

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)
AMERICAN CIVIL LIBERTIES UNION,))
OF MASSACHUSETTS; and))
AMERICAN OVERSIGHT,))
))
Plaintiffs,))
v.)	C.A. No. 19-10916-NMG
))
UNITED STATES DEPARTMENT OF))
HOMELAND SECURITY,))
))
Defendant.))
<hr/>)

DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT

Defendant, United States of America, answers Plaintiffs’ Complaint as follows:

ANSWER

1. Paragraph 1 of the Complaint contains Plaintiffs’ description of this action to which no response is required. To the extent a response is required, Defendant admits only that this action purports to be brought under the Freedom of Information Act 5 U.S.C. § 552. The remaining allegations are denied.
2. Paragraph 2 of the Complaint consists of conclusions of law to which no response is required.
3. Paragraph 3 of the Complaint consists of conclusions of law to which no response is required.
4. Paragraph 4 of the Complaint consists of conclusions of law, to which no response is required. To the extent a response is required, the allegations are denied.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint; therefore, they are denied.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint; therefore, they are denied.

7. Defendant admits that it is a federal agency within the meaning of 5 U.S.C. § 552(f) and is headquartered in Washington D.C. The remaining allegations in Paragraph 7 consist of legal conclusions, to which no response is required. To the extent a response is required, they are denied.

8. Paragraph 8 of the Complaint contains Plaintiffs' characterization of the DHS Appropriations Act for 2018 and does not set forth a claim for relief or allege facts in support of a claim to which a response is required. To the extent that a response is required, Defendant states that the allegations refer to a statute, the content of which speaks for itself.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint; therefore, they are denied. In further answering, Paragraph 9 refers to a writing, the content of which speaks for itself and, thus, Defendant denies any allegations inconsistent therewith.

10. Defendant admits that on March 11, 2019, Plaintiffs submitted a FOIA request to DHS and refers the Court to this March 11, 2019 letter which is a document that speaks for itself, and, thus, Defendant denies any allegations inconsistent therewith.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint; therefore they are denied. In further answering, Paragraph 11 refers to a writing and statute, the content of which speaks for themselves and, thus, Defendant denies any allegations inconsistent therewith.

12. Defendant admits that on March 19, 2019, DHS sent a letter acknowledging receipt of Plaintiffs' request and assigned the request tracking number 2019-HQFO-00486.

13. Defendant admits that it sent Plaintiff a March 19, 2019 letter which is a document, the content of which speaks for itself, and, thus, Defendant denies any allegations inconsistent therewith.

14. Defendant admits that DHS received an email on April 5, 2019, from Katherine Anthony, (a Staff Attorney with American Oversight contesting the 10-day extension), that states that Plaintiffs have attempted to contact DHS by telephone. Defendant has no record of any such call. All remaining allegations are denied.

15. Defendant admits the allegations contained in Paragraph 15 of the Complaint.

16. Defendant admits the allegations contained in Paragraph 16 of the Complaint; however, Defendant has informed Plaintiff's counsel that it has located the responsive document for processing.

17. The allegations contained in Paragraph 17 of the Complaint consist of legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

COUNT 1

18. Defendant repeats and re-alleges each and every response in the foregoing paragraphs and incorporates them as if fully set forth herein.

19. The allegations in Paragraph 19 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

20. The allegations in Paragraph 20 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

21. The allegations in Paragraph 21 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

22. The allegations in Paragraph 22 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

23. The allegations in Paragraph 23 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

COUNT II

24. Defendant repeats and re-alleges each and every response in the foregoing paragraphs and incorporates them as if fully set forth herein.

25. The allegations in Paragraph 25 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

26. The allegations in Paragraph 26 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

27. The allegations in Paragraph 27 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

28. The allegations in Paragraph 28 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

29. The allegations in Paragraph 29 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

30. The allegations in Paragraph 30 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. In further answering, the allegations in the REQUESTED RELIEF section of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required,

Defendant denies the allegations and asserts Plaintiffs are not entitled to the relief requested in said section of the Complaint.

AFFIRMATIVE DEFENSES

First Defense

Some or all of the Complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court lacks jurisdiction over the subject matter of this Complaint because no records have been improperly withheld.

Third Defense

The information that Defendants have withheld, or will withhold, in response to Plaintiffs' Request is exempt from public disclosure by one or more exemptions under the FOIA and/or PA.

Fourth Defense

The Plaintiff's Motion/Complaint is subject to dismissal as a matter of law.

Fifth Defense

Defendant has complied with its obligations under FOIA.

Sixth Defense

The Complaint should be dismissed on accord and satisfaction.

Seventh Defense

Plaintiffs are not entitled to injunctive and declaratory relief in this FOIA action.

Eighth Defense

Plaintiffs are not entitled to attorneys' fees.

Respectfully submitted,

ANDREW E. LELLING
United States Attorney,

By: /s/ Michael Sady
Michael Sady (BBO #552934)
Assistant U.S. Attorney
United States Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100
Michael.Sady@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed through the Electronic Court Filing system and will be sent electronically to the registered participants as identified on the NEF.

/s/ Michael Sady
Michael Sady
Assistant U. S. Attorney

Dated: June 28, 2019