

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION
CENTER,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 18-1268 (KBJ)

ANSWER

Defendant U.S. Department of Homeland Security (“DHS”), through undersigned counsel, hereby answers Plaintiff Electronic Privacy Information Center’s (“EPIC”) Complaint as follows:

First Defense

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

Second Defense

Certain information responsive to the FOIA request is, or may be, exempt from disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

Third Defense

Defendant denies each and every allegation contained in the Complaint not expressly admitted in this Answer. Defendant respectfully requests and reserves the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known to Defendant through the course of the litigation.

Defendant's Responses to the Numbered Paragraphs

In response to the specifically enumerated paragraphs as set forth in the Complaint Defendant admits, denies, and otherwise avers as follows:

1. Paragraph 1 contains Plaintiff's characterization of this action to which no response is required.

2. Paragraph 2 contains Plaintiff's characterization of this action to which no response is required.

Jurisdiction and Venue

3. Paragraph 3 consists of conclusions of law regarding subject matter jurisdiction to which no response is required.

4. Paragraph 4 consists of conclusions of law regarding venue to which no response is required.

Parties

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore denies them on that basis.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies them on that basis.

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and therefore denies them on that basis.

8. Paragraph 8 contains Plaintiff's characterization of other lawsuits that EPIC filed to which no response is required. To the extent that a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8, and therefore denies them on that basis.

9. Paragraph 9 contains Plaintiff's characterization of another lawsuit that EPIC filed to which no response is required. To the extent that a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and therefore denies them on that basis.

10. Defendant admits that DHS is a federal agency headquartered in Washington, D.C. The remaining allegations in Paragraph 10 contain conclusions of law to which no response is required.

Facts

The DHS's Obligation to Conduct and Publish Privacy Impact Assessments

11. The first sentence of Paragraph 11 contains Plaintiff's conclusion of law to which no response is required. The second sentence of this paragraph purports to characterize or summarize information contained in DHS guidance. To the extent a response is required, DHS respectfully refers the Court to the *DHS PIA Official Guidance* for a full and accurate statement of its contents.

12. The allegations in Paragraph 12 purport to characterize or summarize information contained in DHS guidance. To the extent a response is required, DHS respectfully refers the Court to *Privacy Compliance: Privacy Impact Assessment (PIA)* (Mar. 30, 2017), <https://www.dhs.gov/compliance> for a full and accurate statement of its contents.

13.–15. The allegations in Paragraphs 13 to 15 purport to summarize the OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002. To the extent that a response to these paragraphs is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of the contents.

16. The allegations in Paragraph 16 purport to summarize information contained in DHS guidance. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of the contents.

17. Defendant denies the allegation in the first sentence of Paragraph 17, but admits that a request for information was published on April 3, 2018. The second sentence purports to characterize or summarize information contained in the *Draft Statement of Work for Media Monitoring Services*. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of its contents.

18.–20. The allegations in Paragraphs 18 to 20 purport to characterize or summarize information contained in the *Draft Statement of Work for Media Monitoring Services*. To the extent that a response to these paragraphs is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of the contents.

21. The allegations in Paragraph 21 purport to summarize information contained in news articles. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of the contents.

22. The allegations in Paragraph 22 purport to characterize or summarize information contained in the *Draft Statement of Work for Media Monitoring Services*. To the extent that a response to these paragraphs is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of the contents.

23. Paragraph 23 contains Plaintiff's conclusion of law to which no response is required. To the extent a response is required, denied.

24. Paragraph 24 contains Plaintiff's conclusion of law to which no response is required. To the extent a response is required, denied.

25. Paragraph 25 contains Plaintiff's conclusion of law to which no response is required. To the extent a response is required, Defendant admits that the serviced referenced in the draft Statement of Work may include the contact information of journalists, but denies the remainder of the allegations.

26. Paragraph 26 contains Plaintiff's conclusion of law to which no response is required. To the extent a response is required, denied.

27. Paragraph 27 contains Plaintiff's conclusion of law to which no response is required. To the extent a response is required, denied.

28. Defendant admits that it has not completed a Privacy Impact Assessment for the Request for Information pertaining to the Media Monitoring Services, RNBO-18-00041 published in April 2018.

