

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,

Defendant.

Civil Action No. 20-1400 (CRC)

**ANSWER**

Defendant, United States Department of Homeland Security (“Defendant” or “DHS”), by and through its undersigned counsel, hereby responds to the Complaint for Declaratory and Injunctive Relief (“Complaint”) of Plaintiff Citizens for Responsibility and Ethics in Washington (“Plaintiff”) as follows.

**Responses to Numbered Paragraphs**

Defendant responds to the separately numbered paragraphs and prayer for relief contained in the Complaint below. To the extent that any allegation is not admitted herein, it is denied. Moreover, to the extent that 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; 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. Defendant answers as follows:

1. Paragraph 1 of the complaint contains Plaintiff's characterization of this action, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, Defendant denies.
2. Paragraph 2 of the complaint contains Plaintiff's request for relief, to which no response is required. To the extent a response is deemed required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

#### **Jurisdiction and Venue**

3. Paragraph 3 contains Plaintiff's assertions of jurisdiction and venue, which constitute legal conclusions and to which no response is required. To the extent a response may be deemed required, Defendant admits this Court has jurisdiction over and that venue in the District of Columbia is proper in actions brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

#### **Parties**

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, which do not relate to Defendant.
5. Defendant admits that DHS is an agency of the United States government headquartered in Washington, D.C., and that it has agency records subject to the FOIA. The remainder of the allegations in Paragraph 5 consists of legal conclusions, to which no response is required. To the extent a response is deemed necessary, Defendant denies pending a search for records potentially responsive to Plaintiff's requests.

**Statutory and Regulatory Background**

6. The allegations in Paragraph 6 consist of legal conclusions, to which no response is required.
7. The allegations in Paragraph 7 consist of legal conclusions, to which no response is required.
8. The allegations in Paragraph 8 consist of legal conclusions, to which no response is required.
9. The allegations in Paragraph 9 consist of legal conclusions, to which no response is required.

**Factual Background**

*CREW's December 13, 2019 FOIA Request*

10. Defendant admits that Plaintiff submitted a FOIA request to Defendant on December 13, 2019. The remainder of paragraph 10 contains Plaintiff's characterization of the FOIA request to which no response is required. Defendant refers the Court to the December 13, 2019 FOIA request for the best evidence of its contents.
11. The allegations in the first sentence of paragraph 11 constitute Plaintiff's characterization of the December 13, 2019 FOIA request to which no response is required, and the request is the best evidence of its contents. The second sentence of paragraph 11 contains Plaintiff's characterization of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action to which a response would be required.
12. Defendant admits the allegations in paragraph 12.

13. Defendant admits the allegations in paragraph 13.
14. Defendant admits the allegations in this paragraph 14, and refers the Court to the records as the best evidence of their contents.
15. Defendant admits that Plaintiff sent an administrative appeal of the final response to the December 13, 2019 FOIA request by email to Defendant on March 13, 2020. The remainder of the allegations in paragraph 15 contains characterizations of Plaintiff's administrative appeal to which no response is required, and the appeal is the best evidence of its contents.
16. The allegations of paragraph 16 contain characterizations of Plaintiff's administrative appeal to which no response is required. The administrative appeal is the best evidence of its contents.
17. The allegations of paragraph 17 contain characterizations of Plaintiff's administrative appeal and the records Defendant provided in its final response to which no response is required.
18. The allegations of paragraph 18 contain characterizations of Plaintiff's administrative appeal to which no response is required.
19. Defendant denies the allegations in this paragraph and avers that it responded by letter dated May 19, 2020, which is the best evidence of its contents.
20. Paragraph 20 contains a conclusion of law to which no response is required.

