

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

CENTER FOR BIOLOGICAL)	
DIVERSITY,)	
)	
Plaintiff,)	
)	Civil Action No. 1:18-cv-00563 (JEB)
v.)	
)	
UNITED STATES)	
DEPARTMENT OF STATE, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

ANSWER AND DEFENSES

Defendants, the United States Department of State (“State”) and Michael R. Pompeo, in his official capacity as the Secretary of State (“Secretary Pompeo”) (collectively, the “Defendants”), hereby answer the claims brought under the Freedom of Information Act (“FOIA”)¹ (Claims 3-7) and certain claims brought under the Administrative Procedure Act (“APA”) (Claims 8 and 9) in Plaintiff’s Amended Complaint (ECF No. 8) as follows:

FIRST DEFENSE

Defendants reserve the right to amend this Answer to assert any other matter that constitutes an avoidance or affirmative defense under Federal Rule of Civil Procedure 8(c).

¹ This Answer responds to Plaintiff’s FOIA claims (Claims 3-9) only. On June 22, 2018, the Court granted Defendants’ Consent Motion for Extension of Time to File Response (ECF No. 17) to Claims 1 and 2 of the Amended Complaint until August 29, 2018. This Answer does not respond to allegations regarding the submission of the Seventh Climate Action Report.

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 attorneys' fees or costs.

SIXTH DEFENSE

Defendants have conducted adequate searches in response to the underlying requests under FOIA, 5 U.S.C. § 552, as amended, or otherwise is in the process of completing searches and releases of non-exempt, responsive records, or segregable portions thereof. Defendants further aver that some or all of the requested records may be exempt, in full or in part, from release under FOIA exemptions.

SEVENTH DEFENSE

Defendants deny each and every allegation contained in the Complaint except as may have been expressly admitted herein. To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, Defendants may refer to such materials for their accurate

and complete contents in response; however, Defendants' 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.

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF²

1. The allegations in Paragraph 1 constitute Plaintiff's characterization of its case and the nature of the action to which no response is required. To the extent that a response is required, Defendants admit only that Plaintiff filed its Amended Complaint purporting to bring claims under FOIA. Defendants aver that the statutes cited speak for themselves and respectfully refer the Court to those statutes for a full and accurate description of their contents.

2. *See* note 1, *supra*.

3. *See* note 1, *supra*.

4. Admit that Plaintiff submitted a FOIA request dated February 1, 2018. Defendants submit that the request speaks for itself and respectfully refer the Court to the request for a full and accurate statement of its contents.

5. Admit that as of the date of the Amended Complaint, Defendants had not provided a response to Plaintiff's FOIA request. The remainder of this paragraph contains conclusions of law to which no response is required.

6. This paragraph contains Plaintiff's characterization of this action to which no response is required.

² Merely for ease of reference, Defendants' Answer replicates the headings contained in the Amended Complaint. Although Defendants believe 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.

JURISDICTION AND VENUE

7. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, Defendants admit only that this Court has jurisdiction subject to the limitations of FOIA. Defendants further aver that the statutes cited speak for themselves.

8. This paragraph contains conclusions of law, to which no response is required. To the extent that a response is deemed necessary, Defendants admit only that venue is proper in the judicial district. Defendants further aver that the statutes cited speak for themselves.

9. *See* note 1, *supra*.

10. This paragraph contains conclusions of law to which no response is required. Defendants aver that the statutes cited speak for themselves and respectfully refer the Court to the statutes for a full and accurate description of their contents.

PARTIES

11. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 11.

12. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 12.

13. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 13.

14. *See* note 1, *supra*.

15. Deny.

16. Admit that DOS is a federal agency subject to FOIA. Regarding the second sentence of paragraph 16, *see* note 1, *supra*. The third sentence of paragraph 16 contains a legal conclusion to which no response is required.

17. Deny.

BACKGROUND

A. The Department's Failure To Fulfill Its Legal Obligations Under the Global Climate Protection Act And The Convention

i. The Department's Legal Obligations

18. *See* note 1, *supra*.

19. *See* note 1, *supra*.

20. *See* note 1, *supra*.

ii. The Overdue Seventh Climate Action Report

21. *See* note 1, *supra*.

22. *See* note 1, *supra*.

23. *See* note 1, *supra*.

24. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents. Regarding the remaining allegations in Paragraph 24, *see* note 1, *supra*.

B. The Department's Failure to Fulfill Its Legal Obligations Under The FOIA

i. FOIA's Requirements

25. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents.

26. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents.

27. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents.

28. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents.

29. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents.

30. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents.

31. This paragraph contains Plaintiff's characterization of FOIA to which no response is required. Defendants aver that FOIA speaks for itself and respectfully refer the Court to FOIA for a full and accurate description of its contents.

32. This paragraph contains conclusions of law to which no response is required.

ii. The Department's Failure To Comply With FOIA

33. Admit that Plaintiff submitted a FOIA request dated February 1, 2018. Defendants aver that the request speaks for itself and respectfully refer the Court to the request for a full and accurate statement of its contents.

34. Admit.

35. This paragraph contains conclusions of law to which no response is required.

36. Admit that Plaintiff sent DOS a letter on March 5, 2018. Defendants aver that the letter speaks for itself and respectfully refer the Court to the letter for a full and accurate statement of its contents.

37. Admit.

38. Admit that DOS sent a letter to Plaintiff on March 12, 2018. Defendants aver that the letter speaks for itself and respectfully refer the Court to the letter for a full and accurate statement of its contents.

39. Admit that as of the date of the Amended Complaint DOS had sent Plaintiff no further communications concerning this request.

40. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 40.

FIRST CLAIM FOR RELIEF
ADMINISTRATIVE PROCEDURE ACT
(Unlawfully withheld and unreasonably delayed agency action)

- 41. *See* note 1, *supra*.
- 42. *See* note 1, *supra*.
- 43. *See* note 1, *supra*.

SECOND CLAIM FOR RELIEF
MANDAMUS ACT
(Failure to carry out a non-discretionary duty)

- 44. *See* note 1, *supra*.
- 45. *See* note 1, *supra*.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to make a timely determination on the Center's FOIA Request)

- 46. Defendants incorporate their responses to Paragraphs 1-45.
- 47. This paragraph contains conclusions of law to which no response is required.
- 48. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 48.
- 49. Deny.
- 50. Deny.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to provide the records responsive to the Center's FOIA Request)

- 51. Defendants incorporate their responses to Paragraphs 1-50.
- 52. This paragraph contains conclusions of law to which no response is required.

53. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 53.

54. Deny.

55. Deny.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to adequately search for records responsive to the Center's FOIA Request)

56. Defendants incorporate their responses to Paragraphs 1-55.

57. This paragraph contains conclusions of law to which no response is required.

58. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 58.

59. Deny.

60. Deny.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to disclose all non-exempt records responsive to the Center's FOIA Request)

61. Defendants incorporate their responses to Paragraphs 1-60.

62. This paragraph contains conclusions of law to which no response is required.

63. This paragraph contains conclusions of law to which no response is required.

64. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 64.

65. Deny.

66. Deny.

SEVENTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT
(Failure to provide reasonably segregable portions of any lawfully exempt records)

67. Defendants incorporate their responses to Paragraphs 1-66.
68. This paragraph contains conclusions of law to which no response is required.
69. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 69.
70. Deny.
71. Deny.

EIGHTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First Through Fifth Claim)
(Agency action unlawfully withheld or unreasonably delayed)

72. Defendants incorporate their responses to Paragraphs 1-71.
73. This paragraph contains conclusions of law to which no response is required.
74. This paragraph contains conclusions of law to which no response is required.
75. This paragraph contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, deny.
76. This paragraph contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, deny.
77. Deny.
78. This paragraph contains conclusions of law to which no response is required.

NINTH CLAIM FOR RELIEF
VIOLATON OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First Through Sixth Claims)
(Arbitrary and capricious agency action)

79. Defendants incorporate their responses to Paragraphs 1-78.

80. This paragraph contains conclusions of law to which no response is required.

81. This paragraph contains conclusions of law to which no response is required. To the extent a response is deemed necessary, deny.

82. This paragraph contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, deny.

83. Deny.

84. This paragraph contains conclusions of law to which no response is required.

PRAYER FOR RELIEF

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

WHEREFORE, having fully answered, Defendants request judgment and relief against Plaintiff as follows:

- a) that the claims against Defendants are dismissed with prejudice and that Plaintiff takes nothing and is granted no relief;
- b) that Defendants be awarded its costs and disbursements incurred in defending this matter; and
- c) such other and further relief to which Defendants are entitled.

Dated: July 2, 2018

Respectfully submitted,

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United States Attorney

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By: /s/ Scott Leeson Sroka
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2018, that service of the foregoing **Defendants' Answer** has been made on counsel of record through the Court's ECF system.

/s/ Scott Leeson Sroka

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