

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**
1101 K St. N.W., Suite 201,
Washington, D.C. 20005,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,
1401 Constitution Ave., N.W.,
Washington, D.C. 20230,

Defendant.

Civil Action No. 18-3022 (JEB)

DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES

The United States Department of Commerce (“Defendant” or “DOC”), by and through undersigned counsel, hereby answers the Complaint of Citizens for Responsibility and Ethics in Washington (“Plaintiff”) as follows:

1. This paragraph contains Plaintiff’s characterization of its lawsuit, to which no answer is required. To the extent a response is required, Defendant admits that Plaintiff purports to bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and that Plaintiff submitted a FOIA request seeking access to the information identified in this paragraph. Defendant respectfully refers the Court to Plaintiff’s FOIA request for complete and accurate statements of its content.

2. This paragraph contains Plaintiff’s characterization of its lawsuit and the relief sought, to which no answer is required.

Jurisdiction and Venue

3. This paragraph contains Plaintiff's conclusions of law concerning jurisdiction and venue, to which no response is required.

Parties

4. Defendant is without knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

5. Defendant admits that DOC is an agency within the executive branch of the United States. The remainder of the allegations in this paragraph contain conclusions of law, to which no response is required, except to admit that DOC has certain records responsive to the FOIA request at issue in this lawsuit.

Factual Background

6. Defendant admits that Eric Branstad was as an employee of DOC until January 2018. Defendant is without knowledge or information sufficient to confirm or deny the remainder of allegations contained in this paragraph.

7. The allegations contained in this paragraph are immaterial and impertinent to this action under the FOIA, and, therefore, no response is required.

8. The allegations contained in this paragraph are immaterial and impertinent to this action under the FOIA, and, therefore, no response is required.

9. Defendant is without knowledge of information sufficient to confirm or deny why Plaintiff submitted a FOIA request to DOC. Defendant admits the remaining allegations contained in this paragraph, and respectfully refers the Court to Plaintiff's FOIA request for complete and accurate statements of its content.

10. Defendant admits that Plaintiff requested a waiver of fees associated with its request under FOIA, and respectfully refers the Court to Plaintiff's FOIA request for complete and accurate statements of its content.

11. Defendant admits the allegations contained in this paragraph.

12. Defendant admits the allegations contained in this paragraph.

13. Defendant admits that the parties communicated via telephone on October 31, 2018; Plaintiff agreed to modify the date range for its FOIA request; and Defendant reopened Plaintiff's FOIA request. Defendant denies the allegations contained in this paragraph to the extent that Plaintiff characterizes Defendant as having failed to respond to its FOIA request. Defendant further avers that it provided Plaintiff a written acknowledgement of its request on August 22, 2018, and requested clarification of that request. Defendant further avers that it sent to Plaintiff a written notice on or around October 3, 2018, informing Plaintiff that Plaintiff's failure to respond to the request for clarification had resulted in closure of the request.

14. Defendant admits that emails were exchanged on October 31, 2018, and November 1, 2018, subsequent to the October 31, 2018 telephone call, and that DOC confirmed in writing that it would reopen the request. Defendant respectfully refers the Court to these emails for complete and accurate statements of their contents.

15. Defendant is without knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

16. Defendant admits that as of the time the Complaint was filed, Defendant had not provided a final determination of Plaintiff's FOIA request.

17. This paragraph contains conclusions of law, to which no answer is required. .

PLAINTIFF'S CLAIM FOR RELIEF

18. Defendant incorporates by reference its responses to Paragraphs 1 through 17.

19. This paragraph contains conclusions of law, to which no answer is required, except to admit that Plaintiff made a FOIA request to DOC and that DOC has certain records responsive to the FOIA request at issue in this lawsuit.

20. This paragraph contains conclusions of law, to which no answer is required.

21. This paragraph contains conclusions of law, to which no answer is required.

22. This paragraph contains conclusions of law, to which no answer is required.

REQUESTED RELIEF

The remaining paragraphs set forth Plaintiff's prayer for relief to which no answer is required, but insofar as an answer is deemed required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

Defendant hereby denies all allegations in Plaintiff's Complaint not expressly admitted or qualified herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted under FOIA.

SECOND AFFIRMATIVE DEFENSE

The information that Defendant has withheld, or will withhold, in response to Plaintiff's FOIA request is, or will be, permitted under exemptions to FOIA. *See* 5 U.S.C. § 552(a)(3)(C).

THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorneys' fees or costs.

Respectfully submitted,

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/s/ Marina Utgoff Braswell
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