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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

14 AMERICAN CIVIL LIBERTIES UNION  
15 OF NORTHERN CALIFORNIA, *et al.*,

16 Plaintiffs,

17 v.

18 U.S. DEPARTMENT OF JUSTICE,

19 Defendant.  
20  
21

) Case No. 4:17-cv-03571-KAW

) **ANSWER**

22 Defendant the United States Department of Justice (“DOJ”) hereby answers Plaintiffs’  
23 Complaint, ECF No. 1, in the following numbered paragraphs, which correspond to the  
24 Complaint’s numbered paragraphs.

25 1–7. These introductory paragraphs consist of Plaintiffs’ characterization of this lawsuit and  
26 summary of the remainder of the Complaint, to which no response is required. To the extent a  
27 response is required, Defendant incorporates by reference the remainder of this Answer.  
28

1 8–10. Defendant is without sufficient knowledge and information to form a belief as to the truth  
2 or falsity of the allegations in these paragraphs.

3 11. Admitted.

4 12–14. These paragraphs state legal conclusions, to which responses are not required.

5 15–25. The allegations in these paragraphs do not set forth a claim for relief or aver facts in  
6 support of a claim to which a response is required. The paragraphs also contain legal  
7 conclusions, to which responses are not required.

8 26–30. Admitted that Plaintiffs submitted a Freedom of Information Act (“FOIA”) request to the  
9 DOJ by email attachment on February 6, 2017, and that Plaintiffs’ Exhibit 1 to the Complaint is  
10 a copy of that request. Defendants respectfully refer the Court to Plaintiffs’ Exhibit 1 for a full  
11 and accurate statement of its contents.

12 31. The first sentence is denied insofar as DOJ acknowledged receipt of Plaintiff’s FOIA  
13 request by a letter dated February 7, 2017, indicating the Plaintiffs’ request was being referred to  
14 appropriate DOJ components. The first sentence is admitted insofar as an information specialist  
15 with the DOJ National Security Division sent Plaintiffs an email on February 10, 2017, and  
16 Plaintiffs’ Exhibit 2 to the Complaint is a copy of that email. Defendants respectfully refer the  
17 Court to Plaintiffs’ Exhibit 2 for a full and accurate statement of the email’s contents.

18 32. Admitted that one of the documents the DOJ National Security Division withheld in its  
19 February 10, 2017, email response to Plaintiffs was a 31-page memorandum entitled  
20 “Determining Whether Evidence is ‘Derived From’ Surveillance under Title III or FISA.”  
21 Admitted that the DOJ National Security Division cited FOIA Exemption 5, 5 U.S.C.  
22 § 552(b)(5), to withhold this document in full in this email response.

23 33. Admitted that one of the documents the DOJ National Security Division withheld in its  
24 February 10, 2017, email response to Plaintiffs was a two-page memorandum addressed from an  
25 attorney with the DOJ National Security Division and Patty Merkamp Stemler, Chief of the DOJ  
26 Criminal Division, Appellate Section. Admitted that this memorandum was addressed to “all  
27 federal prosecutors.” Admitted that the DOJ National Security Division cited FOIA Exemptions  
28 5, 6, and 7(C), 5 U.S.C. § 552(b)(5)–(7), to withhold this document in full in this email response.

1 34. The first sentence is admitted insofar as the DOJ National Security Division withheld two  
2 documents in response to Plaintiffs' FOIA request, one of the documents is a cover  
3 memorandum for the other documents, and the cover memorandum was addressed to "all federal  
4 prosecutors." The second sentence is admitted insofar as, at present, the number of attorneys  
5 employed by DOJ, including United States Attorneys' offices, who are engaged in the  
6 prosecution of federal crimes numbers in the thousands.

7 35. Admitted that Plaintiffs filed an administrative appeal on February 22, 2017, and that  
8 Plaintiffs' Exhibit 3 to the Complaint is a copy of that appeal filing. Defendants respectfully  
9 refer the Court to Plaintiffs' Exhibit 3 for a full and accurate statement of the contents of their  
10 appeal filing.

11 36–37. Admitted.

12 38. Admitted that DOJ issued a response to Plaintiffs' administrative appeal by letter dated  
13 March 17, 2017, and that Plaintiffs' Exhibit 5 is a copy of that letter. Defendants respectfully  
14 refer the Court to Plaintiffs' Exhibit 5 for a full and accurate statement of the contents of this  
15 letter.

16 39–40. These paragraphs contain legal conclusions and a statement of the relief requested, to  
17 which responses are not required.

18 41. This paragraph incorporates Plaintiffs' prior claims by reference, and no response is  
19 required. To the extent a response is required, Defendant incorporates by reference the  
20 remainder of this Answer.

21 42–44. These paragraphs contains legal conclusions, to which responses are not required.

22 The remainder of the allegations in the Complaint consist of Plaintiffs' prayer for relief,  
23 to which no response is required. To the extent a response is required, Defendants deny and aver  
24 that Plaintiffs are not entitled to any relief.

25 Defendants deny all allegations contained in the Complaint that they have not specifically  
26 admitted.

**DEFENSES**

1  
2 1. Plaintiffs are not entitled to compel production of records exempt from disclosure under  
3 one or more exemptions of the FOIA, 5 U.S.C. § 552.  
4

5 WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully  
6 requests that the Court dismiss the Complaint in its entirety with prejudice and award Defendant  
7 all other relief to which it is entitled.  
8

9 Dated: July 14, 2017

Respectfully submitted,

10 CHAD A. READLER  
Acting Assistant Attorney General

11 JOHN R. GRIFFITHS  
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14  
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