



1           1.       The first two sentences of this paragraph contain Plaintiff's description of this  
2 civil action and its FOIA requests to Defendants, to which no response is required. Defendants  
3 respectfully refer the Court to the requests for a full and accurate statement of their contents.  
4 The third and fourth sentences contain legal conclusions to which no response is required. To  
5 the extent a response is deemed required, denied. Defendants respectfully refer the Court to the  
6 referenced statutory and regulatory provisions for a full and accurate statement of their contents.

7           2.       This paragraph sets forth Plaintiff's characterization of itself and its current  
8 activities about which Defendants lack sufficient knowledge or information to form a belief as to  
9 the truth or falsity of the allegations.

10          3.       This paragraph contains legal conclusions to which no response is required. To  
11 the extent a response is deemed required, admitted.

12          4.       This paragraph contains Plaintiff's assertion of jurisdiction and thus is a legal  
13 conclusion to which no response is required. The Court is respectfully referred to the cited  
14 statutory provisions for a full and accurate description of their contents.

15          5.       This paragraph contains Plaintiff's assertion of venue and thus is a legal  
16 conclusion to which no response is required. The Court is respectfully referred to the cited  
17 statutory provisions for a full and accurate description of their contents.

18          6.       This paragraph contains Plaintiff's assertion of the propriety of assignment of this  
19 case to the San Francisco division pursuant to Local Rule 3-2(c) and (d), and thus is a legal  
20 conclusion to which no response is required. Defendants respectfully refer the Court to the  
21 referenced local rule for a full and accurate statement of its contents.

22          7.       This paragraph contains Plaintiff's characterization of a September 27, 2010, *New*  
23 *York Times* article along with a quoted excerpt from the article. Defendants admit that Plaintiff  
24 has accurately quoted the article, but respectfully refer the Court to the referenced article for a  
25 full and accurate description of its contents.

1 8. This paragraph contains Plaintiff's characterization and citation to a number of  
2 different news reports. Defendants respectfully refer the Court to the referenced citations for a  
3 full and accurate description of their contents.

4 9. This paragraph contains Plaintiff's characterization of an October 6, 2010, speech  
5 by FBI Director Robert Mueller along with a quoted excerpt from the speech. Defendants admit  
6 that Plaintiff has accurately quoted the speech, but respectfully refer the Court to the referenced  
7 speech for a full and accurate description of its contents.

8 10. This paragraph contains Plaintiff's characterization of an October 18, 2010, *New*  
9 *York Times* article along with a quoted excerpt from the article. Defendants admit that Plaintiff  
10 has accurately quoted the article, but respectfully refer the Court to the referenced article for a  
11 full and accurate description of its contents.

12 11. The first sentence is admitted. The second, third and fourth sentences of the  
13 paragraph contain Plaintiff's characterization of the aforementioned September 27, 2010 and  
14 October 18, 2010, *New York Times* articles along with quoted excerpts from the articles.  
15 Defendants admit that Plaintiff has accurately quoted the articles, but respectfully refer the Court  
16 to the referenced articles for a full and accurate description of their contents. The fifth sentence  
17 contains Plaintiff's characterization of the FBI's 2010 Budget and Performance Summary along  
18 with a quoted excerpt from the summary. Defendants admit that Plaintiff has accurately quoted  
19 the summary, but denies Plaintiff's characterization of the document. The referenced portion of  
20 the document did not address FBI's actual FY 2010 budget, but rather addressed a request for  
21 additional funds for the FY 2010 budget. Defendants respectfully refer the Court to the  
22 referenced budget and performance summary for a full and accurate description of its contents.

23 12. The first clause of the first sentence contains a characterization of the  
24 aforementioned October 6, 2010, speech by FBI Director Mueller, and the Court is respectfully  
25 referred to the referenced speech for a full and accurate description of its contents. With respect  
26 to the allegation made in the second clause of the first sentence, Defendants are without  
27 sufficient knowledge or information to admit or deny the allegation that there is no additional

1 official (i.e., public) information beyond the examples given in Director Mueller's speech about  
2 the need for the subject technological and legislative change. The second sentence contains a  
3 quotation from the aforementioned September 27, 2010, *New York Times* article. Defendants  
4 admit that Plaintiff has accurately quoted the article, but the Court is respectfully referred to the  
5 referenced article for a full and accurate description of its contents. The third sentence contains  
6 Plaintiff's characterization of FBI Director Mueller's October 6, 2010, speech, and Defendants  
7 respectfully refer the Court to the speech for the best evidence of its contents.

8 13. This paragraph contains Plaintiff's characterization of its first FOIA request,  
9 dated May 21, 2009, sent by facsimile to the FBI, in which Plaintiff requested materials  
10 regarding the "Going Dark Program." The FBI admits that it received the request, and  
11 respectfully refers the Court to the letter for a full and accurate statement of its contents.

12 14. With respect to the allegations in the first sentence, FBI admits that it sent Plaintiff  
13 a letter, dated May 26, 2009, acknowledging receipt of Plaintiff's request for the "Going Dark"  
14 materials. With respect to the allegation in the second sentence, FBI admits that it sent a letter to  
15 Plaintiff, dated August 21, 2009, but denies Plaintiff's characterization of the letter. The FBI  
16 informed Plaintiff that it had begun its search in response to Plaintiff's FOIA request in its May  
17 26, 2009, letter to Plaintiff, not in its August 21, 2009, letter. With respect to the allegations in  
18 the third sentence, FBI admits that it sent Plaintiff letters dated January 7, 2010, July 8, 2010,  
19 and October 6, 2010, but denies Plaintiff's characterization of those letters as incomplete. The  
20 FBI first informed Plaintiff that an analyst was reviewing its request in its January 7, 2010 letter.  
21 The July 8, 2010, and October 6, 2010 letters provided status updates concerning Plaintiff's  
22 FOIA request and that the request was being reviewed by an analyst. The Court is respectfully  
23 referred to the letters referenced in this paragraph for a full and accurate description of their  
24 contents.

