

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
By: ELIZABETH TULIS
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel: (212) 637-2725
Fax: (212) 637-2702
Email: elizabeth.tulis@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, CENTRAL
INTELLIGENCE AGENCY, DEPARTMENT
OF JUSTICE, and DEPARTMENT OF
STATE,

Defendants.

17 Civ. 3391 (PAE)

ANSWER

Defendants Department of Defense, Central Intelligence Agency, Department of Justice, and Department of State (collectively, “Defendants”), by and through their attorney, Joon H. Kim, Acting United States Attorney for the Southern District of New York, answer Plaintiffs’ complaint on information and belief as follows:

1. Paragraph 1 of the complaint contains Plaintiffs’ characterization of this action and the relief sought, to which no response is required; to the extent a response is required, deny that Plaintiffs are entitled to the relief sought or any relief.

2. With respect to the first sentence of paragraph 2, admit that Plaintiffs submitted their FOIA request to the defendant agencies on or about March 15, 2017; the remainder of the first sentence of paragraph 2 consists of a characterization of Plaintiffs' FOIA request, and Defendants respectfully refer the Court to that request for a true and complete statement of its contents. The second sentence of paragraph 2 contains allegations unrelated to Plaintiffs' legal claims under FOIA, to which no response is required. The third sentence of paragraph 2 contains a characterization of Plaintiffs' FOIA request, and Defendants respectfully refer the Court to that request for a true and complete statement of its contents.

3. To the extent that paragraph 3 characterizes Plaintiffs' motivation in submitting their FOIA request, deny knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent paragraph 3 alleges certain facts about the raid identified in Plaintiffs' FOIA request, it consists of allegations unrelated to Plaintiffs' legal claims under FOIA, to which no response is required; to the extent a response is required, Defendants deny the allegations.

4. Admit the allegations in paragraph 4.

5. Paragraph 5 contains a characterization of the relief sought by Plaintiffs in this action, to which no response is required. To the extent a response is required, deny that Plaintiffs are entitled to the relief sought or any relief.

6. Paragraph 6 contains legal conclusions regarding the Court's jurisdiction, to which no response is required.

7. Paragraph 7 contains legal conclusions regarding venue, to which no response is required.

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

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

10. With respect to paragraph 10, admit that the Department of Defense (“DOD”) is a federal agency, that the Office of the Secretary of Defense and Joint Staff, the United States Central Command (“CENTCOM”), and the DOD Office of Inspector General are components of DOD, and that Plaintiffs requested records from these components. The remainder of paragraph 10 consists of legal conclusions, to which no response is required.

11. With respect to paragraph 11, admit that the Central Intelligence Agency (“CIA”) is a federal agency. The remainder of paragraph 11 consists of legal conclusions, to which no response is required.

12. With respect to paragraph 12, admit that the Department of Justice (“DOJ”) is a federal agency, that the Office of Legal Counsel (“OLC”), the Office of Information Policy (“OIP”), and the Office of the Attorney General are components of DOJ, and that Plaintiffs’ FOIA request was referred to these components by DOJ’s FOIA Referral Unit. The remainder of paragraph 12 consists of legal conclusions, to which no response is required.

13. With respect to paragraph 13, admit that the Department of State (“State Department”) is a federal agency. The remainder of paragraph 13 consists of legal conclusions, to which no response is required.

14. Paragraph 14 contains a characterization of the subject of Plaintiffs’ FOIA request and of facts unrelated to Plaintiffs’ legal claims under FOIA, to which no response is required. Defendants deny the allegations regarding “deep concerns.”

15. Paragraph 15 contains a characterization of the subject of Plaintiffs’ FOIA request and of facts unrelated to Plaintiffs’ legal claims under FOIA, to which no response is required.

16. Paragraph 16 contains a characterization of the subject of Plaintiffs' FOIA request and of congressional testimony unrelated to Plaintiffs' legal claims under FOIA, to which no response is required. To the extent a response is required, respectfully refer the Court to the cited testimony for a true and complete statement of its contents.

17. Paragraph 17 contains a characterization of the subject of Plaintiffs' FOIA request and congressional testimony and reports unrelated to Plaintiffs' legal claims under FOIA, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the testimony and reports cited in paragraph 17 for true and complete statements of their contents.

18. Paragraph 18 contains a characterization of the subject of Plaintiffs' FOIA request and congressional testimony unrelated to Plaintiffs' legal claims under FOIA, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the cited testimony for a true and complete statement of its contents.

19. Paragraph 19 contains a characterization of the subject of Plaintiffs' FOIA request and of reports and facts unrelated to Plaintiffs' legal claims under FOIA, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the cited reports for true and complete statements of their contents and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 because many of the terms used in this paragraph are vague, ambiguous, and argumentative.

20. Paragraph 20 contains a characterization of the subject of Plaintiff's FOIA request and of facts unrelated to Plaintiffs' legal claims under FOIA, to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 20.

