

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON)
1331 F Street, NW, Suite 900)
Washington, DC 20004)
)
Plaintiff,)
v.)
) Civil No. 1:21-cv-02482
U.S. DEPARTMENT OF THE ARMY)
104 Army Pentagon)
Washington, DC 20310-0104, and)
)
SOUTH DAKOTA NATIONAL GUARD)
2823 West Main Street)
Rapid City, SD 57702)
)
)
Defendants.)

DEFENDANTS' ANSWER

Defendants, the United States Department of the Army (“DA”) and the South Dakota National Guard (“SDNG”; collectively “Defendants”)¹, answer the Amended Complaint (Dkt. No. 8-1) filed by Plaintiff, Citizens for Responsibility and Ethics in Washington (“CREW”) on October 20, 2021, as follows:

1. This paragraph sets forth Plaintiff’s characterization of this lawsuit, to which no response is required.

¹ The SDNG is a dual-status organization with both a Federal and State character. *See Perpich v. Dep’t of Def.*, 496 U.S. 334, 110 S. Ct. 2418 (1990). In this instance, Defendants answer on behalf of the SDNG, to the extent that it is deemed a subordinate organization of the United States Army under Freedom of Information Act and Privacy Act. *In re Sealed Case*, 551 F.3d 1047 (D.C. Cir. 2009). This answer is not submitted on behalf of the South Dakota Department of the Military or the SDNG in its capacity as the military force of South Dakota.

2. This paragraph consists of legal conclusions to which no response is required.
3. This paragraph sets forth Plaintiff's requested relief to which no response is required.
4. This paragraph consists of legal conclusions to which no response is required.
5. This paragraph consists of legal conclusions to which no response is required.
6. Defendants lack knowledge or information sufficient to form a belief as to the allegations of this paragraph.
7. Admit.
8. Admit that the South Dakota National Guard is a component of the Army National Guard and Air National Guard of the United States. The remaining portions of this paragraph consist of legal conclusions to which no response is required.
9. This paragraph characterizes a news story, to which the Court is referred for a complete and accurate recitation of its contents.
10. This paragraph characterizes a news story, to which the Court is referred for a complete and accurate recitation of its contents.
11. This paragraph characterizes a news story, to which the Court is referred for a complete and accurate recitation of its contents.
12. This paragraph characterizes a news story, to which the Court is referred for a complete and accurate recitation of its contents.
13. Admit.
14. Admit.
15. Admit.
16. Admit.

17. Admit.
18. Admit.
19. Admit.
20. Admit.
21. Admit.
22. This paragraph repeats Plaintiff's preceding allegations to which no response is required.
23. This paragraph consists of legal conclusions to which no response is required.
24. This paragraph consists of legal conclusions to which no response is required.
25. This paragraph consists of legal conclusions to which no response is required.
26. This paragraph consists of legal conclusions to which no response is required.
27. This paragraph consists of legal conclusions to which no response is required.
28. This paragraph consists of legal conclusions to which no response is required.
29. This paragraph consists of legal conclusions to which no response is required.
30. This paragraph repeats Plaintiff's preceding allegations to which no response is required.
31. This paragraph consists of legal conclusions to which no response is required.
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. This paragraph consists of legal conclusions to which no response is required.
35. This paragraph consists of legal conclusions to which no response is required.

The remainder of the Amended Complaint sets forth Plaintiff's requested relief to which no response is required. To the extent a response is required, Defendants deny that Plaintiff is entitled to the requested relief or to any relief.

Defendants deny all allegations in the Complaint not expressly admitted or denied.

DEFENSE

1. Plaintiff is not entitled to compel the production of any records exempt from disclosure by one or more exemptions of the FOIA, 5 U.S.C. § 552, or those that are not "agency records." *See United States DOJ v. Tax Analysts*, 492 U.S. 136, 109 S. Ct. 2841 (1989).

Dated: December 1, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General
Civil Division

ELIZABETH J. SHAPIRO
Deputy Director,
Federal Programs Branch

/s/ Julia A. Heiman
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