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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
HUMAN RIGHTS WATCH,

Plaintiff,

v.

18 Civ. 11503 (ER)

U.S. CENTRAL COMMAND, U.S.
DEPARTMENT OF THE AIR FORCE, U.S.
DEPARTMENT OF THE ARMY, U.S.
DEPARTMENT OF DEFENSE OFFICE OF
THE INSPECTOR GENERAL, U.S. MARINE
CORPS, U.S. DEPARTMENT OF THE NAVY,
and OFFICE OF THE SECRETARY OF
DEFENSE,

ANSWER

Defendants.

.....X

Defendants the U.S. Central Command (“CENTCOM”), U.S. Department of the Air Force (“USAF”), U.S. Department of the Army (“Army”), U.S. Department of Defense Office of the Inspector General (“OIG”), U.S. Marine Corps (“USMC”), U.S. Department of the Navy (“Navy”) and Office of the Secretary of Defense (“Secretary”) (collectively, “defendants”), by their attorney, 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. To the extent a response is deemed required, deny that plaintiff is entitled to any relief.

2. The allegations in paragraph 2 constitute legal conclusions and a characterization of the relief plaintiff seeks in this action, to which no response is required. To the extent a response is deemed required, deny that plaintiff is entitled to any relief.

3. The allegations in paragraph 3 constitute a characterization of the Freedom of Information Act (“FOIA”) requests underlying this action, to which no response is required. The Court is respectfully referred to plaintiff’s FOIA requests for a true and complete statement of their contents.

4. Deny knowledge or information sufficient to state a belief as to the truth of the allegations in paragraph 4.

5. The allegations in paragraph 5 state legal conclusions, to which no response is required. To the extent a response is deemed required, admit that defendants may have possession and control of certain records responsive to plaintiff’s FOIA requests, but deny knowledge or information sufficient to determine at this time which defendants possess which documents, in light of the scope of the FOIA requests.

6. The allegations in paragraph 6 state legal conclusions regarding jurisdiction, to which no response is required.

7. The allegations in paragraph 7 state legal conclusions regarding venue, to which no response is required.

8. The allegations in paragraph 8 state legal conclusions, to which no response is required. To the extent a response is deemed required, deny the allegations.

9. Paragraph 9 consists of plaintiff’s characterization of publicly available materials from the International Criminal Court, to which no response is required. The Court is respectfully referred to the relevant materials for a true and complete statement of their contents.

10. Paragraph 10 consists of plaintiff's characterization of publicly available materials from the International Criminal Court, to which no response is required. The Court is respectfully referred to the relevant materials for a true and complete statement of their contents.

11. The allegations in paragraph 11 constitute a characterization of remarks by National Security Advisor John Bolton to the Federalist Society, to which no response is required. The Court is respectfully referred to the cited remarks for a true and complete statement of their contents.

12. The allegations in paragraph 12 constitute a characterization of statements in a Response of the United States of America to Recommendations of the Committee Against Torture, to which no response is required. The Court is respectfully referred to the cited response for a true and complete statement of its contents.

13. The allegations in paragraph 13 constitute a characterization of statements in a Response of the United States of America to Recommendations of the Committee Against Torture, to which no response is required. The Court is respectfully referred to the cited response for a true and complete statement of its contents.

14. The allegations in paragraph 14 constitute a characterization of plaintiff's FOIA requests, to which no response is required. The Court is respectfully referred to plaintiff's FOIA requests for a true and complete statements of their contents.

15. Deny the allegations in paragraph 15, except admit that the FOIA requests sought expedited processing and respectfully refer the Court to the FOIA requests for a true and complete statement of their contents.

16. Deny the allegations in paragraph 16, except admit that the FOIA requests sought a fee waiver and respectfully refer the Court to the FOIA requests for a true and complete statement of their contents.

17. Admit that plaintiff submitted a FOIA request to CENTCOM on March 22, 2018, and respectfully refer the Court to the cited FOIA request for a true and complete statement of its contents.

18. Admit that CENTCOM acknowledged receipt of plaintiff's FOIA request by letter dated June 5, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

19. Admit that CENTCOM has not sent further correspondence to plaintiff regarding the FOIA request, and aver that CENTCOM's search for and review of records potentially responsive to plaintiff's FOIA request are ongoing.

20. Deny knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20, and aver that the USAF has no record of receiving plaintiff's request.

21. Deny knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21, and aver that the USAF has no record of receiving plaintiff's request.

22. Admit that plaintiff submitted a FOIA request to the Army on March 22, 2018, which was assigned numbers FA 18-0852 / FP 18-013980, and respectfully refer the Court to the cited FOIA request for a true and complete statement of its contents.

23. Admit that the Army acknowledged receipt of plaintiff's FOIA request and advised plaintiff of certain referrals by letter dated April 3, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

24. Admit that the Army sent a further response to plaintiff advising plaintiff of further referrals by letter dated April 6, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

25. Admit, and aver that U.S. Army Central's search for and review of records potentially responsive to plaintiff's FOIA request are ongoing.

