

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

JOSH HAWLEY FOR SENATE,	)	
	)	
Plaintiff,	)	Civ. No. 22-1275 (EGS)
	)	
v.	)	
	)	
FEDERAL ELECTION COMMISSION,	)	ANSWER
	)	
Defendant.	)	
	)	

**DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER**

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint filed by Josh Hawley for Senate. Any allegation not specifically responded to below is DENIED.

**INTRODUCTION<sup>1</sup>**

1. This paragraph summarizes plaintiff’s complaint, the allegations of which speak for themselves and require no response. To the extent a response is required, ADMIT that this case is an action under the Freedom of Information Act (“FOIA”) to compel the production of certain agency records requested by plaintiff on November 23, 2021. DENY that any records have been improperly withheld.

2. This paragraph characterizes the FOIA request at issue in this case and the FEC’s response, which speak for themselves, and no response is necessary. To the extent a response is required, ADMIT that the FEC has withheld certain documents pursuant to FOIA in response to

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<sup>1</sup> The FEC has included the headings from the Complaint for the sole purpose of assisting in the reading of this answer and does not admit the accuracy of those headings.

a November 23, 2021 request, designated 2022-14, seeking materials related to several administrative enforcement matters. DENY that the FEC's response was "incomplete" or that any documents were improperly withheld.

3. ADMIT that an administrative appeal of FOIA request 2022-14 was filed on March 30, 2022.

4. This paragraph characterizes a written FEC communication with regard to the administrative appeal of FOIA request 2022-14, which speaks for itself, and no response is necessary. To the extent a response is required, admit that the FEC's communication contained the quoted statement and that the FEC continues to withhold certain materials pursuant to FOIA.

5. This paragraph contains plaintiff's legal conclusions, legal argument, and description of a docket in another matter, to which no response is necessary. To the extent a response is required, ADMIT that the FEC has held votes in the administrative matters at issue, but DENY that the FEC has improperly withheld any records, DENY that the FEC has "terminat[ed] the administrative complaints," and DENY that the FEC has acted arbitrarily and capriciously or to deny the exercise of any party's rights. DENY the remainder of the paragraph.

6. DENY.

7. This paragraph contains plaintiff's legal conclusions and legal argument, to which no response is necessary. To the extent a response is required, DENY that the FEC has improperly withheld records, and DENY that plaintiff is entitled to the relief requested.

#### **PARTIES, JURISDICTION, AND VENUE**

8. ADMIT that this Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. ADMIT that venue is proper in this district.

9. ADMIT that this action was filed on behalf of plaintiff Josh Hawley for Senate, which is registered with the FEC as the principal campaign committee authorized by Senator Josh Hawley, who represents the state of Missouri. The FEC is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

10. ADMIT.

11. ADMIT that the FEC has possession or control of records that are the subject of this action.

12-14. These paragraphs contain plaintiff's legal conclusions, as well as its characterizations of FOIA, to which no response is necessary.

15. This paragraph contains plaintiff's legal conclusions, as well as its characterizations of FOIA, to which no response is necessary. The paragraph also contains plaintiff's characterization of the FEC's FOIA response, which speaks for itself, and no response is required.

16-21. These paragraphs contain plaintiff's legal conclusions, as well as its characterizations of FOIA, FEC regulations, and a judicial decision, to which no response is necessary.

22. This paragraph contains plaintiff's legal conclusions and legal arguments, to which no response is necessary. To the extent a response is required, ADMIT that the FEC is an independent agency of the United States government with jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 ("FECA").

23. ADMIT that plaintiff is a respondent in one of the FEC Matters Under Review (“MURs”) that was the subject of *Giffords v. FEC*, No. 19-1192. The FEC is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

24. This paragraph contains plaintiff’s characterizations of a judicial decision, as well as plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, DENY that the votes described by plaintiff closed the files on the administrative complaints to which plaintiff refers.

25. This paragraph contains plaintiff’s description of court filings and pending judicial actions, to which no response is necessary. The FEC is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

26. This paragraph describes the FOIA request at issue in this case, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that Exhibit A is a copy of the FOIA request submitted on November 23, 2021, on behalf of plaintiff. The FEC is without knowledge or information sufficient to admit or deny the allegations in this paragraph regarding the motivations for filing the request.

27-28. These paragraphs describe FEC communications in response to the FOIA request at issue, which speak for themselves, and no response is necessary. To the extent a response is necessary, ADMIT that Exhibits B and C are copies of communications sent by the FEC on November 24, 2021, and December 22, 2021.

29. This paragraph describes an FEC response to the FOIA request at issue, as well as accompanying responsive records, which speak for themselves, and no response is necessary. To the extent a response is required, ADMIT that Exhibit D is a copy of the FEC’s January 7, 2022 response and accompanying responsive records.

30. This paragraph describes a further FEC response to the FOIA request at issue and an accompanying responsive record, which speak for themselves, and no response is necessary. To the extent a response is required, ADMIT that Exhibit E is a copy of the FEC's March 25, 2022 response and the accompanying responsive record.

31. This paragraph describes the administrative appeal of the FOIA request at issue, which speaks for itself, and no response is necessary. To the extent a response is necessary, ADMIT that Exhibit F is a copy of the FOIA appeal received by the FEC. DENY that the FEC's withholding of documents was "improper" or in violation of FOIA.

