

The Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS-WASHINGTON,

Plaintiff,

v.

UNITED STATES CUSTOMS AND
BORDER PROTECTION, UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

Case No. 2:20-cv-217-RSM

ANSWER TO PLAINTIFF’S FIRST
AMENDED COMPLAINT

COME NOW, Defendants U.S. Customs and Border Protection (“CBP”) and U.S. Department of Homeland Security (“DHS”), by and through Brian T. Moran, United States Attorney, Western District of Washington, and Michelle Lambert, Assistant United States Attorney for said District, hereby answer Plaintiff’s First Amended Complaint, Dkt. 15, dated May 1, 2020, as follows.

In response to the numbered paragraphs of the Amended Complaint, CBP¹ admits, denies, or otherwise avers as follows:

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¹ Although CBP is a component of DHS, CBP responds to this Complaint on behalf of Defendants as Plaintiff directed the FOIA request at issue to CBP.

INTRODUCTION

1
2 1. Paragraph 1 contains Plaintiff’s characterizations of their lawsuit and allegations
3 that do not set forth a Freedom of Information Act (“FOIA”) claim or aver facts in support of a
4 FOIA claim to which a response is required. To the extent that a response is deemed necessary,
5 deny, except admit that Plaintiff brings its claims pursuant to the FOIA.

6 2. The allegations in Paragraph 2 do not set forth a FOIA claim or aver facts in
7 support of a FOIA claim to which a response is required. To the extent that a response is
8 deemed necessary, deny.

9 3. The allegations in Paragraph 3 do not set forth a FOIA claim or aver facts in
10 support of a FOIA claim to which a response is required. To the extent that a response is
11 deemed necessary, deny.

12 4. The allegations in Paragraph 4 do not set forth a FOIA claim or aver facts in
13 support of a FOIA claim to which a response is required. To the extent that a response is
14 deemed necessary, deny.

15 5. CBP admits that it received a FOIA request from Plaintiff, a copy of which is
16 attached to this Answer as Exhibit A. CBP further avers that the contents of the FOIA request
17 speaks for itself and respectfully refers the Court to the request for a complete and accurate
18 statement of its contents. CBP is without knowledge or information sufficient to form a belief
19 as to the truth or falsity of the allegations in the second sentence of Paragraph 5. The last two
20 sentences of Paragraph 5 contains conclusions of law, to which no response is required. To the
21 extent that a response is deemed necessary, deny.

22 6. CBP denies that it unlawfully withholds records, and respectfully refers the
23 Court to its responses to Plaintiff’s FOIA request for a complete and accurate statement of their
24 contents. The remaining allegations of Paragraph 6 are Plaintiff’s characterization of the
25 amended complaint, to which no response is required.

JURISDICTION & VENUE

7. Paragraph 7 contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, CBP admits that this Court has jurisdiction subject to the limitations of FOIA. CBP further avers that the cited authority speaks for itself.

8. Paragraph 8 contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, CBP avers that the cited authority speaks for itself.

9. Paragraph 9 contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, CBP avers that the cited authority speaks for itself.

PARTIES

10. CBP is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10. To the extent that a response is deemed necessary, deny.

11. CBP admits that it is a federal agency within the meaning of 5 U.S.C. § 552 and 5 U.S.C. § 552a(a)(1). CBP denies the remaining allegations.

12. DHS admits that it is a federal agency within the meaning of 5 U.S.C. § 552 and 5 U.S.C. § 552a(a)(1). CBP denies the remaining allegations.

FACTUAL ALLEGATIONS

13. The allegations in Paragraph 13 do not set forth a FOIA claim or aver facts in support of a FOIA claim to which a response is required. To the extent that a response is deemed necessary, deny.

14. The allegations in Paragraph 14 do not set forth a FOIA claim or aver facts in support of a FOIA claim to which a response is required. To the extent that a response is deemed necessary, deny.

15. Deny. CBP objects to the term “directive” as vague and undefined.

1 16. Paragraph 16 contains Plaintiff’s characterization of a “purported directive,” to
2 which the Court is respectfully referred for a complete and accurate statement of its contents.
3 CBP objects to the term “directive” as vague and undefined. To the extent that a response is
4 deemed necessary, deny.

