

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

_____)	
GOVERNMENT ACCOUNTABILITY)	
PROJECT)	
Plaintiff,)	Civil Action No. 19-0449 (RDM)
)	
v.)	
)	
UNITED STATES DEPARTMENT)	
OF STATE, <i>et. al.</i> ,)	
)	
Defendants.)	
_____)	

ANSWER

Defendants, the U.S. Department of State (“DOS”), Central Intelligence Agency (“CIA”), U.S. Department of Commerce (“DOC”), U.S. Department of the Treasury (“Treasury”), U.S. Department of Defense (“DOD”) and U.S. Department of Energy (“DOE”), by and through the undersigned counsel, hereby respond to the Complaint filed by Plaintiff, Government Accountability Project. Defendants respond specifically to each numbered paragraph of the Complaint as follows:

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

The FOIA requests that are the subject of this lawsuit implicate certain information that is protected from disclosure by statutory exemptions under 5 U.S.C. § 552(b).

SECOND DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff failed to exhaust administrative remedies before filing suit.

THIRD DEFENSE

Defendants reserve the right to raise additional defenses that become apparent through the factual development of this case.

* * *

1. This paragraph contains Plaintiff's characterization of its action, to which no response is required. To the extent a response may be deemed required, Defendants admit that Plaintiff purports to bring an action under the Freedom of Information Act ("FOIA").

2. This paragraph contains Plaintiff's characterization of its action, to which no response is required. To the extent a response may be deemed required, Defendants admit that Plaintiff purports to bring an action under the Freedom of Information Act ("FOIA").

Jurisdiction and Venue

3. This paragraph states a conclusion of law, to which no response is required. To the extent a response may be required, Defendants admit that this Court has jurisdiction over a proper action under the FOIA and that venue is proper in this District.

Parties

4. Defendants lack knowledge sufficient to admit or deny the allegations in this paragraph and on that basis deny them.

5. Defendant State admits that the Department of State is a federal agency within the meaning of the FOIA statute and is headquartered in Washington, D.C. The second sentence of this paragraph consists of legal conclusions to which no response is required.

6. Defendant CIA admits that the Department of State is a federal agency within the meaning of the FOIA statute and is headquartered in Washington, D.C. The second sentence of this paragraph consists of legal conclusions to which no response is required.

7. Defendant Department of Commerce admits that it is an agency of the United States government headquartered in Washington, DC. The remainder of the allegations consist of legal conclusions, to which no response is required. To the extent that a response may be deemed required, DOC admits that it is an agency subject to FOIA, but otherwise denies the allegations in Paragraph 7.

8. Defendant Department of Treasury admits the allegations in the first sentence that the U.S. Department of the Treasury is a department of the Executive Branch of the U.S. Government. The rest of the first sentence contains the plaintiff's conclusions of law, not allegations of fact, so no response is required.

9. Defendant Department of Defense Admits that it is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and is an agency within the meaning of 5 U.S.C. §552 (f). The remainder of the paragraph contains legal conclusions to which no response is required.

10. Defendant Department of Energy admits the allegations in the first sentence that U.S. Department of Energy is a department of the Executive Branch of the U.S. Government.

The rest of the first sentence contains the plaintiff's conclusion of law, not allegations of fact, so no response is required.

Statutory and Regulatory Background

11. This paragraph contains Plaintiff's characterization of the FOIA statute; Defendants respectfully refer the Court to the cited federal statute for a true and complete statement of its contents.

12. This paragraph contains Plaintiff's interpretation of the FOIA statute; Defendants respectfully refer the Court to the cited federal statute for a true and complete statement of its contents.

13. This paragraph contains Plaintiff's interpretation of the FOIA statute; Defendants respectfully refer the Court to the cited federal statute for a true and complete statement of its contents.

14. This paragraph consists of quotations of the FOIA statute; Defendants respectfully refer the Court to that federal statute for a true and complete statement of its contents.

15. This paragraph contains Plaintiff's interpretation of the FOIA statute; Defendants respectfully refer the Court to the cited federal statute for a true and complete statement of its contents.

16. This paragraph contains Plaintiff's interpretation of the FOIA statute; Defendants respectfully refer the Court to the cited federal statute for a true and complete statement of its contents.

