

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

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FAIR LINES AMERICA FOUNDATION, INC.,)
2308 Mount Vernon Ave. Ste. 716)
Alexandria, VA 22301-1328)
)
Plaintiff,)
)
v.) Civ. A. No. 1:21-cv-01361 (ABJ)
)
UNITED STATES DEPARTMENT OF COMMERCE)
1401 Constitution Avenue, NW)
Washington, D.C. 20230;)
)
and)
)
UNITED STATES BUREAU OF THE CENSUS,)
4600 Silver Hill Road)
Washington, D.C. 20233-3700,)
)
Defendants.)
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DEFENDANTS’ ANSWER TO COMPLAINT

Defendants, the U.S. Department of Commerce (“Commerce”) and the U.S. Census Bureau (“Census”), by and through undersigned counsel, hereby answer the Complaint (ECF No. 1) (“Complaint”) filed by Plaintiff Fair Lines America Foundation, Inc., on May 18, 2021, as follows, in correspondingly numbered paragraphs:

1. This paragraph sets forth Plaintiff’s characterization of this action, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 1, except to admit that this is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), in which Plaintiff seeks records relating to the United States Decennial Census of 2020.

2. Defendants admit the first sentence of Paragraph 2, which restates the first sentence in Plaintiff's March 31, 2021, FOIA request to Census. Defendants respectfully refer the Court to the FOIA request dated March 31, 2021, for a full and accurate statement of its contents. *See* Compl., Ex. C. As for the second sentence of Paragraph 2, Defendants admit that Census is part of Commerce, but the remainder of the allegations in the sentence—i.e., that Commerce possesses the “records” at issue, and that Commerce is responsible for executing the 2020 Census and overseeing the work of the Census Bureau—are legal conclusions to which no response is required.

3. Paragraph 3 sets forth the relief Plaintiff seeks in this action, to which no response is required.

4. Paragraph 4 consists of Plaintiff's legal conclusions regarding jurisdiction and venue, to which no response is required.

5. Defendants lack knowledge or information sufficient to form a belief about truth of the allegations in Paragraph 5.

6. Admitted.

7. Admitted. Defendants further admit the information in the first sentence of footnote 1 to Paragraph 7 to the extent that “address” refers to Census's mailing address. The second sentence of footnote 1 to Paragraph 7 consists of Plaintiff's legal conclusions regarding jurisdiction and venue, to which no response is required.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8.

9. Admitted that Commerce is a federal agency subject to FOIA. The remainder of Paragraph 9—i.e., that Commerce has possession, custody, and control of the “records” at issue,

and that Commerce “oversees” the execution of the 2020 Census—are legal conclusions to which no response is required.

10. Admitted that Census is part of Commerce and that both are subject to FOIA. The remainder of Paragraph 10—i.e., that Census has possession, custody, and control of the “records” at issue, and that it is responsible for planning and administering the 2020 Census—are legal conclusions to which no response is required.

11. Paragraph 11 consists of legal conclusions, to which no response is required.

12. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 12.

13. Paragraph 13 consists of legal conclusions, to which no response is required.

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

15. Paragraph 15 consists of legal conclusions, to which no response is required.

16. Admitted. Defendants respectfully refer the Court to Plaintiff’s FOIA request dated February 19, 2021, for a full and accurate statement of its contents. *See* Compl., Ex. A.

17. Admitted.

18. Admitted. Defendants respectfully refer the Court to the communication from Census to Plaintiff dated March 12, 2021, for a full and accurate statement of its contents. *See* Compl., Ex. B.

19. Admitted that Plaintiff submitted a FOIA request to Census dated March 31, 2021. Defendants respectfully refer the Court to Plaintiff’s FOIA request dated March 31, 2021, for a full and accurate statement of its contents. *See* Compl., Ex. C. Defendants deny that the March 31, 2021 request is substantively similar to the February 19, 2021 request. Footnote 2 to Paragraph 19 consists of legal citations, to which no response is required.

20. Admitted that Paragraph 20 accurately summarizes Plaintiff's application for expedited processing and a fee waiver or limitation of fees as described in Plaintiff's FOIA request dated March 31, 2021. Defendants respectfully refer the Court to Plaintiff's FOIA request dated March 31, 2021, for a full and accurate statement of its contents. *See* Compl., Ex. C.

