

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Advocates for Basic Legal Equality, Inc., et
al.,

Plaintiff,

vs.

United States Customs and Border
Protection,

Defendant.

CASE NO.: 22-CV-00149

JUDGE: JAMES R. KNEPP, II

DEFENDANT’S AMENDED ANSWER TO PLAINTIFFS’ COMPLAINT

Pursuant to Fed. R. Civ. P. 8 and 15(a)(1) Defendant United States Customs and Border Protection (“U.S.C.B.P.”), by and through undersigned counsel, files its Amended Answer¹ to Plaintiff’s Complaint, filed January 28, 2022, answering specifically each numbered paragraph as follows:

1. The allegations contained in paragraph 1 are conclusions of law, to which no response is required. To the extent that a response is required, Defendant admits that this action purports to be brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522, et seq., and that Plaintiffs request injunctive and declaratory relief to compel Defendant to disclose requested documents. To the extent, however, that this paragraph may be deemed to

¹ Counsel for Defendant discovered that a prior draft of the Answer was mistakenly filed on May 23, 2022. Therefore, this Amended Answer is being filed to correct that mistake.

set forth allegations of material fact, they are denied.

2. Defendant is without sufficient information or knowledge to admit or deny the allegations in paragraph 2 as they relate to Plaintiffs' motivation for filing the FOIA requests at issue. Defendant admits Plaintiffs filed three FOIA requests in March 2021.

3. Defendant admits that it is currently in the process of producing records responsive to Plaintiffs' FOIA requests. Defendant states that on or about April 6, 2022, it has produced the data regarding "Arrest Method" as requested by Plaintiffs and thus denies the allegations to the contrary in paragraph 3.

4. Paragraph 4 is a characterization of the relief that Plaintiffs seek and thus no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

JURISDICTION AND VENUE

5. The allegations contained in paragraph 5 are conclusions of law regarding subject matter jurisdiction to which no response is required. To the extent that a response is required, Defendant admits that this Court has subject matter jurisdiction over claims brought pursuant to FOIA. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

6. The allegations contained in paragraph 6 are conclusions of law regarding venue to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

PARTIES

7. Defendant is without sufficient information or knowledge to admit or deny the allegations in paragraph 7.

8. Defendant is without sufficient information or knowledge to admit or deny the allegations in paragraph 8.

9. Defendant admits the allegations in paragraph 9.

LEGAL FRAMEWORK - FOIA

10. The allegations in paragraph 10 are legal conclusions to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

11. The allegations in paragraph 11 are legal conclusions to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

12. The allegations in paragraph 12 are legal conclusions to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

13. The allegations in paragraph 13 are legal conclusions to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

14. The allegations in paragraph 14 are legal conclusions to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of

material fact, they are denied.

STATEMENT OF FACTS

15. Defendant admits that Plaintiffs submitted three FOIA requests about the Sandusky Bay Border Patrol Station in Port Clinton, Ohio; Defendant lacks knowledge or sufficient information to admit or deny the motivation for filing the requests.

A. Policies FOIA, CBP-2021-041935

16. Defendant admits the allegations contained in paragraph 16.

B. Communications FOIA, CBP-2021-041913

17. Defendant admits the allegations contained in paragraph 17.

C. Forms FOIA, CBP-2021-041934

18. Defendant admits the allegations contained in paragraph 18.

D. Developments Since the Filing of the Three FOIA Requests

19. Denied in part and admitted in part. Defendant admits that Plaintiffs communicated regarding the redaction of the Apprehension Log on December 8, 2021, and that at the time this Complaint was filed Defendant had not yet responded to the communication; however, since that time Defendant has provided the arrest method, therefore the remainder of paragraph 19 is denied. Also, by way of further explanation, see Defendant's response to paragraph 3 herein.

