

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
NATIONAL ASSOCIATION OF CRIMINAL)	
DEFENSE LAWYERS,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 18-2399 (KBJ)
FEDERAL BUREAU OF PRISONS)	
)	
and)	
)	
DEPARTMENT OF JUSTICE,)	
)	
<i>Defendants.</i>)	
_____)	

DEFENDANTS’ ANSWER TO SECOND AMENDED COMPLAINT¹

Defendants, the Federal Bureau of Prisons (“BOP”) and the United States Department of Justice (the “Department”) (“Defendants”), by and through its undersigned counsel, hereby submit the following Answer to Plaintiff’s Second Amended Complaint (hereinafter “Amended Complaint”) filed by Plaintiff National Association of Criminal Defense Lawyers (“NACDL”, or “Plaintiff”). Defendants respond to the separately numbered paragraphs and prayer for relief contained in the Amended Complaint below. To the extent that any allegation is not admitted herein, it is denied. Moreover, to the extent that the Amended Complaint refers to or quotes from external documents, statutes, or other sources, Defendants may refer to such materials for their accurate and complete contents; however, Defendants’ references are not intended to be, and

¹ For ease of reference, Defendants’ Answer replicates the headings contained in the Amended Complaint. Although Defendants believe that no response is required to such headings, to the extent a response is deemed required, and to the extent those headings and titles may be construed to contain factual allegations, those allegations are denied.

should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiff; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

INTRODUCTION

1. The first sentence of Paragraph 1 contains Plaintiff's characterization of its action, not allegations of fact, to which no response is required. To the extent a response is deemed required, Defendants deny. Further, Defendants respectfully refer the Court to the cited Freedom of Information Act ("FOIA") requests for a complete and accurate statement of the contents. Defendants admit the second sentence of Paragraph 1 in that Plaintiff submitted three different FOIA requests to five components of the Department, specifically one to BOP (the "BOP Request"); a different one to the Criminal Division, the Office of Information Policy ("OIP"), and the Office of Legal Counsel ("OLC") (collectively, the "Main Justice Request"); and the third to the Executive Office for United States Attorneys ("EOUSA") (the "EOUSA Request").

2. Defendants admit that Plaintiff requested various documents and a waiver of fees, but respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

3. Defendants admit the first sentence of Paragraph 3 and deny the remaining allegations. The Trust Fund Limited Inmate Computer System ("TRULINCS") provides inmates a computer system that does not jeopardize the safety, security, orderly operation of the correctional facility, or the protection of the public or staff. Inmates do not have access to the Internet. (4500.12 14.1). Public Messaging is one service available via TRULINCS. Additionally, inmates may only communicate with approved persons on their contact lists for the purpose of postal mail, TRUFONE, Public Messaging, and/or any person to whom they want to send funds.

(4500.12 14.10 c.) An inmate may be permitted to correspond via Public Messaging and postal mail with an inmate confined in any Bureau facility in accordance with the Program Statement Correspondence. (4500.12 14.10.c(3)(d)). Finally, only approved contacts can access messages using Corrlinks.com. (4500.12 14.10 c.).

4. Defendants deny the allegations of Paragraph 4.

5. Paragraph 5 is Plaintiff's characterization and opinion of TRULINCS and purpose regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny and direct the Court to the published opinion in *United States v. Fumo*, 655 F.3d 288 (3d Cir. 2011), and the pleadings and exhibits filed in that matter for the facts underlying that matter.

6. Paragraph 6 is Plaintiff's characterization and opinion of communication by inmates and purpose regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny.

7. Paragraph 7 is Plaintiff's characterization and opinion of policies and purpose regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny.

8. Defendants deny.

9. Paragraph 9 is Plaintiff's characterization and opinion of policies and purpose regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny.

10. Paragraph 10 is Plaintiff's characterization of the instant FOIA action and purpose regarding its FOIA requests, therefore no response is required.

