IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN FOR ACCOUNTABILITY, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, Defendant.	)	Civil Action No. 1:16-cv-1068 (KBJ)

DEFENDANT'S ANSWER TO AMENDED COMPLAINT

With all claims previously dismissed from this lawsuit except as to one category of Office of Legal Counsel (OLC) opinions—*i.e.*, those formal, written OLC opinions resolving inter-agency disputes pursuant to Executive Order 12,146, *see* ECF Nos. 40-41—defendant United States Department of Justice (DOJ) hereby answers plaintiff's Amended Complaint, *see* ECF No. 22, as follows:

Plaintiff's inclusion of footnotes throughout the Amended Complaint does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated "in numbered paragraphs, each limited as far as practicable to a single set of circumstances." As such, no response is required to these footnotes. To the extent a response is required, when appropriate, footnotes are discussed in the relevant numbered paragraph below.

1. This paragraph consists of plaintiff's characterization of its claims and plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied that DOJ has failed to comply with 5 U.S.C. § 552(a).

2. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have

traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

3. This paragraph consists of plaintiff's characterization of a law review article and a government document, to which no response is required. Defendant further avers that the article and document speak for themselves and respectfully refers the Court to the article and document for a full and accurate statement of their contents. The remaining allegations of this paragraph consist of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

4. This paragraph consists of plaintiff's characterization of a news article, to which no response is required. Defendant further avers that the article speaks for itself and respectfully refers the Court to the article for a full and accurate statement of its contents. The remaining allegations of this paragraph consist of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

5. This paragraph consists of plaintiff's legal conclusions, to which no response is required. Further, the purported OLC opinions listed in this paragraph do not appear to relate to the sole remaining claim in this case—*i.e.*, those formal, written OLC opinions resolving inter-agency disputes pursuant to Executive Order 12,146—and therefore no response is required. To the extent a response is required, admit that OLC has addressed a variety of different topics in its formal written opinions.

6. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that OLC has published some, but not all, of its formal written opinions; but denied that OLC's opinions constitute "secret law," and denied that OLC has not complied with 5 U.S.C. § 552(a)(2).

7. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that OLC has published approximately 1300 opinions, and aver that OLC has fully complied with § 552(a)(2).

8. This paragraph consists of plaintiff's characterization of its claims and plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied that OLC has failed to comply with 5 U.S.C. § 552(a)(2).

9. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

10. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

12. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

13. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

14. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

15. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

16. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

17. This paragraph consists of plaintiff's characterization of an Attorney General opinion, to which no response is required. Defendant further avers that the opinion speaks for itself and respectfully refers the Court to the opinion for a full and accurate statement of its contents. The remaining allegations of this paragraph consist of plaintiff's legal conclusions, to which no response is required.

18. This paragraph consists of plaintiff's legal conclusions, to which no response is required.

19. This paragraph consists of plaintiff's characterization of a law review article, to which no response is required. Defendant further avers that the article speaks for itself and respectfully refers the Court to the article for a full and accurate statement of its contents. The remaining allegations of this paragraph consist of plaintiff's legal conclusions, to which no response is required.

20. This paragraph consists of plaintiff's characterization of a government website, to which no response is required. Defendant further avers that the website speaks for itself and respectfully refers the Court to the website for a full and accurate statement of its contents. The remaining allegations of this paragraph consist of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

21. This paragraph consists of plaintiff's characterization of a government document, to which no response is required. Defendant further avers that the document speaks for itself and respectfully refers the Court to the document for a full and accurate statement of its contents. The remaining allegations of this paragraph consist of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

22. This paragraph consists of plaintiff's characterization of a government document, to which no response is required. Defendant further avers that the document speaks for itself and respectfully refers the Court to the document for a full and accurate statement of its contents.

23. This paragraph consists of plaintiff's characterization of a government document, to which no response is required. Defendant further avers that the document speaks for itself and respectfully refers the Court to the document for a full and accurate statement of its contents.

24. This paragraph consists of plaintiff's characterization of a government document, to which no response is required. Defendant further avers that the document speaks for itself and respectfully refers the Court to the document for a full and accurate statement of its contents.

25. This paragraph consists of plaintiff's characterization of a government document, to which no response is required. Defendant further avers that the document speaks for itself and respectfully refers the Court to the document for a full and accurate statement of its contents.

26. This paragraph consists of plaintiff's characterization of a law review article, to which no response is required. Defendant further avers that the article speaks for itself and respectfully refers the Court to the article for a full and accurate statement of its contents. The remaining allegations of this paragraph consist of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

27. This paragraph consists of plaintiff's characterization of a law review article, to which no response is required. Defendant further avers that the article speaks for itself and respectfully refers the Court to the article for a full and accurate statement of its contents.

