

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

_____)	
BAY JOURNAL MEDIA, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 17-cv-02441 (TSC)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
<i>Defendant.</i>)	
)	
_____)	

ANSWER

Defendant, the United States Environmental Protection Agency (“EPA”), hereby answers the Complaint of Bay Journal Media, Inc., (“Plaintiff”) as follows:

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 in full under one or more exemptions under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended.

THIRD DEFENSE

Plaintiff’s Freedom of Information Act (“FOIA”) request is improper and does not satisfy statutory requirements. Plaintiff’s three-part request is vague and overbroad and does not reasonably describe the records sought.

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

DEFENDANT’S RESPONSE TO THE PRELIMINARY STATEMENT

The opening paragraph of the Complaint contains Plaintiff’s characterization of this action and of the *Bay Journal*’s reputation, purpose, and past funding, to which no response is required. To the extent a response is required, defendant lacks information sufficient to admit or deny these allegations.

DEFENDANT’S RESPONSES TO THE NUMBERED PARAGRAPHS

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

JURISDICTION AND VENUE¹

1. Paragraph 1 sets forth Plaintiff’s statement of jurisdiction to which no response is required; to the extent a response is deemed required, Defendant admits that this Court has jurisdiction.

2. Paragraph 2 sets forth Plaintiff’s statement regarding venue to which no response is required; to the extent a response is deemed required, Defendant admits that this is a proper venue for FOIA claims.

3. The allegations in paragraph 3 are legal conclusions to which no response is required.

PARTIES

4. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraph 4, and therefore denies them.

¹ For ease of reference, Defendant refers to the headings listed in Plaintiff’s Complaint. To the extent that these headings may be construed to contain factual allegations, those allegations are denied.

5. Defendant admits that it is a federal agency within the meaning of 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. The second sentence of this paragraph is a legal conclusion to which no response is required; to the extent a response is deemed required, the allegation is denied.

FACTUAL ALLEGATIONS

Chesapeake Bay Program

6. The allegation in paragraph 6 are immaterial and impertinent to this action and consists of Plaintiff's characterization of generalized efforts related to the Chesapeake Bay, to which to no response is required.

7. The allegations in this paragraph consist of Plaintiff's characterization of the Chesapeake Bay Commission's creation to which no response is required; to the extent a response is deemed required, the allegations are denied.

8. The allegations in this paragraph contain Plaintiff's characterization of the initial signing and subsequent renewal of the Chesapeake Bay Agreement, allegations which are immaterial and impertinent to this action and to which no response is required; to the extent a response is deemed required, the allegations are denied to the extent they are inconsistent with the cited Agreement.

9. Defendant admits that Congress amended section 117 of the Clean Water Act ("Act") in 1987, and it respectfully refers the Court to the Act for a true and complete statement of its contents and denies anything inconsistent therewith.

10. The allegations set forth in this paragraph are legal conclusions to which no response is required; to the extent a response is required, Defendant respectfully refers the Court

to 33 U.S.C. § 1267(b)(2) for a true and complete statement of its content and denies anything inconsistent therewith.

11. The allegations set forth in this paragraph are legal conclusions to which no response is required; to the extent a response is deemed required, Defendant also respectfully refers the Court to the text of 33 U.S.C. § 1267 (b)(2) and denies anything inconsistent therewith.

12. The allegations in this paragraph contain Plaintiff's characterization of the Agency's process for awarding grants for the Chesapeake Bay Program, and Defendant respectfully refers the Court to the sources cited as the best evidence of their contents.

Defendant's Grant to Bay Journal Media, Inc. and the Termination of the Grant

13. Defendant is without knowledge or information sufficient to confirm or deny the allegations contained in the first two sentences of this paragraph and, on that basis, denies them. The final sentence in this paragraph contains Plaintiff's characterization of its grant award to which no response is required; to the extent a response is deemed necessary, Defendant admits only that Plaintiff was awarded a grant pursuant to section 117(d) of the CWA for the stated purpose, and avers that the start date of the grant was February 1, 2016. Defendant lacks information sufficient to admit or deny the allegations in Footnote 1.