PARTIES

11. Paragraph 11 consists of Plaintiff's characterization of itself. Defendants lack knowledge or information to admit or deny the allegations of Paragraph 11.

12. Defendants admit only that the Department is a federal agency of the United States of America and that BOP, the Criminal Division, OIP, OLC, and EOUSA are components of the Department.

13. Defendants admit the first sentence of Paragraph 13 and deny the second sentence.

JURISDICTION AND VENUE

14. This paragraph contains Plaintiff's conclusions of law, to which no response is required.

15. This paragraph contains Plaintiff's conclusions of law, to which no response is required.

NACDL'S FOIA REQUESTS AND AGENCY RESPONSES

The BOP Request and Productions

16. Defendants admit, and respectfully refer the Court to the BOP Request for a complete and accurate statement of the contents.

17. Defendants admit that Plaintiff requested a waiver of fees, but respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

18. Defendants admit.

19. Defendants admit that BOP has made productions to Plaintiff and withheld certain records in full or in part under the FOIA. Defendants deny the allegations in the third sentence of paragraph 19.

The Main Justice Request and Productions

20. Defendants admit, and respectfully refer the Court to the Main Justice Request for a complete and accurate statement of the contents.

21. Defendants admit that Plaintiff requested a waiver of fees, but respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

22. Defendants admit the first two sentences. Defendants lack sufficient knowledge or information to admit or deny the last sentence.

23. Defendants admit that the Criminal Division has made productions to Plaintiff and withheld certain records in full or in part under the FOIA. Defendants deny the allegations in the third sentence of paragraph 23.

24. Defendants admit.

25. Defendants admit.

26. Defendants admit.

27. Defendants admit.

The EOUSA Request and Productions

28. Defendants admit, and respectfully refer the Court to the EOUSA Request for a complete and accurate statement of the contents.

29. Defendants admit that Plaintiff requested a waiver of document search, review and duplication fees. Defendants deny the remaining allegations. Defendants respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

30. Defendants admit that EOUSA sent a letter to the Plaintiff on September 17, 2018, and respectfully refer the Court to this letter for a complete and accurate statement of the contents. Defendants, however, also aver that EOUSA subsequently agreed to conduct a search.

31. Defendants admit.

32. Defendants admit.

33. Defendants admit.

34. Defendants admit that EOUSA has made productions to Plaintiff and withheld certain records in full or in part under the FOIA. Defendants deny the allegations in the third sentence of paragraph 34.

35. Defendants deny.

CAUSES OF ACTION

36-52. Paragraphs 36-52 represents Plaintiff's legal analyses and conclusions to which no response required. To the extent that a response is required, Defendants deny.

Date: August 21, 2020

Respectfully submitted,

MICHAEL R. SHERWIN
Acting United States Attorney

DANIEL F. VAN HORN,
D.C. BAR # 924092
Chief, Civil Division

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Counsel for Defendants

UNITED STATES DISTRICT COURT
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DEPARTMENT OF JUSTICE,)	
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<i>Defendants.</i>)	
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DEFENDANTS' ANSWER TO SECOND AMENDED COMPLAINT¹

Defendants, the Federal Bureau of Prisons (“BOP”) and the United States Department of Justice (~~“DOJ”~~(the “Department”)) (“Defendants”), by and through its undersigned counsel, hereby ~~respond~~submit the following Answer to Plaintiff’s Second Amended Complaint ~~in this Freedom~~(hereinafter “Amended Complaint”) ~~filed by Plaintiff National Association of Information Act (“FOIA”) action as follows:~~

**RESPONSES TO NUMBERED
PARAGRAPHS**

Criminal Defense Lawyers (“NACDL”, or “Plaintiff”). Defendants respond to the separately numbered paragraphs and prayer for relief contained in the Amended Complaint below.

¹ For ease of reference, Defendants’ Answer replicates the headings contained in the Amended Complaint. Although Defendants believe that no response is required to such headings, to the extent a response is deemed required, and to the extent those headings and titles may be construed to contain factual allegations, those allegations are denied.

