

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
PROJECT FOR PRIVACY AND	)	
SURVEILLANCE	)	
ACCOUNTABILITY, INC., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 22-1812 (RC)
v.	)	
	)	
NATIONAL SECURITY AGENCY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**ANSWER**

Defendants National Security Agency (“NSA”), Central Intelligence Agency (“CIA”), United States Department of Justice (“Justice Department”), and Office of the Director of National Intelligence (“ODNI”), by and through their undersigned counsel, hereby respond to the separately numbered paragraphs and prayer for relief contained in Plaintiffs’ Complaint. Defendants deny all allegations in the Complaint, including the relief sought, except as specifically admitted in this Answer. To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, Defendants may refer to such materials for their accurate and complete contents in response; however, Defendants’ references are not intended to be, and should not be construed to be, an admission that the cited materials are: (a) correctly cited or quoted by Plaintiffs; (b) relevant to this, or any other, action; or (c) admissible in this, or any other, action. Defendants respond to the separately numbered paragraphs and prayer for relief in the Complaint as follows:

### **Introduction**<sup>1</sup>

1. Paragraph 1 contains Plaintiff's description of its cause of action to which no response is required. To the extent that a response is required, Defendants deny the allegations.

2. Paragraph 2 contains Plaintiff's description of its cause of action to which no response is required. To the extent that a response is required, Defendants deny the allegations.

### **Jurisdiction and Venue**

3. Paragraph 3 contains conclusions of law and Plaintiff's request for relief to which no response is required. To the extent that a response is required, Defendants deny that Plaintiff is entitled to any relief whatsoever.

4. Paragraph 4 contains conclusions of law to which no response is required.

### **Parties**

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

6. Defendant NSA admits that it is a federal agency within the Department of Defense. The allegations in the second sentence of Paragraph 6 consist of legal conclusions to which no response is required. To the extent that a response is required, Defendant NSA denies the allegations.

7. Defendant CIA admits that it is an agency of the Executive Branch. The allegations in the second sentence of Paragraph 7 consist of legal conclusions to which no response is required. To the extent that a response is required, Defendant CIA denies the allegations.

8. Defendant Justice Department admits the allegations contained in the first sentence of Paragraph 8. The allegations in the second sentence of Paragraph 8 consist of legal conclusions

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<sup>1</sup> For ease of reference, Defendants refer to Plaintiff's headings and titles, but to the extent those headings could be construed to contain factually allegations, those allegations are denied.

to which no response is required. To the extent that a response is required, Defendant Justice Department denies the allegations. With regard to the third sentence of Paragraph 8, Defendant Justice Department admits that the Federal Bureau of Investigation (“FBI”) is a component of the Justice Department. The allegations contained in the fourth sentence of Paragraph 8 consist of legal conclusions to which no response is required. To the extent that a response is required, Defendant Justice Department denies the allegations.

9. Defendant ODNI admits that ODNI is in the Office of the Director of National Intelligence and that the Director of National Intelligence is a cabinet-level position. The allegations in the third sentence of Paragraph 9 consist of legal conclusions to which no response is required. To the extent that a response is required, Defendant ODNI denies the allegations.

#### **Facts**

10. Paragraph 10 contains conclusions of law to which no response is required.

11. Paragraph 11 contains legal conclusions and Plaintiffs’ characterization of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action to which a response would be required. Accordingly, no response to the allegations in Paragraph 11 is required. To the extent that a response is required, Defendants deny the allegations.

#### **Plaintiff’s efforts to obtain records via FOIA**

12. Paragraph 12 purports to characterize the FOIA requests at issue. Defendants respectfully refer the Court to the FOIA request at issue for a complete and accurate statement of its content and deny the allegations in Paragraph 12 to the extent they are inconsistent with the content of the request.

**National Security Agency**

13. Defendant NSA admits the allegations in the first sentence of Paragraph 13. As to the remaining allegations, Defendant respectfully refers the Court to Plaintiff's request for a complete and accurate statement of its contents.

14. Defendant NSA admits the allegations in Paragraph 14 and respectfully refers the Court to Plaintiff's request for a complete and accurate statement of its contents.

