FOIA, it has been properly withheld. *See* 5 U.S.C. § 552(b).

SIXTH DEFENSE

The Court lacks subject matter jurisdiction over Plaintiff's requests for relief that exceed the relief authorized by statute under FOIA, 5 U.S.C. § 552.

SEVENTH DEFENSE

Plaintiff's requests fail, in whole or in part, to reasonably describe the requested records under 5 U.S.C. § 552(a)(3)(A).

Defendants may have additional defenses which are not known at this time but which may become known through further proceedings. Accordingly, Defendants reserve the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

WHEREFORE Defendants respectfully request that the Court: (1) dismiss the complaint with prejudice; (2) enter judgment in favor of Defendants; and (3) grant such further relief as the Court deems just and proper.

Dated: April 3, 2018
New York, New York

Respectfully submitted,

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