

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|--------------------------|---|------------------------------|
| DEMOCRACY FORWARD |) | |
| FOUNDATION, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 17-CV-01295 |
| v. |) | |
| |) | |
| UNITED STATES DEPARTMENT |) | |
| OF COMMERCE, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

ANSWER

Defendant United States Department of Commerce hereby answers Plaintiff Democracy Forward Foundation’s Complaint for Injunctive Relief, ECF No. 1, as follows:

Jurisdiction and Venue

1. This paragraph contains Plaintiff’s allegations as to jurisdiction that raise a question of law for the Court, to which no response is required. To the extent a response may be deemed required, Defendant admits this Court has jurisdiction over proper Freedom of Information Act (FOIA) actions.

2. This paragraph contains Plaintiff’s allegations as to venue that raise a question of law for the Court, to which no response is required. To the extent a response may be deemed required, Defendant admits that venue is proper in this District for proper FOIA actions.

Parties

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

4. Defendant admits the allegations in the first sentence of this paragraph. The second sentence contains a conclusion of law, to which no response is required. To the extent a

response may be deemed required and the second sentence of this paragraph refers to the specific FOIA request that is the subject of this action, Defendant admits that it possesses some records that are responsive to Plaintiff's FOIA request.

Facts

5. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim for relief to which a response is required. To the extent a response is required, the allegations contain Plaintiff's characterization of a news article. Defendant respectfully refers the Court to that article for a full and accurate statement of its contents. However, Defendant admits that on May 9, 2017, John H. Thompson publicly announced his intent to retire from federal service, and specifically denies that Mr. Thompson announced an intent to resign.

6. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim for relief to which a response is required. To the extent a response is required, the allegations contain Plaintiff's characterization of news articles. Defendant respectfully refers the Court to those articles for a full and accurate statement of their contents. Defendant denies the characterization of Mr. Thompson's retirement from federal service as a "resignation."

7. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim for relief to which a response is required. To the extent a response is required, the allegations contain Plaintiff's characterization of news articles. Defendant respectfully refers the Court to those articles for a full and accurate statement of their contents.

8. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim for relief to which a response is required. To the extent a response is required, the allegations contain Plaintiff's characterization of a news article. Defendant respectfully refers the Court to that article for a full and accurate statement of its contents.

9. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim for relief to which a response is required. To the extent a response is required, the allegations contain Plaintiff's characterization of a news article. Defendant respectfully refers the Court to that article for a full and accurate statement of its contents.

Plaintiff's FOIA Request

10. Defendant admits that Plaintiff submitted a FOIA request to a component of Defendant. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in this paragraph.

11. Defendant admits that Plaintiff submitted a FOIA request on May 19, 2017. The remainder of the allegations contain Plaintiff's characterization of its request. Defendant respectfully refers the Court to the submitted request for a full and accurate statement of its contents.

12. Defendant admits Plaintiff sought a fee waiver. The remainder of the allegations in this paragraph consist of legal conclusions, to which no response is required.

13. The allegations in this paragraph consist of legal conclusions, to which no response is required.

14. The allegations in this paragraph consist of legal conclusions, to which no response is required.

15. The allegations in this paragraph consist of legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

16. The allegations in this paragraph consist of legal conclusions, to which no response is required.

Claim for Relief

Count 1 (Violation of FOIA, 5 U.S.C. § 552)

17. Defendant incorporates by reference the foregoing paragraphs as though fully set forth herein.

18. The allegations in this paragraph consist of legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

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

AFFIRMATIVE DEFENSES

First Defense

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

Second Defense

The information sought by Plaintiff is exempt from release under one or more exemptions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended.

Wherefore, Defendant prays that this Court dismiss the Complaint with prejudice, at Plaintiff's cost, and that the Court grant Defendant such other and further relief as the Court deems just and proper.

Dated: September 8, 2017

Respectfully submitted,

CHANNING D. PHILLIPS, D.C. Bar # 415793
United States Attorney

DANIEL VAN HORN, D.C. Bar # 924092
Chief, Civil Division

By: /s/ Daniel P. Schaefer

DANIEL P. SCHAEFER

Assistant United States Attorney

Civil Division

United States Attorney's Office

555 4th Street, N.W.

Washington, D.C. 20530

Telephone: (202) 252-2531

Email: Daniel.Schaefer@usdoj.gov

Counsel for Defendant