

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

)
KNIGHT FIRST AMENDMENT INSTITUTE)
AT COLUMBIA UNIVERSITY,)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF HOMELAND)
SECURITY, et al.,)
)
Defendants.)
)

No. 1:17-cv-00548-TSC

DEFENDANTS' ANSWER

Defendants Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) hereby respond as follows to the numbered and unnumbered paragraphs and the footnotes of the Amended Complaint for Injunctive Relief (Amended Complaint), ECF No. 10:

PREAMBLE

The preamble is plaintiff Knight First Amendment Institute at Columbia University's characterization of this action, to which no response is required.

INTRODUCTION

1. This paragraph is plaintiff's characterization of this action, to which no response is required.
2. This paragraph is plaintiff's characterization of this action, to which no response is required.
3. Sentence 1 characterizes *Border Search of Electronic Devices Containing Information*, CBP Dir. No. 3340-049 (Aug. 20, 2009), Ex. A, and *Border Searches of Electronic*

Devices, ICE Dir. No. 7-6.1 (Aug. 18, 2009), Ex. B, to which the Court is respectively referred for their contents.¹ Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Sentences 2-3.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

6. Sentence 1 consists of legal conclusions, to which no response is required but, to the extent a response is required, deny. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Sentence 2. Sentence 3 and the appended citation consist of legal conclusions, to which no response is required but, to the extent a response is required, deny.

7. This paragraph characterizes a letter dated March 15, 2017, from Katherine Fallow to James V.M.L. Holzer, ECF No. 10-1 and a letter dated March 22, 2017, from Katherine Fallow to FOIA Officer/Public Liaison, Ex. C, to which the Court is respectively referred for their contents.

8. This paragraph characterizes a letter dated March 28, 2017, from ICE FOIA Office to Katherine Fallow, Ex. D, to which the Court is respectfully referred for its contents.

9. This paragraph characterizes a letter dated March 31, 2017, from Angela Washington to Katherine Fallow, Ex. E, to which the Court is respectfully referred for its contents.

10. The allegation that “ten days [are] required by FOIA, 5 U.S.C. § 552(a)(6)(E)(ii)(I)” consists of legal conclusions, to which no response is required but, to the extent a response is

¹ Except as otherwise noted, references to exhibits are to the exhibits to this answer.

required, deny. Admit that CBP had not responded to plaintiff's request for expedited processing as of the date of the Amended Complaint. Deny the other allegations contained in this paragraph.

11. Admit that no record responsive to plaintiff's request under the Freedom of Information of Information Act (FOIA), 5 U.S.C. § 552, had been produced or withheld by any defendant as of the date of the Amended Complaint. Deny the other allegations contained in this paragraph.

12. This paragraph consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

JURISDICTION AND VENUE

13. This paragraph consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

14. This paragraphs consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

PARTIES

15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Sentences 1-3. Sentence 4 consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

16. Admit Sentences 1-2. Sentence 3 consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

FACTUAL ALLEGATIONS

17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

18 n.1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this footnote.

19. This paragraph characterizes a letter dated March 28, 2017, sent on behalf of Katrina M. Pavlik-Keenan to Katherine Fallow, Ex. F, and another such letter, Ex. G, to which the Court is respectfully referred for their contents.

20. This paragraph characterizes a letter dated March 31, 2017, from Angela Washington to Katherine Fallow, Ex. E, to which the Court is respectfully referred for its contents.

21. This paragraph characterizes a letter dated March 15, 2017, from Katherine Fallow to James V.M.L. Holzer, ECF No. 10-1 and a letter dated March 22, 2017, from Katherine Fallow to FOIA Officer/Public Liaison, Ex. C, to which the Court is respectively referred for their contents.

21 n.2. This footnote characterizes Exhibit A to the Amended Complaint, ECF No. 10-1, to which the Court is respectfully referred for its contents.

