

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF DEFENSE,

Defendant.

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No. SA-16-CV-972-RCL

DEFENDANT’S ANSWER TO SECOND AMENDED COMPLAINT

For its Answer to Plaintiff’s Second Amended Complaint, Defendant United States Department of Defense, by and through the United States Attorney for the Western District of Texas, states as follows:

JURISDICTION AND VENUE

1. The issue of subject matter jurisdiction is for the Court’s determination and is a legal conclusion to which no response is required. At this time, Defendant does not challenge the Court’s jurisdiction.

2. Defendant admits that venue is proper in the Western District of Texas.

PARTIES

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3.

4. Defendant admits the allegations in Paragraph 4.

RELATED LITIGATION

5. Defendant admits that Plaintiff filed a civil action in this judicial district under the Freedom of Information Act captioned *Eakin v. U.S. Department of Defense*, SA-10-CA-784-FB. Defendant denies the remaining allegations in Paragraph 5.

6. Defendant admits that Plaintiff filed a civil action in this judicial district under the Administrative Procedure Act captioned *Eakin v. American Battle Monuments Commission*, SA-12-CA-1002-FB. Defendant denies the remaining allegations in Paragraph 6.

7. Defendant admits the allegations in Paragraph 7.

8. Defendant admits that Plaintiff has filed an amended complaint in this action. The docket indicates that this pleading was filed on July 30, 2020.

STATEMENT OF FACTS

9. Defendant admits the allegations in Paragraph 9.

10. Defendant admits the allegations in Paragraph 10.

11. Defendant admits the allegations in the first three sentences of Paragraph 11. The remaining allegations in Paragraph 11 consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies these allegations.

12. Defendant admits the allegations in the first three sentences of Paragraph 12. The remaining allegations in Paragraph 12 consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies these allegations.

13. Defendant admits the allegations in Paragraph 13.

14. Defendant admits the allegations in Paragraph 14.

15. Paragraph 15 consists of legal conclusions to which no response is required. To the extent a response is required, Defendants denies these allegations.

16. Defendant admits the allegations in Paragraph 16.

17. Defendant admits the allegations in Paragraph 17.

18. Defendant admits the allegations in the first sentence of Paragraph 18. Defendant denies the allegations in the second sentence of Paragraph 18. Defendant has produced more than 250,000 records to Plaintiff in response to the FOIA requests that are the subject of this lawsuit, and the parties have had several conversations regarding the scope and timing of Defendant's anticipated production of additional records.

19. Paragraph 19 consists of legal conclusions to which no response is required. To the extent a response is required, Defendants denies these allegations.

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

20. Paragraph 20 merely re-alleges the allegations contained in Paragraphs 1–15 of the Second Amended Complaint. To the extent a response is required, Defendant likewise re-alleges its responses to these portions of the Complaint.

21. Paragraph 21 contains legal conclusions to which no response is required. To the extent a response is required, Defendants denies these allegations.

22. Paragraph 22 contains legal conclusions to which no response is required. To the extent a response is required, Defendants denies these allegations.

23. Paragraph 23 contains legal conclusions to which no response is required. To the extent a response is required, Defendants denies these allegations.

24. Paragraph 24 contains legal conclusions to which no response is required. To the extent a response is required, Defendants denies these allegations.

Although no response is required to Plaintiff's prayer for relief, Defendant denies that Plaintiff is entitled to attorney's fees as a *pro se* litigant. To the extent necessary, where not

admitted, denied, or qualified, Defendant denies each and every remaining allegation contained in the Second Amended Complaint. Any allegations of the Second Amended Complaint not specifically admitted above are denied. Defendant reserves the right to amend this Answer.

AFFIRMATIVE DEFENSES

1. Some or all of the requested records are protected from disclosure by one or more applicable FOIA exemptions or exclusions. *See* 5 U.S.C. § 552(b).

2. Some or all of the relief sought by Plaintiff is barred by the Privacy Act, 5 U.S.C. § 552a.

3. At all times alleged in the Complaint, Defendant acted in good faith, with justification, and pursuant to authority.

4. Plaintiff is proceeding *pro se* and is not entitled to an award of attorney's fees. *See Benavides v. BOP*, 993 F.2d 257, 259 (D.C. Cir. 1993); *Barrett v. Bureau of Customs*, 651 F.2d 1087, 1089–90 (5th Cir. 1981).

5. To the extent Defendant has exercised due diligence in processing Plaintiff's FOIA requests and exceptional circumstances exist, Defendant should be allowed additional time to process the request. *See* 5 U.S.C. § 552(a)(6)(C).

6. Given the volume of FOIA requests received, Defendant is entitled to a stay under the *Open America* doctrine because unusual circumstances exist which do not allow Defendant to process Plaintiff's request within 20 days.

7. Defendant asserts that it has, or may have, additional affirmative defenses which are not known to Defendant at this time, but which may be ascertained during litigation. Defendant specifically preserves these and other affirmative defenses as they are ascertained during litigation, including those required by Fed. R. Civ. P. 8 and 12.

WHEREFORE, Defendant respectfully requests that the Court dismiss the Second Amended Complaint with prejudice, award costs for the defense of this action, and grant Defendant such other and further relief to which it may be justly entitled.

Dated: March 14, 2022

Respectfully submitted,

ASHLEY C. HOFF
United States Attorney

By: /s/ Thomas A. Parnham, Jr.
THOMAS A. PARNHAM, JR.
Assistant United States Attorney
New York Bar No. 4775706
903 San Jacinto Blvd, Suite 334
Austin, Texas 78701
(512) 916-5858 (tel)
thomas.parnham@usdoj.gov

*Attorneys for the United States
Department of Defense*

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2022, I caused the foregoing to be electronically filed via the Court's CM/ECF system, which will send notification to Plaintiff.

/s/ Thomas A. Parnham, Jr.
THOMAS A. PARNHAM, JR.