

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., Plaintiff, v. UNITED STATES DEPARTMENT OF JUSTICE, Defendant.

Civil Action No. 1:18-cv-9363 (AJN)

ANSWER

Defendant, the United States Department of Justice (DOJ), by and through its undersigned counsel, hereby answers the numbered paragraphs of Plaintiff's complaint as follows:

1. This paragraph consists of Plaintiff's characterization of this lawsuit to which no response is required.

2. This paragraph consists of Plaintiff's characterization of this lawsuit to which no response is required.

3. Defendant admits that it has not produced documents in response to Plaintiff's request, as of the filing of the complaint. The remainder of this paragraph consists of Plaintiff's characterization of this lawsuit to which no response is required.

4. Admitted.

5. As to the first sentence of this paragraph, Defendant denies that DOJ's Civil Rights Division (CRT) has failed to conduct a search for responsive records. Defendant admits that CRT sent Plaintiff a letter dated May 31, 2018, and respectfully refers the Court to that letter

for a complete and accurate statement of its contents. The second sentence of this paragraph consists of legal conclusions to which no response is required.

6. This paragraph does not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To the extent that a response is deemed required, Defendant admits that Secretary Ross announced his decision to reinstate a citizenship question on the 2020 decennial census in a March 26, 2018 memorandum, and that DOJ sent a letter addressing the issue on December 12, 2017. Defendant respectfully refers the Court to that memorandum and letter for a complete and accurate statement of their contents.

7. This paragraph does not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To the extent that a response is deemed required, Defendant admits that the proposal to reinstate a citizenship question to the decennial census is the subject of multiple federal lawsuits, including two before Judge Furman, and that Judge Furman has held multiple hearings and issued multiple orders. Defendant respectfully refers the Court to the transcripts of those hearings and the text of those orders for a complete and accurate statement of their contents.

8. This paragraph does not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To the extent that a response is deemed required, Defendant admits that a number of organizations have brought suit to challenge Secretary Ross's decision to reinstate a citizenship question on the 2020 decennial census, and that Dr. Abowd sent a memorandum to Secretary Ross. Defendant respectfully refers the Court to the complaints filed in those lawsuits and to Dr. Abowd's memorandum for a complete and accurate statement of their contents.

9. This paragraph does not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

10. The first sentence of this paragraph does not set forth a claim for relief or aver facts in support of a claim to which an answer is required. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second and third sentence of this paragraph.

11. Defendant admits that OLP has yet to provide a determination in response to Plaintiff's request. Defendant denies that CRT has failed to conduct a search. Defendant admits that CRT sent Plaintiff a letter dated May 31, 2018, and respectfully refers the Court to that letter for a full and complete statement of its contents. The remaining portions of this paragraph consist of legal conclusions to which no response is required.

12. Defendant admits the first three sentences of this paragraph. The fourth sentence consists of legal conclusions to which no response is required.

13. This paragraph consists of legal conclusions to which no response is required.

14. The first sentence consists of legal conclusions to which no response is required. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of this paragraph.

15. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

16. Defendant admits the first two sentences of this paragraph. Defendant admits that the Office of Information Policy (OIP) is a component of DOJ and that, among other functions, it processes FOIA requests on behalf of certain other DOJ components, including OLP,¹ and

¹ OIP's Initial Request Staff is responsible for processing FOIA requests for records within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), the Associate Attorney General (OASG), Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO).

adjudicates appeals of FOIA determinations made by any DOJ component. The fourth sentence consists of legal conclusions to which no response is required.

17. Defendant admits that CRT and OIP received a FOIA request from LDF dated April 11, 2018 (the request). Defendant respectfully refers the Court to that request for a complete and accurate statement of its contents.

18. Defendant admits that CRT and OIP received a FOIA request from LDF dated April 11, 2018. Defendant respectfully refers the Court to that request for a complete and accurate statement of its contents.

19. Defendant admits that LDF requested expedited processing of its request. Defendant respectfully refers the Court to LDF's request of April 11, 2018 for a complete and accurate statement of its contents.

20. Defendant admits that LDF requested a fee waiver for its request. Defendant respectfully refers the Court to LDF's request of April 11, 2018 for a complete and accurate statement of its contents.

21. Defendant admits that CRT and OIP received a FOIA request from LDF dated April 11, 2018. Defendant respectfully refers the Court to that request for a complete and accurate statement of its contents.

22. Defendant admits that CRT sent LDF a letter on April 25, 2018, assigning the request tracking number 18-00245-F. Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

23. Defendant respectfully refers the Court to the April 25, 2018 letter for a complete and accurate statement of its contents.

24. Defendant admits that CRT sent LDF a response letter dated May 31, 2018.

Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

25. Defendant respectfully refers the Court to the May 31, 2018 letter for a complete and accurate statement of its contents.

26. Defendant respectfully refers the Court to the May 31, 2018 letter for a complete and accurate statement of its contents.