26. Admit that the Office of Inspector General acknowledged receipt of plaintiff's FOIA request by e-mail dated July 12, 2018, and assigned plaintiff's request number 18-451, and respectfully refer the Court to the relevant e-mail for a true and complete statement of its contents.

27. Admit that the U.S. Army Claims Service and the International and Operational Law Division responded to plaintiff's FOIA request by letter dated May 2, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

28. The allegations in the first sentence of paragraph 28 constitute conclusions of law, to which no response is required. To the extent a response is deemed required, admit that plaintiff submitted administrative appeals dated July 31, 2018. The allegations in the second and third sentences of paragraph 28 constitute a characterization of plaintiff's administrative appeals, to which no response is required. The Court is respectfully referred to those appeals for a true and complete statement of their contents. Admit the allegations in the fourth sentence of paragraph 28. The allegations in the fifth sentence of paragraph 28 constitute a characterization of an e-mail dated October 4, 2018, from the Office of the Army General

Counsel, to which no response is required. The Court is respectfully referred to that e-mail for a true and complete statement of its contents.

29. Deny, and aver that the U.S. Army Legal Services Agency acknowledged receipt of plaintiff's FOIA request by letter dated August 15, 2018, assigned plaintiff's request number FP-18-026905, and notified plaintiff that it was conducting a search; further aver that plaintiff's request was placed in the complex queue for processing due to the fact that the potentially responsive records were voluminous and at a separate location; and further aver that the Army Legal Services Agency's search for and review of records potentially responsive to plaintiff's FOIA request are ongoing.

30. Admit that the Office of the Provost Marshal General acknowledged receipt of plaintiff's FOIA request by letter dated April 6, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

31. Admit that U.S. Army Human Resources Command ("HRC") responded to plaintiff's FOIA request by letter dated May 10, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

32. The allegations in the first sentence of paragraph 32 constitute conclusions of law, to which no response is required. To the extent a response is deemed required, deny knowledge or information sufficient to state a belief as to the truth of the allegations in the first sentence, except admit that another Army component alerted plaintiff's counsel by e-mail on August 21, 2018, to the fact that plaintiff had originally misdirected its administrative appeal as to HRC. In response to the second sentence, admit that plaintiff submitted an administrative appeal to HRC by letter dated August 24, 2018. In response to the third sentence, admit that HRC acknowledged receipt of plaintiff's administrative appeal by e-mail dated September 5, 2018,

and respectfully refer the Court to that e-mail for a true and complete statement of its contents. Deny the allegations in the fourth sentence of paragraph 32.

33. Admit the allegations in the first sentence of paragraph 33. Deny the allegations in the second sentence of this paragraph, and aver that Army's records indicate that counsel for plaintiff requested to close the request in order that plaintiff could request a formal response. The third sentence of this paragraph constitutes a conclusion of law, to which no response is required. In response to the fourth and fifth sentences, deny knowledge or information sufficient to form a belief about the truth of the allegations in these sentences, and aver that HRC has no record of a written request from plaintiff dated September 28, 2018.

34. Admit that the Army Review Boards Agency acknowledged receipt of plaintiff's FOIA request on or about April 20, 2018, and assigned plaintiff's request numbers FP-18-016282 and FA-18-0007, and respectfully refer the Court to that acknowledgment for a true and complete statement of its contents.

35. As to the first sentence of paragraph 35, admit that plaintiff submitted a second FOIA request to the Army Review Boards Agency on October 19, 2018, and respectfully refer the Court to that request for a true and complete statement of its contents. As to the second sentence of this paragraph, admit that the Army Review Boards Agency has not responded to date concerning the second FOIA request, and aver that the Army Review Boards Agency's search for and review of records potentially responsive to plaintiff's FOIA requests are ongoing.

36. Admit that plaintiff submitted a FOIA request to OIG on March 22, 2018, and respectfully refer the Court to the cited FOIA request for a true and complete statement of its contents.

37. Admit that OIG acknowledged receipt of plaintiff's FOIA request by communication dated March 23, 2018, and respectfully refer the Court to that communication for a true and complete statement of its contents; further admit that OIG denied plaintiff's request for expedited processing by letter dated March 26, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

38. The allegations in the first sentence of paragraph 38 constitute conclusions of law, to which no response is required. To the extent a response is deemed required, admit that plaintiff submitted an administrative appeal dated June 25, 2018, and respectfully refer the Court to that appeal for a true and complete statement of its contents.

39. The allegations in paragraph 39 constitute a characterization of a letter from OIG to plaintiff dated June 27, 2018, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

40. The allegations in paragraph 40 constitute a characterization of a letter from OIG to plaintiff dated August 15, 2018, to which no response is required. The Court is respectfully referred to the cited letter for a true and complete statement of its contents.