5 17. Paragraph 17 contains Plaintiff’s characterization of a “directive,” to which the
6 Court is respectfully referred for a complete and accurate statement of its contents. CBP
7 objects to the term “directive” as vague and undefined. To the extent that a response is deemed
8 necessary, deny.

9 18. Paragraph 18 contains Plaintiff’s characterization of a “directive,” to which the
10 Court is respectfully referred for a complete and accurate statement of its contents. CBP
11 objects to the term “directive” as vague and undefined. To the extent that a response is deemed
12 necessary, deny.

13 19. The allegations in Paragraph 19 do not set forth a FOIA claim or aver facts in
14 support of a FOIA claim to which a response is required. To the extent that a response is
15 deemed necessary, deny.

16 20. The allegations in Paragraph 20 do not set forth a FOIA claim or aver facts in
17 support of a FOIA claim to which a response is required. To the extent that a response is
18 deemed necessary, deny.

19 21. The allegations in Paragraph 21 do not set forth a FOIA claim or aver facts in
20 support of a FOIA claim to which a response is required. To the extent that a response is
21 deemed necessary, deny.

22 22. The allegations in Paragraph 22 do not set forth a FOIA claim or aver facts in
23 support of a FOIA claim to which a response is required. To the extent that a response is
24 deemed necessary, deny.

25 23. The allegations in Paragraph 23 do not set forth a FOIA claim or aver facts in
26 support of a FOIA claim to which a response is required. To the extent that a response is
27 deemed necessary, deny.

1 24. The allegations in Paragraph 24 do not set forth a FOIA claim or aver facts in
2 support of a FOIA claim to which a response is required. To the extent that a response is
3 deemed necessary, deny.

4 25. The first sentence in Paragraph 25 does not set forth a FOIA claim or aver facts
5 in support of a FOIA claim to which a response is required. The remaining allegations in
6 Paragraph 25 consist of Plaintiff's characterization of its FOIA request. CBP admits that it
7 received a FOIA request from Plaintiff, a copy of which is attached to this Answer as Exhibit
8 A. CBP further avers that the contents of the FOIA request speaks for itself and respectfully
9 refers the Court to the request for a complete and accurate statement of its contents. CBP
10 denies any remaining allegations in Paragraph 25.

11 26. Paragraph 26 consists of Plaintiff's characterization of its FOIA request. CBP
12 further avers that the contents of the FOIA request speaks for itself and respectfully refers the
13 Court to the request for a complete and accurate statement of its contents. CBP denies any
14 remaining allegations in Paragraph 26.

15 27. CBP admits that an email acknowledging Plaintiff's FOIA request and assigning
16 it tracking number CBP-OFO-2020-024470 was sent to Aaron Korthuis on January 9, 2020.
17 The email speaks for itself and the Court is respectfully referred to the email for a complete and
18 accurate statement of its contents. CBP is without knowledge or information sufficient to form
19 a belief as to the truth or falsity of the allegation of when Plaintiff received the email.

20 28. Paragraph 28 contains legal conclusions, to which no response is required. To
21 the extent that a response is deemed necessary, CBP avers that the FOIA statute speaks for
22 itself and denies any characterization of FOIA inconsistent with the language of the statute.
23 CBP admits that it did not respond to the request by February 7, 2020 or provide Plaintiff with
24 a request of an extension.

25 29. CBP admits the allegation in Paragraph 29 that it responded to Plaintiff's FOIA
26 request on April 15, 2020, to which the Court is respectfully referred for a complete and
27 accurate statement of its contents.

1 30. Paragraph 30 contains Plaintiff's characterization of CBP's FOIA response, to
2 which the Court is respectfully referred for a complete and accurate statement of its contents.

3 31. CBP admits the allegation in Paragraph 31 that it provided a supplemental
4 response to Plaintiff's FOIA request on April 30, 2020, to which the Court is respectfully
5 referred for a complete and accurate statement of its contents.

6 32. Paragraph 32 contains Plaintiff's characterization of CBP's FOIA responses, to
7 which the Court is respectfully referred for complete and accurate statements of their contents.

8 33. Paragraph 33 contains Plaintiff's characterization of CBP's FOIA responses, to
9 which the Court is respectfully referred for complete and accurate statements of their contents.

