

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 25-3113 (TNM)

ANSWER

Defendant United States Department of Homeland Security (“DHS”), by and through undersigned counsel, hereby submits this answer to the complaint filed by Plaintiff American Oversight (“Plaintiff”) in this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, case. Defendant denies all allegations in the Complaint, including the relief sought, except as specifically admitted in this Answer. To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents in response; however, Defendant’s responses are not intended to be, and should not be construed to be, an admission that the cited materials are: (a) correctly cited or quoted by Plaintiffs; (b) relevant to this, or any other, action; or (c) admissible in this, or any other, action. Defendant responds to the separately numbered paragraphs and prayer for relief in the Complaint as follows.

COMPLAINT¹

1. Paragraph 1 contains Plaintiff's characterization of this action, to which no response is required. To the extent a response is required, Defendant admits only that Plaintiff brings this action under the FOIA, 5 U.S.C. § 552, *et seq.*

2. – 24. To the extent the allegations in Paragraphs 2 through 24 seek to provide background facts in support of allegations of public interest, Defendant admits there may be some public interest in the records sought but presently lacks knowledge or information sufficient to form a belief as to the existence or extent of any public interest, including as compared to any countervailing interests. To the extent the allegations in these paragraphs are alleged for other purposes, they do not set forth claims of relief or aver facts in support of a claim, and thus, the Court should strike them as immaterial and impertinent matters pursuant to Rule 12(f).

25. Paragraph 25 contains Plaintiff's characterization of its FOIA requests, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Plaintiff's FOIA requests referenced in this paragraph for a full and accurate statement of their contents and denies any allegations inconsistent therewith.

26. Paragraph 26 contains Plaintiff's characterization of this action, to which no response is required. To the extent a response is required, Defendant admits only that Plaintiff brings this action under the FOIA, 5 U.S.C. § 552, *et seq.* and denies that Plaintiff is entitled to the declaratory and injunctive relief requested or to any relief whatsoever.

JURISDICTION AND VENUE

27. The allegations contained in Paragraph 27 consist of Plaintiff's conclusions of law

¹ For ease of reference, Defendant refers to Plaintiff's headings and titles, but to the extent those headings could be construed to contain factual allegations, those allegations are denied.

regarding jurisdiction, to which no response is required. To the extent that a response is required, Defendant admit that 5 U.S.C. § 552(a)(4)(B) and (a)(6)(C)(i) and 28 U.S.C. § 1331 govern jurisdiction in actions brought pursuant to the FOIA. Defendant denies that 28 U.S.C. §§ 2201-2202 confer this court with independent jurisdiction.

28. The allegations contained in Paragraph 28 constitute Plaintiff's legal conclusions regarding venue, to which no response is required. To the extent a response is deemed required, Defendant DHS admits only that venue is proper in this judicial district.

29. The allegations in Paragraph 29 contain legal conclusions to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the provisions under the FOIA referenced in this paragraph for a complete and accurate statement of its contents and denies any allegations in this paragraph inconsistent therewith.

PARTIES

30. The allegations contained in Paragraph 30 consist of Plaintiff's characterization of itself, to which no response is required. To the extent a response is deemed required, Defendant lacks knowledge sufficient to form a belief as to the truth or falsity of the allegations and therefore they are denied.

31. Defendant admits the allegations in Paragraph 31 in part. Defendant admits that DHS is a federal agency as defined by FOIA, and admits and avers that the DHS Privacy Office only processes FOIA requests for DHS Headquarters. The remaining allegations contained in Paragraph 31 are legal conclusions, to which no response is required. To the extent a response is required, DHS lacks knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

STATEMENT OF FACTS

32. Paragraph 32 contains Plaintiff's characterization of its FOIA requests and this action, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited materials for a full and accurate statement of their contents and denies any allegations inconsistent therewith.