21. Paragraph 21 contains a characterization Plaintiffs' FOIA requests and of facts unrelated to Plaintiffs' legal claims under FOIA, to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 21.

22. With respect to the allegations in paragraph 22, admit that the ACLU submitted FOIA requests to DOD, CIA, DOJ, and the State Department on March 15, 2017. The remainder of paragraph 22 consists of a characterization of Plaintiffs' FOIA requests, and Defendants respectfully refer the Court to those requests for true and complete statements of their contents.

23. To the extent paragraph 23 characterizes Plaintiffs' FOIA request, Defendants respectfully refer the Court to the request for a true and complete statement of its contents. To the extent paragraph 23 characterizes Plaintiffs' motivation for seeking expedited processing, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations. Paragraph 23 otherwise consists of a legal conclusion, to which no response is required.

24. To the extent paragraph 24 characterizes Plaintiffs' FOIA request, Defendants respectfully refer the Court to the request for a true and complete statement of its contents. To the extent paragraph 24 characterizes Plaintiffs' motivation in seeking a waiver of fees, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations. Paragraph 24 otherwise consists of a legal conclusion, to which no response is required.

25. To the extent paragraph 25 characterizes Plaintiffs' FOIA request, Defendants respectfully refer the Court to the request for a true and complete statement of its contents. To the extent paragraph 25 characterizes Plaintiffs' motivation in seeking a waiver of fees, Defendants deny knowledge or information sufficient to form a belief as to the truth of the

allegations. Paragraph 25 otherwise consists of a legal conclusion, to which no response is required.

26. With respect to the first sentence of paragraph 26, admit that no Defendant has released any record in response to Plaintiffs' FOIA request. The remainder of the first sentence of paragraph 26 consists of a characterization of facts unrelated to Plaintiffs' legal claims under FOIA, to which no response is required; to the extent a response is required, deny knowledge or information sufficient to form a belief as to the truth of the allegations because they are vague, ambiguous, and argumentative. With respect to the second sentence of paragraph 26, admit that the DOD Office of Inspector General granted Plaintiffs' request for expedited processing; that the DOD Office of Inspector General and State Department granted Plaintiffs' request for a waiver of fees; that the CIA, State Department, Office of the Secretary of Defense and Joint Staff, CENTCOM, DOJ Office of Legal Counsel, and DOJ Office of Information Policy denied Plaintiffs' request for expedited processing; and that CENTCOM denied Plaintiffs' request for a waiver of fees. Otherwise deny the allegations in the second sentence of paragraph 26.

27. The first and second sentence of paragraph 27 contain legal conclusions, to which no response is required. With respect to the third sentence of paragraph 27, admit that Plaintiffs submitted their FOIA requests on or about March 15, 2017, and that Plaintiffs filed their complaint on or about May 8, 2017; otherwise deny the allegations in the third sentence of paragraph 27. The fourth sentence of paragraph 27 contains a legal conclusion, to which no response is required.

28. Paragraph 28 characterizes a letter from the DOD Office of Freedom of Information dated March 20, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

29. Paragraph 29 further characterizes the letter from the DOD Office of Freedom of Information dated March 20, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

30. With respect to the first sentence of paragraph 30 admit that the Office of the Secretary of Defense and Joint Staff has not released any records in response to Plaintiffs' FOIA request; otherwise deny the allegations in the first sentence of paragraph 30. The second sentence of paragraph 30 contains legal conclusions, to which no response is required.

31. Deny the allegations in paragraph 31.

32. Paragraph 32 characterizes a letter from CENTCOM dated March 27, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

33. Admit that Plaintiffs filed an administrative appeal by email dated April 24, 2017. The remainder of paragraph 33 consists of a legal conclusion, to which no response is required.

34. Paragraph 34 characterizes a letter from the Chief of the Appeals Office of the Freedom of Information Division of DOD dated April 24, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

35. With respect to the first sentence of paragraph 35, admit that CENTCOM has not released any records in response to Plaintiffs' FOIA request; otherwise deny the allegations in the first sentence of paragraph 35. The second sentence of paragraph 35 contains legal conclusions, to which no response is required.

36. Deny the allegations in paragraph 36.

37. The first sentence of paragraph 37 characterizes a March 15, 2017, email from the DOD Office of Inspector General, and Defendants respectfully refer the Court to that email for a

true and complete statement of its contents. The second sentence of paragraph 37 characterizes a letter from the DOD Office of Inspector General dated March 20, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents. The third sentence of paragraph 37 characterizes a March 22, 2017, email from the DOD Office of Inspector General, and Defendants respectfully refer the Court to that email for a true and complete statement of its contents.

38. With respect to the first sentence of paragraph 38, admit that the DOD Office of Inspector General has not released any records in response to Plaintiffs' FOIA request; otherwise deny the allegations in the first sentence of paragraph 38. The second sentence of paragraph 38 contains legal conclusions, to which no response is required.

