

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INFORMED CONSENT ACTION NETWORK,

Plaintiff,

v.

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION,

Defendant.

Civil Action No. 24-cv-1898 (BAH)

ANSWER

Defendant National Oceanic and Atmospheric Administration (“NOAA”), by and through undersigned counsel, responds as follows to the separately numbered paragraphs and prayer for relief in Plaintiff Informed Consent Action Network’s Complaint, ECF No. 1, alleging causes of action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Any allegations not specifically admitted, denied, or otherwise responded to below are hereby denied. To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their complete and accurate contents, but such references are not intended to be, and should not be construed as, an admission that the cited materials are (a) correctly cited or quoted by Plaintiff, (b) relevant to this, or any other, action, or (c) admissible in this, or any other, action. For ease of reference, this Answer replicates the headings contained in the Complaint. Although Defendant believes such headings require no response, to the extent a response is deemed required and those headings and titles could be construed to contain factual allegations, those allegations are denied.

The initial preamble paragraph consists of Plaintiff's characterization of this action, which requires no response.

JURISDICTION AND VENUE

1. This paragraph consists of legal conclusions, which requires no response.
2. This paragraph consists of legal conclusions, which requires no response.

PARTIES

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

4. Defendant admits that NOAA is a component of the Department of Commerce ("Commerce"). Defendant denies NOAA is an agency as defined by 5 U.S.C. § 552(f), but admits that Commerce is an agency as defined by 5 U.S.C. § 552(f) and that NOAA is subject to FOIA.

STATEMENT OF FACTS

5. This paragraph characterizes Plaintiff's FOIA request apparently submitted to FOIA.gov, which is the best evidence of its contents, and to which Defendant respectfully refers the Court for a complete and accurate statement of its contents. Defendant denies any allegations inconsistent with the submission. Defendant specifically denies having received a copy of the submission prior to service of the complaint upon Defendant on July 8, 2024, and specifically denies the implicit allegation contained within Plaintiff's Exhibit 1 that the request was submitted via email to FOIA@noaa.gov.

6. This paragraph characterizes an automated web response Plaintiff apparently received from FOIA.gov, which is administered by the U.S. Department of Justice. The response is the best evidence of its contents, and Defendant respectfully refers the Court to the response for a complete and accurate statement of its contents. Defendant denies any allegations inconsistent

with the response. Defendant specifically denies that the confirmation ID is a tracking number used or controlled by Defendant.

7. This paragraph contains legal conclusions to which no response is required. Defendant specifically denies receiving a request to respond to prior to the filing of the complaint.

COUNT I – FAILURE TO MAKE DETERMINATION BY REQUIRED DEADLINE

8. Defendant realleges and incorporates its responses to paragraphs 1 through 7 above as if set forth fully herein.

9. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

10. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

11. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

12. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

COUNT II – FAILURE TO PROVIDE AN ESTIMATED COMPLETION DATE

13. Defendant realleges and incorporates its responses to paragraphs 1 through 12 above as if set forth fully herein.

14. This paragraph consists of legal conclusions, which requires no response.

15. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

COUNT III – ENTITLEMENT TO WAIVER OF SEARCH FEES

16. Defendant realleges and incorporates its responses to paragraphs 1 through 15 above as if set forth fully herein.

17. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

18. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

19. This paragraph consists of legal conclusions, which requires no response. If a response is deemed required, Defendant denies the allegations in this paragraph.

The remaining paragraph and sub-paragraphs consist of Plaintiff's prayer for relief, which require no response. To the extent a response is required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

* * *

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 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

Plaintiff is neither eligible for nor entitled to attorney's fees or costs.

Second Defense

Plaintiff failed to provide actual notice of its request and/or failed to reasonably describe the records sought.

Third Defense

Plaintiff is not entitled to production of records protected from disclosure by one or more applicable FOIA exemptions, the release of which foreseeably would harm an interest that the exemption protects, or which are protected from disclosure by one or more applicable FOIA exclusions.

Fourth Defense

Plaintiff is not entitled to production of non-exempt portions of records that are not reasonably segregable from exempt portions of records.

* * *

Dated: July 31, 2024

Respectfully submitted,

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