

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

GOVERNMENT ACCOUNTABILITY)
PROJECT,)
))
Plaintiff,)
))
v.)
))
UNITED STATES DEPARTMENT OF)
STATE, et al.)
))
Defendants.)
))
_____)

Civil Action No. 19-0449 (RDM)

**PLAINTIFF’S RESPONSE TO DEFENDANT’S STATEMENT OF ADDITIONAL
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 7(h), Plaintiff Government Accountability Project (“GAP”) hereby responds to Defendant’s Statement of Additional Undisputed Material Facts in Support of the Renewed Motion for Summary Judgment by the Central Intelligence Agency:

1. Admits that the CIA preserves records in accordance with the Federal Records Act (“FRA”) but denies that for all records the CIA has in its possession the agency has determined the information in the records is relevant to the CIA’s mission. Plaintiff denies that unsolicited information received from third parties – which forms the basis of Defendant’s renewed motion for summary judgment –*per se* qualifies as a record evidencing the CIA’s “organization, functions, policies, decisions, procedures, operations, or other activities.” See Blaine Decl. at ¶ 6 (quoting 44 U.S.C. § 3301(a)).

2. The first sentence is a hypothetical statement not a material fact not in dispute. Plaintiff denies that all documents the CIA merely retains necessarily reveal something about the CIA’s interests or activities and denies any inference that the unsolicited documents at issue here

reveal something about the CIA's interests or activities that is protected from disclosure under the FOIA. Plaintiff denies any implication that the CIA can neither confirm nor deny the existence or nonexistence of unsolicited information responsive to Plaintiff's FOIA request. Plaintiff avers that the statements in this paragraph are issues of law and not material facts as to which there is no dispute.

3. Denies that this paragraph sets forth undisputed statements of material fact. Plaintiff specifically denies that the CIA properly used a *Glomar* response for all the records sought in Plaintiff's FOIA request, which is not an undisputed statement of material fact. Plaintiff further states that it lacks knowledge as to the extent of Ms. Blaine's inquiry which led her to conclude that the CIA may not be able to employ "any search terms or restrictions that would enable the Agency to conduct a meaningful search" for unsolicited communications responsive to Plaintiff's request. Plaintiff avers that simply because Ms. Blaine claims to be unaware of any search terms or restrictions that would enable the CIA to conduct a meaningful search does not establish that the CIA cannot conduct such a search.

4. Denies that the CIA has met its burden of demonstrating that its acknowledgement of the existence or nonexistence of unsolicited communications responsive to Plaintiff's request would reveal whether it has a mission-related interest in or connection to the items set forth in the paragraph, which is a disputed statement of material fact. Plaintiff denies that the mere existence of records in the CIA's possession that are responsive to Plaintiff's FOIA request reveals any link to a CIA mission-related interest that the FOIA protects from disclosure.

5. Denies that unsolicited communications from a third party are properly classified and exempt from release under FOIA Exemptions 1 and 3 and denies that the CIA has met its burden of proving that the unsolicited documents from third parties are properly exempt from

disclosure. Plaintiff avers that this is an issue of law and not an undisputed statement of material fact.

Dated: March 2, 2022

Respectfully submitted,

/s/ Anne L. Weismann

Anne L. Weismann

(D.C. Bar No. 298190)

5335 Wisconsin Avenue, N.W., Suite 640

Washington, D.C. 20015

Phone: (301) 717-6610

weismann.anne@gmail.com

Counsel for Plaintiff