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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INFORMED CONSENT ACTION NETWORK,

Plaintiff,

v.

CENTERS FOR DISEASE CONTROL AND
PREVENTION,

Defendant.

20 Civ. 6177 (JGK)

**ANSWER OF DEFENDANT CENTERS
FOR DISEASE CONTROL AND
PREVENTION**

Defendant Centers for Disease Control and Prevention (“CDC”), by its attorney, Audrey Strauss, Acting United States Attorney for the Southern District of New York, hereby answers the complaint of plaintiff Informed Consent Action Network (“Plaintiff”) upon information and belief as follows:

1. Paragraph 1 constitutes alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. To the extent Paragraph 1 contains factual allegations to which a response is required, avers that CDC is a component of the Department of the Health and Human Services (“HHS”).

CDC further avers that footnote 1 of Paragraph 1 contains a quoted excerpt from CDC's website, respectfully refers the Court to the website for a true and complete statement of its contents, and denies the allegations to the extent they fail to reflect or accurately reflect the website's full contents.

2. Paragraph 2 constitutes alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. To the extent a response is required, admits that, as of the filing of the complaint, there is an ongoing pandemic in the United States with the SARS-CoV-2 ("COVID-19" virus, and denies knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 2.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, except admits that the CDC is and has been involved in the federal government's response to the COVID-19 pandemic. Further admits that ICAN submitted four FOIA requests to the CDC on April 29, 2020 ("FOIA Requests"), respectfully refers the Court to the FOIA Requests for a true and complete statement of their contents, and denies the allegations to the extent they fail to reflect or accurately characterize the FOIA Requests' full contents.

4. Admits that by letter dated May 8, 2020, the CDC informed Plaintiffs that the FOIA Requests were treated as one request and assigned the identifying number #20-01462-FOIA, and that the FOIA Requests were not proper because they were overly broad and lacked the specificity needed to allow the agency to retrieve the information requested with a reasonable amount of effort, respectfully refers the Court to that letter for a true and complete statement of its contents, and denies the allegations to the extent they fail to reflect or accurately characterize the letter's full contents. Further admits that, to date, CDC has not produced any records to

Plaintiff in response to the FOIA Requests.

5. Admits that by letter dated May 11, 2020, Plaintiff filed an administrative appeal of CDC's May 8, 2020 letter, respectfully refers the Court to that letter for a true and complete statement of its contents, and denies the allegations to the extent they fail to reflect or accurately characterize the letter's full contents.

6. Paragraph 6 constitutes conclusions of law or Plaintiffs' characterization of their claims in this lawsuit, to which no response is required. To the extent Paragraph 6 contains factual allegations to which a response is required, denies the allegations in Paragraph 6.

7. Paragraph 7 constitutes conclusions of law or Plaintiffs' characterization of their claims in this lawsuit, to which no response is required. To the extent Paragraph 7 contains factual allegations to which a response is required, denies the allegations in Paragraph 7.

PARTIES

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8.

9. Admits that CDC is a component of HHS, and that the CDC is an agency within the meaning of 5 U.S.C. § 552(f)(1).

JURISDICTION AND VENUE

10. Paragraph 10 constitutes conclusions of law, to which no response is required. To the extent Paragraph 10 contains factual allegations to which a response is required, denies the allegations in Paragraph 10.

FACTS

11. Paragraph 11 constitutes alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is

required. To the extent Paragraph 11 contains factual allegations to which a response is required, admits that SARS-CoV-2 is a novel coronavirus known as “COVID-19,” and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations because the terms “swift action,” “numerous restrictions on everyday life,” “press deeply upon cherished civil and constitutional rights,” “pressing questions by the public,” and “fulfill the role of the fourth estate” are undefined.

I. The FOIA Requests and Administrative Record

12. Denies knowledge and information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 12. The second sentence of Paragraph 12 constitutes Plaintiff’s characterization of one of its four FOIA Requests submitted on April 29, 2020, to which no response is required. To the extent Paragraph 12 contains factual allegations to which a response is required, respectfully refers the Court to the FOIA Request described therein for a true and complete statement of its contents, and denies the allegations to the extent they fail to reflect or accurately characterize the Request’s full contents.

13. Paragraph 13 constitutes Plaintiff’s characterization of three of its four FOIA Requests submitted on April 29, 2020, to which no response is required. To the extent Paragraph 13 contains factual allegations to which a response is required, respectfully refers the Court to the three FOIA Requests described therein for a true and complete statement of their contents, and denies the allegations to the extent they fail to reflect or accurately characterize the Requests’ full contents.

14. Admits that by letter May 8, 2020, CDC issued a determination regarding Plaintiffs’ FOIA Requests, respectfully refers the Court to that letter for a true and complete statement of its contents, and denies the allegations to the extent they fail to reflect or accurately

characterize the Request's full contents.

15. Admits that by letter dated May 11, 2020, Plaintiff filed an administrative appeal of CDC's May 8, 2020 letter, respectfully refers the Court to that letter for a true and complete statement of its contents, and denies the allegations to the extent they fail to reflect or accurately characterize the letter's full contents.

16. Admits that by letter dated May 12, 2020, CDC acknowledged receipt of Plaintiff's administrative appeal, respectfully refers the Court to that letter for a true and complete statement of its contents, and denies the allegations to the extent they fail to reflect or accurately characterize the letter's full contents.

17. Paragraph 17 constitutes conclusions of law, to which no response is required. To the extent Paragraph 17 contains factual allegations to which a response is required, denies the allegations in Paragraph 17.

II. The FOIA Request is Proper and Not Overbroad

18. Paragraph 18 constitutes conclusions of law, to which no response is required. To the extent Paragraph 18 contains factual allegations to which a response is required, denies the allegations in Paragraph 18.

19. Paragraph 19 constitutes conclusions of law, to which no response is required. To the extent Paragraph 19 contains factual allegations to which a response is required, denies the allegations in Paragraph 19.

20. Paragraph 20 constitutes conclusions of law, to which no response is required. To the extent Paragraph 20 contains factual allegations to which a response is required, denies the allegations in Paragraph 20.

21. Paragraph 21 constitutes conclusions of law, to which no response is required. To

the extent Paragraph 21 contains factual allegations to which a response is required, denies the allegations in Paragraph 21.

22. Paragraph 22 constitutes conclusions of law, to which no response is required. To the extent Paragraph 22 contains factual allegations to which a response is required, denies the allegations in Paragraph 22.

23. Paragraph 23 constitutes conclusions of law, to which no response is required. To the extent Paragraph 23 contains factual allegations to which a response is required, denies the allegations in Paragraph 23.

Requested Relief

The paragraphs following Paragraph 23 contain Plaintiff's prayer for relief, to which no response is required. To the extent a response is required, denies that Plaintiff is entitled to the requested relief, or to any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

For further and separate answer, CDC alleges as follows:

FIRST DEFENSE

The information requested in Plaintiff's FOIA Requests are exempt in whole or in part under the FOIA. *See* 5 U.S.C. § 552(b).

SECOND DEFENSE

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

THIRD DEFENSE

CDC has exercised due diligence in processing Plaintiff's FOIA request and exceptional circumstances exist that necessitate additional time for CDC to process the FOIA request. *See* 5

U.S.C. § 552(a)(6)(C).

Dated: New York, New York
October 23, 2020

Respectfully submitted,

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