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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiff,

-v-

CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF THE ARMY, DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, and OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,

Defendants.

22 Civ. 1542 (CM)

ANSWER

Defendants the Central Intelligence Agency ("CIA"), Department of the Army, Department of Justice ("DOJ"), National Security Agency ("NSA"), and Office of the Director of National Intelligence ("ODNI," and together with the other defendant agencies, "defendants" or the "government"), by their attorney, Damian Williams, United States Attorney for the Southern District of New York, hereby answer the complaint under the Freedom of Information Act ("FOIA") of plaintiff The Knight First Amendment Institute at Columbia University, upon information and belief as follows. The government specifically denies each and every allegation

of the Complaint not otherwise expressly admitted, qualified, or denied in this Answer. Moreover, to the extent that the Complaint refers to or quotes from external documents, statutes, or other sources, the government may refer to such materials for their accurate and complete contents; however, the government's references are not intended to be, and should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiffs; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action. The government answers as follows:

INTRODUCTION[1]

1. Paragraph 1 contains legal conclusions and a description of this action, to which no response is required. To the extent a response is required, the government denies.

2. The allegations of paragraph 2 are vague and ambiguous and purport to allege facts that are not material to this FOIA action, and thus no response is required.

3. The allegations of paragraph 3 are vague and ambiguous and purport to allege facts that are not material to this FOIA action, and thus no response is required.

4. The allegations of paragraph 4 appear to refer to press or other accounts of events that are not cited in the complaint; such press accounts are the best evidence of their own contents.

5. The allegations of the first sentence of paragraph 5 describe plaintiff's reasons for bringing this action, as to which no response is required, except the government admits that plaintiff made FOIA requests to each defendant agency on February 2 or 3, 2022. As to the second sentence, the government admits that plaintiff sought expedited processing, but denies knowledge or information sufficient to form a belief as to plaintiff's motives for doing so.

[1] Headings from the Complaint are included only for ease of reference. By including them, the government does not admit the accuracy of the headings.

6. The allegations of paragraph 6 are legal conclusions or describe plaintiff's motive for bringing this action, as to which no response is required, except defendants aver that plaintiff brought suit before the applicable statutory period under FOIA, 5 U.S.C. §§ 552(a)(6)(A) & (C), had expired.

JURISDICTION AND VENUE

7. Paragraph 7 consists of legal conclusions regarding jurisdiction, to which no response is required.

8. Paragraph 8 consists of legal conclusions regarding venue, to which no response is required.

PARTIES

9. The government denies knowledge or information sufficient to form a belief about the truth or falsity of the allegations of the first two sentences of paragraph 9. The last sentence of paragraph 9 consists of a legal conclusion, as to which no response is required.

10. The government admits the allegations of the first sentence of paragraph 10. The second sentence consists of a legal conclusion, as to which no response is required.

11. The government admits the allegations of the first sentence of paragraph 11. The second sentence consists of a legal conclusion, which does not require a response.

12. The government admits the allegations of the first sentence of paragraph 12. The second sentence consists of legal conclusions, as to which no response is required.

13. The government admits the allegations of the first sentence of paragraph 13. The second sentence consists of a legal conclusion, as to which no responses required.

14. The government admits the allegations of the first sentence of paragraph 14. The second sentence consists of a legal conclusion, as to which no response is required.

FACTUAL ALLEGATIONS

15. The allegations of the first three sentences of paragraph 15 are vague and ambiguous and purport to allege facts that are not material to this FOIA action, and thus no response is required. The remainder of paragraph 15 consists of quotations from, and paraphrasing of, a document, which is the best evidence of its own contents.

16. The allegations of paragraph 16 appear to refer to press or other accounts of events that are not cited in the complaint; such press accounts are the best evidence of their own contents. Further, the allegations in this paragraph purport to allege facts that are not material to this FOIA action, and no response is required.

17. The allegations of the first sentence are vague and ambiguous and allege facts concerning the administration's purported motivations for actions, which not material to this FOIA action, and no response is required. The government admits the allegations of the second and third sentences.

18. The allegations of the first sentence are vague and ambiguous and do not require a response. The second sentence refers to press or other accounts of events; such press accounts are the best evidence of their own contents. The allegations of the third and fourth sentences appear to refer to press or other accounts of events that are not cited in the complaint; such press accounts are the best evidence of their own contents. Further, the allegations in these sentences purport to allege facts that are not material to this FOIA action, and no response is required.

19. Paragraph 19 consists of opinions and characterizations of the reasons plaintiff made the Requests, not allegations of fact, as to which no response is required.

THE FOIA REQUEST

20. The government admits only that plaintiff sent the requests to the defendant agencies on February 2 and 3, 2022. Otherwise, paragraph 20 (including its subparagraphs) consists of quotation or paraphrase from a document, which is the best evidence of its own contents.