To the extent that any allegation is not admitted herein, it is denied. Moreover, to the extent that the Amended Complaint refers to or quotes from external documents, statutes, or other sources, Defendants may refer to such materials for their accurate and complete contents; however, Defendants' 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 Plaintiff; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

~~Wherefore, Defendants answer as follows to the specifically numbered paragraphs of the Amended Complaint:~~

INTRODUCTION

1. The first sentence of Paragraph 1 contains Plaintiff's characterization of its action, not allegations of fact, to which no response is required. To the extent a response is deemed required, Defendants deny. Further, Defendants respectfully refer the Court to the cited Freedom of Information Act ("FOIA") requests for a complete and accurate statement of the contents. Defendants admit the second sentence of Paragraph 1 in that Plaintiff submitted three different FOIA requests to five components of the Department, specifically one to BOP (the "BOP Request"); a different one to the Criminal Division, the Office of Information Policy ("OIP"), and the Office of Legal Counsel ("OLC") (collectively, the "Main Justice Request"); and the third to the Executive Office for United States Attorneys ("EOUSA") (the "EOUSA Request").

2. Defendants admit that ~~NACDL~~ Plaintiff requested various documents and a waiver of fees, but respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

3. Defendants admit the first sentence of Paragraph 3 and deny the remaining allegations. The Trust Fund Limited Inmate Computer System (~~("TRULINCS")~~) provides inmates

a computer system that does not jeopardize the safety, security, orderly operation of the correctional facility, or the protection of the public or staff. Inmates do not have access to the Internet. (4500.12 14.1). Public Messaging is one service available via TRULINCS. Additionally, inmates may only communicate with approved persons on their contact lists for the purpose of postal mail, TRUFONE, Public Messaging, and/or any person to whom they want to send funds. (4500.12 14.10 c.) An inmate may be permitted to correspond via Public Messaging and postal mail with an inmate confined in any Bureau facility in accordance with the Program Statement Correspondence. (4500.12 14.10.c(3)(d)). Finally, only approved contacts can access messages using Corrlinks.com. (4500.12 14.10 c.).

4. Defendants deny the allegations of Paragraph 4.

5. Paragraph 5 is Plaintiff's characterization and opinion of TRULINCS and purpose regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny and direct the Court to the published opinion in *United States v. Fumo*, 655 F.3d 288 (3d Cir. 2011), and the pleadings and exhibits filed in that matter for the facts underlying that matter.

6. Paragraph 6 is Plaintiff's characterization and opinion of communication by inmates and purpose regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny.

7. Paragraph 7 is Plaintiff's characterization and opinion of policies and purpose regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny.

8. Defendants deny.

9. Paragraph 9 is Plaintiff's characterization and opinion of policies and purpose

regarding its FOIA requests, therefore no response is required. To the extent that a response is required, Defendants deny.

10. Paragraph 10 is Plaintiff's characterization of the instant FOIA action and purpose regarding its FOIA requests, therefore no response is required.

PARTIES

11. Paragraph 11 consists of Plaintiff's characterization of itself. Defendants lack knowledge or information to admit or deny the allegations of Paragraph 11.

12. Defendants admit only that ~~DOJ~~the Department is a federal agency of the United States of America and that BOP, the Criminal Division, OIP, OLC, and EOUSA ~~and~~ are components of the Department ~~of Justice~~.

13. Defendants admit the first sentence of Paragraph 13 and deny the second sentence.

JURISDICTION AND VENUE

14. This paragraph contains Plaintiff's conclusions of law, to which no response is required.

15. This paragraph contains Plaintiff's conclusions of law, to which no response is required.

NACDL'S FOIA REQUESTS AND AGENCY RESPONSES

The BOP Request and Productions

16. Defendants admit, and respectfully refer the Court to the BOP Request for a complete and accurate statement of the contents.