21. The first sentence of Paragraph 21 is admitted. Defendants respectfully refer the Court to Plaintiff's email dated April 7, 2021, for a full and accurate statement of its contents. *See* Compl., Ex. D. The second sentence of Paragraph 21 is also admitted. Defendants respectfully refer the Court to Census's April 7, 2021 email time-stamped at 3:14 pm, for a full and accurate statement of its contents. *See* Compl., Ex. E. The third sentence of Paragraph 21 is also admitted. Defendants respectfully refer the Court to the email communications submitted by Plaintiff as Exhibit F to the Complaint for a full and accurate statement of its contents. *See* Compl., Ex. F.¹

22. Admitted that Defendants did not communicate with Plaintiff between April 13, 2021, and the filing of the Complaint regarding the FOIA request at issue in this litigation; otherwise, denied.

23. The first two sentences of Paragraph 23 consists of Plaintiff's legal conclusions regarding 5 U.S.C. § 552(a)(6), to which no response is required. Defendants admit that more than thirty days transpired between when Plaintiff filed the FOIA request at issue on March 31, 2021, and the filing of the Complaint. Defendants further admit that as of the date of the Complaint, Defendants had not produced or admitted the existence of records responsive to the March 31, 2021 request; otherwise denied.

¹ Regarding footnote 3 to Paragraph 21, Defendants admit that Plaintiff submitted a March 31, 2021, FOIA request to Census's designated email address. Defendants further admit that Plaintiff received two email messages on April 7, 2021. Defendants respectfully refer the Court to the email communications submitted by Plaintiff as Exhibit E to the Complaint for a full and accurate statement of their contents. *See* Compl., Ex. E. Defendants further admit that Plaintiff and Census corresponded by email on April 8, April 12, and April 13, 2021. Defendants respectfully refer the Court to the email communications submitted by Plaintiff as Exhibit F to the Complaint for a full and accurate statement of their contents. The remainder of the footnote is denied.

24. Paragraph 24 and footnote 4 to Paragraph 24 consist of legal conclusions and citations, to which no response is required.

25. Paragraph 25 and footnote 5 to Paragraph 25 consists of legal conclusions and citations, to which no response is required.

26. Paragraph 26 consists of legal conclusions, to which no response is required.

27. Admitted that as of the date of the filing of the Complaint, Defendants had not released any documents to Plaintiff in response to the FOIA request at issue in this litigation; otherwise Paragraph 27 consists of legal conclusions, to which no response is required.

28. In Paragraph 28, Plaintiff re-alleges its preceding paragraphs as if fully stated therein. Defendants thus incorporate by reference here their answers to all of the preceding paragraphs.

29. Admitted that Plaintiff requested records in its March 31, 2021, FOIA request; the remainder of the paragraph consists of legal conclusions, to which no response is required.

30. Admitted that at the time of the filing of the Complaint, Defendants had not released records responsive to the FOIA request at issue or made a claim for a statutory exemption or extension; otherwise, denied.

31. Paragraph 31 consists of legal conclusions, to which no response is required.

32. Paragraph 32 consists of legal conclusions, to which no response is required.

33. Paragraph 33 consists of legal conclusions, to which no response is required.

34. Paragraph 34 consists of legal conclusions, to which no response is required.

The remaining paragraphs of the Complaint contain Plaintiff's requested relief, to which no response is required. To the extent a response is required, Defendants deny the allegations

contained in the remaining paragraphs of the Complaint and further aver that Plaintiff is not entitled to any relief.

Defendants hereby deny all allegations in the Complaint not expressly admitted or denied.

DEFENSES

1. Plaintiff is not entitled to compel production of documents exempt from disclosure by one or more exemptions of the FOIA or that do not constitute “records” as defined by the FOIA, 5 U.S.C. § 552.

2. Defendants reserve the right to amend this Answer to assert any other matter that constitutes an avoidance or affirmative defense under Fed. R. Civ. P. 8(c).

Dated: June 21, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/ JONATHAN D. KOSSAK

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Answer with the Clerk of the Court through the ECF system on June 21, 2021. This system provided a copy to and effected service of this document on all parties.

/s/ Jonathan D. Kossak

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