

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EUGENE B. MCDANIEL, *et al.*,

Plaintiffs,

v.

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION,

Defendant.

Civil Action No. 20-1735 (RCL)

ANSWER TO AMENDED COMPLAINT

Defendant, the National Archives and Records Administration (“Defendant” or “NARA”), by and through undersigned counsel, respectfully submits this Answer to the Amended Complaint filed by Plaintiffs Eugene B. McDaniel, Carol Hrdlicka, Robert Moore, Jana Orear, Christianne O’Malley, Mark Sauter, John Zimmerlee, and The POW Investigative Project, Inc. (collectively, “Plaintiffs”) on September 1, 2021 (ECF No. 20).¹ Defendant expressly denies all of the allegations in the Amended Complaint that are not specifically admitted or otherwise qualified in this Answer. Defendant responds to the numbered and unnumbered paragraphs in the Amended Complaint as follows:

The first unnumbered paragraph of the Complaint consists of Plaintiffs’ characterization of this action, to which no response is required. Defendant admits that Plaintiffs purport to bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

¹ To the extent the Amended Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents in response; however, Defendant’s references are not intended to be, and should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiffs; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

Preliminary Statement²

Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Plaintiffs' preliminary statement.

Jurisdiction and Venue

1. This paragraph consists of legal conclusions to which no response is required. To the extent a response is deemed required, Defendant admits that this Court has jurisdiction over proper FOIA actions and that venue is proper in this District.

Parties

2. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2.

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

4. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4.

5. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5.

6. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6.

² Merely for ease of reference, Defendant replicates the headings contained in the Complaint. Although Defendant believes that no response is required to such headings, to the extent a response is deemed required and to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

7. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7.

8. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8.

9. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9.

10. Defendant admits that it is an agency of the federal government subject to FOIA. The remaining allegations in this paragraph consist of legal conclusions to which no response is required.

Facts

11. Defendant Admits that Plaintiffs Moore, Orear, O'Malley, Zimmerlee, Sauter, and The POW Investigative Project, Inc. submitted a FOIA request to NARA dated April 20, 2020. Defendant respectfully refers the Court to the FOIA request for a full and accurate statement of its contents. Defendant denies that Michael Driggs is a plaintiff in this case.

12. The allegations in paragraph 12 of the Amended Complaint are denied. However, NARA admits that it received a letter dated May 20, 2021 withdrawing portions of the April 20, 2020 FOIA request. Defendant respectfully refers the Court to that letter for a full and accurate statement of its contents.

13. The allegations in paragraph 13 of the Amended Complaint are denied. However, NARA admits that it received a second FOIA request from Plaintiffs dated May 21, 2021. Defendant respectfully refers the Court to the second FOIA request for a full and accurate statement of its contents. To the extent Plaintiffs' reference to "the aforementioned plaintiffs" in this paragraph

includes the earlier referenced Michael Driggs, NARA denies that Michael Driggs is a plaintiff in this case.

14. This paragraph contains a characterization and description of its narrowed April 20, 2021 request to which no response is required. Defendant respectfully refers the Court to the April 20, 2021 for a full and accurate statement of its contents.

15. This paragraph contains a characterization and description of the second FOIA request submitted May 21, 2021, to which no response is required. Defendant respectfully refers the court to the May 21, 2021, FOIA request for a full and accurate statement of its contents. To the extent the plaintiffs assert in this paragraph that it submitted a FOIA request dated May 5, 2021, NARA denies that plaintiffs ever submitted a request on that date.

Count I
(Prompt Disclosure)

16. Defendant repeats its answers to the foregoing paragraphs and incorporates them as though fully set forth herein.

17. This paragraph consists of legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

Count II
(News Media Status)

18. Defendant repeats its answers to the foregoing paragraphs and incorporates them as though fully set forth herein.

19. Defendant admits that plaintiff's April 20, 2020 and May 21, 2021 requests sought status as a representative of the news media for plaintiff Mark Sauter. Defendant respectfully refers

the Court to the requests for a full and accurate statement of its contents. The remaining allegations in this paragraph consist of legal conclusions to which no response is required. However, To the extent that a response is required, the allegations are denied.

The remaining paragraphs of the Complaint set forth Plaintiffs' prayer for relief to which no response is required, but insofar as a response is deemed required, Defendant denies that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

DEFENSES

Defendant reserves the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to this Complaint become known to Defendant through the course of this litigation.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Certain of the information sought by Plaintiffs is exempt from release under one or more exemptions of the FOIA.

THIRD DEFENSE

The complaint should be dismissed in whole or in part to the extent that Plaintiffs have failed to exhaust their administrative remedies with respect to some or all of the FOIA requests at issue.

FOURTH DEFENSE

Plaintiffs are neither eligible nor entitled to attorneys' fees or costs.

FIFTH DEFENSE

The Court lacks jurisdiction to award relief that exceeds that authorized by the FOIA.

Dated: September 15, 2021

Respectfully submitted,

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