

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

CITIZENS FOR RESPONSIBILITY & ETHICS
IN WASHINGTON,

Plaintiff,

v.

U.S. SMALL BUSINESS ADMINISTRATION,

Defendant.

Case No: 1:17-cv-01836 (APM)

ANSWER AND DEFENSES

Defendant U.S. Small Business Administration (“SBA” or “Defendant”), through its undersigned counsel, hereby answers the Complaint filed by Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW” or “Plaintiff”), brought pursuant to the Freedom of Information Act (“FOIA”) as follows:

FIRST DEFENSE

Defendant reserves the right to amend this Answer to assert any other matter that constitutes an avoidance or affirmative defense under Fed. R. Civ. P. 8(c).

SECOND DEFENSE

Any relief is limited to that provided for in 5 U.S.C. § 552(a)(4)(B).

THIRD DEFENSE

Plaintiff is not entitled to compel the production of responsive records protected from disclosure by one or more of the exemptions or exclusions to FOIA, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

FOURTH DEFENSE

As to some or all of the claims asserted in this action, Plaintiff has failed to state a claim upon which relief may be granted under FOIA.

FIFTH DEFENSE

Plaintiff is not entitled to attorney's fees or costs.

SIXTH DEFENSE

Defendant denies each and every allegation contained in the Complaint except as may have been expressly admitted.

SEVENTH DEFENSE

To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents in response; however, Defendant's references are not intended to be, and should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiff; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF¹

1. This paragraph of the Complaint contains conclusions of law, to which no response is required.
2. This Paragraph contains Plaintiff's characterization of the case and requested remedies to which no response is required. Insofar as an answer may be required, the allegations in the paragraph are denied.

¹ Merely 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 could be construed to contain factual allegations, those allegations are denied.

3. This paragraph of the Complaint contains conclusions of law, to which no response is required. To the extent a response is deemed necessary, Defendant admits only that this Court has jurisdiction. Defendant further avers that the statutes cited speak for themselves.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6.

7. Deny.

8. Admit.

STATUTORY FRAMEWORK

9. This paragraph of the Complaint contains conclusions of law, to which no response is required. Defendant avers that the statute cited speaks for itself.

10. This paragraph of the Complaint contains conclusions of law, to which no response is required. Defendant avers that the statute cited speaks for itself.

11. This paragraph of the Complaint contains conclusions of law, to which no response is required. Defendant avers that the statute cited speaks for itself.

12. This paragraph of the Complaint contains conclusions of law, to which no response is required. Defendant avers that the statute cited speaks for itself.

13. This paragraph of the Complaint contains conclusions of law, to which no response is required. Defendant avers that the statute cited speaks for itself.

FOIA REQUEST AT ISSUE

14. Admit.

15. Admit.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 19.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20.

21. Admit.

22. Admit.

23. Admit.

24. This paragraph consists of Plaintiff's characterization of its appeal letter to SBA's Office of Hearings and Appeals. Defendant respectfully refers the Court to the appeal letter for a complete and accurate statement of its contents and denies any characterization inconsistent therewith.

25. Admit.

26. This paragraph consists of Plaintiff's characterization of SBA's August 3, 2017, decision letter. Defendant respectfully refers the Court to the decision letter for a complete and accurate statement of its contents and denies any characterization inconsistent therewith.

27. Denied except to qualify that SBA has informed CREW that it will not proceed with the FOIA request unless it receives payment.

28. This paragraph consists of legal conclusions to which no response is required. Insofar as an answer may be required, the allegations in this paragraph are denied.

**PLAINTIFF'S CLAIMS OR RELIEF
COUNT I
(Improper Denial of Fee Waiver)**

29. Defendant repeats its answers contained in paragraphs 1 through 28 above, as though fully set forth herein.

30. Deny.

31. Deny.

32. Deny.

**COUNT II
(Wrongful Withholding of Non-Exempt Records Requested by CREW)**

33. Defendant repeats its answers contained in paragraphs 1 through 32 above, as though fully set forth herein.

34. Admit.

35. This paragraph consists of legal conclusions to which no response is required. Insofar as an answer may be required, the allegations in this paragraph are denied.

36. Admit.

37. Deny.

38. Deny.

REQUESTED RELIEF

The remainder of Plaintiff's Complaint contains Plaintiff's "Requested Relief," which contains conclusions of law, to which no response is required. To the extent that this paragraph may be deemed to contain factual allegations to which a response may be required, they are denied.

WHEREFORE, having fully answered, Defendant requests judgment and relief against Plaintiff as follows:

- a) That claims against Defendant are dismissed with prejudice and that the Plaintiff take nothing and is granted no relief;
- b) That Defendant be awarded its costs and disbursements incurred in defending this matter; and
- c) Such other and further relief, including declaratory relief, equitable relief, and damages, to which it is entitled.

Dated: October 13, 2017

Respectfully submitted,

JESSIE K. LIU, D.C. Bar No. 472845
United States Attorney

DANIEL F. VAN HORN, D.C. Bar No. 924092
Chief, Civil Division

By: /s/ Scott Leeson Sroka
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2017, that service of the foregoing **Defendant's Answer** has been made on counsel of record through the Court's ECF system.

/s/ Scott Leeson Sroka

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