

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
AMERICAN CIVIL LIBERTIES UNION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 22-1721 (JEB)
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY,)	
)	
Defendant.)	
_____)	

ANSWER

Defendant, the United States Department of Homeland Security (“DHS”), by and through its undersigned counsel, hereby responds to Plaintiffs’ Complaint. Defendant denies all allegations in the Complaint, including the relief sought, except as specifically admitted in this Answer. To the extent 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 in response; however, Defendant’s references are not intended to be, and should not be construed to be, an admission that the cited materials are: (a) correctly cited or quoted by Plaintiffs; (b) relevant to this, or any other, action; or (c) admissible in this, or any other, action. Defendant responds to the separately numbered paragraphs and prayer for relief in the Complaint as follows:

INTRODUCTION¹

1. The allegations in Paragraph 1 consists of Plaintiffs’ characterization of this action brought pursuant to the Freedom of Information Act (“FOIA”), to which no response is required.

¹ For ease of reference, Defendant refers to Plaintiffs’ headings and titles, but to the extent those headings could be construed to contain factual allegations, those allegations are denied.

To the extent a response is deemed required, Defendant admits that Plaintiffs bring this action under the FOIA 5 U.S.C. § 552, et seq.

2. Defendant admits the allegations in Paragraph 2.

3. Defendant admits the allegations in Paragraph 3.

4. The allegations in Paragraph 4 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, generalizations, to which no response is required.

5. This paragraph consists of Plaintiffs' characterization of this action, to which no response is required.

6. The allegations in Paragraph 6 consist of Plaintiffs' characterization of the reasons for submitting the FOIA request. Defendant DHS Privacy Office admits only that Plaintiffs submitted a FOIA request on April 7, 2022, and denies the remaining allegations contained in Paragraph 6. DHS Office of Intelligence & Analysis ("I&A") has no record of receiving a FOIA request from Plaintiffs on April 7, 2022.

7. The DHS Privacy Office, Office for Civil Rights and Civil Liberties ("CRCL"), and I&A admit only that as of the date of the filing of the Plaintiffs' Complaint, they have not provided a response to Plaintiffs' FOIA request and they deny the remaining allegations contained in Paragraph 7. The DHS Privacy Office and CRCL are currently reviewing the request, conducting the searches, and determining the universe of documents. DHS I&A has reviewed the request and drafted a preliminary search.

8. This paragraph consists of Plaintiffs' request for relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

JURISDICTION AND VENUE

9. Defendant admits that this case purports to be brought under 5 U.S.C. § 552(a)(4)(B). The remaining allegations in Paragraph 9 contain conclusions of law to which no response is required.

10. Defendant admits the allegations in Paragraph 10.

PARTIES

11. The allegations in Paragraph 11 consist of Plaintiff's characterization of itself. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

12. The allegations in Paragraph 12 consist of Plaintiff's characterization of itself. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

13. Defendant admits only that it is a federal agency within the meaning of 5 U.S.C. § 552(f). The remaining allegations contained in Paragraph 13 consist of Plaintiffs' legal conclusions to which no response is required.

FACTUAL BACKGROUND

Department of Homeland Security Announcement Regarding Domestic Terrorism Initiatives

14. Defendant admits the allegations in Paragraph 14.

15. The allegations in Paragraph 15 reference and purport to quote from a DHS press release, the content of which speaks for itself. Defendant denies the allegations in Paragraph 15 to the extent they are inconsistent with, mischaracterize, or misquote the press release.

16. The allegations in Paragraph 16 reference and characterize a DHS press release, the content of which speaks for itself. Defendant denies the allegations in Paragraph 16 to the extent they are inconsistent with, mischaracterize, or misquote the press release.

17. Defendant admits the allegations set forth in the first and second sentences of Paragraph 17. The allegations set forth in the third sentence of Paragraph 17 reference and characterize a DHS press release, the content of which speaks for itself. Defendant denies the allegations in the third sentence of Paragraph 17 to the extent they are inconsistent with, mischaracterize, or misquote the press release.

18. Defendant admits some of the allegations in this paragraph and denies some of the allegations in this paragraph. Defendant admits that it has not yet publicly formulated a definition of “targeted violence” as contemplated in the *Department of Homeland Security Strategic Framework for Countering Domestic Terrorism and Targeted Violence* (Strategic Framework) (available at https://www.dhs.gov/sites/default/files/publications/19_0920_pley_strategic-framework-countering-terrorism-targeted-violence.pdf); however, the Strategic Framework itself defines the term “targeted violence” for purposes of the Strategic Framework as “any incident of violence that implicates homeland security and/or [DHS] activities, and in which a known or knowable attacker selects a particular target prior to violent attack.” Strategic Framework at 4. Defendant has defined the term “domestic terrorism” along with other, associated terms in its joint report with the Federal Bureau of Investigation to the Permanent Select Committee on Intelligence, the Committee on Homeland Security, and the Committee of the Judiciary of the United States House of Representatives, and the Select Committee on Intelligence, the Committee on Homeland Security and Governmental Affairs, and the Committee of the Judiciary of the United States Senate entitled *Strategic Intelligence Assessment and Data on Domestic Terrorism* (May 2021), which is

publicly available at <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf>. Plaintiffs' allegation that "DHS has publicly released very little information about CP3 and the new I&A domestic terrorism branch" is a characterization of DHS activities for which no response is required. Defendant denies the remaining allegations in Paragraph 18, including any allegations inconsistent with the terms cited herein.

19. The allegations in Paragraph 19 reference and purport to quote from a DHS report to the Secretary of Homeland Security, the content of which speaks for itself. Defendant denies the allegations in Paragraph 19 to the extent they are inconsistent with, mischaracterize, or misquote the report.