21. The government admits only that plaintiff sought expedited processing. To the extent that the allegations in paragraph 21 purport to indicate that plaintiff was entitled to expedited processing, such allegations consist of legal conclusions, to which no response is required.

22. The government admits only that plaintiff sought a waiver of document search, review, and duplication fees on certain grounds. To the extent that the allegations in paragraph 22 purport to indicate that plaintiff was entitled to a waiver of such fees, such allegations consist of legal conclusions, to which no response is required.

AGENCY RESPONSES

23. Construing "to date" to mean the date the complaint was filed (February 24, 2022), the government admits the allegations of paragraph 23.

24. The government admits that DOJ's Office of Information Policy acknowledged receipt of Plaintiff's February 2, 2022 FOIA request by letter dated February 7, 2022. The government respectfully refers the Court to the cited document for a full and accurate statement of its contents, and denies any allegations inconsistent with that document.

25. Because the Secret Service is not a defendant in this action, its response to the request is irrelevant to the case, and thus the defendant agencies are not required to respond.

26. The government admits that DEA acknowledged receipt of plaintiff's February 2, 2022 FOIA request by letter dated February 10, 2022. The government respectfully refers the Court to the cited document for a full and accurate statement of its contents, and denies any allegations inconsistent with that document.

27. The government admits that DOJ's Criminal Division acknowledged receipt of Plaintiff's February 2, 2022 FOIA request by letter dated February 11, 2022. The government respectfully refers the Court to the cited document for a full and accurate statement of its contents, and denies any allegations inconsistent with that document.

28. The government admits that ODNI acknowledged receipt of Plaintiff's February 2, 2022 FOIA request by letter dated February 14, 2022. The government respectfully refers the Court to the cited document for a full and accurate statement of its contents, and denies any allegations inconsistent with that document.

29. The government admits that NSA acknowledged receipt of Plaintiff's February 2, 2022 FOIA request by letter dated February 17, 2022. The government respectfully refers the Court to the cited document for a full and accurate statement of its contents, and denies any allegations inconsistent with that document.

30. The government admits that, as of the date the complaint was filed, DOJ's National Security Division had not acknowledged receipt of plaintiff's FOIA request or made a determination on plaintiff's request for expedited processing. The government denies that, as of the date the complaint was filed, CIA had not acknowledged the request or responded to plaintiff's requests for expedited processing and a fee waiver, and avers that by letter dated February 24, 2022—the date the complaint was filed—CIA acknowledged receipt of plaintiff's request, denied expedited processing, and stated it would waive fees.

31. The government admits that no defendant agency has, as of the date of this answer, released any responsive records, but denies the allegations of the final clause, and avers that several agencies have made a complete response to plaintiff's request.

CAUSES OF ACTION

1. The allegation of paragraph 1 of the "Causes of Action" section consists of a legal conclusion as to which no response is required. To the extent a response is required, the government denies this allegation.

2. The allegation of paragraph 2 of the "Causes of Action" section consists of a legal conclusion. To the extent a response is required, the government denies this allegation.

3. The allegation of paragraph 3 of the "Causes of Action" section consists of a legal conclusion as to which no response is required. To the extent a response is required, the government denies this allegation.

4. The allegation of paragraph 4 of the "Causes of Action" section consists of a legal conclusion as to which no response is required. To the extent a response is required, the government denies this allegation.

PRAYER FOR RELIEF

The paragraphs marked A through D contain plaintiff's prayer for relief, to which no response is required. To the extent a response is deemed required, the government denies that plaintiff is entitled to the relief it seeks or to any relief.

DEFENSES

For further defenses, the government alleges as follows:

FIRST DEFENSE

Plaintiff's complaint should be dismissed in whole or in part to the extent it fails to state a claim on which relief may be granted.

SECOND DEFENSE

Some or all of the requested records or information may be exempt from disclosure, in whole or in part, under 5 U.S.C. § 552(b).

THIRD DEFENSE

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

FOURTH DEFENSE

Plaintiffs are not entitled to declaratory relief. *See* 5 U.S.C. § 552(a)(4)(B).

FIFTH DEFENSE

Plaintiffs are not entitled to attorney fees under 5 U.S.C. § 552(a)(4)(E).

SIXTH DEFENSE

The case should be dismissed to the extent venue is improper in this Court under 5 U.S.C. § 552(a)(4)(B).

SEVENTH DEFENSE

Plaintiffs 'FOIA request is improper to the extent it does not reasonably describe the records requested. 5 U.S.C. § 552(a)(3)(A).

EIGHTH DEFENSE

This litigation was brought before plaintiff exhausted its administrative remedies. 5 U.S.C. §§ 552(a)(6)(A), (C).

The government may have additional defenses which are not known at this time but which may become known through further proceedings. Accordingly, the government reserves 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 the government respectfully requests that the Court: (1) dismiss the complaint with prejudice; (2) enter judgment in favor of the government; and (3) grant such further relief as the Court deems just and proper.

Dated: April 14, 2022
New York, New York

Respectfully submitted,

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