17. This paragraph contains Plaintiff's interpretation of the FOIA statute; Defendants respectfully refer the Court to the cited federal statute for a true and complete statement of its contents.

Factual Background

Michael Flynn's Involvement In Plans to Build Nuclear Reactors
In the Middle East

18 - 23. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in this paragraph.

Flynn's Work During Campaign and Transition

24 - 31. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in this paragraph.

Thomas Barrack's Involvement in Nuclear Reactor Plans

32 - 43. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in this paragraph.

NSC Officials Raise Concerns About Nuclear Reactor Plan
and Conflicts of Interest

44 - 47. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in this paragraph.

Harvey Continues Pushing For Approval of IP3 Nuclear Plan

48 - 56. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in this paragraph.

Jared Kushner's Links to IP3's Nuclear Plan

57 - 62. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in this paragraph.

Secretary Perry and Others Continue to Push IP3 Plan

63 - 69. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in this paragraph

FOIA Requests at Issue

Department of State FOIAs

70. Defendant State admits that it received a FOIA request from Plaintiff dated August 21, 2018. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

71. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

72. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

73. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

74. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

75. Defendant State admits that Plaintiff sought a waiver of fees. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

76. Defendant State admits the allegations in this paragraph.

77. Defendant State admits that as of the date of the Complaint, it had not communicated further with Plaintiff regarding this FOIA request.

78. Defendant State admits that it received a FOIA request from Plaintiff dated September 11, 2018. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

79. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

80. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

81. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

82. Defendant State admits that Plaintiff sought a waiver of fees. Defendant State respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

83. Defendant State admits that it contacted Plaintiff regarding the scope of its FOIA request and that Plaintiff did not agree to alter the scope of its request.

84. Defendant State admits the allegation in the first sentence of this paragraph. Defendant State denies the allegation in the second sentence of this paragraph.

CIA FOIA

85. Denied.

86. Paragraph 86 consists of a characterization of Plaintiff's FOIA request, and Defendant respectfully refers the Court to that request for a true and complete statement of its contents.

87. Paragraph 87 consists of a characterization of Plaintiff's FOIA request, and Defendant respectfully refers the Court to that request for a true and complete statement of its contents.

88. Paragraph 88 consists of a characterization of Plaintiff's FOIA request, and Defendant respectfully refers the Court to that request for a true and complete statement of its contents.

89. Paragraph 89 consists of a characterization of Plaintiff's FOIA request, and Defendant respectfully refers the Court to that request for a true and complete statement of its contents.

90. Paragraph 90 consists of a characterization of Plaintiff's FOIA request, and Defendant respectfully refers the Court to that request for a true and complete statement of its contents.

91. Paragraph 91 consists of a characterization of Plaintiff's FOIA request, and Defendant respectfully refers the Court to that request for a true and complete statement of its contents.

92. Admits that the CIA acknowledged receipt of Plaintiff's request by letter dated September 11, 2018 and denied GAP's request for expedited processing. Paragraph 92 otherwise consists of a characterization of the CIA's letter, and Defendant CIA respectfully refers the Court to that request for a true and complete statement of its contents.

93. Admits that the CIA sent a second letter to Plaintiff dated December 4, 2018 requesting clarification of Plaintiff's request. Paragraph 93 otherwise consists of a

characterization of the CIA's letter, and Defendant CIA respectfully refers the Court to that request for a true and complete statement of its contents.

94. Admits that the CIA received a letter from Plaintiff that was dated January 8, 2019. Paragraph 94 otherwise consists of a characterization of Plaintiff's FOIA request, and Defendant CIA respectfully refers the Court to that request for a true and complete statement of its contents.

95. Admits.

Department of Commerce FOIA

96. DOC admits that Plaintiff submitted to DOC a FOIA request dated September 4, 2018, and respectfully refers the Court to this FOIA request for complete and accurate statements of its content.

97.-100 DOC respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its content.

101. DOC admits that Plaintiff requested a waiver of fees for its FOIA request, and respectfully refers the Court to the FOIA request for complete and accurate statements of its content.

102. DOC admits that Plaintiff requested expedited processing of its FOIA request, and respectfully refers the Court to the FOIA request for complete and accurate statements of its content. DOC avers that, by correspondence dated October 4, 2018, it advised Plaintiff that Plaintiff's justification for expedited processing provided insufficient information for DOC to make a determination.

