

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

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NBC 7 SAN DIEGO, <i>et al.</i> ,		)	
		)	
	Plaintiffs,	)	
		)	
v.		)	Civil Action No. 19-1146 (RBW)
		)	
U.S. DEPARTMENT OF		)	
HOMELAND SECURITY, <i>et al.</i> ,		)	
		)	
	Defendants.	)	
<hr/>		)	

**ANSWER**

Defendants, the U.S. Department of Homeland Security (“DHS”) and its component-agencies, Immigration and Customs Enforcement (“ICE”), U.S. Customs and Border Protection (“CBP”), and U.S. Citizenship and Immigration Services (“USCIS”), by undersigned counsel, respectfully submit this Answer to the Complaint filed by Plaintiffs NBC 7 of San Diego, Tom Jones, and Reporter’s Committee for Freedom of the Press.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

As to some or all of the claims asserted in this action, Plaintiffs have failed to state a claim upon which relief may be granted under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

**SECOND DEFENSE**

Plaintiffs are not entitled to compel the production of records protected from disclosure by one or more of the exemptions to the FOIA.

**THIRD DEFENSE**

Defendants have, or may have, further and additional affirmative defenses that are not yet known to Defendants, but which may become known through the course of litigation. Defendants reserve the right to later assert each and every affirmative defense.

**FOURTH DEFENSE**

The Court lacks jurisdiction over the subject matter of this Complaint for any relief that exceeds the relief authorized by statute under 5 U.S.C. § 552.

**FIFTH DEFENSE**

Plaintiffs are not entitled to attorneys' fees or costs.

**RESPONSES TO THE NUMBERED PARAGRAPHS<sup>1</sup>**

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 Plaintiffs; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action. Defendants expressly deny all of the allegations in the Complaint that are not specifically admitted or otherwise qualified in this Answer. Defendants respond to the Complaint in like numbered paragraphs as follows:

1. This paragraph contains Plaintiffs' description of this action to which no response is required. To the extent that a response is required, Defendants admit only that this action purports to be brought under the FOIA, 5 U.S.C. § 552.

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<sup>1</sup> Merely for ease of reference, Defendants replicate the headings contained in the 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.

2. This paragraph consists of Plaintiffs' characterization of this action to which no response is required. To the extent a response is required, Defendants deny that (i) they have unlawfully withheld records responsive to Plaintiffs' FOIA request; and (ii) Plaintiffs are entitled to any relief, including, but not limited, to relief under the FOIA.

### **PARTIES**

3. The allegations contained in this paragraph consist of Plaintiff NBC 7 San Diego's characterization of itself. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

4. The allegations contained in this paragraph consist of Plaintiff Tom Jones' characterization of himself. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

5. The allegations contained in this paragraph consist of Plaintiff Reporter's Committee for Freedom of Press' characterization of itself. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

6. Defendants admit that DHS is a federal agency within the meaning of 5 U.S.C. § 552(f), and is headquartered in Washington, D.C. Defendants deny the remaining allegations in Paragraph 6.

7. Defendants admit that CBP is a component agency of DHS within the meaning of 5 U.S.C. § 552(f), and is headquartered in Washington, D.C. Defendants deny the remaining allegations in paragraph 7.

8. Defendants admits that ICE a component agency of DHS within the meaning of 5 U.S.C. § 552(f), and is headquartered in Washington, D.C. Defendant denies the remaining allegations in Paragraph 8.

9. Defendant USCIS admits that it is a component agency of DHS within the meaning of 5 U.S.C. § 552(f) and is headquartered in Washington D.C. Defendants deny the remaining allegations in Paragraph 9.

### **JURISDICTION AND VENUE**

10. This paragraph contains conclusions of law concerning jurisdiction to which no response is required. To the extent that a response is required, Defendants admit that the Court has jurisdiction over Plaintiffs' lawsuit subject to the limitations of the FOIA.

11. This paragraph contains conclusions of law concerning venue to which no response is required. To the extent that a response is required, Defendants admit that venue in this district is proper.

### **FACTUAL ALLEGATIONS**

#### **BACKGROUND**

12. This paragraph contains Plaintiffs' characterization of Exhibit 1 to the Complaint. Defendants respectfully refer the Court to the referenced exhibit for a complete and accurate description of its contents and deny any allegations inconsistent therewith.

13. This paragraph contains Plaintiffs' characterization of Exhibit 1 to the Complaint and does not set forth a claim for relief or allege facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to Plaintiffs' Exhibit for an accurate description of its contents and deny any allegations inconsistent therewith.

14. This paragraph contains Plaintiffs' further characterization of Exhibit 1 to the Complaint. Defendants respectfully refer the Court to the referenced exhibit for an accurate description of its contents and deny any allegations inconsistent therewith.

15. With regard to first sentence of paragraph 15, Defendants admit that a CBP spokesperson issued the quoted statements in response to media inquires, including from NBC 7. The remainder

of paragraph 15 characterizes a publicly available news article, to which Defendants respectfully refer the Court to for a complete and accurate description of its contents.