22. This paragraph characterizes a letter dated March 15, 2017, from Katherine Fallow to James V.M.L. Holzer, ECF No. 10-1 and a letter dated March 22, 2017, from Katherine Fallow to FOIA Officer/Public Liaison, Ex. C, to which the Court is respectively referred for their contents.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

24. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

AGENCY RESPONSES AND ADMINISTRATIVE APPEALS

25. This paragraph characterizes an electronic communication dated March 24, 2017, from CBP to Katherine Fallow, Ex. H, to which the Court is respectfully referred for its contents.

26. This paragraph characterizes a letter dated March 28, 2017, from ICE FOIA Office to Katherine Fallow, Ex. D, to which the Court is respectfully referred for its contents.

27. This paragraph characterize a letter dated March 31, 2017, from Angela Washington to Katherine Fallow, Ex. E, to which the Court is respectfully referred for its contents.

27 n.3. This footnote characterizes an email dated March 16, 2017, from Privacy Office to Catherine E. Ahmed, Ex. I, to which the Court is respectfully referred for its contents.

28. Sentence 1 characterizes a letter dated March 31, 2017, from Angela Washington to Katherine Fallow, Ex. E, to which the Court is respectfully referred for their contents. Sentence 2 consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

29. This paragraph characterizes a letter dated March 31, 2017, from Angela Washington to Katherine Fallow, Ex. E, and a letter dated on or after April 4, 2017, from the Transportation Security Administration (TSA) to Katherine Fallow, Ex. J, to which the Court is respectfully referred for their contents

30. This paragraph characterizes a letter dated on or after April 4, 2017, from TSA to Katherine Fallow, Ex. J, to which the Court is respectfully referred for its contents.

31. Admit.

32. This paragraph consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

33. The allegations contained in Sentence 1 and the appended citation consist of legal conclusions, to which no response is required but, to the extent a response is required, deny.

Admit the allegations contained in Sentence 2. Admit that “CBP did not respond to the Knight Institute’s request for expedited processing within 10 days after the March 22, 2017 date of the Request.” The other allegations contained in Sentence 3 consist of legal conclusions, to which no response is required but, to extent a response is required, deny.

FIRST CAUSE OF ACTION – FAILURE TO GRANT EXPEDITED PROCESSING

34. Repeat and re-allege the responses to ¶¶ 1-33.

35. This paragraph consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

36. This paragraph consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

SECOND CAUSE OF ACTION – FAILURE TO PRODUCE RECORDS

37. Repeat and re-allege the responses to ¶¶ 1-36.

38. This paragraph consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

39. This paragraph consists of legal conclusions, to which no response is required but, to the extent a response is required, deny.

PRAYER FOR RELIEF

Deny that plaintiff is entitled to the requested relief or to any relief whatsoever.

No response to the internal headings of the Amended Complaint is required. To the extent a response is required, deny.

Deny every allegation of the Amended Complaint not otherwise responded to.

FOR A FIRST DEFENSE

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

FOR A SECOND DEFENSE

Plaintiff's FOIA request fails in certain respects to describe reasonably the records sought and fails in those respects to comply with FOIA or to trigger a search or production obligation.

FOR A THIRD DEFENSE

Plaintiffs' FOIA request is not enforceable to the extent it does not permit a reasonable search to be undertaken to identify and locate responsive records.

FOR A FOURTH DEFENSE

This action is moot insofar as plaintiff seeks an order compelling DHS to process plaintiff's FOIA request on an expedited basis because DHS advised plaintiff by letter dated April 27, 2017, from Kevin Tyrell to Katherine Fallow, Ex. K, that it would process plaintiff's request on an expedited basis.

Wherefore, this action should be dismissed, plaintiff should take nothing, and defendants should be awarded their costs and such other relief as may be appropriate.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

CHANNING D. PHILIPS
United States Attorney

ELIZABETH J. SHAPIRO
Deputy Director

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Senior Trial Counsel
Department of Justice, Civil Division
20 Massachusetts Ave., N.W., Room 7200
Washington, D.C. 20529
Tel: (202) 514-4469/Fax: (202) 616-8470
E-mail: david.glass@usdoj.gov
Attorneys for Defendants

Dated: May 3, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2017, I served the within answer and the exhibits to the answer on all counsel of record by filing them with the Court by means of its ECF system.

s/ David M. Glass
