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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
AMERICAN CIVIL LIBERTIES UNION and
THE AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE;
DEPARTMENT OF JUSTICE, including its
components the OFFICE OF LEGAL COUNSEL
and OFFICE OF INFORMATION POLICY;
DEPARTMENT OF STATE; and CENTRAL
INTELLIGENCE AGENCY,

Defendants.

.....X

15 Civ. 09317 (AKH)

ANSWER

ECF CASE

Defendants the Department of Defense (“DOD”), Department of Justice (“DOJ”), including its components the Office of Legal Counsel (“OLC”) and Office of Information Policy (“OIP”), the Department of State (“DOS”), and the Central Intelligence Agency (“CIA”), by their attorneys, answer the complaint upon information and belief as follows:

1. The allegations in paragraph 1 constitute a characterization of this action to which no response is required.

2. This paragraph contains a characterization of facts and legal conclusions unrelated to plaintiffs' legal claims under FOIA, to which no response is required.

3. The allegations in paragraph 3 constitute a characterization of the review and subsequent report of the Senate Select Committee on Intelligence ("SSCI"), to which no response is required.

4. Deny the allegations in the first sentence of paragraph 4, except admit that the SSCI released a redacted version of the executive summary of the SSCI's report following declassification review by the Executive Branch. The second sentence of paragraph 4 purports to characterize the contents of the executive summary; the Court is respectfully referred to the executive summary for a complete and accurate statement of its contents. The third sentence of paragraph 4 purports to characterize the public and media response to the executive summary, to which no response is required; to the extent a response is deemed required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of paragraph 4 because many of the terms used in this sentence are vague, ambiguous and argumentative.

5. This paragraph contains a characterization of facts and legal conclusions unrelated to plaintiffs' legal claims under FOIA, to which no response is required. To the extent a response is deemed required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 because many of the terms used in this paragraph are vague, ambiguous and argumentative.

6. The allegations in paragraph 6 constitute a characterization of the CIA's response to the SSCI report and a statement by CIA Director Brennan, to which no response is required.

Defendants respectfully refer the Court to the cited document and statement for a complete and accurate statement of their contents.

7. Admit that on or about January 28, 2015, the CIA issued classification guidance pertaining to the Rendition, Detention, and Interrogation Program; the remaining allegations in paragraph 7 characterize the CIA's classification guidance and the CIA's response to the SSCI report, to which no response is required.

8. The allegations in paragraph 8 constitute a characterization of this action and the ACLU's FOIA request to which no response is required. Defendants respectfully refer the Court to the FOIA request for a complete and accurate statement of its contents.

9. Admit the allegations in paragraph 9 and respectfully refer the Court to the FOIA request for a complete and accurate statement of its contents.

10. Admit the allegations in paragraph 10.

11. The allegations in paragraph 11 constitute a legal conclusion regarding jurisdiction to which no response is required.

12. The allegations in paragraph 12 constitute a legal conclusion regarding venue to which no response is required.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.

15. Admit the allegations in paragraph 15.

16. Admit the allegations in paragraph 16.

17. Admit the allegations in paragraph 17.

18. Admit the allegations in paragraph 18.

19. Admit that the ACLU submitted a FOIA request and respectfully refer the Court to the FOIA request for a complete and accurate statement of its contents.

20. Admit that the ACLU, in its FOIA request, sought expedited processing, and respectfully refer the Court to the FOIA request for a complete and accurate statement of its contents.

21. Admit that the ACLU, in its FOIA request, sought a fee waiver, and respectfully refer the Court to the FOIA request for a complete and accurate statement of its contents.

22. Deny the allegations in paragraph 22, except admit that the defendant agencies have not disclosed any records in response to the FOIA request, aver that each defendant has responded to the ACLU's FOIA request, and respectfully refer the Court to defendants' respective responses for a complete and accurate statement of their contents.

23. Admit the allegations in paragraph 23, and respectfully refer the Court to the contents of OLC's August 28, 2015 letter and the cited regulations for a complete and accurate statement of their contents.

24. With respect to the first two sentences of paragraph 24, admit that by letter dated September 17, 2015, OLC advised the ACLU that DOJ's Office of Public Affairs had granted the ACLU's request for expedited processing under 28 C.F.R. § 16.5(d)(1)(iv), and respectfully refer the Court to the September 17, 2015 letter for a complete and accurate statement of its contents. With respect to the third and fourth sentences of paragraph 24, admit that OLC has not provided further correspondence or response to the ACLU.

25. Admit the allegations in the first two sentences of paragraph 25, and respectfully refer the Court to the contents of OIP's August 28, 2015 letter and September 16, 2015 letter and the cited regulations for a complete and accurate statement of their contents. With respect to the third sentence of paragraph 25, admit that by letter dated September 16, 2015, OIP advised the ACLU that the ACLU's request falls within "unusual circumstances," and that OIP had not yet made a decision on the ACLU's request for a fee waiver; OIP further respectfully refers the Court to the September 16, 2015 letter for a complete and accurate statement of its contents. With respect to the fourth sentence of paragraph 25, admit that OIP has not provided further correspondence or response to the ACLU.

26. Admit that by letter dated September 15, 2015, DOD denied the ACLU's request for expedited processing, did not address ACLU's request for a fee waiver, and stated and explained that "unusual circumstances . . . impact our ability to quickly process your request;" DOD further respectfully refers the Court to the September 15, 2015 letter for a complete and

accurate statement of its contents. Admit that DOD has not provided further correspondence or response to the ACLU.

27. Admit that by letter dated August 21, 2015, DOS denied the ACLU's request for expedited processing, granted the ACLU's request for a fee waiver, and respectfully refer the Court to the August 21, 2015 letter for a complete and accurate statement of its contents.

Admit that DOS has not provided further correspondence or response to the ACLU.

28. Admit that by letter dated August 26, 2015, CIA denied the ACLU's request for expedited processing, and respectfully refer the Court to the August 26, 2015 letter for a complete and accurate statement of its contents. Admit that CIA has not provided further correspondence or response to the ACLU.

29. Deny the allegations in paragraph 29.

30. Deny the allegations in paragraph 30.

31. Deny the allegations in paragraph 31.

32. Deny the allegations in paragraph 32.

33. Deny the allegations in paragraph 33.

The remainder of the complaint contains a request for relief, to which no response is required. To the extent a response is required, Defendants deny the allegations contained in the remainder of the complaint and state that plaintiffs are not entitled to the requested relief or any other relief.

Defendants deny all allegations in plaintiffs' complaint not expressly admitted or denied.

DEFENSES

FIRST DEFENSE

Some or all of the requested documents and information are exempt from disclosure.
See 5 U.S.C. § 552(b).

SECOND DEFENSE

The Court lacks subject matter jurisdiction over plaintiffs' requests for relief that exceed the relief authorized under FOIA.

THIRD DEFENSE

Defendants have exercised due diligence in processing plaintiffs' FOIA request and exceptional circumstances exist that necessitate additional time for the defendants to complete their processing of the FOIA request. *See* 5 U.S.C. § 552(a)(6)(C).

FOURTH DEFENSE

With regard to many of the requested documents, the FOIA request does not reasonably describe the records sought.

FIFTH DEFENSE

Plaintiffs are barred by issue preclusion or collateral estoppel from challenging the withholding of some or all of the requested documents.

SIXTH DEFENSE

Plaintiffs are barred by claim preclusion or res judicata from challenging the withholding of some or all of the requested documents.

WHEREFORE, defendants are entitled to judgment dismissing plaintiffs' complaint with prejudice and granting such further relief as the Court deems just, including costs and disbursements.

Dated: January 15, 2016

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