32. This paragraph describes an email from the FEC regarding the administrative appeal of the FOIA request at issue, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that Exhibit G is a copy of an email sent by the FEC on April 27, 2022, and that "the effect of the Commissioners' divided vote is apparently to maintain the status quo." DENY that the FEC "improperly" withheld documents or violated FOIA.

33. This paragraph describes confidentiality waivers submitted to the FEC by certain administrative respondents including plaintiff in the MURs identified in the waivers, which speak for themselves, and no response is necessary. To the extent a response is necessary, ADMIT that these respondents provided confidentiality waivers to the FEC, but DENY that all respondents have provided confidentiality waivers in all of the referenced MURs to the FEC. The FEC is without knowledge or information sufficient to admit or deny the allegations in the second sentence regarding plaintiff's motivations for providing its waiver. DENY that the referenced waivers are attached as Exhibit H to the Complaint; rather, the waivers to which plaintiff refers appear to be attached as exhibits to Exhibit F.

34. This paragraph describes the FOIA request and FOIA appeal at issue in this case, which speak for themselves, and no response is necessary. To the extent a response is necessary,

ADMIT that confidentiality waivers by some of the administrative respondents as to some of the identified MURs were provided to the FEC with the administrative appeal.

35. This paragraph describes filings in *Giffords v. FEC*, Civ. No. 19-1192, which speak for themselves, and no response is necessary. With regard to the third sentence, DENY that the unsealing of the record in *Giffords v. FEC* is the only reason certain persons outside the FEC are aware of certain information about the identified MURs, as those involved in that litigation were otherwise aware of that information.

36. This paragraph describes materials on the docket in *Giffords v. FEC*, Civ. No. 19-1192, as well as the FEC's response to the FOIA request at issue here, which speak for themselves, and no response is required. To the extent a response is required, ADMIT that the FEC has withheld certain materials responsive to the FOIA request at issue.

37. This paragraph describes the FOIA responses at issue in this case, which speak for themselves, and no response is necessary. To the extent a response is required, DENY that the FEC has explained the application of the FOIA exemptions on which it relies to the withheld materials in a manner that is less adequate than required during the administrative FOIA process.

38. DENY the first sentence. The second sentence describes the *Giffords v. FEC* docket, which speaks for itself, and no response is necessary. To the extent a response is necessary, ADMIT that the Court in *Giffords v. FEC* made public some information about the contents of some withheld documents on the basis of some administrative respondents' waivers of confidentiality as to some of the identified MURs.

39. This paragraph contains plaintiff's legal conclusions, characterizations of and quotations from judicial opinions, and references to an FEC response to the FOIA request, which speak for themselves, and no response is necessary. To the extent a response is required,

ADMIT that two Commissioners who voted to find no reason to believe violations occurred and to close the file submitted a statement of reasons for the administrative record and that the FEC's January 7, 2022 response contains the quoted language. DENY the remainder of the factual allegations in the paragraph.

40. This paragraph contains plaintiff's legal conclusions and legal arguments, to which no response is necessary. To the extent a response is required, DENY that the FEC has failed to provide a basis for its withholding of information under FOIA Exemption 5, and DENY that the FEC has violated FOIA. The FEC is without knowledge or information sufficient to admit or deny the other allegations in this paragraph.

41. This paragraph contains plaintiff's legal conclusions and legal arguments, to which no response is necessary. To the extent a response is required, ADMIT that plaintiff exhausted administrative remedies. DENY that the FEC has improperly withheld records or violated FOIA, and DENY that plaintiff is entitled to the relief requested.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**(Injunctive and Declaratory Relief Due To the FEC's Wrongful Failure to Produce**  
**Records Pursuant to, and [sic] Violation of the Provisions of FOIA)**

42. The FEC incorporates its responses to paragraphs 1-41.

43. This paragraph contains plaintiff's characterization and quotation of a provision of FOIA, and no response is necessary.

44. ADMIT that plaintiff requested records from the FEC under FOIA. To the extent the paragraph's use of the term "properly" is a conclusion of law regarding FOIA, no response is necessary.

45. ADMIT that the FEC is an agency subject to FOIA. The remainder of this paragraph contains plaintiff's characterization and conclusions of law regarding FOIA, and therefore no further response is necessary.

46-49. DENY.

50. ADMIT.

51. ADMIT that an index of withheld documents will be prepared in the course of this litigation. DENY the factual allegations in this paragraph, and DENY that plaintiff is otherwise entitled to the relief requested.

#### **PRAYER FOR RELIEF**

Defendant FEC DENIES that plaintiff is entitled to the relief requested in paragraphs 1-7 under this heading.

#### **DEFENSES**

Defendant FEC reserves the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to this Complaint become known to the FEC through the course of this litigation.

#### **FIRST DEFENSE**

Certain of the information sought by plaintiff may be exempt from release under one or more FOIA exemptions.

#### **SECOND DEFENSE**

Plaintiff is neither eligible for nor entitled to attorneys' fees or costs.

**THIRD DEFENSE**

The Court lacks jurisdiction to award relief that exceeds that authorized by the FOIA.

Respectfully submitted,

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August 8, 2022

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