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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION
and AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE,
DEPARTMENT OF JUSTICE, and
CENTRAL INTELLIGENCE AGENCY,

Defendants.

16 Civ. 8936 (RMB)

ANSWER

Defendants National Security Agency (“NSA”), Office of the Director of National Intelligence (“ODNI”), Department of Justice (“DOJ”), and the Central Intelligence Agency (“CIA”) (jointly “Defendants”), by their attorney, Preet Bharara, United States Attorney for the Southern District of New York, hereby answer the complaint of plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (jointly “Plaintiffs”) upon information and belief as follows:

1. Paragraph 1 constitutes Plaintiffs' characterization of this action, to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 1, except admit that this action purports to be brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*

2. The allegations contained in paragraph 2 constitute Plaintiffs' characterization of their September 14, 2016 FOIA request ("FOIA Request"), and Defendants respectfully refer the Court to the FOIA Request for a true and complete statement of their contents.

3. Deny the allegations in Paragraph 3, except aver that Defendants have not completed their processing of the FOIA Request.

4. Deny the allegations in Paragraph 4, except aver that Defendants have not completed their processing of the FOIA Request.

5. The allegations contained in the first sentence and part of the second sentence of paragraph 5 constitute Plaintiffs' characterization of Section 702 of the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. § 1881a, and Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents. The remainder of paragraph 5 constitutes Plaintiffs' characterization of an "ongoing public debate" regarding the reauthorization of Section 702, to which no response is required.

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

JURISDICTION AND VENUE

7. The allegations in paragraph 7 constitute Plaintiffs' conclusions of law regarding jurisdiction, to which no response is required.

8. The allegations in paragraph 8 constitute Plaintiffs' conclusions of law regarding venue, to which no response is required.

PARTIES

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first, second, third and fifth sentences of paragraph 9. The fourth sentence of paragraph 9 constitutes Plaintiffs' conclusions of law regarding their claim for expeditious processing under 5 U.S.C. § 552(a)(6)(E), to which no response is required. To the extent a response is required, defendant NSA denies the allegations contained in the fourth sentence of paragraph 9, and the remaining defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence of paragraph 9.

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

11. Admit the allegations in paragraph 11.

12. Admit the allegations in paragraph 12.

13. Admit the allegations in paragraph 13.

14. Admit the allegations in paragraph 14.

FACTUAL BACKGROUND

Section 702 of FISA

15. The allegations contained in paragraph 15 constitute Plaintiffs' characterization of Section 702 of FISA, and Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents.

16. The allegations contained in paragraph 16 constitute Plaintiffs' characterization of Section 702 of FISA, and Defendants respectfully refer the Court to Section 702 of FISA for a

complete and accurate description of its contents.

17. The allegations contained in paragraph 17 constitute Plaintiffs' characterization of Section 702 of FISA, and Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents.

18. The allegations contained in paragraph 18 constitute Plaintiffs' characterization of Section 702 of FISA. Defendants respectfully refer the Court to the National Security Agency, Civil Liberties and Privacy Office Report entitled "NSA's Implementation of Foreign Intelligence Surveillance Act Section 702" ("NSA CLPO Report") dated April 16, 2014, available at https://www.nsa.gov/about/civil-liberties/reports/assets/files/nsa_report_on_section_702_program.pdf, for further information concerning the implementation of Section 702.

19. The allegations contained in paragraph 19 constitute Plaintiffs' characterization of Section 702 of FISA. Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents, and to the NSA CLPO Report for further information concerning the implementation of Section 702.

20. The allegations contained in paragraph 20 constitute Plaintiffs' characterization of Section 702 of FISA. Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents, and to the NSA CLPO Report for further information concerning the implementation of Section 702.

21. The allegations contained in paragraph 21 constitute Plaintiffs' characterization of Section 702 of FISA, and Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents.

22. The allegations contained in paragraph 22 constitute Plaintiffs' characterization of

Section 702 of FISA, and Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents.

23. The allegations contained in paragraph 23 constitute Plaintiffs' characterization of Section 702 of FISA, and Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents.

