

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICHAEL DRIGGS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 1:23cv1124
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), defendant Central Intelligence Agency (“CIA”), through its undersigned counsel, hereby respectfully submits this answer to plaintiffs complaint in the above-captioned action.

FIRST DEFENSE

This Court lacks subject-matter jurisdiction to provide any of the relief plaintiffs seek that is not expressly authorized by the Freedom of Information Act (“FOIA”).

SECOND DEFENSE

To the extent that plaintiffs maintain that the CIA has unlawfully withheld records within the meaning of FOIA, or requests that this Court order the CIA to produce documents that do not constitute “agency records” within the meaning of FOIA, plaintiffs have failed to state a plausible claim upon which relief can be granted.

THIRD DEFENSE

To the extent that plaintiffs seek to challenge the 2015 *Decennial Review of Exempted Operational Files*, see 50 U.S.C. § 3141(g), any such judicial review is limited to “[w]hether the [CIA] has conducted the review . . . before the expiration of the 10-year period beginning on the

date of the most recent review,” and whether the CIA “considered the criteria set forth” in the pertinent statutory section, *id.* § 3141(g)(3).

FOURTH DEFENSE

Plaintiffs are 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.

FIFTH DEFENSE

Plaintiffs are neither eligible for nor entitled to attorney’s fees or costs in this matter.

SIXTH DEFENSE

Certain of plaintiffs’ claims are unripe.

SEVENTH DEFENSE

To the extent that the FOIA request that is the subject of the instant civil action, or other claims asserted within the instant civil action, are identical to, or requires the resolution of legal issues or claims, that were adjudicated in *Sauter, et al. v. Dep’t of State, et al.*, No. 1:17cv1596 (D.D.C.), they are barred by operation of *res judicata* or collateral estoppel at least as to plaintiffs in the *Sauter* civil action.

EIGHTH DEFENSE

To the extent that the FOIA request that is the subject of the instant civil action, or other claims asserted within the instant civil action, are identical to, or requires the resolution of legal issues or claims, that were adjudicated in *Moore, et al. v. Central Intelligence Agency, et al.*, No. 1:20cv1027 (D.D.C.), they are barred by operation of *res judicata* or collateral estoppel at least as to plaintiffs in the *Moore* civil action.

NINTH DEFENSE

Defendant reserves the right to raise any supportable affirmative defense, including, but not limited to, those expressly found in Federal Rule of Civil Procedure 8(c).

TENTH DEFENSE

Defendant answers the specific allegations contained within the paragraphs of Plaintiff's complaint as follows:

Preliminary Statement

The allegations contained within the unnumbered introductory paragraphs (*i.e.*, under the heading "Preliminary Statement") constitute a characterization of the claims presented in the instant civil action, and plaintiffs' motivation in filing the same, as to which no response is required.

Jurisdiction and Venue

1. The allegations contained within this paragraph constitute conclusions of law, to which no response is required.

Parties

2. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

3. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

4. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

5. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

6. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

7. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

8. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

9. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

10. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

11. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

12. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

13. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

14. Defendant is without information sufficient to admit or deny the allegations contained within this paragraph.

15. To the extent that the allegations contained within this paragraph concern the CIA's status under FOIA, this paragraph constitutes a conclusion of law, to which no response is required. Defendant is without information sufficient to admit or deny the remaining allegations contained within this paragraph.

16. Defendant admits the allegations contained within this paragraph only to the extent that a FOIA request was submitted to the CIA by an individual purporting to represent plaintiffs. The remaining allegations contained within this paragraph either constitute a conclusion of law or a reiteration of the specific FOIA requests made of the CIA. The FOIA request speaks for itself and is the best evidence of its contents. To the extent that the remaining allegations contained within this paragraph are inconsistent with the text of the FOIA request, defendant denies the same.

17. The allegations contained within this paragraph constitute a reiteration of the specific FOIA requests made of the CIA. The FOIA request speaks for itself and is the best evidence of its contents. To the extent that the allegations contained within this paragraph are inconsistent with the text of the FOIA request, defendant denies the same.

Constructive Exhaustion of Administrative Remedies

18. Defendant admits the allegations contained within this paragraph.

19. Defendant admits the allegations contained within this paragraph.

20. The allegations contained within this paragraph constitute a conclusion of law to which no response is required.

Count I

21. Defendant restates its responses to paragraphs 1-20 as if fully repeated here.

22. The allegations contained within this paragraph constitute a characterization of the specific FOIA request at issue in this civil action. The FOIA request speaks for itself and is the best evidence of its contents. To the extent that the allegations contained within this paragraph are inconsistent with the text of the FOIA request, defendant denies the same.

Count II

23. Defendant restates its responses to paragraphs 1-22 as if fully repeated here.

24. The allegations contained within this paragraph constitute a conclusion of law to which no response is required.

Count III

25. Defendant restates its responses to paragraphs 1-24 as if fully repeated here.

26. The allegations contained within this paragraph constitute a characterization of the specific FOIA request at issue in this civil action. The FOIA request speaks for itself and is the best evidence of its contents. To the extent that the allegations contained within this paragraph are inconsistent with the text of the FOIA request, defendant denies the same.

27. The allegations contained within this paragraph constitute a statement of law to which no response is required.

28. The allegations contained within this paragraph constitute a characterization of an affidavit attached to the complaint. The affidavit speaks for itself and is the best evidence of its contents. To the extent that the allegations contained within this paragraph are inconsistent with the text of the affidavit, defendant denies the same.

29. The allegations contained within this paragraph constitute a characterization of an affidavit attached to the complaint. The affidavit speaks for itself and is the best evidence of its contents. To the extent that the allegations contained within this paragraph are inconsistent with the text of the affidavit, defendant denies the same.

30. The allegations contained within this paragraph constitute a conclusion of law to which no response is required.

31. The allegations contained within this paragraph constitute a conclusion of law to which no response is required.

Count IV

32. Defendant restates its responses to paragraphs 1-31 as if fully repeated here.

33. The allegations contained within this paragraph constitute a conclusion of law to which no response is required.

34. The allegations contained within this paragraph constitute a conclusion of law to which no response is required.

35. The allegations contained within this paragraph constitute a statement of law to which no response is required.

36. The allegations contained within this paragraph constitute a conclusion of law to which no response is required.

The remaining allegations contained within plaintiffs' complaint constitute a prayer for relief, to which no response is required.

Respectfully submitted,

JESSICA D. ABER
UNITED STATES ATTORNEY

By: _____/s/_____
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DATE: October 12, 2023

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will transmit a Notice of Electronic Filing (“NEF”) to the following:

John H. Clarke
1629 K Street, N.W., Suite 300
Washington, D.C. 20006
Email: john@johnclarkelaw.com

Date: October 12, 2023

_____/s/
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