14. Defendant admits the allegations in paragraph 14.

15. Paragraph 15 contains Plaintiff's characterization of correspondence, to which no response is required; to the extent a response is required, Defendant refers to the referenced correspondence for a complete and accurate statement of their contents and denies anything inconsistent therewith.

16. Defendant denies the allegation in paragraph 16 and respectfully refers the Court to the referenced correspondence for a true and accurate statement of its contents.

17. Defendant denies the allegations of Paragraph 17 and respectfully refers the Court to the referenced correspondence for a true and accurate statement of its contents.

18. Defendant denies the allegations of Paragraph 18 and respectfully refers the Court to the referenced correspondence for a true and accurate statement of its content.

19. Paragraph 19 contains Plaintiff's characterization of the Agency's grant review process to which no response is required; to the extent a response is deemed required, Defendant admits only that John Konkus is a politically appointed staff member to the Office of Public Affairs and that, in 2017, Mr. Konkus reviewed Agency grant award decisions, including the *Bay Journal* grant.

20. Defendant is without sufficient knowledge or information to admit or deny the allegation in the first clause of this paragraph, and on that basis denies it. Defendant denies the allegation in the second clause of this paragraph.

21. The allegations in this paragraph contain Plaintiff's characterization of the Chesapeake Bay Program, associated grants, and the Chesapeake Executive Council, to which no response is required. To the extent a response is required, Defendant denies the allegation and respectfully refers the Court to 33 U.S.C. § 1267(d), which speaks for itself.

22. Defendant lacks sufficient knowledge or information to admit or deny the allegation in paragraph 22, and on that basis denies it.

23. In response to the allegations in the first two sentences of this paragraph, Defendant refers to the referenced correspondence and denies anything inconsistent therewith. Defendant denies the last sentence of this paragraph.

24. Defendant admits that Senators Benjamin L. Cardin and Chris Van Hollen of Maryland wrote a letter to the Administrator regarding the *Bay Journal* grant but denies

Plaintiff's characterization of its purpose and content. Defendant respectfully refers the Court to the letter for a true and complete statement of its contents and denies anything inconsistent therewith.

25. Defendant is without sufficient knowledge or information to admit or deny the allegation of Plaintiff's intent, although it admits an administrative appeal was filed with EPA on November 20, 2017.

26. Defendant is without sufficient knowledge or information to admit or deny the allegation in this paragraph, and on that basis denies it.

Plaintiff's FOIA Request to the EPA

27. In response to paragraph 27, Defendant refers to the referenced request, attached as Exhibit A to Plaintiff's Complaint, for a complete and accurate statement of its contents and denies anything inconsistent therewith.

28. In response to paragraph 28, Defendant respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents and denies anything inconsistent therewith.

29. Defendant admits the allegation in paragraph 29.

30. Defendant admits the allegations in paragraph 30.

31. Defendant admits that it sent an email on October 31, 2017 to Plaintiff, which speaks for itself and respectfully refers the Court to the email for a complete and accurate statement of its contents.

32. In response to the allegations in this paragraph, Defendant respectfully refers the Court to the referenced correspondence and denies anything inconsistent therewith.

33. The allegations in this paragraph contain Plaintiff's characterization of its communications with Defendant concerning the FOIA request at issue in this action. Defendant admits only the dates and methods of the alleged communications and the actors involved, and it respectfully refers the Court to the cited communications for their contents and denies anything inconsistent therewith. Defendant admits that, as of the date of the filing, the referenced correspondence had not been sent to Plaintiff, but avers that it was drafting this correspondence at the time Plaintiff filed the Complaint.

34. Paragraph 34 sets forth legal conclusions to which no response is required; to the extent a response is deemed necessary, Defendant denies the allegation.

35. Paragraph 35 sets forth legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

36. Defendant is without sufficient knowledge or information to admit or deny the allegation in this paragraph, and on that basis denies it.

CLAIM FOR RELIEF

37. Paragraph 37 sets forth legal conclusions to which no response is required. To the extent a response a required, the allegations are denied.

The remainder of the Complaint sets forth Plaintiff's prayer for relief to which no response is required. To the extent a response is deemed required, Defendant denies that Plaintiff is entitled to the relief for which Plaintiff prays, or to any other relief.

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendant asserts a general denial as to those allegations contained in the Complaint that are not expressly admitted herein.

Respectfully submitted,

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