24. The allegations contained in paragraph 24 constitute Plaintiffs' characterization of a portion of the Statistical Transparency Report Regarding Use of National Security Authorities, Annual Statistics for Calendar Year 2015 Regarding Use of Certain National Security Legal Authorities, dated April 30, 2016, available at <https://www.dni.gov/files/icotr/ODNI%20CY15%20Statistical%20Transparency%20Report.pdf>, and Defendants respectfully refer the Court to that report for a complete and accurate description of its contents.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 because Plaintiffs have not provided a definition setting forth their intended meaning of the phrases "basic information about the breadth of Section 702 surveillance," "many of the rules that set the bounds of this surveillance," and "its complete sets of rules for using Section 702 to investigate or prosecute individual Americans."

26. The allegations contained in paragraph 26 constitute Plaintiffs' characterization of Section 702 of FISA, and Defendants respectfully refer the Court to Section 702 of FISA for a complete and accurate description of its contents.

27. Deny the allegations contained in paragraph 27.

The FOIA Request

28. The allegations contained in paragraph 28 constitute Plaintiffs' characterization

of their FOIA Request, and Defendants respectfully refer the Court to the FOIA Request for a true and complete statement of its contents.

29. The allegations contained in paragraph 29 constitute Plaintiffs' characterization of their FOIA Request, and Defendants respectfully refer the Court to the FOIA Request for a true and complete statement of its contents.

30. The allegations contained in paragraph 30 constitute Plaintiffs' characterization of their FOIA Request, and Defendants respectfully refer the Court to the FOIA Request for a true and complete statement of its contents.

31. The allegations contained in paragraph 31 constitute Plaintiffs' characterization of their FOIA Request, and Defendants respectfully refer the Court to the FOIA Request for a true and complete statement of its contents.

Defendants' Responses to the Request

32. Deny the first sentence of paragraph 32, except to admit that Defendants have not completed their processing of Plaintiffs' FOIA Request. The second sentence of paragraph 32 constitutes Plaintiffs' characterizations of Defendants' responses to their FOIA Request, and respectfully refer the Court to those responses for a complete and accurate description of their contents.

33. The allegations contained in paragraph 33 constitute Plaintiffs' conclusions of law regarding the timeframe in which FOIA requires agencies to respond to requests, to which no response is required. To the extent a response is required, admit that Defendants have not completed their processing of Plaintiffs' FOIA Request within 30 business days after Plaintiffs submitted the FOIA Request.

NSA

34. Admit that the NSA sent Plaintiffs a letter dated September 23, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

35. Admit that Plaintiffs submitted a letter to NSA dated October 28, 2016, regarding Plaintiffs' administrative appeal of NSA's decision and respectfully refer the Court to that letter for a complete and accurate description of its contents.

36. The allegations contained in paragraph 36 constitute Plaintiffs' conclusions of law regarding administrative exhaustion, to which no response is required. To the extent paragraph 36 contains factual allegations to which a response is required, admit that NSA has not completed its processing of Plaintiffs' FOIA Request, and deny the remainder of the allegations contained in paragraph 36.

37. Deny the allegations contained in paragraph 37.

Office of the Director of National Intelligence

38. Admit that ODNI sent a letter to Plaintiffs dated September 20, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

39. The allegations contained in paragraph 39 constitute Plaintiffs' conclusions of law regarding administrative exhaustion, to which no response is required. To the extent paragraph 39 contains factual allegations to which a response is required, admit that ODNI has not completed its processing of Plaintiffs' FOIA Request, and deny the remainder of the allegations contained in paragraph 39.

40. Deny the allegations contained in paragraph 40.

Department of Justice

Federal Bureau of Investigation

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14, except admit that the FBI received Plaintiffs' FOIA Request on September 14, 2016.

42. Admit that FBI sent Plaintiffs a letter dated September 21, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

43. Admit that FBI sent Plaintiffs a letter dated September 30, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

44. The allegations contained in paragraph 44 constitute Plaintiffs' conclusions of law regarding administrative exhaustion, to which no response is required. To the extent paragraph 44 contains factual allegations to which a response is required, admit that FBI has not completed its processing of Plaintiffs' FOIA Request, and deny the remainder of the allegations contained in paragraph 44.