15. Defendant NSA admits that Plaintiff appealed on November 18, 2021, and respectfully refers the Court to Plaintiff's referenced exhibit (Exhibit C) for a complete and accurate statement of its contents. Defendant NSA admits that NSA denied the appeal on January 12, 2022, and respectfully refers the Court to Plaintiff's referenced exhibit (Exhibit D) for a complete and accurate statement of its contents. The remaining allegations in Paragraph 15 consist of legal conclusions to which no response is required. To the extent that a response is required, Defendant NSA denies the allegations.

16. Defendant NSA denies the allegations in Paragraph 16.

17. Paragraph 17 contains conclusions of law to which no response is required. To the extent that a response is required, Defendant NSA denies the allegations, including the fact that NSA has wrongfully withheld records.

**Central Intelligence Agency**

18. Defendant CIA admits the allegations in the first sentence of Paragraph 18. As to the remaining allegations in Paragraph 18, Defendant CIA respectfully refers the Court to the Plaintiff's request (Exhibit E) for a complete and accurate statement of its contents.

19. Defendant CIA admits the allegations in Paragraph 19 and respectfully refers the Court to its response (Exhibit F) for a complete and accurate statement of its contents.

20. Defendant CIA admits the allegations in the first sentence of Paragraph 20 and respectfully refers the Court to Plaintiff's Exhibit G for a complete and accurate statement of its contents. Defendant CIA denies the allegations in the second sentence of Paragraph 20. The remaining allegations in Paragraph 20 consist of legal conclusions to which no response is required. To the extent that a response is required, Defendant CIA denies the allegations.

21. Defendant CIA admits that it provided a Glomar response to Plaintiff's request indicating that it could not confirm or deny the existence of responsive records, and that Defendant CIA acknowledged receipt of Plaintiff's appeal but did not otherwise substantively respond. Defendant CIA otherwise denies the allegations in Paragraph 21.

22. Paragraph 22 contains conclusions of law to which no response is required. To the extent that a response is required, Defendant CIA denies the allegations.

**U.S. Department of Justice**

23. Defendant Justice Department admits that Plaintiff submitted a FOIA request dated July 26, 2021, to the Department of Justice's Mail Referral Unit. Defendant Justice Department respectfully refers the Court to that request for a complete and accurate statement of its contents.

24. Defendant Justice Department admits that the Department of Justice's Mail Referral Unit sent Plaintiff a letter dated August 24, 2021. Defendant Justice Department respectfully refers the Court to that letter for a complete and accurate statement of its contents.

25. Defendant Justice Department admits that OIP acknowledged Plaintiff's request by letter dated September 21, 2021. Defendant Justice Department respectfully refers the Court to that letter for a complete and accurate statement of its contents. Defendant Justice Department admits the allegations contained in the second sentence of Paragraph 25.

26. Defendant Justice Department admits that the FBI, by letter dated September 24, 2021, acknowledged receipt of Plaintiff's request and respectfully refers the Court to Plaintiff's referenced exhibit (Exhibit K) for a complete and accurate statement of its contents. Defendant Justice Department further admits only that the FBI, by letter dated September 28, 2021, issued a Glomar response and advised Plaintiff that its request had been closed and respectfully refers the Court to Plaintiff's referenced exhibit (Exhibit L) for a complete and accurate statement of its contents.

27. Regarding the allegations contained in the first sentence of Paragraph 27, Defendant Justice Department admits that Plaintiff submitted an appeal dated December 27, 2021. Defendant Justice Department respectfully refers the Court to that letter for a complete and accurate statement of its contents. Defendant Justice Department admits the allegations contained in the second sentence of Paragraph 27. Regarding the allegations contained in the third sentence of Paragraph 27, Defendant Justice Department admits that OIP denied Plaintiff's appeal by letter dated June 3, 2022, and respectfully refers the Court to that letter for a complete and accurate statement of its contents. The remaining allegations contained in Paragraph 27 consist of legal conclusions to which no response is required.

28. Defendant Justice Department admits that the FBI provided a Glomar response to Plaintiff's request indicating that it could not confirm or deny the existence of responsive records. Defendant Justice Department further admits that OIP denied Plaintiff's appeal by letter dated June 3, 2022, and respectfully refers the Court to that letter for a complete and accurate statement of its contents. Defendant Justice Department otherwise denies the allegations in Paragraph 28.

