

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

DEMOCRACY FORWARD)
FOUNDATION,)
)
Plaintiff,)
v.)
)
U.S. DEPARTMENT OF)
TRANSPORTATION,)
)
Defendant.)
_____)

Case No: 17-cv-01293 (RDM)

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant United States Department of Transportation (“Defendant” or “DOT”), by and through undersigned counsel, hereby answers Plaintiff Democracy Forward Foundation’s (“Plaintiff”) Complaint brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as follows:

FIRST AFFIRMATIVE DEFENSE

To the extent that Plaintiff’s Complaint avers that Plaintiff has received no response from Defendant to its FOIA request, dated May 18, 2017, this claim is moot as Defendant responded to Plaintiff’s FOIA request on August 11, 2017, and August 31, 2017.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is not entitled to compel the production of records protected from disclosure by one or more of the exemptions to FOIA.

THIRD AFFIRMATIVE DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

Defendant has not improperly withheld any records under FOIA, 5 U.S.C. § 552.

FIFTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend this Answer to assert any other matter that constitutes an avoidance or affirmative defense under Fed. R. Civ. P. 8(c).

SIXTH AFFIRMATIVE DEFENSE

Defendant denies each and every allegation contained in the Complaint except as hereinafter may be expressly admitted.

SEVENTH AFFIRMATIVE DEFENSE

To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents in the response; however, Defendant'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.

DEFENDANT'S RESPONSES TO THE NUMBERED PARAGRAPHS

Defendant responds to the Complaint in like-numbered paragraphs as follows:

JURISDICTION AND VENUE¹

1. Paragraph 1 contains Plaintiff's conclusions of law, to which no response is required.

¹ For ease of reference, Defendant refers to Plaintiff's headings and titles, but to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

2. Paragraph 2 contains Plaintiff's conclusions of law, to which no response is required.

PARTIES

3. Paragraph 3 contains Plaintiff Democracy Forward Foundation's characterization of itself, to which no response is required. To the extent a response is deemed necessary, Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's characterization and therefore denies.
4. Admit that DOT is a federal agency and is headquartered in Washington, DC. The remainder of Paragraph 4 contains factual assertions which Defendant denies and conclusions of law, to which no response is required.

FACTS

Trump Administration Officials' Use of Encrypted and Ephemeral Messaging Apps

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies the same.
6. Paragraph 6 characterizes the content of a news article dated February 13, 2017, to which no response is required. To the extent any response is required, Plaintiff's characterization of that article is denied. Defendant further responds by referring the Court to the referenced article for a true and complete statement of its contents, and denies the allegations in this paragraph to the extent inconsistent with the content of that article.

7. Paragraph 7 characterizes the content of a news article dated February 2, 2017, to which no response is required. To the extent any response is required, Plaintiff's characterization of that article is denied. Defendant further responds by referring the Court to the referenced article for a true and complete statement of its contents, and denies the allegations in this paragraph to the extent inconsistent with the content of that article.
8. Paragraph 8 characterizes the content of three news articles, to which no response is required. To the extent any response is required, Plaintiff's characterization of those news articles is denied. Defendant further responds by referring the Court to the January 24, 2017, February 8, 2017, and February 16, 2017, news articles referenced in this paragraph for a true and complete statement of their contents, and denies the allegations in this paragraph to the extent inconsistent with the content of those articles.
9. Paragraph 9 characterizes the content of a March 15, 2017, memorandum issued by David Ferriero, the Archivist of the United States, to which no response is required. To the extent any response is required, Plaintiff's characterization of that memorandum is denied. Defendant further responds by referring the Court to the memorandum referenced in this paragraph for a true and complete statement of its contents, and denies the allegations in this paragraph to the extent inconsistent with the content of the memorandum.

9. The second Paragraph 9² characterizes the content of three news articles, to which no response is required. To the extent any response is required, Plaintiff's characterization of those news articles is denied. Defendant further responds by referring the Court to the January 13, 2017, April 11, 2017, and May 25, 2017, news articles referenced in this paragraph for a true and complete statement of their contents, and denies the allegations in this paragraph to the extent inconsistent with the content of those articles.

Plaintiff's FOIA Request

11. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained Paragraph 11. To the extent a response is deemed necessary, Defendant denies.
12. Admit that Plaintiff submitted a FOIA request dated May 18, 2015. Defendant respectfully refers the Court to the FOIA request, which speaks for itself and is the best evidence of its contents.
13. Admit that Plaintiff sought a waiver of search and duplicating fees. The remaining allegations in Paragraph 11 assert a conclusion of law in reference to 5 U.S.C. § 552, to which no response is required. Defendant respectfully refers the Court to the referenced statute for a true and complete statement of its contents.
14. Admit.
15. Paragraph 15 contains conclusions of law, to which no response is required.
16. Paragraph 16 contains conclusions of law, to which no response is required.

² Plaintiff's Complaint contains two paragraphs numbered as 9.

17. Defendant denies the allegations in Paragraph 17, and avers that Defendant responded to Plaintiff's FOIA request and produced the requested records on August 11, 2017, and August 31, 2017.
18. Paragraph 18 contains conclusions of law, to which no response is required.

CLAIM FOR RELIEF

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

19. Defendant incorporates by reference each and every response contained in the preceding paragraphs.
20. Paragraph 20 contains conclusions of law, to which no response is required. To the extent a response is deemed necessary, Defendant denies.

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 as to Defendant.

WHEREFORE, having fully answered, Defendant respectfully requests that the Complaint be dismissed with prejudice and that this Court award Defendant such other and further relief as the Court may deem just and proper.

Dated: September 8, 2017

Respectfully submitted,

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