

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICA FIRST LEGAL FOUNDATION,

*Plaintiff,*

v.

CENTERS FOR DISEASE CONTROL  
AND PREVENTION,

*Defendant.*

Civil Action No. 22-0978 (APM)

**ANSWER**

Defendant Centers for Disease Control and Prevention (“CDC”), by and through undersigned counsel, respectfully submits the following answer to Plaintiff’s Complaint filed on April 11, 2022. All allegations not specifically admitted are denied.

1. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiff has purported to characterize this action as an action to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

2. The allegations in this paragraph pertain to a RealClearPolitics article, which speaks for itself and is background, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action to which a response would be required. To the extent a response is required, Defendant respectfully refers the Court to that article for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

3. Defendant admits that on July 16, 2021, Plaintiff submitted a FOIA request. The remaining allegations in this paragraph pertain to Plaintiff’s FOIA request, which speaks for itself. To the extent a response is required, Defendant respectfully refers the Court to Plaintiff’s FOIA

request for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

4. Defendant admits the allegations in this paragraph.

5. Defendant admits that Plaintiff disagreed with CDC's assertion that the request was "unduly burdensome" and that the parties attempted to work together to address CDC's concerns. The remaining allegations in this paragraph pertain to Plaintiff's correspondence with CDC, dated July 22, 2021, which speaks for itself. To the extent a response is required, Defendant respectfully refers the Court to this correspondence for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

6. Defendant admits that CDC, in turn, sent a letter, dated July 22, 2021, to Plaintiff but denies that CDC demanded that Plaintiff provide a custodian list of 5 to 10 people to search. Defendant avers that CDC instead asked for some reasonable specificity, such as the names of three to four specific CDC and White House staff employees that may have been the direct custodian of the records Plaintiff was seeking. The remaining allegations in this paragraph pertain to the correspondence mentioned in this paragraph, which speaks for itself. To the extent a response is required, Defendant respectfully refers the Court to this correspondence for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

7. Defendant admits the allegations in this paragraph.

8. Defendant denies the allegation that communications with external organizations "take very little effort to process." The remainder of this paragraph consists of conclusions of law and of Plaintiff's characterization of this action, to which no response is required.

9. This paragraph consists of conclusions of law and Plaintiff's characterization of a memorandum from the Attorney General, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the Attorney General's

memorandum for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

10. Defendant admits the allegations in this paragraph.

11. This paragraph consists of conclusions of law to which no response is required.

12. This paragraph consists of conclusions of law to which no response is required.

13. Defendant lacks knowledge or information sufficient to form a belief about whether Plaintiff does indeed have the concerns that it references, but Defendant denies that any such concerns are legitimate or are considered in the processing of FOIA requests.

#### **JURISDICTION AND VENUE**<sup>1</sup>

14. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant admits that the Court has jurisdiction over actions involving proper FOIA requests and subject to all of the terms and limitations of FOIA.

15. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this District.

#### **PARTIES**

16. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

17. Defendant admits that it is an agency of the federal government located at 1600 Clifton Road, Atlanta, Georgia. The last sentence of this paragraph consists of legal conclusions to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the last sentence of this paragraph.

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<sup>1</sup> For ease of reference, Defendant refers to the Complaint's headings and titles, but to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

**FACTS**

18. Defendant admits that Plaintiff sent a FOIA request to the CDC, dated July 16, 2021. The remaining allegations in this paragraph pertain to Plaintiff's FOIA request, which speaks for itself. To the extent a response is required, Defendant respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

19. Defendant admits the allegations in this paragraph.

20. Defendant admits the allegations in this paragraph.

21. Defendant admits the allegations in this paragraph.

22. Defendant admits the allegations in this paragraph.

23. Defendant admits that Plaintiff sent correspondence to the CDC, dated July 28, 2021. The remaining allegations in this paragraph pertain to that correspondence, which speaks for itself, or conclusions of law, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the correspondence for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

24. Defendant admits the allegations in this paragraph.

25. Defendant admits that Plaintiff followed-up with the CDC FOIA analyst to inquire as to whether the analyst had spoken with agency IT staff to determine if the agency had the capabilities to pull email communications from a particular email domain address. Defendant avers that the correspondence was dated August 5, 2021, and not August 6, 2021, as alleged in this paragraph.

26. Defendant admits the allegations in this paragraph.

27. Defendant admits the allegations in this paragraph.

28. Defendant admits the allegations in this paragraph.

29. Defendant admits the allegations in this paragraph.
30. Defendant admits the allegations in this paragraph.
31. Defendant admits the allegations in this paragraph.
32. Defendant admits the allegations in this paragraph.
33. Defendant admits the allegations in this paragraph.
34. Defendant admits the allegations in this paragraph.
35. Defendant admits the allegations in this paragraph.
36. Defendant admits the allegations in this paragraph.

**Claim for Relief**  
**(For Violation of 5 U.S.C. § 552)**

37. Defendant incorporates by reference its responses to paragraphs 1-36 set forth above.

38. Sections (a) through (d) of this paragraph consist of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

39. Defendant avers that this paragraph is erroneously numbered as paragraph 43 and should have been numbered paragraph 39. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

**Relief Requested**

The allegations following the “Wherefore” clause of Plaintiff’s Complaint constitute Plaintiff’s request for relief to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

**DEFENSES**

In further response to the Complaint, Defendant raises the following defenses. Defendant respectfully requests and reserves 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 Defendant throughout the course of this litigation.

**First Defense**

The Court lacks subject matter jurisdiction over Plaintiff's requests for relief that exceed the relief authorized under FOIA, 5 U.S.C. § 552.

**Second Defense**

Plaintiff is not entitled to compel the release of records or information either exempt from disclosure under FOIA or non-exempt where foreseeable harm would be caused by disclosure. *See* 5 U.S.C. § 552(b).

**Third Defense**

Plaintiff's FOIA requests, in whole or in part, are overbroad and not reasonably described.

**Fourth Defense**

Plaintiff is not entitled to attorney's fees or costs.

**Fifth Defense**

To the extent the Complaint purports or is construed to include a challenge to an agency policy or practice, Plaintiff failed to exhaust its administrative remedies for that claim, and it is accordingly barred.

\* \* \*

Dated: May 18, 2022

Respectfully submitted,

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United States Attorney

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