17. Defendants admit that ~~NACDL~~Plaintiff requested a waiver of fees, but respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

18. Defendants admit.

~~19.~~ Defendants admit ~~only that BOP has not issued a final response (including documents) to Plaintiff's request. Defendants deny Plaintiff's characterization of the passing of a deadline that BOP has made productions to Plaintiff and withheld certain records in full or in part under the FOIA. Defendants deny the allegations in the third sentence of paragraph 19.~~

The Main Justice Request and Productions

~~19.~~20. Defendants admit, and respectfully refer the Court to the Main Justice Request for a complete and accurate statement of the contents.

~~20.~~21. Defendants admit that ~~NACDL~~Plaintiff requested a waiver of fees, but respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

~~21.~~22. Defendants admit the first two sentences. Defendants lack sufficient knowledge ~~as or information~~ to ~~admit or deny~~ the last sentence.

~~22.~~23. Defendants admit ~~only that Criminal Division has not issued a final response (including documents) to Plaintiff's request. Defendants deny Plaintiff's characterization of the passing of a deadline. Defendants admit only that OIP has not produced any records or issued a final determination to Plaintiff's FOIA request. Defendants deny Plaintiff's characterization of the passing of a deadline. that the Criminal Division has made productions to Plaintiff and withheld certain records in full or in part under the FOIA. Defendants deny the allegations in the third sentence of paragraph 23.~~

23. — Defendants admit

24. Defendants admit.

25. Defendants admit.

~~1. Defendants admit only that OLC has not issued a final response to Plaintiff's request. Defendants deny Plaintiff's characterization of the passing of a deadline.~~

The EOUSA Request and Productions

26. Defendants admit, and respectfully refer the Court to the EOUSA Request for a complete and accurate statement of the contents.

27. Defendants admit that ~~NACDL~~Plaintiff requested a waiver of document search, review and duplication fees. Defendants deny the remaining allegations. Defendants respectfully refer the Court to the relevant FOIA request for a complete and accurate statement of the contents.

28. Defendants admit that EOUSA sent a letter to the Plaintiff on September 17, 2018, and respectfully refer the Court to this letter for a complete and accurate statement of the contents. Defendants, however, also aver that EOUSA subsequently agreed to conduct a search.

29. Defendants admit.

30. Defendants admit.

31. Defendants admit.

~~2. Defendants admit that OIP has not completed its adjudication of Plaintiff's appeal of EOUSA's determination of its FOIA request.~~

~~32. Defendants admit only that EOUSA has not issued a final response made productions to Plaintiff's request. On February 6, 2019, EOUSA resent Plaintiff an acknowledgment letter, stating that it was now searching the U.S. Attorneys' Offices for any responsive and withheld certain records per Plaintiff's in full or in part under the FOIA request. Defendants respectfully refer deny the Court to this letter for a complete and accurate statement of allegations in the contents third sentence of paragraph 34.~~

~~31-33.~~ Defendants deny.

~~3.~~ No further response is required to the referenced paragraphs.

CAUSES OF ACTION

~~36-39.~~52. Paragraphs ~~36-39~~52 represents ~~Plaintiff's~~Plaintiff's legal ~~analysis~~analyses and ~~conclusion~~conclusions to which no response required. To the extent that a response is required, Defendants deny.

~~40-43.~~ Paragraphs ~~40-43~~ represents Plaintiff's legal analysis and conclusion to which no response required. ~~To the extent that a response is required, Defendants deny.~~

~~44-47.~~ Paragraphs ~~44-47~~ represents Plaintiff's legal analysis and conclusion to which no response required.

Date: August 21, 2020

Respectfully submitted,

~~JESSIE K. LIU, DC Bar #472845~~
MICHAEL R. SHERWIN
Acting United States Attorney

DANIEL F. VAN HORN,
D.C. BAR # 924092
Chief, Civil Division

By: ~~/s/ Kristin D. Brudy-Everett~~

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