

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,

Plaintiff,

vs.

UNITED STATES DEPARTMENT
OF DEFENSE,

Defendant.

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Civil Action No. SA-16-CV-0972

**DEFENDANT’S RESPONSE TO PLAINTIFF’S STATEMENT OF
MATERIAL FACTS NOT IN DISPUTE**

The Defendant, United States Department of Defense (DoD), by and through the United States Attorney for the Western District of Texas, respectfully responds, as detailed in corresponding numbered paragraphs below, to each of the Plaintiff’s Statement of Undisputed Material Facts [Doc. at 16, pp. 9-19].¹ Many of Plaintiff’s statements are not admissible, not supported by specific citations to evidence, and not material to this matter.

1. Defendant admits paragraph 1.
2. Defendant admits paragraph 2.
3. Defendant admits the first two sentences of paragraph 3. Defendant is responding to the Plaintiff in this litigation.
4. Defendant admits the first two sentences of paragraph 4. Defendant is responding to the Plaintiff in this litigation.

¹ Plaintiff provided a separate statement of material facts in support of his motion for summary judgment. A separate statement of material facts is not required by the Federal Rules of Civil Procedure nor the Local Rules for the Western District of Texas. The government’s cross-motion for summary judgment contains its references to the record in the body of the motion.

5. Defendant objects to paragraph 5. Paragraph 5 is a legal conclusion not supported by admissible factual evidence.
6. Defendant objects to Paragraph 6. Plaintiff states at Paragraph 6 that, “Defendant has not claimed that any part of the requested IDPF files are exempt from disclosure under any specific provision of FOIA.” In DoD’s Answer [Doc. at 8], DoD affirmatively alleged that some documents requested were exempt from disclosure under one of the enumerated FOIA exemptions. DoD is under no obligation to forecast what specific exemptions it will apply to Plaintiff’s FOIA request.
7. Defendant admits Paragraph 7 as of its filing; however, the additional contract documents were produced on February 8, 2017.
8. Defendant objects to Paragraph 8. Plaintiff’s statement is not supported by admissible evidence. Further, the newsletter referenced (“The Torch”), contained an article that stated that the X-files of deceased WWII and Korean War American service members would be digitized and shared with the accounting community. The newsletter did not make any mention of the IDPF files.
9. Defendant admits to Paragraph 9.
10. Defendant admits to Paragraph 10; however in the interest of completeness it would add that the addresses of the next of kin were withheld under b(6). [*See* Case No. SA-10-CA-784-FB-NSN, Doc. at 25-1, pp. 20-21.]
11. Defendant objects to Paragraph 11. Plaintiff provides no citation to admissible evidence.
12. Defendant objects to Paragraph 12. Plaintiff provides no citation to admissible evidence.
13. Defendant has no objection to Paragraph 13, but also has no independent knowledge of Plaintiff’s needs.

14. Defendant objects to Paragraph 14. The citation only supports the conclusion that the contract for scanning contained a term that Metadata be collected on each file.
15. Defendant objects to Paragraph 15. The citation only supports the conclusion that the contract for scanning contained a term that the files be processed to be machine readable.
16. Defendant objects to Paragraph 16. The citation only supports the conclusion that the contract for scanning contained a term that the files were processed to recognize specific forms in common use by DPAA.
17. Defendant objects to Paragraph 17. Plaintiff's statement is not supported by citation or reference to an admissible fact. Further, Defendant disagrees with this conclusion.

DATED: June 1, 2017

Respectfully submitted,

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