28. This paragraph consists of plaintiff's characterization of a law review article, to which no response is required. Defendant further avers that the article speaks for itself and

respectfully refers the Court to the article for a full and accurate statement of its contents. Footnote 25 likewise consists of plaintiff's characterization of law review articles, to which no response is required. Defendant further avers that the articles speak for themselves and respectfully refers the Court to the articles for a full and accurate statement of their contents. The remaining allegations of footnote 25 consist of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

29. This paragraph consists of plaintiff's legal conclusions and characterization of unspecified OLC opinions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

30. This paragraph consists of characterization of an OLC opinion, to which no response is required. Defendant further avers that the OLC opinion speaks for itself and respectfully refers the Court to the opinion for a full and accurate statement of its contents. The remainder of this paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but

aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

31. This paragraph consists of plaintiff's characterization of law review articles, to which no response is required. Defendant further avers that the articles speak for themselves and respectfully refers the Court to the articles for a full and accurate statement of their contents. The remainder of this paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

32. This paragraph and footnote 30 consist of plaintiff's characterization of a purported statement and a government document, to which no response is required. Defendant further avers that the statement and document speak for themselves and respectfully refers the Court to the statement and the document for a full and accurate statement of their contents. The remainder of this paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

33. This paragraph consists of plaintiff's characterization of law review articles, to which no response is required. Defendant further avers that the articles speak for themselves and

respectfully refers the Court to the articles for a full and accurate statement of their contents. The remainder of this paragraph consists of plaintiff's characterization of its claim, to which no response is required.

34. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied that OLC's opinions fall within the scope of FOIA's affirmative-disclosure provisions. Admit that executive branch agencies have traditionally treated OLC's legal opinions as "binding" in the sense that an opinion's conclusion is customarily treated as an authoritative interpretation of the law within the Executive Branch, but aver that this feature (or any other feature) of OLC's advice does not change the privileged, pre-decisional nature of such legal advice.

35. This paragraph consists of plaintiff's characterization of an Executive Order, a government document, and a law review article, to which no response is required. Defendant further avers that these materials speak for themselves and respectfully refers the Court to the materials for a full and accurate statement of their contents. The remainder of this paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied that OLC "adjudicates" disputes between agencies.

36. This paragraph consists of plaintiff's characterization of an OLC opinion, to which no response is required. Defendant further avers that the OLC opinion speaks for itself and respectfully refers the Court to the OLC opinion for a full and accurate statement of its contents. The remainder of this paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied that the OLC opinion was issued as part of OLC "adjudicating" a dispute between agencies.

37. This paragraph consists of plaintiff's characterization of an OLC opinion, to which no response is required. Defendant further avers that the OLC opinion speaks for itself and respectfully refers the Court to the OLC opinion for a full and accurate statement of its contents. The remainder of this paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied that the OLC opinion was issued as part of OLC "adjudicating" a dispute between agencies.

38. This paragraph and footnote 36 consist of plaintiff's characterization of an OLC opinion, to which no response is required. Defendant further avers that the OLC opinion speaks for itself and respectfully refers the Court to the OLC opinion for a full and accurate statement of its contents. The remainder of this paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied that OLC "adjudicates" disputes between agencies, and denied that OLC opinions fall within 5 U.S.C. § 552(a)(2)(A) or § 552(a)(2)(B).

39-49. These paragraphs relate to claims that have now been dismissed, and therefore no response is required.

50. Admit that OLC received a letter from plaintiff dated March 22, 2016. The remaining allegations of this paragraph consist of plaintiff's characterization of correspondence from plaintiff to OLC, to which no response is required. Defendant further avers that the correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents.

51. Admit that OLC responded to plaintiff in a letter dated May 26, 2016. The remaining allegations of this paragraph consist of plaintiff's characterization of correspondence from OLC to plaintiff, to which no response is required. Defendant further avers that the

correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents.

52. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

53. Admit that plaintiff filed this lawsuit on June 8, 2016, and that the district court previously granted the Government's motion to dismiss on October 6, 2017. The remainder of this paragraph consists of plaintiff's legal conclusions and characterizations of pleadings and decisions in this case, to which no response is required. Defendant further avers that the pleadings and decisions speak for themselves and respectfully refers the Court to them for a full and accurate statement of their contents.

54. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

55. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

56. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

57. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

58. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

59. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

60. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

61. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

62. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

63. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

64. This paragraph consists of plaintiff's legal conclusions, to which no response is required. To the extent a response is required, denied.

The remaining paragraphs of the Amended Complaint consist of plaintiff's legal conclusions and plaintiff's requested relief, to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations contained in the remaining paragraphs of the Complaint and further avers that plaintiff is not entitled to any relief.

Defendant hereby denies all allegations in plaintiff's Amended Complaint not expressly admitted or denied.

WHEREFORE, having fully answered plaintiff's Amended Complaint, Defendant asserts that plaintiff is not entitled to the relief requested, or to any relief whatsoever, and requests that this action be dismissed in its entirety with prejudice and that Defendant be given such other relief as this Court deems proper, including costs and disbursements.

Dated: September 25, 2020

Respectfully Submitted,

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