

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

BENJAMIN WITTES, *et al.*,

Plaintiffs,

v.

**OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE,
Washington, DC 20511**

Defendant.

Case No. 1:20-cv-02020-CJN

DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT

Defendant, the Office of the Director of National Intelligence (“ODNI” or “Defendant”), by and through its undersigned counsel, hereby answers the numbered paragraphs of the complaint of Benjamin Wittes and Scott Anderson (“Plaintiffs”), ECF No. 1, as follows:

1. This paragraph consists of Plaintiffs’ characterization of this lawsuit to which no response is required.
2. The allegations in this paragraph consist of characterizations of news reports to which no response is required. The Court is respectfully referred to the cited news reports for a complete and accurate statement of their contents.
3. The allegations in this paragraph consist of characterizations of news reports to which no response is required. The Court is respectfully referred to the cited news reports for a complete and accurate statement of their contents.

4. The allegations in this paragraph consist of characterizations of news reports to which no response is required. The Court is respectfully referred to the cited news reports for a complete and accurate statement of their contents.

5. The allegations in this paragraph consist of characterizations of articles to which no response is required. The Court is respectfully referred to the cited articles for a complete and accurate statement of their contents.

6. The allegations contained in the second sentence are admitted. The remaining allegations in this paragraph consist of characterizations of reports to which no response is required. The Court is respectfully referred to the cited reports for a complete and accurate statement of their contents.

7. Admitted, except as to Plaintiffs' characterization that the scope of Defendant's public filings is "limited," which is denied.

8. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the first sentence. With respect to the second sentence, Defendant admits that it received two FOIA requests from Plaintiffs. The remainder of the second sentence consists of Plaintiffs' characterization of the contents of the requests or do not set forth a claim for relief or aver facts in support of a claim for relief to which a response is required. Defendant respectfully refers the Court to the requests for a complete and accurate statement of their contents.

9. This paragraph consists of Plaintiffs' characterization of this lawsuit, to which no response is required, as well as legal conclusions, to which no response is required.

10. This paragraph consists of legal conclusions to which no response is required.

11. This paragraph consists of legal conclusions to which no response is required.

12. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

14. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

15. Admitted as to the first sentence. Defendant denies the allegations in the second sentence and avers that it is headquartered in Virginia. The third sentence consists of legal conclusions to which no response is required.

16. Defendant admits that it received a FOIA request (the “AOPS request”) from Plaintiffs dated May 13, 2020. The rest of this paragraph consists of Plaintiffs’ characterization of the contents of the request. Defendant respectfully refers the Court to the request for a complete and accurate statement of its contents.

17. This paragraph consists of Plaintiffs’ characterization of the contents of the AOPS request. Defendant respectfully refers the Court to the request for a complete and accurate statement of its contents.

18. Defendant admits that it received a second FOIA request (“the climate survey request”) from Plaintiffs dated May 13, 2020. The rest of this paragraph consists of Plaintiffs’ characterization of the contents of the request. Defendant respectfully refers the Court to the request for a complete and accurate statement of its contents.

19. This paragraph consists of Plaintiffs’ characterization of the contents of the climate survey request. Defendant respectfully refers the Court to the request for a complete and accurate statement of its contents.

20. Admitted.

21. The first sentence is admitted. The second sentence consist of Plaintiffs' characterization of the contents of the requests. Defendant respectfully refers the Court to the requests for a complete and accurate statement of their contents.

22. Admitted.

23. With respect to the first two sentences, Defendant admits that on May 14, 2020 it sent Plaintiffs acknowledgment letters corresponding to Plaintiffs' FOIA requests via email. The remainder of the first two sentences, as well as the third sentence, consist of Plaintiffs' characterization of the letters and emails. Defendant respectfully refers the Court to the letters and emails for a complete and accurate statement of their contents.

24. This paragraph consists of Plaintiffs' characterization of the acknowledgment letters. Defendant respectfully refers the Court to the acknowledgment letters for a complete and accurate statement of their contents.

25. This paragraph consists of Plaintiffs' characterization of the acknowledgment letters. Defendant respectfully refers the Court to the acknowledgment letters for a complete and accurate statement of their contents.

26. Defendant admits that it received an email from Plaintiffs on June 29, 2020, and that Defendant responded by email on July 2, 2020. The remainder of this paragraph consists of Plaintiffs' characterization of the emails. Defendant respectfully refers the Court to the emails for a complete and accurate statement of their contents.

27. The first sentence is admitted. With respect to the second sentence, Defendant admits that an employee sent Plaintiffs an email on July 15, 2020. The remainder of the second

sentence consists of Plaintiffs' characterization of the email. Defendant respectfully refers the Court to the email for a complete and accurate statement of its contents.

28. Admitted.

29. The first sentence is admitted. With respect to the second sentence, Defendant admits that as of the date of the complaint Defendant had not yet made a final determination regarding Plaintiffs' FOIA requests and has not produced records to Plaintiffs.

30. Defendant incorporates by reference its responses to the preceding paragraphs.

31. Denied.

32. This paragraph consists of legal conclusions to which no response is required.

33. This paragraph consists of legal conclusions to which no response is required.

34. Denied.

35. Defendant incorporates by reference its responses to the preceding paragraphs.

36. Denied.

37. This paragraph consists of legal conclusions to which no response is required.

38. This paragraph consists of legal conclusions to which no response is required.

39. Denied.

40. This paragraph sets forth Plaintiffs' requested relief, to which no response is required. To the extent a response is deemed required, Defendant denies that Plaintiffs are entitled to the relief that they seek or to any other relief in this action.

Defendant denies any and all allegations in Plaintiffs' Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Plaintiffs are not entitled to any documents or information that is exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).
2. Defendant's actions did not violate the FOIA or any other statutory or regulatory provision.

DATED: September 16, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director
Federal Programs Branch

/s/ Joshua C. Abbuhl
JOSHUA C. ABBUHL (D.C. Bar No. 1044782)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Telephone: (202) 616-8366
Facsimile: (202) 616-8470
joshua.abbuhl@usdoj.gov

Counsel for the Defendant