10 34. The allegations in Paragraph 34 consist of uncited assertions of fact which are
11 not material to a FOIA claim and to which no response is required. To the extent that a
12 response is deemed necessary, deny.

13 35. The allegations in Paragraph 35 do not set forth a FOIA claim or aver facts in
14 support of a FOIA claim to which a response is required. To the extent that a response is
15 deemed necessary, deny.

16 36. The allegations in Paragraph 36 consist of Plaintiff's characterization of a Press
17 Release that does not set forth a FOIA claim or aver facts in support of a FOIA claim to which
18 a response is required. To the extent that a response is deemed necessary, deny CBP.

19 37. The allegations in Paragraph 37 do not set forth a FOIA claim or aver facts in
20 support of a FOIA claim to which a response is required. To the extent that a response is
21 deemed necessary, deny.

22 38. The allegations in Paragraph 38 do not set forth a FOIA claim or aver facts in
23 support of a FOIA claim to which a response is required. To the extent that a response is
24 deemed necessary, CBP is without knowledge or information sufficient to form a belief as to
25 the truth or falsity of the allegations in Paragraph 38.

1 FOIA statute speaks for itself and denies any characterization of the FOIA inconsistent with the
2 language of the statute. CBP further avers that Plaintiff is not entitled to the requested relief as
3 it has provided its response to Plaintiff's FOIA request.

4 **Count II**

5 **Violation of Freedom of Information Act**
6 **(Unlawfully Withheld Agency Records)**

7 46. CBP incorporates by reference its responses contained in the preceding
8 paragraphs of this Answer as if fully set forth herein.

9 47. The allegations in Paragraph 47 consist of legal conclusions, to which no
10 response is required. To the extent that a response is deemed necessary, CBP avers that the
11 FOIA statute and CBP regulations speak for themselves and denies any wrongful withholdings.

12 48. The allegations in Paragraph 48 consist of Plaintiff's request for relief, to which
13 no response is required. To the extent that a response is deemed necessary, CBP avers that
14 Plaintiff is not entitled to the requested relief as it has provided its response to Plaintiff's FOIA
15 request.

16 **Count III**

17 **Violation of Freedom of Information Act**
18 **(Failure to Conduct Adequate Search)**

19 49. CBP incorporates by reference its responses contained in the preceding
20 paragraphs of this Answer as if fully set forth herein.

21 50. Deny.

22 51. The allegations in Paragraph 51 consist of legal conclusions, to which no
23 response is required. To the extent that a response is deemed necessary, CBP avers that the
24 FOIA statute speaks for itself and denies any characterization of the FOIA inconsistent with the
25 language of the statute.

26 52. The allegations in Paragraph 52 consist of Plaintiff's request for relief, to which
27 no response is required. To the extent that a response is deemed necessary, CBP avers that
28 Plaintiff is not entitled to the requested relief.

1 **PRAYER FOR RELIEF**

2 The remainder of Plaintiff's Complaint sets out Plaintiff's prayer for relief, to which no
3 response is required. To the extent that a response is deemed necessary, CBP avers that
4 Plaintiff is not entitled to the requested relief.

5 **GENERAL DENIAL**

6 Pursuant to Rule 8(b)(3), CBP denies all allegations in the Amended Complaint which it
7 has not otherwise specifically admitted or denied herein.

8 **DEFENSES**

- 9 1. Plaintiff has failed to state a claim upon which relief may be granted under FOIA.
- 10 2. This Court lacks jurisdiction over Plaintiff's claims to the extent that they are moot.
- 11 3. Plaintiff has not established a right to attorney's fees.
- 12 4. To the extent that the Complaint refers to or quotes from external documents or other
13 sources, CBP's answer may refer to these materials; however, CBP's references are not
14 intended to be, nor should they be construed to be, and admission that the materials cited in
15 Plaintiff's Complaint are: (a) correctly cited or quoted by Plaintiff; (b) relevant to this, or any
16 other, action; or (c) admissible in this, or any other, action.
- 17
- 18 5. CBP reserves the right to amend, supplement, and assert additional affirmative
19 defenses.

20 WHEREFORE, CBP respectfully requests that the Court dismiss all claims in the
21 Amended Complaint and grant it such other relief as may be just and appropriate.
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