**PLAINTIFFS' FOIA REQUESTS**

**THE NBC 7 REQUEST**

16. With regard to the first sentence of paragraph 16, Defendants admit that Plaintiff Jones submitted a FOIA request to CBP; Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence. With regard to the second sentence, Defendants admit that Exhibit 2 is a copy of the request submitted to CBP; the remainder of the second sentence characterizes Exhibit 2 to the Complaint, to which the Court is respectfully referred for a complete and accurate description of its contents.

17. This paragraph characterizes Exhibit 2 to the Complaint, to which Defendants respectfully refer the Court to for an accurate description of its contents and deny any allegations inconsistent therewith.

18. This paragraph characterizes Exhibit 2 to the Complaint, to which Defendants respectfully refer the Court to for an accurate description of its contents and deny any allegations inconsistent therewith.

19. This paragraph characterizes Exhibit 3 to the Complaint, to which Defendants respectfully refer the Court to for an accurate description of its contents and deny any allegations inconsistent therewith.

20. Defendants admit that CBP informed Plaintiff Jones via email that it was granting the request for a fee waiver for the NBC 7 Request, but deny that Exhibit 4 relates to the NBC 7 Request, as that term is defined in the Complaint; the remainder of this paragraph characterizes Exhibit 4 to the Complaint, to which the Court is respectfully referred to for a complete and accurate description of its contents.

21. This paragraph characterizes Exhibit 5 to the Complaint, to which to which Defendants respectfully refer the Court to for an accurate description of its contents and deny any allegations inconsistent therewith.

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 22. Defendants admit the allegations contained in the second sentence.

**THE RCFP REQUEST**

23. Defendants admit that Plaintiffs submitted a FOIA request dated March 20, 2019, to CBP, ICE, and USCIS. Defendants deny that DHS received Plaintiff's FOIA request.

24. Admit

25. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.

26. Admit.

27. Admit.

28. This paragraph consists of Plaintiffs' characterization of their FOIA request to which no response is required. To the extent that a response is required, Defendants respectfully refer the Court to Plaintiffs' FOIA request for a complete and accurate description of its contents.

29. Admit.

30. This paragraph characterizes Exhibit 10 to the Complaint, to which Defendants respectfully refer the Court for an accurate description of its contents and deny any allegations inconsistent therewith.

31. Defendants admit that as of the date of Plaintiffs' Complaint, CBP has not corresponded with Plaintiffs.

32. Defendants admit that as of the date of Plaintiffs' Complaint, DHS has not corresponded with Plaintiffs.

33. Defendants admits that as of the date of Plaintiffs' Complaint, ICE has not corresponded with Plaintiffs.

34. Defendants admits that as of the date of Plaintiffs' Complaint, USCIS had not yet issued a response to Plaintiffs' FOIA request and aver that USCIS subsequently sent an acknowledgement letter to Plaintiffs on May 15, 2019.

### **CAUSE OF ACTION**

#### **Count I: Failure to Process NBC 7 Request on Expedited Basis (Defendant CBP)**

35. Defendants repeat and incorporate herein by reference their responses to paragraphs 1-34, *supra*.

36. Admit.

37. This paragraph consists of legal conclusions, to which no response is required, but to the extent a response is deemed necessary, Defendants deny.

38. This paragraph consists of legal conclusions, to which no response is required, but to the extent a response is deemed necessary, Defendants deny.

39. This paragraph consists of legal conclusions, to which no response is required, but to the extent a response is deemed necessary, Defendants deny.

40. This paragraph consists of legal conclusions, to which no response is required, but to the extent a response is deemed necessary, Defendants deny.

41. This paragraph consists of legal conclusions, to which no response is required, but to the extent a response is deemed necessary, Defendants deny.

#### **Count II: Violation of FOIA for Failure to Comply with Statutory Deadlines (All Defendants)**

42. Defendants incorporate by reference its responses to all preceding paragraphs.

43. Admit.

44. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

45. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

46. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

47. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

48. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

**Count III Violation of FOIA for Wrongful Withholding of Agency Records  
(All Defendants)**

49. Defendants repeat and incorporate by reference their responses to paragraphs 1-34, *supra*.

50. Admit

51. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

52. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

53. Defendants admit that, as of the date of this Answer, Defendants have not yet released any records or portions thereof in response to Plaintiffs' FOIA requests.

54. Defendants admit that, as of the date of this Answer, Defendants have not yet cited any exemptions to withhold records or portions thereof that are responsive to Plaintiffs' FOIA requests.

55. Defendants admit that, as of the date of this Answer, they have not yet identified whether or how disclosure of each of the records or portions thereof sought by Plaintiffs' FOIA requests would foreseeably harm an interest protected by a FOIA exemption and/or why disclosure is prohibited by law.

56. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

57. This paragraph consists of a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

**REQUESTED RELIEF**

The remainder of Plaintiffs' Complaint contain Plaintiffs' requested relief, to which no response is required. To the extent this Paragraph is deemed to contain factual allegations, Defendants deny those allegations and denies that Plaintiffs are entitled to any relief.

Respectfully Submitted,

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