

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER  
FOUNDATION,

*Plaintiff,*

v.

UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY,

*Defendant.*

Civil Action No. 19-2578 (TFH)

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

Defendant, the United States Department of Homeland Security ("DHS"), by undersigned counsel, respectfully submit this answer to the complaint filed by Plaintiff Electronic Frontier Foundation.

**AFFIRMATIVE DEFENSES**

1. The complaint fails to state a claim upon which relief can be granted.
2. Plaintiff is not entitled to information protected from disclosure by one or more exemptions to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.
3. The Court lacks subject-matter jurisdiction to award relief that exceeds that authorized by FOIA.
4. Plaintiff's request did not reasonably describe the records sought.
5. Plaintiff is not entitled to attorney's fees.

**RESPONSES TO THE NUMBERED PARAGRAPHS**

Defendant denies all of the allegations in the complaint, including the relief sought, except to the extent specifically admitted herein. Defendant admits, denies, or otherwise responds to the numbered paragraphs in the complaint as follows:

1. This paragraph does not contain allegations but rather a characterization of Plaintiff's claims to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

### **Parties<sup>1</sup>**

2. Defendant lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

3. Defendant admits the allegations in this paragraph.

### **Jurisdiction and Venue**

4. This paragraph does not contain allegations but rather a conclusion of law to which no response is required. To the extent that a response is required, Defendants admit that this Court has jurisdiction subject to the terms and limitations of FOIA.

5. This paragraph does not contain allegations but rather a conclusion of law to which no response is required. To the extent that a response is required, Defendants admit that venue is proper in this district.

### **Background**

6. This paragraph purports to describe and characterize a filing made in *United States v. Ignjatov*, No. 5:17-cr-00222-JGB (C.D. Cal.), which speaks for itself and is the best evidence of its contents. Accordingly, Defendants refer to that filing for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

7. This paragraph purports to describe and characterize a declaration filed in *United States v. Ignjatov*, No. 5:17-cr-00222-JGB (C.D. Cal.), which speaks for itself and is the best

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<sup>1</sup> Defendant has included the headings from the complaint for the sole purpose of assisting in the reading of this answer. Defendant does not admit the accuracy of those headings.

evidence of its contents. Accordingly, Defendants refer to that declaration for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

8. This paragraph purports to describe and characterize an Order issued in *United States v. Ignjatov*, No. 5:17-cr-00222-JGB (C.D. Cal.), which speaks for itself and is the best evidence of its contents. Accordingly, Defendants refer to that Order for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

9. This paragraph purports to describe and characterize a motion made in *United States v. Ignjatov*, No. 5:17-cr-00222-JGB (C.D. Cal.), which speaks for itself and is the best evidence of its contents. Accordingly, Defendants refer to that motion for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

10. This paragraph purports to describe and characterize an Order issued in *United States v. Ignjatov*, No. 5:17-cr-00222-JGB (C.D. Cal.), which speaks for itself and is the best evidence of its contents. Accordingly, Defendants refer to that Order for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

11. Defendant admits that the two cited articles reported upon *United States v. Ignjatov*, No. 5:17-cr-00222-JGB (C.D. Cal.). These articles speak for themselves and are the best evidence of their contents.

### **EFF's FOIA Requests**

#### **A. ICE FOIA Request 2019-ICFO-21210**

12. Defendant admits the allegations in this paragraph. See Exhibit A for a complete and accurate description of the contents of Plaintiff's request.

13. Defendant admits the allegations in this paragraph. See Exhibit A for a complete and accurate description of the contents of Plaintiff's request.

14. Defendant admits that Plaintiff sought expedited process of its request and a fee waiver for its request. See Exhibit A for a complete and accurate description of the contents of Plaintiff's request.

15. Admit that Immigration and Customs Enforcement ("ICE") electronically acknowledged receipt of the request and referred to Plaintiff as a media requester on November 15, 2018. Admit that ICE advised Plaintiff in a letter that ICE had also forwarded Plaintiff's request to CBP on November 15, 2018. See Exhibits B and C for complete and accurate descriptions of the contents of this email and letter.

16. Defendant admits the allegations in first two sentences of this paragraph. See Exhibit D for a complete and accurate description of the contents of the March 11, 2019 letter. Defendant denies the allegations in the third sentence of this paragraph.

17. Defendant admits that Plaintiff filed an administrative appeal, which was received by ICE on April 26, 2019. See Exhibit E for a complete and accurate description of the appeal's contents.

18. Defendant denies the allegations in this paragraph. ICE responded to Plaintiff's administrative appeal on May 24, 2019. See Exhibit F for a complete and accurate description of the appeal adjudication's contents.

19. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

20. Defendant denies the allegations in this paragraph.

B. CBP FOIA Request CBP-OFO-2019-008804

21. Defendant admits the allegations in this paragraph. See Exhibit A for a complete and accurate description of the contents of Plaintiff's request.

22. Defendant admits the allegations in this paragraph. See Exhibit A for a complete and accurate description of the contents of Plaintiff's request.

23. Defendant admits the allegations in this paragraph. See Exhibit A for a complete and accurate description of the contents of Plaintiff's request.

24. Defendant admits that on November 7, 2018, CBP acknowledged receipt of the request, stated CBP would not charge duplication fees for the first 100 pages of responsive documents, and granted Plaintiff's fee waiver request. Defendant lacks knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

25. Defendant admits the allegations in this paragraph.

26. Defendant admits the allegations in this paragraph.

27. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

28. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

**Causes of Action**

Count 1

*Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records –  
November 5 ICE FOIA*

29. Defendant incorporates its responses to preceding paragraphs as if set forth fully herein.

30. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

31. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

32. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

*Violation of the Freedom of Information Act for Wrongful Denial of Requests for a Waiver of All  
Processing Fees – November 5 ICE FOIA*

33. Defendant incorporates its responses to preceding paragraphs as if set forth fully herein.

34. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

35. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

36. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

Count 2

*Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records –  
November 5 CBP FOIA*

37. Defendant incorporates its responses to preceding paragraphs as if set forth fully herein.

38. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

39. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

40. This paragraph does not contain allegations but rather conclusions of law to which no response is required. To the extent that a response is deemed required, Defendant denies the statements in this paragraph.

**Requested Relief**

The remainder of Plaintiff's complaint consists of Plaintiff's prayer for relief, to which no response is required. To the extent that a response is deemed required, Defendant denies that Plaintiff is entitled to any of the requested relief.

Dated: October 7, 2019

Respectfully submitted,

JESSIE K. LIU, D.C. Bar. No. 472845  
United States Attorney

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Chief, Civil Division

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