103. Admits.

104. Denies.

Department of the Treasury FOIAs

105. Defendant Department of the Treasury respectfully refers the Court to Plaintiff's FOIA for a full and accurate statement of its contents. Defendant Department of the Treasury further avers that it has no record of receiving Plaintiff's FOIA request on August 29, 2018 via facsimile.

106. – 111 Defendant DOT respectfully refers the Court to the request for a full and accurate statement of its contents.

112. Denied. Defendant Department of the Treasury has no record of receiving a FOIA request from Plaintiff dated August 31, 2018 via first-class mail.

113. Defendant DOT admits that the Department of the Treasury sent a letter dated September 27, 2018 to GAP by email and respectfully refers the Court to the letter for a full and accurate statement of its contents.

114. Admit.

Department of Defense FOIAs

115 - 122. Admit that on September 7, 2018 Defendant Department of Defense (DOD) received a FOIA request from Plaintiff dated August 31, 2018. DOD refers to that request for a complete and accurate statement of its contents and denies any allegations inconsistent herewith.

123 - 126. Admits that DOD exchanged correspondence and conversed with Plaintiff concerning Plaintiff's FOIA request. That correspondence speaks for itself and is the best

evidence of its contents. Defendant DOD respectfully refers the Court to that correspondence for a full and accurate statement of its content.

Department of Energy FOIAs

127. Defendant Department of Energy (DOE) respectfully refers the Court to Plaintiff's FOIA request for a full and accurate statement of its contents. Defendant DOE further avers that it has no record of receiving Plaintiff's August 29, 2018 FOIA request via facsimile.

128-33. Defendant DOE respectfully refers the Court to the FOIA request for a full and accurate statement of its contents.

134. Denied. Defendant DOE has no record of receiving Plaintiff's FOIA August 31, 2018 request via first-class mail.

135. Admits.

PLAINTIFF'S CLAIM FOR RELIEF

CLAIM ONE

(Department of State's Wrongful Withholding of Agency Records)

136. Defendant State answers and incorporates by reference its responses to paragraphs 1-135 above.

137. - 140 Paragraph 137-140 state legal conclusions to which no response is required. To the extent a response is required, denied.

CLAIM TWO

(CIA's Wrongful Withholding of Agency Records)

141. Defendant CIA answers and incorporates by reference its responses to paragraphs 1-135 above, as those paragraphs apply to the CIA.

142.-145 Paragraphs 142-145 consist of legal conclusions to which no response is required.

CLAIM THREE

(Department of Commerce's Wrongful Withholding of Agency Records)

146. Defendant DOC repeats and incorporates by reference its responses to the allegations in Paragraphs 1 through 145.

147. – 150. Paragraphs 147-150 consist of legal conclusions, to which no response is required. To the extent a response may be deemed required, DOC denies the allegations in Paragraphs 147- 150.

CLAIM FOUR

(Department of Treasury's Wrongful Withholding of Agency Records)

151. Defendant DOT incorporates its responses to the foregoing paragraphs as if set forth fully herein.

152. This paragraph states a conclusion of law, to which no response is required.

153. Denied.

154. This paragraph states a conclusion of law, to which no response is required.

155. Denied.

CLAIM FIVE

(Department of Defense Wrongful Withholding of Agency Records)

156. Defendant DOD repeats and re-alleges its answers to the foregoing paragraphs and incorporates them as though fully set forth herein.

157. – 160 These paragraphs consist of legal conclusions to which no response is required. To the extent that a response is required, DOD lacks sufficient knowledge or information to form a belief about the truth of the allegations contained in these paragraphs.

CLAIM SIX

(Department of Energy’s Wrongful Withholding of Agency Records)

161. Defendant DOE incorporates its responses to the foregoing paragraphs as if set forth fully herein.

162. This paragraph states a conclusion of law, to which no response is required.

163. Denied.

164. This paragraph states a conclusion of law, to which no response is required.

165. Denied.

REQUESTED RELIEF

The remainder of Plaintiff’s Complaint consists of Plaintiff’s request for relief, to which no response is required. To the extent a response may be deemed required, Defendants deny that Plaintiff is entitled to the requested relief or to any relief whatsoever.

Dated: May 24, 2019

