

**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,
UNITED STATES DEPARTMENT OF
THE ARMY, and JOHN McHUGH,
Secretary of the Army
Defendants.

**DEFENDANTS’ AMENDED ANSWER TO
PLAINTIFF’S FIRST AMENDED COMPLAINT**

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

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

3. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 3 of the Amended Complaint.
4. Defendants admit to the allegations contained in ¶ 4 of the Amended Complaint.
5. Defendants admit to the allegations contained in ¶ 5 of the Amended Complaint.
6. Defendants admit to the allegations contained in ¶ 6 of the Amended Complaint.
7. Defendants admit to the allegations contained in ¶ 7 of the Amended Complaint.
8. Defendants admit to the allegations contained in ¶ 8 of the Amended Complaint.
9. Defendants admit to the allegations contained in ¶ 9 of the Amended Complaint.
10. Defendants admit to the allegations contained in ¶ 10 of the Amended Complaint.
11. Defendants admit to the allegations contained in ¶ 11 of the Amended Complaint.
12. Regarding ¶ 12 of the Amended Complaint Defendants admit that DoD provided a final response to Plaintiff's request on November 24, 2010, provided 90 pages and withheld information under FOIA exemption (b)(6) but deny that the documents were largely illegible.
13. Defendants admit to the allegations contained in ¶ 13 of the Amended Complaint.
14. Defendants deny the allegations contained in ¶ 14 of the Amended Complaint.
15. Defendants admit to the allegations contained in ¶ 15 of the Amended Complaint.
16. Defendants admit to the allegations contained in ¶ 16 of the Amended Complaint.
17. Paragraph 17 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 17.
18. Defendants admit to the allegations contained in ¶ 18 of the Amended Complaint.

Defendant Army's Failure to Timely Comply with Plaintiff's Request

19. Defendants admit to the allegations contained in ¶ 19 of the Amended Complaint that Plaintiff filed an appeal on October 20, 2010 regarding Plaintiff's September 10, 2010 FOIA request, but deny that there was a constructive denial.

20. Defendants admit to the allegations contained in ¶ 20 of the Amended Complaint.

21. Defendants admit to the allegations contained in ¶ 21 of the Amended Complaint.

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

23. Defendants admit to the allegations contained in ¶ 23 of the Amended Complaint.

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

25. Paragraph 25 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 25.

26. Defendants admit to the allegations contained in ¶ 26 of the Amended Complaint.

Factual Background

27. Paragraph 27 of the Amended Complaint contains averments of fact to which an answer is not required. To the extent that an answer is deemed required, Defendants are without sufficient information to either admit or deny the allegations in ¶ 27 of the Amended Complaint. To the extent that ¶ 27 alleges that United States engaged in wrongful activities, those allegations are denied.

28. Paragraph 28 of the Amended Complaint contains averments of fact to which an answer is not required. To the extent that an answer is deemed required, Defendants are without sufficient information to either admit or deny the allegations in ¶ 28 of the Amended Complaint.

29. Paragraph 29 of the Amended Complaint contains averments of fact to which an answer is not required.

30. Paragraph 30 of the Amended Complaint contains averments of fact to which an answer is not required.

31. Paragraph 31 of the Amended Complaint contains averments of fact to which an answer is not required. To the extent that an answer is deemed required, Defendants are without sufficient information to either admit or deny the allegations in ¶ 31 of the Amended Complaint. To the extent the ¶ 31 of Amended Complaint alleges that the United States is not actively engaged in the recovery or accounting of missing service members, that allegation is denied.

32. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 32 of the Amended Complaint. To the extent that Plaintiff claims that the United States has engaged in improper activity, Defendants deny those allegations.

33. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 33 of the Amended Complaint.

34. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 34 of the Amended Complaint.

Plaintiffs' Entitlement to the Requested Documents

35. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 35 of the Amended Complaint.

36. Defendants admit to the allegations contained in ¶ 36 of the Amended Complaint.

37. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 37 of the Amended Complaint.

38. Defendants admit to the allegations contained in ¶ 38 of the Amended Complaint.

39. Regarding ¶ 39 of the Amended Complaint, Defendants admit that a June 23, 2010 policy was issued, but deny the second sentence of ¶ 39.

40. Regarding paragraph 40 in the Amended Complaint, Defendants admit to not determining the individual's life status, but deny that it was improper.

41. Paragraph 41 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 41.

42. Defendants admit to the allegations contained in ¶ 42 of the Amended Complaint.

Plaintiffs' Entitlement to a Waiver or Limitation of Processing Fees

41.² Paragraph 41 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 41.

42. Defendants admit to the allegations contained in ¶ 42 of the Amended Complaint.

43. Paragraph 43 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 43.

44. Paragraph 44 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 44.

45. Paragraph 45 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 45.

46. Paragraph 46 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 46.

47. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 47 of the Amended Complaint.

² Plaintiff repeats paragraphs 41 and 42. Defendants follow Plaintiff's format.

48. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 48 of the Amended Complaint.

49. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 49 of the Amended Complaint.

50. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 50 of the Amended Complaint.

51. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 51 of the Amended Complaint.

52. Paragraph 52 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants are without sufficient information to deny or admit the allegations contained in ¶ 52 of the Amended Complaint.

53. Paragraph 53 of the Amended Complaint contains conclusions of law to which no response is required. To the extent that an answer is deemed required, Defendants deny Paragraph 53.

54. Paragraph 54 of the Amended Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny Plaintiff's allegations.

55. Paragraph 55 of the Amended Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny Plaintiff's allegations.

56. Paragraph 56 of the Amended Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny Plaintiff's allegations.

57. Paragraph 57 of the Amended Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny Plaintiff's allegations.

58. Paragraph 58 of the Amended Complaint contains averments of fact to which an answer is not required. To the extent a response is required, Defendants deny Plaintiff's allegations.

59. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 59 of the Amended Complaint.

60. Defendants admit to the allegations contained in ¶ 60 of the Amended Complaint.

61. Defendants deny the allegations contained in ¶ 61 of the Amended Complaint

Defendants Have Improperly Denied Plaintiff's Request

62. Paragraph 62 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

63. Defendants admit to the allegations contained in ¶ 63 of the Amended Complaint

64. Defendants admit to the allegations contained in ¶ 64 of the Amended Complaint

65. Defendants deny the allegations contained in ¶ 65 of the Amended Complaint.

Plaintiffs' Entitlement to Expedited Processing

66. Defendants deny the allegations contained in ¶ 66 of the Amended Complaint.

67. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 67 of the Amended Complaint.

68. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 68 of the Amended Complaint.

69. Defendants are without sufficient information to deny or admit the allegations contained in ¶ 69 of the Amended Complaint.

70. Defendants deny the allegations contained in ¶ 70 of the Amended Complaint.

71. Paragraph 71 contains conclusions of law to which no response is required. To the extent a response is required, Plaintiff's allegations are denied.

CAUSES OF ACTION

72. Defendants deny the allegations contained in ¶ 72 of the Amended Complaint

73. Defendants deny the allegations contained in ¶ 73 of the Amended Complaint.

74. Defendants deny the allegations contained in ¶ 74 of the Amended Complaint

75. Defendants deny the allegations contained in ¶ 75 of the Amended Complaint.

76. Defendants deny the allegations contained in ¶ 76 of the Amended Complaint.

77. Defendants deny the allegations contained in ¶ 77 of the Amended Complaint.

Requested Relief

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

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 20th day of January, 2011 addressed as follows:

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

CMRRR 7179 1000 1642 5280 4160

/s/ Dimitri N. Rocha

DIMITRI N. ROCHA

Assistant United State Attorney