27. Defendant respectfully refers the Court to the May 31, 2018 letter for a complete and accurate statement of its contents.

28. Admitted.

29. Defendant admits that LDF sent OIP an appeal letter dated August 28, 2018.

Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

30. Defendant admits that LDF's request for expedited processing of its appeal regarding request 18-00245-F was denied, as stated in an email sent September 17, 2018.

Defendant respectfully refers the Court to that email for a complete and accurate statement of its contents.

31. Defendant admits that CRT's action on request 18-00245-F was affirmed on appeal as stated in a letter dated September 27, 2018. Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

32. This paragraph consists of legal conclusions to which no response is required.

33. Defendant admits that OIP sent a letter to LDF on April 30, 2018. Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

34. Defendant admits that OIP sent a letter to LDF on April 30, 2018, and that LDF's request for expedited processing was denied. Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

35. Defendant admits that OIP sent a letter to LDF on April 30, 2018. Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

36. Defendant admits that OIP sent a letter to LDF on April 30, 2018. Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

37. Defendant admits that OIP sent a letter to LDF on April 30, 2018. Defendant respectfully refers the Court to that letter for a complete and accurate statement of its contents.

38. Admitted.

39. Defendant denies the first sentence of this paragraph. OIP replied to LDF's July 13, 2018 email on July 16, 2018 and indicated that it may take a number of months to review any records located for responsiveness and disclosure. Defendant respectfully refers the Court to that email for a complete and accurate statement of its contents. As to the second sentence of this paragraph, Defendant admits that LDF sent an email to OIP on July 13, 2018, and respectfully refers the Court to that email for a complete and accurate statement of its contents.

40. Defendant admits that OIP sent an email to LDF on July 16, 2018. Defendant respectfully refers the Court to that email for a complete and accurate statement of its contents.

41. Defendant admits that OIP did not have additional communications with Plaintiff about Plaintiff's request as of October 12, 2018, the date the complaint was filed. Defendant otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

42. This paragraph consists of legal conclusions to which no response is required.

43. Defendant asserts and incorporates its responses to paragraphs 1 through 42 of the complaint.

44. This paragraph consists of legal conclusions to which no response is required.

45. Defendant admits that DOJ is an agency subject to FOIA. The remainder of this paragraph consists of legal conclusions to which no response is required.

46. Defendant admits that OIP has communicated with Plaintiff concerning its request as described in Defendant's responses to paragraphs 33 to 42 of Plaintiff's complaint and the correspondence cited therein.

47. This paragraph consists of legal conclusions to which no response is required.

48. This paragraph consists of legal conclusions to which no response is required.

49. Defendant asserts and incorporates its responses to paragraphs 1 through 48 of the complaint.

50. This paragraph consists of legal conclusions to which no response is required.

51. Defendant admits that DOJ is an agency subject to FOIA. The remainder of this paragraph consists of legal conclusions to which no response is required.

52. Denied. CRT has performed searches, and located and reviewed records in response to LDF's request, as indicated in CRT's May 31, 2018 letter to LDF.

53. Defendant re-asserts its response to paragraph 52 of Plaintiff's complaint.

54. Defendant admits that CRT has communicated with Plaintiff concerning its request as described in Defendant's responses to paragraphs 22 to 32 of Plaintiff's complaint and the correspondence cited therein. The remaining portions of this paragraph consist of Plaintiff's legal conclusions, to which no response is required.

55. Defendant admits that, as of the filing of the complaint, CRT had not provided

any documents or portions thereof in response to Plaintiff's request. Defendant admits that CRT provided Plaintiff with information through its communications with Plaintiff as described in Defendant's responses to paragraphs 22 to 32 of Plaintiff's complaint and the correspondence cited therein. After the filing of the complaint, CRT has provided Plaintiff with 78 pages of documents in response to its request, and has explained why an additional 42 pages are being withheld in full.

56. This paragraph consists of legal conclusions to which no response is required.

57. This paragraph consists of legal conclusions to which no response is required.

58. This paragraph consists of legal conclusions to which no response is required.

59. This paragraph consists of legal conclusions to which no response is required.

60. Defendant asserts and incorporates its responses to paragraphs 1 through 59 of the complaint.

61. This paragraph consists of legal conclusions to which no response is required.

62. This paragraph consists of legal conclusions to which no response is required.

The remaining paragraphs of the complaint constitute a request for relief to which no response is required. To the extent a response is deemed necessary, Defendant denies that Plaintiff is entitled to the relief requested or to any relief at all.

Defendant hereby denies all allegations in Plaintiff's complaint not expressly admitted or denied.

AFFIRMATIVE DEFENSES

1. Plaintiff is not entitled to compel production of records exempt from disclosure by one or more exemptions to the Freedom of Information Act, 5 U.S.C. § 552.

Dated: November 16, 2018

Respectfully submitted,

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