

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
By: PETER ARONOFF
Assistant U.S. Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2697
Fax: (212) 637-2717
Email: peter.aronoff@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY and
KENNETH P. VOGEL,

Plaintiffs,

- versus -

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

**ANSWER TO FIRST
AMENDED COMPLAINT**

No. 18 Civ. 2095 (LAK) (SA)

Defendant the United States Department of Justice (“DOJ” or the “government”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, answer the correspondingly numbered paragraphs of the first amended complaint (the “FAC”) of plaintiffs The New York Times Company and Kenneth P. Vogel (“plaintiffs”) upon information and belief as follows:

INTRODUCTION¹

1. Paragraph 1 of the FAC constitutes plaintiff's characterization of this action, to which no response is required.

2. Paragraph 2 of the FAC constitutes plaintiff's characterization of this action, to which no response is required.

3. Paragraph 3 of the FAC constitutes plaintiff's characterization of the FOIA requests, to which no response is required. The government respectfully refers the Court to the FOIA requests for a full and complete statement of their contents.

PARTIES

4. The government denies knowledge or information sufficient to form a belief as to the allegations of paragraph 4.

5. The government denies knowledge or information sufficient to form a belief as to the allegations of paragraph 5.

6. Paragraph 6 of the FAC consists of legal conclusions, as to which no response is required, except admits that the Department of Justice is a federal agency within the Executive Branch of the United States government, and denies knowledge or information sufficient to form a belief as to whether it has possession and control of records that the Plaintiffs seek.

JURISDICTION AND VENUE

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

8. Paragraph 8 of the FAC consists of legal conclusions, to which no response is required.

¹ For convenience, section headings of the FAC are included, but they are not part of the government's response to the FAC.

9. Paragraph 9 of the FAC consists of legal conclusions, to which no response is required.

FACTS

10. Paragraph 10 of the FAC consists of legal conclusions and citations, to which no response is required.

11. Paragraph 11 of the FAC consists of quotations and characterizations of a judicial decision, to which no response is required. The government respectfully refers the Court to that judicial opinion for a full and complete statement of its contents.

12. As to the first sentence of paragraph 12, denies, except admits that DOJ's FARA Registration Unit is primarily responsible for administration of certain FARA requirements. The remaining portions of paragraph 12 consist of legal citations, to which no response is required.

FOIA Requests to the Department of Justice and the Denial of Expedited Processing

13. Admits.

14. Paragraph 14 of the FAC, including its lettered subparagraphs, constitutes plaintiffs' characterization of the FOIA requests, to which no response is required. The government respectfully refers the Court to the FOIA requests for a full and complete statement of their contents.

15. Paragraph 15 of the FAC, including its lettered subparagraphs, constitutes plaintiffs' characterization of the FOIA requests, to which no response is required, except the government admits that exhibits A through D to the FAC are correct copies of the four FOIA requests that are the subject of this litigation. The government respectfully refers the Court to the FOIA requests for a full and complete statement of their contents.

16. Admits.

17. Admits.

18. Admits.

19. Admits.

Plaintiffs' Administrative Appeal

20. Admits.

21. Admits.

22. The government denies the allegations of the first sentence as vague and ambiguous. As to the second sentence, admits.

23. Paragraph 23 of the FAC consists of legal conclusions, to which no response is required.

DOJ OIG's Untimely Response to Plaintiffs' Requests

24. The government denies the allegations of the first sentence of paragraph 24 of the FAC, except admits that DOJ OIG provided a response dated March 13, 2018. The government admits the allegations of the second sentence.

25. Admits.

26. The government denies knowledge or information sufficient to form a belief as to the allegations of paragraph 26.

27. Denies.

FIRST CLAIM

28. Paragraph 28 repeats prior paragraphs; no independent response is required.

29. Paragraph 29 consists of legal conclusions, to which no response is required; to the extent a response is required, denies.

30. Paragraph 30 consists of legal conclusions, to which no response is required; to the extent a response is required, denies.

31. Paragraph 31 consists of legal conclusions, to which no response is required; to the extent a response is required, denies.

32. Paragraph 32 consists of legal conclusions, to which no response is required; to the extent a response is required, denies.

33. Denies.

34. Paragraph 34 consists of legal conclusions or demands for relief, to which no response is required; to the extent a response is required, denies that plaintiffs are entitled to the requested relief, or any relief whatsoever.

SECOND CLAIM

35. Paragraph 35 repeats prior paragraphs; no independent response is required.

36. Paragraph 36 consists of legal conclusions, to which no response is required; to the extent a response is required, denies.

RELIEF REQUESTED

The remainder of the complaint consists of plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, the government denies that plaintiffs are entitled to the relief requested, or to any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

Any allegations not specifically admitted, denied, or otherwise answered are hereby denied. For its further and separate defenses, the defendants allege as follows:

FIRST DEFENSE

The complaint should be dismissed in whole or in part for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks subject matter jurisdiction over plaintiff's requests for relief that exceeds the relief authorized by statute under FOIA, 5 U.S.C. § 552.

The government may have additional defenses which are not known at this time but which may become known through discovery. Accordingly, the government reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

WHEREFORE the government respectfully request that the Court: (1) dismiss the FAC with prejudice; (2) enter judgment in favor of the government; and (3) grant such further relief as the Court deems just and proper.

Date: New York, New York
April 26, 2018

GEOFFREY S. BERMAN
United States Attorney
Southern District of New York

By: PETER ARONOFF
/s/ Peter Aronoff
Assistant U.S. Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2697
Fax: (212) 637-2717
Email: peter.aronoff@usdoj.gov
*Attorney for United States
Department of Justice*