

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHN EAKIN,
Plaintiff,

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NO. SA-10-CA-0784-FB-NN

UNITED STATES DEPARTMENT OF
DEFENSE; ROBERT M. GATES,
Secretary of Defense,
Defendants.

DEFENDANTS' ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT

Defendants, United State Department of Defense (“DOD”) and Robert M. Gates, Secretary of Defense, and for their Answer to Plaintiff’s Original Complaint (hereinafter “Complaint”), answers the Complaint as set forth below. All allegations not specifically admitted in the Answer are denied.

COMPLAINT FOR INJUNCTIVE RELIEF¹

1. Paragraph 1 contains conclusions of law to which no response is required. To the extent that a response is necessary, Defendants deny that they improperly withheld documents from the Plaintiff as the allegations contained in ¶ 1.
2. Paragraph 2 contains conclusions of law to which no response is required.
3. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 3 of the Complaint.
4. Defendants admit to the allegations contained in ¶ 4 of the Complaint.

¹ Defendants follow the Plaintiff’s headings and format throughout his Complaint for organizational purposes.

5. Defendants admit to the allegations contained in ¶ 5 of the Complaint.
6. Defendants state there is no ¶ 6 in Plaintiff's Complaint.
7. Defendants admit to the allegations contained in ¶ 7 of the Complaint.
8. Defendants admit to the allegations contained in ¶ 8 of the Complaint.
9. Defendants admit to the allegations contained in ¶ 9 of the Complaint.
10. Defendants admit to the allegations contained in ¶ 10 of the Complaint.
11. Defendants admit to the allegations contained in ¶ 11 of the Complaint.
12. Defendants admit to the allegations contained in ¶ 12 of the Complaint.
13. Paragraph 13 contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 13.
14. Defendants admit to the allegations contained in ¶ 14 of the Complaint.

Factual Background

15. To the extent that an answer is deemed required, Defendants are without sufficient information to either admit or deny the allegations in Paragraph 15. To the extent that Paragraph 15 alleges that United States engaged in illegal activities, those allegations are denied.
16. Paragraph 16 contains averments of fact to which an answer is not required.
17. Paragraph 17 contains averments of fact to which an answer is not required.
18. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 18 of the Complaint.
19. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 19 of the Complaint.

20. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 20 of the Complaint.

Plaintiffs' Entitlement to the Requested Documents

21. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 21 of the Complaint.

22. Defendants admit to the allegations contained in ¶ 22 of the Complaint.

23. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 23 of the Complaint.

24. Defendants admit to the allegations contained in ¶ 24 of the Complaint.

25. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 25 of the Complaint.

26. Paragraph 26 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

27. Defendants admit to the allegations contained in ¶ 27 to the extent that the Deputy Assistant Secretary of Defense for POW/Missing Personnel issued a new policy memorandum on June 23, 2010, but deny to the extent that Plaintiff claims that the memorandum stated "independent" researchers and analysts.

Defendant DoD's Partial Denial and Processing Was Based on an Out Of Date Regulation

28. Defendants admit to the allegations contained in Paragraph ¶ 28 of the Complaint.

29. Defendants admit to the allegations contained in Paragraph ¶ 29 of the Complaint.

30. Paragraph 30 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

Plaintiffs' Entitlement to a Waiver or Limitation of Processing Fees

31. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 31 of the Complaint.

32. Paragraph 32 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

33. Paragraph 33 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

34. Paragraph 34 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

35. Paragraph 35 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

36. Paragraph 36 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

Plaintiffs' Entitlement to Expedited Processing

37. Defendants deny the allegations contained in ¶ 37 of the Complaint.

38. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 38 of the Complaint.

39. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 39 of the Complaint.

40. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 40 of the Complaint.

41. Defendants deny the allegations contained in ¶ 41 of the Complaint.

42. Defendants deny the allegations contained in ¶ 42 of the Complaint.

43. Paragraph 43 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

CAUSES OF ACTION²

1. Defendants deny the allegations contained in ¶ 1 of the Complaint under "CAUSES OF ACTION."

2. Defendants deny the allegations contained in ¶ 2 of the Complaint under "CAUSES OF ACTION."

3. Defendants deny the allegations contained in ¶ 3 of the Complaint under "CAUSES OF ACTION."

4. Defendants deny the allegations contained in ¶ 4 of the Complaint under "CAUSES OF ACTION."

5. Defendants deny the allegations contained in ¶ 5 of the Complaint under "CAUSES OF ACTION."

6. Defendants deny the allegations contained in ¶ 6 of the Complaint under "CAUSES OF ACTION."

7. Defendants deny the allegations contained in ¶ 7 of the Complaint under "CAUSES OF ACTION."

Requested Relief

The section titled "Requested Relief" is a prayer for relief for which an answer is not required.

²Plaintiff began renumbering the paragraphs from 1-9 under the section "Causes of Action" in his Complaint, beginning on page 9. These answers refer to that section of Plaintiff's Complaint.

To the extent an answer may be required, Defendants deny the section titled "Requested Relief."

AFFIRMATIVE DEFENSES

- A. The only proper Defendant in a FOIA lawsuit is the agency.
- B. Defendants have not improperly withheld records.
- C. Plaintiff is not entitled to attorney fees and/or costs incurred in this action.
- D. On November 26, 2010, Defendants provided 90 pages of documents, free of cost, to Plaintiff pursuant to his FOIA request.

WHEREFORE, Defendants having fully answered respectfully asks that this action be dismissed, and that the Defendants be granted costs.

Respectfully submitted,

JOHN E. MURPHY
UNITED STATES ATTORNEY

By:

/s/ Dimitri N. Rocha

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with the Court's CM/ECF system and served by certified mail, return receipt requested on this 1st day of December, 2010 addressed as follows:

John Eakin, *Pro Se*
9865 Tower View Road
Helotes, Texas 78023

CMRRR 7179 1000 1642 5245 1272

/s/ Dimitri N. Rocha

DIMITRI N. ROCHA

Assistant United State Attorney