

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NUCLEAR WATCH NEW MEXICO

Plaintiff,

v.

Civ. A. No. 1:22-cv-00680-GJF-JHR

NATIONAL NUCLEAR SECURITY
ADMINISTRATION,

Defendant.

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant National Nuclear Security Administration ("Defendant" or "Agency"),
by and through undersigned counsel, hereby answers Plaintiff's Complaint as follows:

DEFENDANT'S RESPONSES TO NUMBERED PARAGRAPHS

Defendant denies each and every allegation contained in the Complaint not expressly admitted in this Answer. Defendant respectfully requests and reserves the right to amend, alter, and supplement the defenses contained in the Answer as the facts and circumstances giving rise to the Complaint become known to Defendant through the course of the litigation.

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

Introduction

1. Defendant admits that Plaintiff filed this action for relief pursuant to FOIA, and that relief sought is Defendant's complete FY 2019 Performance Evaluation Reports ("PERS"). Defendant admits that Plaintiff made a FOIA request to Defendant on January 27, 2020, for Defendant's complete FY 2019 PERS. All other statements

made in Plaintiff's Paragraph (1) contain Plaintiff's characterization of this lawsuit and conclusions of law, not allegations of fact, and thus no further response is required. To the extent a response is required, Defendant denies the allegations.

2. Defendant admits acknowledging Plaintiff's FOIA request. Defendant admits communicating to Plaintiff on February 6, 2020, that Plaintiff's request was "still open" and was "being processed." Defendant denies all other allegations in Plaintiff's paragraph (2).

3. Plaintiff's paragraph (3) contains Plaintiff's characterization of this lawsuit and conclusions of law, not allegations of fact, and thus no response is required. To the extent a response is required, Defendant admits that Plaintiff submitted a FOIA request and denies Plaintiff's characterization of its request.

Jurisdiction and Venue

4. Plaintiff's paragraph (4) contains conclusions of law to which no response is required.

5. Plaintiff's paragraph (5) contains conclusions of law to which no response is required.

Parties

6. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Plaintiff's paragraph (6) and therefore denies the allegations.

7. Defendant admits the allegations in Plaintiff's paragraph (7).

Factual Background

8. The allegations of paragraph 8 contain plaintiff's characterization or

previous matters to which no request is needed. In addition, any information of a “2012” lawsuit is no longer available as those records have been destroyed in accordance with records retention schedules. However, if a response is needed, Defendant states that it lacks sufficient knowledge or information to form a belief as to the truth of the first through fourth sentences in Plaintiff’s paragraph (8) and therefore denies the allegation. In response to the allegations in the fifth sentence, which purport to characterize Plaintiff’s FOIA request, Defendant respectfully refers to the request for a full and accurate statement of their contents. Defendant denies that it has unlawfully withheld documents demanded by Plaintiff’s January 27, 2020, FOIA request.

9. The allegations of paragraph 9 contain plaintiff’s characterization of the documents sought in the January 27, 2020, request, to which no response is necessary. The request for documents speaks for itself.

10. Defendant admits the allegations in Plaintiff’s paragraph (10).

11. Defendant denies that it has not provided any documents responsive to Plaintiff’s FOIA request. The remaining allegations in Plaintiff’s paragraph (11) contain conclusions of law to which no response is required. To the extent to the remaining allegations require a response, they are denied.

Nuclear Watch New Mexico’s FOIA Request

12. The allegations of Plaintiff’s paragraph (12) contain Plaintiff’s characterization of the January 27, 2020, request, to which no response is necessary. The document speaks for itself.

13. The allegations of Plaintiff's paragraph (13) contain Plaintiff's characterization of the January 27, 2020, request, to which no response is necessary. The document speaks for itself.

14. The allegations of Plaintiff's paragraph (14) contain Plaintiff's characterization of the January 27, 2020, request, to which no response is necessary. The document speaks for itself. Defendant lacks sufficient knowledge or information to form a belief as to the truth of whether it usually asks certain questions of FOIA requesters.

15. The allegations of Plaintiff's paragraph (15) contain Plaintiff's characterization of the January 27, 2020, request, to which no response is necessary. The document speaks for itself.

NNSA's Response

16. The allegations of Plaintiff's paragraph (16) contain Plaintiff's characterization of a January 30, 2020, email from NNSA FOIA Specialist Kristen Duran to Plaintiff, to which no response is necessary. The document speaks for itself.

17. The allegations of Plaintiff's paragraph (17) contain Plaintiff's characterization of a January 31, 2020, email from Plaintiff to Ms. Duran, to which no response is necessary. The document speaks for itself.

18. The allegations of Plaintiff's paragraph (18) contain Plaintiff's characterization of a February 6, 2020, email from Ms. Duran to Plaintiff, to which no response is necessary. The document speaks for itself.

19. Defendant denies the allegations in Plaintiff's paragraph (19).

Causes of Action

20. The allegations contained in Plaintiff's paragraph (20) contain conclusions of law to which no response is required. To the extent a response to these allegations is required, they are all denied.

21. The allegations contained in Plaintiff's paragraph (21) contain conclusions of law to which no response is required. To the extent a response to these allegations is required, they are all denied.

22. The allegations contained in Plaintiff's paragraph (22) contain conclusions of law to which no response is required. To the extent a response to these allegations is required, they are all denied.

23. The allegations contained in Plaintiff's paragraph (23) contain conclusions of law to which no response is required. To the extent a response to these allegations is required, they are all denied.

Prayer for Relief

The remainder of the Complaint contains Plaintiff's requests for relief to which no response is required. To the extent that a response is deemed required, Defendant denies that Plaintiff is entitled to the requested relief.

First Affirmative Defense

Plaintiff is not entitled to information that is exempt from disclosure under the Freedom of Information Act ("FOIA," 5 U.S.C. § 552(b)).

Second Affirmative Defense

Defendant's release of documents responsive to Plaintiff's January 27, 2020, FOIA request moots the above-captioned lawsuit.

Third Affirmative Defense

Plaintiff has failed to state a claim upon which relief may be granted.

Fourth Affirmative Defense

Defendant's actions did not violate FOIA or any other statute, regulation, or provision of law.

Fifty Affirmative Defense

The Freedom of Information Act does not provide for declaratory relief against a federal agency.

WHEREFORE, having fully answered the complaint, Defendants pray that this Court Dismiss this Complaint with prejudice and with such further relief as may be appropriate.

Respectfully submitted,

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Electronically filed 11/23/22
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 23, 2022, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Filed electronically 11/23/22
MANUEL LUCERO
Assistant United States Attorney