Lewandowski Communications and Calendar Request

33. Defendant DHS admits receiving Plaintiff's FOIA request dated May 9, 2025. The remaining allegations in paragraph 33 contains Plaintiff's characterization of that FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

34. Paragraph 34 contains Plaintiff's characterization of its May 9, 2025 FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

35. Admit.

36. Admit.

Insurrection Act and Posse Comitatus Act Request

37. DHS admits it received Plaintiff's FOIA request dated June 10, 2025. The remaining allegations in paragraph 33 contains Plaintiff's characterization of that FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

38. Paragraph 38 contains Plaintiff's characterization of its FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

39. Admit.

40. Admit.

Denaturalization Request

41. DHS admits it received Plaintiff's FOIA request dated June 10, 2025. The remaining allegations in paragraph 33 contains Plaintiff's characterization of that FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

42. Paragraph 42 contains Plaintiff's characterization of its FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited material for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

43. Admit.

44. Admit.

Exhaustion of Administrative Remedies

45. The allegations in Paragraph 45 are legal conclusions to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the provisions under the FOIA referenced in this paragraph for a complete and accurate statement of its contents and denies any allegations in this paragraph inconsistent therewith

46. The allegations in Paragraph 46 are legal conclusions to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the FOIA for a complete and accurate statement of its contents and denies any allegations in this paragraph inconsistent therewith.

COUNT I

**Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records**

47. Defendant reincorporates the proceeding paragraphs 1-46.

48. The allegations in Paragraph 48 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies.

49. The allegations in Paragraph 49 are legal conclusions to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the FOIA for a complete and accurate statement of its contents and denies any allegations in this paragraph inconsistent therewith.

50. The allegations in Paragraph 50 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies.

51. The allegations in Paragraph 51 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies.

52. The allegations in Paragraph 52 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the relief requested in this paragraph and denies that Plaintiff is entitled to any relief whatsoever.

COUNT II

**Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records**

53. Defendant reincorporates the proceeding paragraphs 1-52.

54. The allegations in Paragraph 54 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies.

55. The allegations in Paragraph 55 are legal conclusions to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the FOIA for a complete and accurate statement of its contents and denies any allegations in this paragraph inconsistent therewith

56. The allegations in Paragraph 56 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies.

57. The allegations in Paragraph 57 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies.

58. The allegations in Paragraph 58 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the relief requested in this paragraph and denies that Plaintiff is entitled to any relief whatsoever

PRAYER FOR RELIEF

The remainder of the Complaint starting with “WHEREFORE” and continuing with subparagraphs a) through e) consists of Plaintiff’s request for relief to which no response is required. To the extent a response is deemed required, Defendant denies that Plaintiff is entitled to the relief requested in these paragraphs or to any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

Any allegations not specifically admitted, denied, or otherwise answered are hereby denied. In further response to the Complaint, Defendants raise the following defenses. Defendants respectfully reserve the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known to Defendants

throughout the course of this litigation.

FIRST DEFENSE

Plaintiff is not entitled to compel the production of any record or portion of any record protected from disclosure by one or more of the exclusions or exemptions to the FOIA or the Privacy Act, 5 U.S.C. § 552a, where disclosure would cause foreseeable harm. *See* 5 U.S.C. § 552(b); 8 U.S.C. § 1202(f).

SECOND DEFENSE

The Court lacks subject matter jurisdiction over Plaintiff's requests for relief that exceed the relief authorized under FOIA.

THIRD DEFENSE

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

FOURTH DEFENSE

Plaintiff's claims under FOIA should be dismissed to the extent Plaintiff failed to exhaust administrative remedies prior to filing this action.

FIFTH DEFENSE

FOIA does not provide for declaratory relief against a federal agency.

SIXTH DEFENSE

To the extent the Complaint alleges background facts unnecessary to the consideration of Defendant's response to the FOIA request at issue, the Complaint violates Rule 8(a)(2) by alleging information that is unnecessary to a "short and plain" statement of the claim. The Court should strike all such immaterial and impertinent matters pursuant to Rule 12(f). *See Mich. Immigr. Rts.*

Ctr. v. Dep't of Homeland Sec., Civ. A. No. 16-14192, 2017 WL 2471277, at *3 (E.D. Mich. June 8, 2017) (deeming stricken under Rule 12(f) background facts alleged in a FOIA complaint: “In this unique context, requiring Defendants to answer allegations in Plaintiffs’ complaint that they would not otherwise be required to answer, and that are not material to Plaintiffs’ FOIA claim, would prejudice Defendants.”); *Robert v. Dep't of Just.*, Civ. A. No. 05-2543, 2005 WL 3371480, at *11 (E.D.N.Y. Dec. 12, 2005) (striking allegations of background facts; concluding that plaintiff’s “allegations are irrelevant to the validity of [his] FOIA claims”).

Dated: December 8, 2025
Washington, DC

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

By: /s/ Anna D. Walker
ANNA D. WALKER
D.C. Bar No. 90037215
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
(202) 252-2544

Attorneys for the United States of America