

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

CITIZENS FOR RESPONSIBILITY )  
AND ETHICS IN WASHINGTON )  
 )  
Plaintiff, )  
v. )  
 )  
CENTERS FOR DISEASE CONTROL )  
AND PREVENTION, and )  
 )  
U.S. DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES )  
 )  
Defendants. )

Case No: 21-CV-122 (BAH)

**DEFENDANTS’ ANSWER TO PLAINTIFF’S COMPLAINT  
FOR INJUNCTIVE AND DECLARATORY RELIEF**

Defendants, the Centers for Disease Control (“CDC”), and United States Department of Health and Human Services (“HHS”) (collectively, “Defendants”), through their undersigned counsel, hereby answer the Complaint of Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552:

**FIRST DEFENSE**

The information sought by Plaintiff may be exempt from release in full or in part under one or more exemptions of the FOIA, 5 U.S.C. § 552, as amended.

**SECOND DEFENSE**

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

**THIRD DEFENSE**

The Complaint, including paragraphs 10-14, among others, violates Fed.R.Civ.P. 8(a)(2)

by alleging information that is unnecessary to a “short and plain” statement of the claim. The Court should strike all such immaterial and impertinent matters pursuant to Fed.R.Civ.P. 12(f).

DEFENDANTS’ RESPONSES TO THE NUMBERED PARAGRAPHS

Defendants respond to the Complaint in like-numbered paragraphs as follows:

1. This paragraph contains Plaintiff’s characterization of this lawsuit and asserts a conclusion of law to which no response is required.

2. This paragraph contains Plaintiff’s characterization of this lawsuit and asserts a conclusion of law to which no response is required.

**Jurisdiction and Venue**

3. This paragraph asserts a conclusion of law to which no response is required. To the extent any response is required, Defendants admit that venue of actions brought under FOIA is proper in this judicial district.

**Parties**

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5. Defendants admit the allegations in the first sentence of this paragraph. As to the second sentence, Defendants admit that CDC is a component of HHS and states that the remainder of the sentence is a conclusion of law to which no response is required.

**Statutory and Regulatory Background**

6. This paragraph asserts a conclusion of law to which no response is required.

7. This paragraph asserts a conclusion of law to which no response is required.

8. This paragraph asserts a conclusion of law to which no response is required.

9. This paragraph asserts a conclusion of law to which no response is required.

**Factual Background**

10-13. These paragraphs contain Plaintiff's characterization of alleged background information, including a characterization of information allegedly appearing in the news media, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action to which a response would be required. Accordingly, no response is required to the allegations in these paragraphs.

**The FOIA Requests at Issue**

14. Defendants admit that Plaintiff submitted a FOIA request on April 14, 2020 to CDC, and refer the Court to that request for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with the content of the referenced request.

15. Defendants admit the allegations in this paragraph, including the allegations in footnotes 1 and 2 to this paragraph, and further respond by averring that CDC made a large production to Plaintiff on September 1, 2020 in response to the third part of the April 14, 2020 request.

16. Defendants deny the allegations in the first sentence of this paragraph that Plaintiff requested a waiver of fees for "both requests" but aver that Plaintiff sought a waiver of fees "associated with processing this request for records." Defendants deny the allegations in the second sentence of this paragraph but aver that Plaintiff's FOIA Request stated that "[t]he subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and

the general public in a significant way.” In further response, Defendants refer the Court to the FOIA request for a complete and accurate statement of its contents and deny this paragraph to the extent inconsistent with the content of the FOIA request.

17. Defendants deny that Plaintiff “explained that the requested records would shed light on the CDC’s efforts to monitor, contain, and mitigate the spread of the virus in the hardest hit communities” but aver that Plaintiff stated “[n]ow, more than ever, the public needs to understand what their government is doing to monitor, contain, and mitigate the spread of the virus — particularly in the hardest hit communities.” In further response, Defendants refer the Court to the FOIA request for a complete and accurate statement of its contents and deny this paragraph to the extent inconsistent with the content of the FOIA request.

18. Defendants admit the allegations in the first sentence of this paragraph. Defendants deny the allegations in the second sentence of this paragraph that “the acknowledgment letter advised that CREW would receive documents by October 16, 2020,” but aver that the letter advised that Defendants “reasonably anticipate that [Plaintiff] should receive documents by October 16, 2020. Please know that this date roughly estimates how long it will take the agency to close requests ahead of your request in the queue and complete work on your request. The actual date of completion might be before or after this estimated date.”

19. Defendants admit that a letter dated April 29, 2020 was sent to Plaintiff, but deny the remainder of this paragraph and refer the Court to that letter for a complete and accurate statement of its contents. In further response, Defendants aver that the letter stated that Plaintiff has “not submitted a proper FOIA request because your request lacks the specificity needed to assist the agency retrieve the information with a reasonable amount of effort. To assist the agency, locate the records you are requesting, we need you to provide the following additional information: 1) identify and name a set of CDC employees to search; and 2) a full email domain any person specified in your search that is not a CDC or HHS employee. The third part of you [sic] request seeks ‘all documents’ ‘pertaining to’ the topic you specified. Please specify a record type, and if emails are sought, the CDC employee names and full email domains of any person external to CDC and HHS.”

20. Defendants admit that counsel for CREW and the CDC engaged in a dialogue in which CREW agreed to narrow its request but deny that the dialogue was limited to the time period alleged in this paragraph.

21. Defendants deny the allegations of this paragraph and aver that on September 1, 2020, CDC made a large production to Plaintiff in response to the third part of Plaintiff’s April 14, 2020 FOIA request.

22. This paragraph asserts a conclusion of law to which no response is required.

**PLAINTIFF’S CLAIM FOR RELIEF**

23. Defendants repeat and re-allege paragraphs 1-22 as if fully set forth herein.

24. This paragraph asserts a conclusion of law to which no response is required.

25. Defendants deny the allegations in this paragraph.

26. This paragraph asserts a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

**Requested Relief**

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendants assert a general denial as to those allegations contained in the Complaint that are not specifically admitted herein. The remainder of the Complaint sets forth Plaintiff's prayer for relief to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to the relief for which Plaintiff prays or to any other relief as to Defendants.

Respectfully submitted,

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