41. Admit that OIG has not corresponded with plaintiffs since the cited letter dated August 15, 2018, and aver that OIG's review of records potentially responsive to plaintiff's FOIA request is ongoing. The remaining allegations in paragraph 41 constitute plaintiff's characterization of OIG's responses to date, to which no response is required. The Court is respectfully referred to the cited responses for a true and complete statement of their contents.

42. Admit that plaintiff submitted a FOIA request to the Navy on March 22, 2018, which was assigned number DON-NAVY-2018-005780, and respectfully refer the Court to the cited FOIA request for a true and complete statement of its contents.

43. Admit that Navy acknowledged receipt of the request by message dated March 22, 2018, and respectfully refer the Court to the cited message for a true and complete statement of its contents.

44. Admit, and aver that Navy's search for and review of records potentially responsive to plaintiff's FOIA request are ongoing.

45. Admit that plaintiff submitted a FOIA request to the USMC on March 22, 2018, which was assigned number DON-USMC-2018-005781, and respectfully refer the Court to the cited FOIA request for a true and complete statement of its contents.

46. Deny, except admit that the USMC acknowledged receipt of plaintiff's FOIA request and denied plaintiff's requests for a fee waiver and for expedited processing by correspondence dated March 28, 2018, and respectfully refer the Court to the relevant correspondence for a true and complete statement of its contents.

47. Deny, and aver that plaintiff filed an appeal by letter dated June 29, 2018, of the USMC's denial of its request for expedited processing and a fee waiver, and respectfully refer the Court to the cited appeal for a true and complete statement of its contents.

48. Deny, and aver that (1) in April 2018, the USMC advised plaintiff's counsel that it had referred a portion of plaintiff's request to the Army; (2) in August 2018, the USMC advised plaintiff's counsel that it had referred a portion of plaintiff's request to another USMC subcomponent; and (3) in August 2018, the USMC advised plaintiff's counsel that it had denied plaintiff's appeal of the denial of its request for expedited processing and a fee waiver; and further aver that USMC's search for and review of records potentially responsive to plaintiff's FOIA request are ongoing.

49. Admit that plaintiff submitted a FOIA request to the Office of the Secretary on March 22, 2018, and respectfully refer the Court to the cited FOIA request for a true and complete statement of its contents.

50. Admit that the Office of the Secretary acknowledged plaintiff's FOIA request by letter dated April 18, 2018, and respectfully refer the Court to that letter for a true and complete statement of its contents.

51. Admit that plaintiff submitted a second FOIA request to the Office of the Secretary on October 19, 2018, and respectfully refer the Court to the cited FOIA request for a true and complete statement of its contents.

52. Admit that the Office of the Secretary acknowledged plaintiff's second FOIA request by e-mail dated October 22, 2018, and respectfully refer the Court to that e-mail for a true and complete statement of its contents.

53. Admit that the Office of the Secretary closed plaintiff's second FOIA request because was duplicative or similar to the first FOIA request, and advised plaintiff of this action by letter dated November 5, 2018. The Court is respectfully referred to that letter for a true and complete statement of its contents.

54. Defendants repeat, reallege, and incorporate their responses in the foregoing paragraphs as though fully set forth herein.

55. The allegations in paragraph 55 constitute legal conclusions, to which no response is required.

56. The allegations in paragraph 56 constitute legal conclusions, to which no response is required. Defendants deny that they have violated any provision of FOIA.

57. Deny.

58. Deny.

59. Defendants repeat, reallege, and incorporate their responses in the foregoing paragraphs as though fully set forth herein.

60. Deny.

61. Deny.

62. Defendants repeat, reallege, and incorporate their responses in the foregoing paragraphs as though fully set forth herein.

63. Deny.

64. Deny.

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

DEFENSES

For further defenses, defendants allege as follows:

FIRST DEFENSE

Some or all of the requested records and information are exempt from disclosure, in whole or in part. *See* 5 U.S.C. § 552(b).

SECOND DEFENSE

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

THIRD DEFENSE

Defendants have exercised due diligence in processing plaintiffs' FOIA requests and

exceptional circumstances exist that necessitate additional time for the defendants to complete their processing of the FOIA requests. *See* 5 U.S.C. § 552(a)(6)(C).

FOURTH DEFENSE

Plaintiff is not entitled to expedited processing of the FOIA requests. *See* 5 U.S.C. § 552(a)(6)(E).

FIFTH DEFENSE

Plaintiff is not entitled to a fee waiver. *See* 5 U.S.C. § 552(a)(4)(A).

SIXTH DEFENSE

Plaintiff is not entitled to declaratory relief. *See* 5 U.S.C. § 552(a)(4)(B).

SEVENTH DEFENSE

Plaintiff is not entitled to attorney fees under 5 U.S.C. § 552(a)(4)(E).

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

Dated: March 18, 2019
New York, New York

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