

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:11-cv-00863-JDB
)	
U.S. DEPARTMENT OF DEFENSE,)	
)	
Defendant.)	

ANSWER

Defendant, United States Department of Defense, through undersigned counsel, hereby answers the Complaint of Plaintiff, Judicial Watch, Inc., as follows:

First Affirmative Defense

The Complaint purports to impose obligations upon Defendant that exceed those imposed by the Freedom of Information Act (“FOIA”).

Second Affirmative Defense

Plaintiff is not entitled to compel the production of records that are exempt from disclosure under FOIA or under other provisions of law, or to compel the production of records that are not subject to FOIA.

Third Affirmative Defense

The Complaint fails to state a claim upon which relief may be granted.

Fourth Affirmative Defense

Defendant answers the first unnumbered paragraph of the Complaint as follows:

This paragraph contains only Plaintiff’s characterization of the Complaint, which speaks for itself.

Defendant further answers the numbered paragraphs of the Complaint as follows:

1. This paragraph contains conclusions of law and not averments of fact to which a response is required.

2. This paragraph contains conclusions of law and not averments of fact to which a response is required.

3. Defendant lacks sufficient information to admit or deny the allegations of this paragraph.

4. Deny the first sentence, except to admit that Defendant is an agency of the United States government and is headquartered in Arlington, Virginia. Deny the second sentence, except to admit that Defendants has control of records that are potentially responsive to a request submitted to it by Plaintiff under the Freedom of Information Act (FOIA).

5. Admit that on December 15, 2010, Plaintiff submitted a request to Defendant for records pursuant to FOIA. With respect to the remaining allegations of this paragraph, Defendant separately avers that that request speaks for itself, and no further response is required with respect to the contents of that document.

6. Admit that on December 21, 2010, Defendant responded by letter to Plaintiff's request. With respect to the remaining allegations of this paragraph, Defendant separately avers that that letter speaks for itself, and no further response is required with respect to the contents of that document.

7. This paragraph contains conclusions of law and not averments of fact to which a response is required.

8. Deny, except to admit that Defendant responded to Plaintiff's request by a letter December 21, 2010. Defendant refers Plaintiff to that letter for a fuller response to the allegations of this paragraph.

9. This paragraph contains conclusions of law and not averments of fact to which a response is required.

10. Defendant hereby incorporates by reference its responses to paragraphs 1 through 9 of the Complaint as if fully set forth herein.

11. This paragraph contains conclusions of law and not averments of fact to which a response is required.

12. This paragraph contains conclusions of law and not averments of fact to which a response is required.

Defendant specifically denies all allegations in Plaintiff's Complaint not otherwise answered herein. In addition, Defendant denies that Plaintiff is entitled to the relief requested in the prayer for relief, or to any relief whatsoever.

WHEREFORE, Defendant requests that Plaintiff's prayer for relief be denied, that this action be dismissed, and that Defendant be awarded its costs and such other relief as may be appropriate.

Dated: June 13, 2011

Respectfully submitted,

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Assistant Attorney General

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/s/ Joel McElvain
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