

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|---------------------------------|--|---|--------------------------------|
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| CITIZENS FOR RESPONSIBILITY AND | |) | |
| ETHICS IN WASHINGTON, | |) | |
| | |) | |
| Plaintiff, | |) | |
| | |) | |
| v. | |) | Civil Action No. 21-0708 (EGS) |
| | |) | |
| U.S. IMMIGRATION AND CUSTOMS | |) | |
| ENFORCEMENT, | |) | |
| | |) | |
| Defendant. | |) | |
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**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S
COMPLAINT¹ FOR INJUNCTIVE AND DECLARATORY RELIEF**

Pursuant to Rule 8, Federal Rules of Civil Procedure, Defendant U.S. Immigration and Customs Enforcement (hereinafter referred to as “ICE” or the “Defendant”), by and through its attorneys, hereby responds to Citizens for Responsibility and Ethics in Washington (hereinafter referred to as “Plaintiff” or “CREW”) Complaint filed on March 17, 2021 as follows:

DEFENDANT’S RESPONSES TO THE NUMBERED PARAGRAPHS

In response to the enumerated paragraphs, as set forth in the Complaint, Defendant admits, denies, and otherwise avers as follows. Any allegations not specifically admitted herein are hereby denied. Defendant respectfully requests and reserves the right to amend, alter, and supplement the responses and defenses contained in this Answer as additional facts become known to Defendant.

¹ For ease of reference, Defendant’s Answer replicates the headings contained in the Complaint. Although Defendant believes that no response is required to such headings, to the extent a response is deemed required and to the extent those headings and titles may be construed to contain factual allegations, those allegations are denied.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. The allegations contained in Paragraph 1 consist of Plaintiff's characterization of this action, to which no response is required. To the extent that a response is required, Defendant admits that this action purports to be brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq*, and Defendant denies the remaining allegations.

2. The allegations contained in Paragraph 2 consist of Plaintiff's conclusions of law, to which no response is necessary. To the extent a response is required, Defendant denies the allegations.

JURISDICTION AND VENUE

3. The allegations contained in Paragraph 3 consist of Plaintiff's conclusions of law regarding subject matter jurisdiction and personal jurisdiction, to which no response is required. To the extent that a response is required, Defendant admits that this action purports to be brought pursuant to the FOIA, 5 U.S.C. § 552, *et seq*, and that this Court has subject matter jurisdiction over this action.

4. The allegation contained in Paragraph 4 consist of Plaintiff's conclusion of law regarding venue to which no response is necessary. To the extent a response is required, Defendant admits that the venue is proper.

PARTIES

5. The allegations contained in Paragraph 5 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies the allegations.

6. Defendant admits that ICE is a federal agency and denies the remaining allegations contained in Paragraph 6.

FACTUAL BACKGROUND

7. The allegations contained in Paragraph 7 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations.

8. The allegations contained in Paragraph 8 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations.

9. Admitted.

10. Admitted.

11. The allegations contained in Paragraph 11 consist of Plaintiff's characterization of ICE's response to Plaintiff's FOIA request. To the extent that a response is required, Defendant admits it acknowledged receipt of Plaintiff's FOIA request, assigned tracking number 2021-ICFO-13543, and invoked a 10-day extension to respond to the request. ICE denies the remaining allegations.

12. The allegations contained in Paragraph 12 consist of Plaintiff's characterization of ICE FOIA's e-mail dated December 9, 2020. To the extent that a response is required, Defendant admits that it sent Plaintiff an email on December 9, 2020, but denies the remaining allegations., as ICE FOIA requested Plaintiff complete a Certificate of Identity (DHS Form 500-5), not a Privacy Act Waiver.

13. The allegations contained in Paragraph 13 consist of Plaintiff's characterization of its response to ICE FOIA's e-mail dated December 9, 2020. To the extent that a response is required, Defendant admits Plaintiff clarified its request for records.

14. Admitted.

15. Admitted.

16. Admitted.

PLAINTIFF'S CLAIM FOR RELIEF

17. Defendant incorporates by reference its responses to Paragraphs 1-16.

18-22. The allegations contained in Paragraphs 18-22 are Plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

PLAINTIFF'S REQUESTED RELIEF

The remainder of the Complaint consists of Plaintiff's Requested Relief, to which no response is required. To the extent that a response is required, Defendant denies the allegations in the Request for Relief, and denies that Plaintiff is entitled to any of the relief requested in Paragraphs 1 through 22, or to any relief whatsoever from the Defendant.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Any information that Defendant has withheld, or will withhold, in response to Plaintiff's FOIA request may be exempt in whole or in part from public disclosure under the FOIA, 5 U.S.C. § 552 *et seq.*, and the Privacy Act, 5 U.S.C. § 552(a), *et seq.*

THIRD AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over any matter to the extent Plaintiff failed to satisfy prerequisites to suit, as well as over any requests or allegations that are not contained in a FOIA request at issue in this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has not alleged sufficient factual and/or legal bases for its request for costs and/or attorney's fees.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's request submitted under FOIA, 5 U.S.C. § 552, as amended, did not reasonably describe the records sought.

WHEREFORE, having fully answered, Defendant, by counsel, requests that the Court grant Defendant judgment and relief against Plaintiff as follows:

- a) that the claims against Defendant are dismissed with prejudice and that Plaintiff takes nothing and is granted no relief;
- b) that Defendant be awarded costs and disbursements incurred in defending this matter; and
- c) such other and further relief to which Defendant is entitled.

* * *

Date: April 26, 2021

Respectfully submitted,

CHANNING D. PHILLIPS, D.C. Bar #415793
Acting United States Attorney

BRIAN P. HUDAK,
Acting Chief, Civil Division

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