25 15. Admitted.

26 16. This paragraph contains Plaintiff's characterization of its second FOIA request,  
27 dated September 28, 2010, sent by facsimile to FBI, DOJ Crim, and DEA, which sought

1 documents separate and distinct from its May 21, 2009, FOIA request sent to the FBI. The Court  
2 is respectfully referred to the facsimiles sent to each Defendant for a full and accurate  
3 description of their contents.

4 17. Admitted that, while Plaintiff's May 21, 2009, FOIA request to the FBI did not  
5 contain a request for expedited processing, Plaintiff's second and separate FOIA request, dated  
6 September 28, 2010, to FBI, DOJ Crim, and DEA did include a request for expedited processing.  
7 The court is respectfully referred to Plaintiff's September 28, 2010, FOIA request for a full and  
8 accurate description of its contents.

9 18. Admitted as to Defendants FBI and DEA. DOJ Crim received Plaintiff's FOIA  
10 request on September 29, 2010.

11 19. Admitted that DEA acknowledged Plaintiff's FOIA request, but the letter was  
12 sent on September 29, 2010, not October 1, 2010. DEA respectfully refers the Court to its  
13 September 29, 2010, letter for a full and accurate description of its contents.

14 20. Admitted. DOJ Crim respectfully refers the Court to its October 4, 2010, letter  
15 for a full and accurate description of its contents.

16 21. Admitted with respect to Plaintiff's second FOIA request, dated September 28,  
17 2010. Defendant FBI respectfully refers the Court to its October 20, 2010, letter for a full and  
18 accurate description of its contents.

19 22. The first clause of the sentence in this paragraph contains the legal conclusion  
20 that Defendants are required and have failed to expedite the processing of Plaintiff's FOIA  
21 requests to which no response is required. To the extent a response is deemed required, denied.  
22 With respect to the allegation in the parenthetical that FBI granted Plaintiff's request for  
23 expedited processing, denied with respect to Plaintiff's first FOIA request dated May 21, 2009,  
24 and admitted with respect to its second FOIA request, dated September 28, 2010. The second  
25 clause of the sentence in this paragraph contains a characterization of the twenty-day deadline in  
26 the FOIA and the allegation that Defendants have not met this deadline, which are legal

1 conclusions to which no response is required. The Court is respectfully referred to the  
2 referenced statutory provision for a full and accurate description of its contents.

3 23. This paragraph contains a legal conclusion to which no response is required. To  
4 the extent a response is deemed required, denied.

5 24. This paragraph contains a legal conclusion to which no response is required. To  
6 the extent a response is deemed required, denied.

7 25. This paragraph repeats and re-alleges the allegations contained in paragraphs 1-24  
8 of Plaintiff's Complaint. Defendants respectfully refer the Court to its responses to those  
9 specific preceding paragraphs.

10 26. This paragraph contains a legal conclusion to which no response is required. To  
11 the extent a response is deemed required, denied.

12 27. This paragraph contains legal conclusions to which no response is required. To  
13 the extent a response is deemed required, denied.

14 28. This paragraph contains legal conclusions to which no response is required. To  
15 the extent a response is deemed required, denied.

16 29. This paragraph repeats and re-alleges the allegations contained in paragraphs 1-  
17 24 of the Complaint. Defendants respectfully refer the Court to its responses to those specific  
18 preceding paragraphs.

19 30. This paragraph contains legal conclusions to which no response is required. To  
20 the extent a response is deemed required, denied.

21 31. This paragraph contains legal conclusions to which no response is required. To  
22 the extent a response is deemed required, denied.

23 32. This paragraph contains legal conclusions to which no response is required. To  
24 the extent a response is deemed required, denied.

25 The remaining paragraphs of the Complaint contain a Prayer for Relief, to which no  
26 response is required. To the extent a response is deemed required, Defendants deny the

1 allegations in the remainder of the Complaint and further aver that Plaintiff is not entitled to the  
2 requested relief or any other relief from the Defendants.

3 **FIRST DEFENSE**

4 1. This Court lacks subject matter jurisdiction over Plaintiff's claims.

5 **SECOND DEFENSE**

6 2. Plaintiff has failed to exhaust all administrative remedies.

7 **THIRD DEFENSE**

8 3. The Complaint fails to state a claim against the Defendants upon which relief can  
9 be granted.

10 **CONCLUSION**

11 Wherefore, having fully answered, Defendants assert that Plaintiff is not entitled to the  
12 relief requested, or to any relief whatsoever.

13  
14 Dated: December 8, 2010

Respectfully Submitted,

15  
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Assistant Attorney General

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18 MELINDA HAAG  
United States Attorney

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20 ELIZABETH J. SHAPIRO  
Deputy Director, Federal Programs Branch

21  
22 /s/ Nicholas Cartier  
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26 *Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 8, 2010, I caused a copy of the foregoing to be served on counsel for Plaintiff via the Court's ECF system.

/s/ Nicholas Cartier  
NICHOLAS CARTIER

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