

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

ELECTRONIC FRONTIER FOUNDATION,)	
)	
Plaintiff,)	Civil Action No. 07-00403 (RMU)
)	
v.)	
)	
DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	

ANSWER

Defendant, the United States Department of Justice, by and through its undersigned counsel, hereby answers plaintiff's Complaint in the captioned matter as follows:

First Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted

Second Affirmative Defense

The Court lacks subject matter jurisdiction over plaintiff's Complaint because Defendant has not improperly withheld information within the meaning of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

Third Affirmative Defense

The FOIA request that is the subject of this lawsuit implicates certain information that is protected from disclosure by one or more statutory exemptions. Disclosure of such information is not required or permitted.

Fourth Affirmative Defense

Defendant denies each and every allegation contained in the First Amended Complaint except as hereinafter may be expressly admitted.

In response to the numbered paragraphs and sentences of the Complaint, defendant admits, denies, or otherwise responds as follows:

1. The first sentence of this paragraph is admitted. The second sentence of this paragraph characterizes the relief that plaintiff seeks in its Complaint and the Court is respectfully referred to that Complaint for a full and accurate description of its contents, except that defendant denies the allegation contained in this sentence that defendant “wrongfully withheld” records. The third sentence of this paragraph constitutes a characterization of plaintiff’s request under the Freedom of Information Act, 5 U.S.C. § 552, to which no response of defendant is required; the request itself provides the fullest and most accurate description of its contents.

2. Admitted.

3. Defendant admits that EFF is an organization with offices in Washington D.C., but lacks sufficient knowledge or information to form a belief as to the truth of the information contained in the remainder of this paragraph, and therefore denies the same.

4. Admitted.

5. The allegations contained in this paragraph constitute plaintiff’s characterization of an article published by the New York Times on December 16, 2005. Defendant admits that such an article was published, but that the article itself provides the fullest and most accurate description of its contents.

6. Admitted.

7. Admitted.

8. Admitted.

9. The allegations contained in this paragraph consist of a characterization of

plaintiff's purported FOIA request to which no response from defendant is required. To the extent a response is deemed required, defendant admits that plaintiff requested records under FOIA by letter dated January 23, 2007, from the Office of Intelligence Policy and Review ("OIPR"), but that plaintiff's letter provides the fullest and most accurate description of its contents.

10. Admitted.

11. Admitted.

12. Denied, except to admit that defendant responded to plaintiff's FOIA request by letter dated March 9, 2007, indicating that responsive records had been located but withheld under the exemptions provided for in FOIA.

13. Admitted.

14. Denied.

15. Defendant repeats and realleges the responses contained in paragraphs 1-14.

16. Denied.

17. Admitted, except to deny that defendants "wrongfully withheld" records.

18. Denied.

WHEREFORE, having fully answered plaintiff's Complaint, defendant prays for a judgment dismissing the complaint with prejudice and for such further relief as the Court may deem just.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General, Civil Division

JEFFREY A. TAYLOR
United States Attorney

JOSEPH H. HUNT
Director, Federal Programs Branch

ELIZABETH J. SHAPIRO
Assistant Director, Federal Programs Branch

 /s/ Rupa Bhattacharyya
RUPA BHATTACHARYYA (VA# 38877)
Senior Trial Counsel
Federal Programs Branch, Civil Division
United States Department of Justice
P.O. Box 883, 20 Massachusetts Ave., N.W.
Washington, D.C. 20044
Tel: (202) 514-3146
Fax: (202) 318-7593
Email: rupa.bhattacharyya@usdoj.gov

Dated: March 23, 2007.