

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVE LEVINTHAL, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 15-1624 (APM)
)	
v.)	ECF
)	
FEDERAL ELECTION COMMISSION,)	
)	
Defendant.)	
)	

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint for Declaratory and Injunctive Relief filed by Plaintiffs Dave Levinthal and the Center for Public Integrity. *See* ECF 1.

FIRST DEFENSE

Defendant has complied with its disclosure obligations under the Freedom of Information Act (“FOIA”), as amended, 5 U.S.C. § 552, in responding to Plaintiffs’ FOIA request and has not improperly withheld any non-exempt, responsive records, or segregable portions thereof. Defendant further avers that some or all of the records sought by Plaintiffs may be exempt, in part or in full, from release under FOIA exemptions.

SECOND DEFENSE

The complaint is subject to dismissal to the extent that Plaintiffs have failed to exhaust their administrative remedies as to certain information sought in their FOIA request.

THIRD DEFENSE

In response to the specifically-enumerated paragraphs, as set forth in the Complaint, Defendant admits, denies and otherwise avers as follows:¹

Nature of Action

1. Paragraph 1 of the Complaint contains Plaintiffs' legal and factual characterization of this action, to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs' action is brought under the FOIA and seeks records requested under the statute, but denies the remaining allegations of this paragraph.

Jurisdiction and Venue

2-3. Paragraphs 2-3 of the Complaint set forth legal conclusions and allegations of subject matter jurisdiction and venue, to which no response is required. Defendant does not contest this Court's jurisdiction over this action or venue in this District.

Parties

4-5. Paragraphs 4 and 5 of the Complaint allege facts regarding Plaintiffs and their reasons for submitting their FOIA request about which Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

6. Defendant admits that Plaintiffs submitted a request under FOIA for certain records from the FEC, *see infra* ¶ 8, and that Defendant has withheld portions of records responsive to the request. Defendant avers that Plaintiffs' generalized reference to unspecified "withheld records" is otherwise too vague to admit or deny.

¹ To the extent the Complaint refers to or quotes from external documents, statutes or other sources, Defendant may refer to such materials for their accurate and complete contents in its responses to particular allegations; however, Defendant's references are not intended to be, and should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiffs; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

7. Defendant admits the allegation in the first sentence of Paragraph 7 of the Complaint that it is an agency of the United States government that is subject to the requirements of FOIA. Defendant admits the allegation in the second sentence that the Commission is in possession of certain records referenced in paragraph 8 of Plaintiffs' Complaint, but denies that the Commission has exclusive possession and control over many of those records at this time.

Plaintiffs' Freedom of Information Request

8. This paragraph describes the FOIA request at issue in this case, which speaks for itself. To the extent a response is required, Defendant admits that Plaintiffs submitted a FOIA request on July 6, 2015, and that the request contained the language quoted in this paragraph. Defendant further avers that the request itself is the best evidence of its content and respectfully refers the Court to the request for a complete and accurate statement of its content. Defendant denies the allegations in Paragraph 8 to the extent that the allegations differ from the content of the request.

Defendant's Processing of the Request

9. This paragraph describes the Commission's August 18, 2015 "interim response" to Plaintiffs' FOIA request, which speaks for itself. To the extent a response is required, Defendant admits that the statements contained in Paragraph 9 of the complaint were contained in the response. Defendant further avers that the response itself is the best evidence of its content and respectfully refers the Court to the response for a complete and accurate statement of its content. Defendant denies the allegations in Paragraph 9 to the extent that the allegations differ from the content of the response.

10. Paragraph 10 of the Complaint contains conclusions of law, to which no response is required. To the extent that a response is deemed to be required, Defendant denies that the Commission has not yet made a determination within the meaning of 5 U.S.C. § 552(a)(6)(A)(i).

11. Defendant admits the first sentence in this paragraph. The remainder of this paragraph consists of legal conclusions, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the statute for a complete and accurate statement of its terms and otherwise denies the allegations in this paragraph.

12. Admit.

13. Admit.

14. Defendant denies the allegations in this paragraph to the extent it alleges that the Commission has not provided a complete response to Plaintiffs regarding their request for the NIST study, and further denies that “there are reasonably segregable portions” of the NIST study that are not exempt from disclosure under FOIA. The remainder of this paragraph consists of legal conclusions to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the statute for a complete and accurate statement of its terms and otherwise denies the allegations in this paragraph.

15. Defendant admits that Plaintiffs have a statutory right to a portion of the records requested in the July 6, 2015 FOIA request. The remainder of this paragraph consists of legal conclusions to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the statute for a complete and accurate statement of its terms and otherwise denies the allegations in this paragraph.

Demand for Relief

The remainder of Plaintiffs' Complaint, set forth in separately numbered paragraphs 1-4, consists of Plaintiffs' requests for relief, to which no response is required. To the extent that a response is deemed to be required, Defendant denies that Plaintiffs are entitled to the relief requested, or to any other relief, including attorney's fees.

GENERAL DENIAL

Defendant expressly denies all of the allegations in the Complaint that are not specifically admitted or otherwise qualified in this Answer.

WHEREFORE, having fully answered, Defendant respectfully prays that Plaintiffs' Complaint be dismissed with prejudice and judgment be entered in Defendant's favor and that the Court enter such other and further relief for Defendant as is appropriate.

