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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY
and CAROL ROSENBERG,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE,

Defendant.

No. 19 Civ. 05779 (GBD)

ANSWER

Defendant the U.S. Department of Defense (“DOD”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, answers the complaint filed on June 20, 2019, by Plaintiffs The New York Times Company and Carol Rosenberg (“Plaintiffs”) upon information and belief as follows:

1. Paragraph 1 of the complaint consists of Plaintiffs’ characterization of the action and legal conclusions, to which no response is required.

PARTIES

2. Admits the allegations in paragraph 2 of the complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.

4. Admits that DOD is an agency of the federal government but denies knowledge or information sufficient to form a belief as to the scope of the “records that Plaintiffs seek” and whether such records are in DOD’s possession and/or control.

JURISDICTION AND VENUE

5. Paragraph 5 of the complaint consists of legal conclusions, to which no response is required.

6. Paragraph 6 of the complaint consists of legal conclusions, to which no response is required.

7. Paragraph 7 of the complaint consists of legal conclusions, to which no response is required.

FACTS

8. Denies the allegations in the first sentence of paragraph 8, except admits that U.S. Navy Rear Admiral John Ring was relieved of command of the Joint Task Force - Guantanamo on April 27, 2019. Admits the allegations in the second sentence of paragraph 8, except avers that the URL in the citation for this sentence of the complaint does not currently lead to the cited source. Denies the allegations in the final sentence of paragraph 8, except admits that a spokeswoman for DOD spoke with Carol Rosenberg and informed her that the relief of command was the result of a month-long investigation, and respectfully refers the Court to the cited article for a true and complete statement of its contents.

9. Admit the allegations in paragraph 9 of the complaint.

10. Admit the allegations in paragraph 10 of the complaint.

11. Admit the allegations in paragraph 11 of the complaint.

12. Admit the allegations in paragraph 12 of the complaint, and further aver that

the Command FOIA Manager for SOUTHCOM informed the attorney during this conversation that the reason he could not provide an estimated date of completion was because the investigation was not yet final.

COUNT I

13. DOD repeats and restates its responses to paragraphs 1 through 12 of the complaint with the same force and effect as if set forth fully herein.

14. Paragraph 14 of the complaint consists of legal conclusions, to which no response is required.

15. Paragraph 15 of the complaint consists of legal conclusions, to which no response is required. To the extent a response is required, denies the allegations in paragraph 15.

16. Paragraph 16 of the complaint consists of legal conclusions, to which no response is required. To the extent a response is required, denies the allegations in paragraph 16.

REQUEST FOR RELIEF

Paragraphs 17 through 20 constitute a prayer for relief, to which no response is required. To the extent a response is required, denies that Plaintiff is entitled to the requested relief or any relief.

DEFENSES

FIRST DEFENSE

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

SECOND DEFENSE

Plaintiff is not entitled to compel the production of records protected from disclosure

by any applicable FOIA exemptions or exclusions. *See* 5 U.S.C. § 552(b).

THIRD DEFENSE

At all times alleged in the complaint, DOD acted in good faith, with justification, and pursuant to authority, and exceptional circumstances exist that necessitate additional time for DOD to process Plaintiff's FOIA request.

FOURTH DEFENSE

The Court lacks subject matter jurisdiction over Plaintiff's requests for relief to the extent those requests exceed the relief authorized under FOIA. *See* 5 U.S.C. § 552.

FIFTH DEFENSE

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

DOD may have additional defenses that are not known to DOD at this time, but that may be ascertained during litigation. DOD reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Federal Rules of Civil Procedure 8 and 12.

WHEREFORE, DOD, having fully answered the allegations in the complaint and stated its defenses, respectfully requests that this Court dismiss the complaint with prejudice, enter judgment in favor of DOD, award costs for defense of this action, and grant such other relief as may be just and equitable.

Dated: August 2, 2019
New York, New York

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