

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

**CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON**  
1101 K Street, NW, Suite 201  
Washington, D.C. 20005

Plaintiff,

v.

**UNITED STATES DEPARTMENT  
OF JUSTICE**

950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Defendant.

Civ. Action No. 1:19-cv-03626 (DLF)

**DEFENDANT’S ANSWER TO COMPLAINT**

Defendant, the U.S. Department of Justice (“DOJ”), by and through undersigned counsel, hereby answer the Complaint (ECF No. 1) (“Complaint”) filed by Plaintiff Citizens for Responsibility and Ethics in Washington on December 4, 2019, as follows, in correspondingly numbered paragraphs:

1. This paragraph sets forth Plaintiff’s characterization of this action, to which no response is required.
2. This paragraph sets forth Plaintiff’s characterization of this action, to which no response is required.
3. This paragraph consists of Plaintiff’s legal conclusions regarding venue and jurisdiction, to which no response is required.

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

5. With regard to the first sentence, Defendant admits that DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 701(b)(1). Defendant further admits that the federal Bureau of Prisons (“BOP”) is a component within DOJ. The remainder of the paragraph consists of Plaintiff’s legal conclusions, to which no response is required.

6. Admitted that on July 25, 2019, DOJ filed with this Court in a separate action an addendum to the BOP’s execution protocol providing for the use of pentobarbital sodium as the lethal agent in federal executions; otherwise denied. *See Roane v. Barr*, No. 05-2337 (D.D.C.), ECF Nos. 385 and 385-1, Notice of Adoption of Revised Protocol.

7. Admitted. Defendant respectfully refers the Court to the press release cited in Paragraph 7 of the Complaint for a full and accurate statement of its contents.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

10. Admitted. Defendant respectfully refers the Court to the FDA documents cited in Paragraph 10 of the Complaint for a full and accurate statement of their contents.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

12. Admitted. Defendant respectfully refers the Court to the opinion cited in Paragraph 12 of the Complaint for a full and accurate statement of its contents.

13. Admitted. Defendant respectfully refers the Court to the FOIA request dated August 8, 2019, for a full and accurate statement of its contents.

14. Admitted. Defendant respectfully refers the Court to the FOIA request dated August 8, 2019, for a full and accurate statement of its contents.

15. Admitted that BOP provided a letter to CREW dated August 14, 2019. The remainder of the paragraph purports to characterize that letter and is denied. Defendant respectfully refers the Court to the August 14, 2019 letter for a full and accurate statement of its contents.

16. Admitted that on August 20, 2019, an agent of Plaintiff spoke on the telephone with a BOP employee regarding the reason Plaintiff's request was placed on the complex track; Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 regarding the exact substance details of the telephone conversation.

17. Admitted. Defendant respectfully refers the Court to the September 30, 2019 letter BOP provided Plaintiff for a full and accurate statement of its contents.

18. Admitted. Defendant respectfully refers the Court to CREW's October 10, 2019 letter appealing BOP's determination for a full and accurate statement of its contents.

19. Admitted that BOP has sent no further communication to CREW.

20. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

21. Admitted. Defendant respectfully refers the Court to the FOIA request dated August 9, 2019, for a full and accurate statement of its contents.

22. Admitted. Defendant respectfully refers the Court to the FOIA request dated August 9, 2019, for a full and accurate statement of its contents.

23. Admitted that DOJ's Office of Information Policy ("OIP") provided a letter to CREW dated September 6, 2019 acknowledging receipt of CREW's August 9, 2019 FOIA request. Also admitted that DOJ OIP did not provide a date by which it anticipated a response. The remainder of the paragraph purports to characterize that letter and is denied. Defendant respectfully refers the Court to the September 6, 2019 letter for a full and accurate statement of its contents.

24. Admitted that DOJ OIP has sent no further communications to CREW.

25. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

26. In Paragraph 26, Plaintiff re-alleges its preceding paragraphs as if fully stated therein. Defendant thus incorporates by reference here its answers to all of the preceding paragraphs.

27. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

28. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

29. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

30. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

31. In Paragraph 31, Plaintiff re-alleges its preceding paragraphs as if fully stated therein. Defendant thus incorporates by reference here its answers to all of the preceding paragraphs.

32. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

33. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

34. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

35. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

The remaining paragraphs of the Complaint contain Plaintiff's requested relief, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in the remaining paragraphs of the Complaint and further avers that Plaintiff is not entitled to any relief.

Defendant hereby denies all allegations in the Complaint not expressly admitted or denied.

### **DEFENSES**

1. Defendant's alleged actions did not violate the FOIA or any other statutory or regulatory provision.

2. Plaintiff's FOIA requests are overbroad and/or not reasonably described.

3. Plaintiff is not entitled to compel production of documents exempt from disclosure by one or more exemptions of the FOIA or that do not constitute "records" as defined by the FOIA, 5 U.S.C. § 552.

4. Defendant has exercised due diligence in processing Plaintiff's August 9, 2019, FOIA request and exceptional circumstances exist that necessitate additional time for Defendant to complete the processing of that FOIA request. *See* 5 U.S.C. § 552(a)(6)(C).

WHEREFORE, having answered, Defendant prays that:

1. This Court enter judgment for Defendant and dismiss this action with prejudice;
- and
2. Defendant be granted such further relief as the Court may deem just and proper.

Dated: January 15, 2020

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

ELIZABETH J. SHAPIRO  
Deputy Director

/s/ Jonathan D. Kossak

JONATHAN D. KOSSAK  
Trial Attorney (DC Bar # 991478)  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, D.C. 20005  
Tel. (202) 305-0612  
Fax. (202) 616-8460  
Email: [jonathan.kossak@usdoj.gov](mailto:jonathan.kossak@usdoj.gov)

*Counsel for Defendant*