*CREW's March 24, 2020 FOIA Request*

21. Defendant admits that Plaintiff sent a FOIA request dated March 24, 2020 to the Office of Inspector General for the Department of Homeland Security (“OIG”). The March 24, 2020 FOIA request is the best evidence of its contents.
22. The allegations in the first sentence of paragraph 22 contain characterizations of Plaintiff’s March 24, 2020 FOIA request to OIG or background to which no response is required. The March 24, 2020 FOIA request is the best evidence of its contents. The remainder of paragraph 22 contains Plaintiff’s characterizations of the OIG Report requested in the March 24, 2020 FOIA Request, to which no response is required. The OIG Report is the best evidence of its contents.
23. Defendant admits that OIG responded to Defendant’s FOIA request on April 1, 2020. Defendant admits that no paper documents were provided to Plaintiff on April 1, 2020, and avers that OIG provided Plaintiff a link to access the responsive documents electronically. Defendant further avers that it provided Plaintiff a paper copy of the same record with its response to the administrative appeal by letter dated June 18 2020. The rest of the allegations in paragraph 23 contain characterizations of Defendant’s response to which no response is required. The April 1, 2020 letter and the OIG Report provided in redacted form are the best evidence of their contents.
24. Defendant admits Plaintiff sent an administrative appeal on April 3, 2020 and that Plaintiff challenged the application of FOIA Exemptions 7(E) and 7(F). The remaining allegations in paragraph 24 consist of Plaintiff’s characterization of the appeal to which no response is required.

25. The allegations in the first sentence of paragraph 25 are characterizations of the contents of Plaintiff's administrative appeal and legal conclusions to which no response is required. With respect to the allegations in the second sentence of paragraph 25, Defendant admits that Defendant did not provide the document to Plaintiff in paper form, but rather provided the link to where the document was available online and the document is the best evidence of its contents.
26. The allegations in paragraph 26 contains characterizations of Plaintiff's administrative appeal and legal conclusions to which no response is required. To the paragraph 26 contains any allegations of fact, Defendant denies.
27. The first two sentences of paragraph 27 contains characterizations of Plaintiff's administrative appeal to which no response is required. To the extent a response is required, Defendant denies Plaintiff's characterization of its application of the FOIA exemptions. With respect to sentence three of paragraph 27, Defendant denies that Plaintiff is entitled to an unredacted copy of the OIG report.
28. Defendant denies that Plaintiff has not received a response to its administrative appeals.
29. Paragraph 29 contains conclusions of law to which no response is required.<sup>1</sup>

**Plaintiff's Claim for Relief**

30. Defendant realleges its responses to the allegations in Paragraphs 1 through 29 above as set forth fully herein.

---

<sup>1</sup> Paragraph 29 appears to contain a scrivener's error in referencing a FOIA request made to "HUD."

31. Defendant admits the allegations of fact contained in paragraph 31 and denies the conclusions of law.

32. Defendant denies the allegations of fact contained in paragraph 32, and denies the conclusions of law.

33. The allegations in Paragraph 33 set forth Plaintiff's request for relief, to which no response is required. To the extent a response is deemed necessary, Defendant denies that Plaintiff is entitled to the relief requested or any relief whatsoever.

### **Requested Relief**

The remaining paragraphs set forth Plaintiff's prayer for relief, to which no response is required. To the extent a response is deemed required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

### **DEFENSES**

Defendant alleges the following defenses to the complaint. In asserting these defenses, Defendant does not assume the burden to establish any fact or proposition where that burden is properly imposed upon Plaintiff.

1. Plaintiff is not entitled to compel the production of records protected from disclosure by one or more of the exemptions or exclusions to the FOIA.

2. This Court lacks subject matter jurisdiction over any of Plaintiff's requests for relief that exceed the relief authorized by the FOIA.

3. Plaintiff is not entitled to injunctive relief, declaratory relief, mandamus, attorneys' fees, costs of suit, or any damages whatsoever.

Dated: July 9, 2020

Respectfully submitted,

MICHAEL R. SHERWIN  
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092  
Chief, Civil Division

By: /s/ Jane M. Lyons  
JANE M. LYONS, D.C. Bar #451737  
Assistant United States Attorney  
555 4th Street, N.W. – Room E4816  
Washington, D.C. 20530  
Tel: (202) 252-2540  
E-mail: Jane.Lyons@usdoj.gov