20. Denied in part and admitted in part. Defendant admits that its counsel emailed Plaintiffs on December 2, 2021, regarding the production schedule. Defendant further admits it did not respond to the December 8, 2021, email, however agency counsel was on leave during the latter part of the month

of December. Once Plaintiffs filed their Complaint on January 28, 2022, agency counsel waited for the U.S. Attorney's Office to facilitate communication. The remainder of this paragraph is denied, as Defendant was producing documents on a rolling basis since September 8, 2021, for FOIA request CBP-2021-041934, and production was completed on April 29, 2022. Communication currently continues regarding the other FOIA requests and some documents have already been produced.

21. Denied in part and admitted in part. Defendant denies that it has violated FOIA or any other statutory or regulatory provision. Defendant admits it has not fully responded to Plaintiffs' Policies and Communications FOIA requests, CBP-2021-041935 and CBP-2021-041913 respectively, however, communication regarding production related to those requests is ongoing and the voluminous information is still being gathered. By way of further explanation, a timeline of responses and productions on the three FOIA requests is included below:

041934 (Forms)

- Sep 8, 2021 – First interim release; reviewed and produced 111 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E) – this was a sample production of five Forms I-213 from each fiscal year (25 forms total) provided to Plaintiffs.
- Dec 3, 2021 – Second interim release; reviewed and produced 588 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E)
- Dec 29, 2021 – Third interim release; reviewed and produced 503 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E)
- Feb 1, 2022 – Fourth interim release; reviewed and produced 501 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E)
- March 1, 2022 – Fifth interim release; reviewed and produced 501 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E)
- April 1, 2022 – Sixth interim release; reviewed and produced 503 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E)
- April 29, 2022 – Seventh and final interim release; reviewed and produced 153 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E)

041913/041935 (Records and Communications)

- April 29, 2022 - reviewed 347 pages; produced 347 pages, partially releasable pursuant to 5 U.S.C. § 552(b)(6), (b)(7)(C), and (b)(7)(E)

22. Defendant denies the allegations in paragraph 22. By way of further explanation, see Defendant's responses to paragraphs 3,19, and 21 herein.

23. The allegations contained in paragraph 23 are conclusions of law, to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

24. The allegations contained in paragraph 24 are conclusions of law and/or argument, to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

CAUSES OF ACTION

25. The answers to paragraphs 1-24 above are hereby incorporated by reference as if set forth fully herein.

A. First Cause of Action Violation of FOIA, 5 U.S.C. § 552, for Failure to Disclose Responsive Records

26. Defendant denies that it has failed to disclose responsive documents related to Communications, CBP-2021-041913, FOIA, as the response is ongoing, and counsel have been in regular communication regarding the production since Plaintiffs filed their Complaint. Defendant admits that records related to Policies, CBP-2021-041935, FOIA have not yet been produced.

27. Defendant denies this allegation, as this requested information has been produced to Plaintiffs since the filing of this Complaint. By way of further explanation, see Defendant's responses to paragraphs 3, 19, and 21 herein.

B. Second Cause of Action Violation of the Freedom of Information Act, 5 U.S.C. § 552: Failure to Conduct an Adequate Search for Responsive Records

28. The allegations contained in paragraph 28 are conclusions of law and/or argument, to which no response is required. To the extent, however, that this paragraph may be deemed to set forth allegations of material fact, they are denied.

REQUESTED RELIEF

The remaining paragraphs of the Complaint contain Plaintiffs' requested relief, to which no response is required. To the extent that a response is deemed necessary, Defendant denies the allegations contained in the prayer for relief and further avers that Plaintiffs are not entitled to the requested relief or any other relief from Defendant.

GENERAL DENIAL

Defendant expressly denies all of the allegations in the Complaint that are not specifically admitted or otherwise qualified in this Amended Answer.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

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

SECOND DEFENSE

Defendant's actions did not violate FOIA or any other statutory or regulatory provision.

THIRD DEFENSE

Plaintiffs' FOIA requests are overbroad and unreasonably burdensome.

FOURTH DEFENSE

Defendant has, or may have, further and additional affirmative defenses that are not yet known to Defendant, but which may become known in the future. Defendant reserves the right to later assert each and every affirmative defense.

Respectfully submitted,

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