45. Deny the allegations contained in paragraph 45.

National Security Division

46. Admit that NSD sent Plaintiffs an email dated October 4, 2016, and respectfully refer the Court to that email for a complete and accurate description of its contents.

47. The allegations contained in paragraph 47 constitute Plaintiffs' conclusions of law regarding administrative exhaustion, to which no response is required. To the extent paragraph 44 contains factual allegations to which a response is required, admit that NSD has not completed its processing of Plaintiffs' FOIA Request, and deny the remainder of the allegations contained in paragraph 47.

48. Deny the allegations contained in paragraph 48.

*Office of Information Policy, Office of the Attorney General,
and Office of the Deputy Attorney General*

49. Admit that Plaintiffs were sent two system-generated notifications from the OIP FOIAonline request portal on September 22, 2016, confirming that Plaintiffs' request was logged into the FOIAonline system under tracking numbers DOJ-2016-005518 (Office of the Attorney General) and DOJ-2016-005536 (Office of the Deputy Attorney General).

50. Admit that OIP sent Plaintiffs a letter dated September 23, 2016, on behalf of the Offices of the Attorney General and Deputy Attorney General, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

51. Admit that OIP sent Plaintiffs a letter dated September 23, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

52. The allegations contained in paragraph 52 constitute Plaintiffs' conclusions of law regarding administrative exhaustion, to which no response is required. To the extent paragraph 52 contains factual allegations to which a response is required, admit that OIP has not completed processing of Plaintiffs' FOIA Request on behalf of the Offices of the Attorney General and the Deputy Attorney General, and deny the remainder of the allegations contained in paragraph 52.

53. Deny the allegations contained in paragraph 53.

Office of the Inspector General

54. Admit that OIG sent Plaintiffs a letter dated September 30, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

55. Admit that OIG sent Plaintiffs a letter dated October 24, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

56. Admit that Plaintiffs submitted to OIP a letter dated November 14, 2016

regarding Plaintiffs' administrative appeal of OIG's response, and that the letter was received by OIP on November 15, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

57. Deny the allegations in contained in paragraph 57 and aver that, based on the manner in which it construed Plaintiffs' FOIA Request, OIG located no responsive records.

58. Deny the allegations contained in paragraph 58 of the complaint.

Central Intelligence Agency

59. Admit that CIA sent Plaintiffs a letter dated September 16, 2016, and respectfully refer the Court to that letter for a complete and accurate description of its contents.

60. The allegations contained in paragraph 60 constitute Plaintiffs' conclusions of law regarding administrative exhaustion, to which no response is required. To the extent paragraph 60 contains factual allegations to which a response is required, admit that CIA has not completed its processing of Plaintiffs' FOIA Request, and deny the remainder of the allegations contained in paragraph 60.

61. Deny the allegations contained in paragraph 61.

CAUSES OF ACTION

62. Deny the allegations contained in paragraph 62.

63. Deny the allegations contained in paragraph 63.

64. Deny the allegations contained in paragraph 64.

65. Deny the allegations contained in paragraph 65.

66. Deny the allegations contained in paragraph 66.

67. The remaining paragraphs of the complaint contain Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, deny that Plaintiffs are

entitled to the requested relief, or to any relief whatsoever.

FIRST DEFENSE

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

SECOND DEFENSE

The information requested in Plaintiffs' FOIA Request is exempt in whole or in part under the FOIA. *See* 5 U.S.C. § 552(b).

THIRD DEFENSE

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

Dated: New York, New York
January 13, 2017

Respectfully submitted,

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United States Attorney
Southern District of New York

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CERTIFICATE OF SERVICE

I, TOMOKO ONOZAWA, Assistant United States Attorney for the Southern District of New York, hereby certify that on January 13, 2017, I caused a copy of the foregoing Answer to the Complaint to be served by ECF and Electronic Mail, on the following:

Patrick Toomey, Esq.
Ashley Gorski, Esq.
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, New York 10004
Counsel for Plaintiffs

Dated: New York, New York
January 13, 2017

/s/ Tomoko Onozawa
TOMOKO ONOZAWA