29. Defendant Justice Department denies that "[o]ther than as described above, no DOJ component has responded to Plaintiff's FOIA request." To the extent the allegations in Paragraph

29 are intended to apply to the Justice Department's National Security Division ("NSD"), NSD denies that it did not respond to Plaintiff's FOIA request. *See* Exhibit.

30. Paragraph 30 contains conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations, including the fact that the Justice Department has wrongfully withheld records.

**Office of [the] Director of National Intelligence**

31. Defendant ODNI admits the allegations in the first sentence of Paragraph 31. As to the remaining allegations in Paragraph 31, Defendant ODNI respectfully refers the Court to Plaintiff's request for a complete and accurate statement of its contents.

32. Defendant ODNI admits the allegations in Paragraph 32 and respectfully refers the Court to Plaintiff's referenced exhibit (Exhibit Q) for a complete and accurate statement of its contents.

33. Defendant ODNI admits that Plaintiff appealed on November 11, 2021, and respectfully refers the Court to Plaintiff's referenced exhibit (Exhibit R) for a complete and accurate statement of its contents. Defendant ODNI admits that ODNI has not responded to Plaintiff's appeal. The remaining allegations in Paragraph 33 consist of legal conclusions to which no response is required. To the extent that a response is required, Defendant ODNI denies the allegations.

34. Defendant ODNI admits that it provided a Glomar response to Plaintiff's request indicating that it could not confirm or deny the existence of responsive records, and that Defendant ODNI acknowledged receipt of Plaintiff's appeal but did not otherwise substantively respond. Defendant ODNI otherwise denies the allegations in Paragraph 34.

35. Paragraph 35 contains conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations, including the fact that ODNI has wrongfully withheld records.

**Count One: Freedom of Information Act**

**Defendants are required to disclose all non-exempt records responsive to Plaintiff's Freedom of Information Act requests**

36. Defendants incorporate by reference their responses to Paragraphs 1-35 of this Answer.

37. Paragraph 37 contains conclusions of law to which no response is required. Defendants deny that the FBI is an agency of the federal government within the meaning of 5 U.S.C. § 552(f) but admit that the FBI is a component of the Justice Department and is subject to the requirements of the Freedom of Information Act.

38. Defendants admit the allegations in Paragraph 38 and respectfully refer the Court to any relevant exhibit for a complete and accurate statement of its contents.

39. Paragraph 39 contains conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

40. Paragraph 40 contains conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

41. Paragraph 41 contains conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

42. Paragraph 42 contains conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

43. Paragraph 43 contains conclusions of law and Plaintiff's request for relief to which no response is required. To the extent that a response is required, Defendants deny the allegations, including the fact that Plaintiff is entitled to any relief whatsoever.

### **PRAYER FOR RELIEF**

The remaining portions of Plaintiff's Complaint contain its prayer for relief to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to the relief requested, or to any relief whatsoever.

### **DEFENSES**

In further response to the Complaint, Defendants raise the following defenses. Defendants respectfully reserve the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known to Defendants throughout the course of this litigation.

#### **FIRST DEFENSE**

This Court lacks subject matter jurisdiction of any of Plaintiff's requests for relief that exceed the relief authorized by FOIA.

#### **SECOND DEFENSE**

FOIA does not provide for declaratory relief against a federal agency.

#### **THIRD DEFENSE**

Plaintiff is not entitled to compel production of records exempt from disclosure by one or more exemptions to FOIA. *See* 5 U.S.C. § 552(b).

#### **FOURTH DEFENSE**

Plaintiff's requests do not "reasonably describe" the records being sought. 5 U.S.C. § 552(a)(3).

FIFTH DEFENSE

Plaintiff has failed to exhaust its administrative remedies with respect to one or more requests at issue and therefore fails to state a claim under Federal Rule of Civil Procedure 12(b)(6).

Dated: September 9, 2022

Respectfully submitted,

MATTHEW M. GRAVES, D.C. Bar # 481052  
United States Attorney

BRIAN P. HUDAK  
Chief, Civil Division

By: /s/ Robert A. Caplen  
ROBERT A. CAPLEN, D.C. Bar #501480  
Assistant United States Attorney  
601 D Street, N.W.  
Washington, DC 20530  
(202) 252-2523  
robert.caplen@usdoj.gov

*Counsel for Defendants*