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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

17 Civ. 9972 (ER)

v.

ANSWER

DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

.....X

Defendants the Department of Defense (“DOD”); the Department of Justice (“DOJ”),
including its components the Office of Legal Counsel (“OLC”), the Office of Information Policy
 (“OIP”), and the National Security Division (“NSD”); and the Department of State (“DOS”)

(collectively, “Defendants”), by their attorneys, answer the complaint upon information and belief as follows:

1. The allegations in paragraph 1 constitute a characterization of this action and the relief requested by Plaintiffs, to which no response is required. To the extent a response is required, deny the allegations in paragraph 1, except admit that this action is putatively brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. Admit that Plaintiffs submitted a FOIA request on or about October 30, 2017, and respectfully refer the Court to the FOIA request for a true and complete statement of its contents. Neither admit nor deny the allegations in paragraph 2 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA.

3. The allegations in paragraph 3 constitute a characterization of certain media reports, to which no response is required. Defendants respectfully refer the Court to the cited media reports for a true and complete statement of their contents. Neither admit nor deny the allegations in paragraph 3 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA.

4. Neither admit nor deny the allegations in paragraph 4 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA. The remaining allegations in paragraph 4 constitute a characterization of Plaintiffs’ motivation for submitting the FOIA request and the purported public necessity for information sought by the FOIA request, to which no response is

required. To the extent a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to Plaintiffs' motivation.

5. Admit the allegations in paragraph 5.

6. The allegations in paragraph 6 constitute a characterization of the relief requested by Plaintiffs, to which no response is required. To the extent a response is required, deny that Plaintiffs are entitled to any relief.

7. The allegations in paragraph 7 constitute legal conclusions as to jurisdiction, to which no response is required. To the extent a response is deemed required, deny that the Court has jurisdiction under 5 U.S.C. §§ 701-706.

8. The allegations in paragraph 8 constitute legal conclusions as to venue, to which no response is required.

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

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

11. DOD admits the allegations in paragraph 11, except to the extent they state legal conclusions, to which no response is required.

12. DOJ admits the allegations in paragraph 12, except to the extent they state legal conclusions, to which no response is required.

13. DOS admits the allegations in paragraph 13, except to the extent they state legal conclusions, to which no response is required.

14. Deny the allegations in paragraph 14 as vague and argumentative, including with

regard to the terms “began,” “conducting,” “lethal strikes,” “abroad,” “these strikes,” “far from,” “traditional battlefield,” and “civilians,” and irrelevant to Plaintiffs’ claims in this FOIA action.

15. Deny the allegations in paragraph 15 as vague and argumentative, including with regard to the terms “lethal strike program,” “without formal rules,” “backlash,” and “promises,” and irrelevant to Plaintiffs’ claims in this FOIA action. Admit that President Obama issued a “Presidential Policy Guidance,” or “PPG,” in May 2013, and respectfully refer the Court to the cited statements by President Obama for a true and complete statement of their contents.

16. Admit that the government produced a redacted version of the PPG to ACLU in August 2016, in connection with a then-pending FOIA lawsuit.

17. The allegations in paragraph 17 constitute a characterization of news reports, to which no response is required. The Court is respectfully referred to the cited news reports for a true and complete statement of their contents. Neither admit nor deny the allegations in paragraph 17 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA.

18. Neither admit nor deny the allegations in paragraph 18 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA. Defendants respectfully refer the Court to the PPG and the cited news report for a true and accurate statement of their contents.

19. Neither admit nor deny the allegations in paragraph 19 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA. Defendants respectfully refer the Court to the cited news report for a true and accurate statement of its contents.

20. Neither admit nor deny the allegations in paragraph 20 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA.

21. The allegations in paragraph 21 constitute a characterization of Plaintiffs’ FOIA request, to which no response is required. The Court is respectfully referred to the FOIA request for a true and complete statement of its contents.

22. The allegations in paragraph 22 constitute a characterization of the FOIA request and Plaintiffs’ request for expedited processing, to which no response is required. The Court is respectfully referred to the FOIA request and the cited statute for a true and complete statement of their contents.

23. The allegations in paragraph 23 constitute a characterization of the FOIA request and Plaintiffs’ request for a fee waiver, to which no response is required. The Court is respectfully referred to the FOIA request and the cited statute for a true and complete statement of their contents.

24. The allegations in paragraph 24 constitute a characterization of the FOIA request and Plaintiffs’ request for a fee waiver, to which no response is required. The Court is respectfully referred to the FOIA request and the cited statute for a true and complete statement of their contents.