39. Deny the allegations in paragraph 39.

40. Paragraph 40 characterizes a letter from the CIA dated March 16, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

41. With respect to the first sentence of paragraph 41, admit that the CIA has not released any records in response to Plaintiffs' FOIA request; otherwise deny the allegations in the first sentence of paragraph 41. The second sentence of paragraph 41 contains legal conclusions, to which no response is required.

42. Deny the allegations in paragraph 42.

43. Paragraph 43 characterizes a letter from OLC dated March 24, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

44. With respect to the first sentence of paragraph 44, admit that OLC has not released any records in response to Plaintiffs' FOIA request; otherwise deny the allegations in the first

sentence of paragraph 44. The second sentence of paragraph 44 contains legal conclusions, to which no response is required.

45. Deny the allegations in paragraph 45.

46. Paragraph 46 characterizes a letter from the Justice Management Division of DOJ dated March 16, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents. Defendants aver that OIP handles initial requests for records on behalf of the Office of the Attorney General (“OAG”), and therefore the Justice Management Division of DOJ routed the request to OIP to handle on behalf of OAG.

47. Paragraph 47 characterizes a March 21, 2017, system-generated email from OIP, and Defendants respectfully refer the Court to that email for a true and complete statement of its contents.

48. With respect to the first sentence of paragraph 48, admit that on March 28, 2017, Doug Hibbard spoke with the FOIA requester about the type of records OAG typically maintains, the nature of the records requested by Plaintiffs, and Mr. Hibbard’s experience with searching OAG for a similar past request, and that Mr. Hibbard inquired whether Plaintiffs wanted OIP to conduct a search of OAG records in light of these considerations, and otherwise deny the allegations in the first sentence of paragraph 48. Admit the allegations in the second sentence of paragraph 48.

49. Paragraph 49 characterizes a letter from OIP dated April 28, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

50. With respect to the first sentence of paragraph 50, admit that OIP and OAG have not released any records in response to Plaintiffs’ FOIA request; otherwise deny the allegations in

the first sentence of paragraph 50. The second sentence of paragraph 50 contains legal conclusions, to which no response is required.

51. Deny the allegations in paragraph 51.

52. Paragraph 52 characterizes a letter from the State Department dated March 21, 2017, and Defendants respectfully refer the Court to that document for a true and complete statement of its contents.

53. With respect to the first sentence of paragraph 53, admit that the State Department has not released any records in response to Plaintiffs' FOIA request; otherwise deny the allegations in the first sentence of paragraph 53. The second sentence of paragraph 53 contains legal conclusions, to which no response is required.

54. Deny the allegations in paragraph 54.

55. Deny the allegations in paragraph 55.

56. Deny the allegations in paragraph 56.

57. Deny the allegations in paragraph 57.

58. Deny the allegations in paragraph 58.

59. Deny the allegations in paragraph 59.

60. The paragraphs beginning "WHEREFORE" contain Plaintiff's prayer for relief, to which no response is required; to the extent a response is required, deny that Plaintiffs are entitled to the relief sought or any relief.

DEFENSES

Any allegations not specifically admitted, denied, or otherwise answered are hereby denied. For further defenses, Defendant alleges as follows:

First Defense

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

Second Defense

To the extent Plaintiffs have failed to exhaust available administrative remedies and do not satisfy the requirements of the constructive exhaustion doctrine, the complaint should be dismissed for failure to state a claim and/or for lack of subject matter jurisdiction.

Third Defense

Plaintiffs' FOIA requests do not reasonably describe the records sought, and therefore do not comply with FOIA and/or do not trigger a search or production obligation.

Fourth Defense

Some or all of the requested documents are fully or partially exempt from disclosure. *See* 5 U.S.C. § 552(b).

Fifth Defense

Plaintiffs are not entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E).

Sixth Defense

Plaintiffs are not entitled to a fee waiver under 5 U.S.C. § 552(a)(4)(A).

Seventh Defense

Plaintiffs' FOIA requests are not enforceable under FOIA to the extent a reasonable search cannot be undertaken to identify and locate all responsive records.

Eighth Defense

Defendants have exercised due diligence in processing Plaintiffs' FOIA requests and exceptional circumstances exist that necessitate additional time for Defendants to complete their processing of the FOIA requests. *See* 5 U.S.C. § 552(a)(6)(C).

Defendants may have additional defenses which are not known at this time but which may become known through further proceedings. Defendants reserve the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

CONCLUSION

WHEREFORE, Defendants demand judgment dismissing the complaint and granting such other and further relief as this Court deems appropriate, including costs and disbursements.

Dated: New York, New York
June 14, 2017

Respectfully submitted,

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
Attorney for Defendants

By: /s/ Elizabeth Tulis
ELIZABETH TULIS
Assistant United States Attorney
U.S. Attorney's Office, SDNY
86 Chambers Street, 3rd Floor
New York, NY 10007
T. (212) 637-2725
F. (212) 637-2702
elizabeth.tulis@usdoj.gov