20. The allegations in Paragraph 20 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, generalizations about information Plaintiffs and the public purportedly know, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20.

DHS History of Flawed Counterterrorism Frameworks

21. The allegations in Paragraph 21 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, or generalizations to which no response is required.

22. The allegations in Paragraph 22 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, or generalizations to which no response is required.

23. The allegations in Paragraph 23 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, or generalizations to which no response is required.

24. The allegations in Paragraph 24 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, or generalizations to which no response is required.

To the extent a response is required, I&A admits that it facilitates information sharing between federal, state, and local law enforcement agencies.

25. The allegations in Paragraph 25 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, or generalizations to which no response is required.

26. The allegations in Paragraph 26 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, or generalizations to which no response is required.

27. The allegations in Paragraph 27 constitute Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, or generalizations to which no response is required.

The FOIA Request

28. Defendant DHS Privacy Office admits only that Plaintiffs submitted a FOIA request to Defendant on April 7, 2022. On May 3, 2022, DHS Privacy Office transferred Plaintiffs' request to CRCL and I&A. The remaining allegations contained in Paragraph 28 purport to characterize Plaintiffs' April 7, 2022, FOIA request, which speaks for itself and is the best evidence of its contents, and Defendant denies the allegations to the extent they are inconsistent with or mischaracterize the FOIA request. I&A has no record of receiving a FOIA request from Plaintiffs on April 7, 2022. I&A became aware of Plaintiffs' request on May 3, 2022, after DHS Privacy Office forwarded the request to I&A.

29. Defendant respectfully refers the Court to Plaintiffs' FOIA request for a complete and accurate statement of its contents. Defendant denies the allegations in Paragraph 29 to the extent they are inconsistent with Plaintiffs' FOIA request.

30. The allegations in Paragraph 30 consist of Plaintiffs' reasons for requesting expedited processing. Defendant DHS Privacy Office admits only that Plaintiffs' FOIA request sought expedited processing and denies the remaining allegations. Defendant DHS Privacy Office

respectfully refers the Court to the request letter for a complete and accurate description of its contents, and denies the allegations to the extent they are inconsistent with the request letter.

31. The allegations in Paragraph 31 consist of Plaintiffs' reasons for requesting a fee waiver. Defendant DHS Privacy Office admits only that Plaintiffs' FOIA request sought a fee waiver and denies the remaining allegations. Defendant respectfully refers the Court to the request letter for a complete and accurate description of its contents, and denies the allegations to the extent they are inconsistent with the request letter.

32. The allegations in Paragraph 32 consist of Plaintiffs' reasons for requesting a fee waiver. Defendant DHS Privacy Office admits only that Plaintiffs' FOIA request sought a fee waiver and denies the remaining allegations. Defendant respectfully refers the Court to the request letter for a complete and accurate description of its contents, and denies the allegations to the extent they are inconsistent with the request letter.

Defendant's Response to the Request

33. DHS Privacy Office, CRCL, and I&A admit only that as of the date of the filing of the Plaintiffs' Complaint, they have not provided a response to Plaintiffs' FOIA request and deny the remaining allegations contained in Paragraph 33. The DHS Privacy Office and CRCL are currently reviewing the request, conducting the searches, and determining the universe of potentially responsive documents. I&A has reviewed the request and drafted a preliminary search.

34. The allegations in Paragraph 34 consist of Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations.

35. Defendant DHS Privacy Office admits only that on April 7, 2022, it sent Plaintiffs correspondence acknowledging receipt of Plaintiffs' FOIA request, assigning tracking number 2022-HQFO-00853.

36. Defendant DHS Privacy Office admits only that it issued letters on May 3, 2022, and May 17, 2022, denying Plaintiffs' request for expedited processing and conditionally granting Plaintiffs' request for a fee waiver. Defendant DHS Privacy Office avers that the letters were not identical.

37. Defendant DHS Privacy Office, CRCL, and I&A admit only that as of the date of the filing of the Plaintiffs' Complaint, Defendant has not released records responsive to Plaintiffs' FOIA request. To the extent the allegation contained in Paragraph 37 may be interpreted as a legal conclusion, Defendant denies the allegations.

38. The allegations in Paragraph 38 consist of Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations.

CLAIMS FOR RELIEF

39. Paragraph 39 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations.

40. Paragraph 40 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations.

41. Paragraph 41 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations.

42. Paragraph 42 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations.

43. Paragraph 43 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations.

REQUESTED RELIEF

The remaining portions of Plaintiffs' Complaint contain their request for relief, to which no response is required. To the extent a response is deemed necessary, Defendant denies that Plaintiffs are entitled to the relief requested, or to any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

Any allegations not specifically admitted, denied, or otherwise responded to are hereby denied. In further response to the Complaint, Defendant raises the following defenses. Defendant respectfully reserves the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known to Defendant throughout the course of this litigation.

First Defense

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

Second Defense

FOIA does not provide for declaratory relief against a federal agency.

Third Defense

The information that Defendant has withheld, or will withhold, in response to Plaintiff's FOIA request may be exempt in whole, or in part, from public disclosure under the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

Fourth Defense

Pursuant to Federal Rule of Civil Procedure 12(b)(4), Plaintiffs have failed to effect proper service on Defendant.

Fifth Defense

At all times alleged in the Complaint, Defendant acted in good faith, with justification, and pursuant to authority.

WHEREFORE, having fully answered, Defendant respectfully requests that the Court enter judgment in its favor, dismiss the Complaint in its entirety with prejudice, and grant such additional relief as the Court may deem appropriate.

Dated: August 22, 2022

Respectfully submitted,

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