25. The allegations in paragraph 25 constitute a characterization of Defendants’ respective responses to the FOIA request, to which no response is required. To the extent a response is deemed required, Defendants admit that no records have been released in response to the FOIA request, and respectfully refer the Court to Defendants’ respective communications

with Plaintiffs for a true and complete statement of their contents.

26. The allegations in paragraph 26 constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendants admit that more than 20 days have elapsed since Plaintiffs submitted the FOIA request, but otherwise deny the allegations in paragraph 26 and respectfully refer the Court to the cited statutory provisions for a true and complete statement of their contents.

27. The allegations in paragraph 27 constitute a characterization of a letter from DOD to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

28. The allegations in paragraph 28 constitute a characterization of a letter from DOD to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

29. The allegations in paragraph 29 constitute a characterization of a letter from DOD to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

30. DOD admits that it has not released any records in response to the FOIA request, and otherwise denies the allegations in the first sentence of paragraph 30. The allegations in the second sentence of paragraph 30 constitute legal conclusions to which no response is required. To the extent a response is deemed required, DOD denies that it has failed to comply with any statutory time limit.

31. DOD denies the allegations in paragraph 31.

32. The allegations in paragraph 32 constitute a characterization of a letter from OLC

to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

33. The allegations in paragraph 33 constitute a characterization of a letter from OLC to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

34. DOJ admits that OLC has not released any records in response to the FOIA request, and otherwise denies the allegations in the first sentence of paragraph 34. The allegations in the second sentence of paragraph 34 constitute legal conclusions to which no response is required. To the extent a response is deemed required, DOJ denies that OLC has failed to comply with any statutory time limit.

35. DOJ denies the allegations in paragraph 35.

36. The allegations in paragraph 36 constitute a characterization of an electronic message from OIP to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited message for a true and complete statement of its contents.

37. The allegations in paragraph 37 constitute a characterization of a letter from OIP to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

38. The allegations in paragraph 38 constitute a characterization of a letter from OIP to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

39. DOJ admits that OIP has not released any records in response to the FOIA request, and otherwise denies the allegations in the first sentence of paragraph 39. The

allegations in the second sentence of paragraph 39 constitute legal conclusions to which no response is required. To the extent a response is deemed required, DOJ denies that OIP has failed to comply with any statutory time limit.

40. DOJ denies the allegations in paragraph 40.

41. The allegations in paragraph 41 constitute a characterization of an email from NSD to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited email for a true and complete statement of its contents.

42. DOJ admits that NSD has not released any records in response to the FOIA request, and otherwise denies the allegations in the first sentence of paragraph 42. The allegations in the second sentence of paragraph 42 constitute legal conclusions to which no response is required. To the extent a response is deemed required, DOJ denies that NSD has failed to comply with any statutory time limit.

43. DOJ denies the allegations in paragraph 43.

44. The allegations in paragraph 44 constitute a characterization of a letter from DOS to Plaintiffs, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

45. DOS admits that it has not released any records in response to the FOIA request, and otherwise denies the allegations in the first sentence of paragraph 45. The allegations in the second sentence of paragraph 45 constitute legal conclusions to which no response is required. To the extent a response is deemed required, DOS denies that it has failed to comply with any statutory time limit.

46. DOS denies the allegations in paragraph 46.

- 47. Deny the allegations in paragraph 47.
- 48. Deny the allegations in paragraph 48.
- 49. Deny the allegations in paragraph 49.
- 50. Deny the allegations in paragraph 50.
- 51. Deny the allegations in paragraph 51.

The remainder of the complaint contains a request for relief, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations contained in the remainder of the complaint and state that Plaintiffs are not entitled to the requested relief or any relief whatsoever.

Defendants deny all allegations in Plaintiffs' complaint not expressly admitted or denied.

DEFENSES

FIRST DEFENSE

Defendants are unable to confirm or deny the existence of responsive records without revealing information that is exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).

SECOND DEFENSE

Plaintiffs fail to state a claim upon which relief may be granted.

THIRD DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' request for relief that exceeds the relief authorized under FOIA, 5 U.S.C. § 552.

Defendants may have additional defenses which are presently unknown but may be ascertained at a later time. Defendants reserve the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Federal Rules

of Civil Procedure 8 and 12.

WHEREFORE, Defendants are entitled to judgment dismissing Plaintiffs' complaint with prejudice and granting such further relief as the Court deems just, including costs and disbursements.

Dated: February 1, 2018

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