29. Defendant admits that it has not conducted a Privacy Impact Assessment for the Request for Information pertaining to the Media Monitoring Services, RNBO-18-00041, published in April 2018.

30. Defendant admits that on April 13, 2018, DHS's National Protection and Programs Directorate ("NPPD") FOIA Office received via email a FOIA request dated April 13, 2018, from EPIC. Defendant denies the remaining allegations in Paragraph 30. Defendant respectfully refers the Court to the NPPD FOIA acknowledgement email dated April 13, 2018, for a full and accurate statement of the contents. *See* Compl. Ex. 3.

31. Admitted. Defendant respectfully refers the Court to EPIC's FOIA request for a full and accurate statement of the contents. *See* Compl. Ex. 2.

32. Admitted. Defendant respectfully refers the Court to EPIC's FOIA request for a full and accurate statement of the contents. *See* Compl. Ex. 2.

33. Admitted. Defendant respectfully refers the Court to EPIC's FOIA request for a full and accurate statement of the contents. *See* Compl. Ex. 2.

34. Admitted. Defendant respectfully refers the Court to the NPPD FOIA acknowledgement email, dated April 13, 2018, for a full and accurate statement of the contents. *See* Compl. Ex. 3.

35. Defendant admits that the FOIA request at issue in this case was received by DHS NPPD on April 13, 2018. The remaining allegations in Paragraph 35 are denied.

36. Paragraph 36 sets forth Plaintiff's conclusions of law to which no response is required. To the extent a response is required, Defendant admits that as of the date the Complaint was filed DHS had not provided a final response to Plaintiff's FOIA request.

37. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of Paragraph 37, and therefore denies those allegations on that basis. The third sentence purports to summarize or characterize the Draft Statement of Work. To the extent a response is required, Defendant respectfully refers the Court to the Draft Statement of Work for a full and accurate statement of its contents.

Count I

Violation of FOIA: Failure to Comply with Statutory Deadlines

38. Defendant incorporates by reference its responses to the previous paragraphs as if fully stated herein.

39. Paragraph 39 consists of conclusions of law to which no response is required.

40. Paragraph 40 consists of conclusions of law to which no response is required.

Count II

Violation of FOIA: Unlawful Withholding of Agency Records

41. Defendant incorporates by reference its responses to the previous paragraphs as if fully stated herein.

42. Paragraph 42 consists of conclusions of law to which no response is required.

43. Paragraph 43 consists of conclusions of law to which no response is required.

44. Paragraph 44 consists of conclusions of law to which no response is required.

Count III

Violation of APA: Unlawful Agency Action

45. Defendant incorporates by reference its responses to the previous paragraphs as if fully stated herein.

46. Paragraph 46 consists of conclusions of law to which no response is required.

47. Paragraph 47 consists of conclusions of law to which no response is required.

48. The allegations in Paragraph 48 are denied in their entirety.

49. Paragraph 49 consists of conclusions of law to which no response is required.

Count IV

Violation of APA: Agency Action Unlawful Withheld

50. Defendant incorporates by reference its responses to the previous paragraphs as if fully stated herein.

51. Paragraph 51 consists of conclusions of law to which no response is required.

52. Paragraph 52 consists of conclusions of law to which no response is required.

53. The allegations in Paragraph 53 are denied in their entirety.

54. Paragraph 54 consists of conclusions of law to which no response is required.

Count V

Claim for Declaratory Relief

55. Defendant incorporates by reference its responses to the previous paragraphs as if fully stated herein.

56. Paragraph 56 consists of conclusions of law to which no response is required.

Prayer for Relief

The remaining paragraphs of the Complaint consist of Plaintiff's requested relief to which no response is required. To the extent a response is deemed required, Defendant denies that Plaintiff is entitled to the requested relief or to any relief whatsoever.

WHEREFORE, having fully answered, Defendant respectfully prays that Plaintiff's Complaint be dismissed with prejudice and judgment be entered in favor of Defendant together with such other and further relief as the Court deems appropriate.

July 11, 2018

Respectfully submitted,

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