

DAVID L. ANDERSON (CABN 149604)
United States Attorney
SARA WINSLOW (DCBN 457643)
Chief, Civil Division
BENJAMIN J. WOLINSKY (CABN 305410)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-6996
Facsimile: (415) 436-6748
benjain.wolinsky@usdoj.gov

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRYAN CARMODY and FIRST) CASE NO. 3:20-cv-04809-LB
AMENDMENT COALITION,)
)
) **ANSWER**
Plaintiffs,)
)
)
v.)
)
)
FEDERAL BUREAU OF INVESTIGATION,)
)
)
Defendant.)
)
)

Defendant Federal Bureau of Investigation (“FBI”) submits this Answer to the Complaint filed by Plaintiffs Bryan Carmody (“Carmody”) and the First Amendment Coalition (“FAC”). When the Complaint refers to or quotes from external documents, statutes, or other sources, FBI may refer to such materials for their accurate and complete contents in response, though FBI’s references are not intended to be, and should not be construed to be, an admission that the cited materials are: (i) cited correctly or quoted correctly by Plaintiffs; (ii) relevant to this, or any other, action; or (iii) admissible in this, or any other, action. FBI denies all the allegations that are not specifically admitted or otherwise qualified in this Answer. If a response to any allegation is deemed required, but not otherwise provided, those allegations are denied.

FBI responds to the Complaint in like numbered paragraphs as follows:

1. FBI admits that Plaintiffs purport to bring this action pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §552. The rest of this paragraph consists of Plaintiffs’ characterization of this action to which no response is required. To the extent that a response is required, FBI denies the allegations.

2. This paragraph consists of Plaintiffs' characterization of this action and their legal conclusions to which no response is required. To the extent that a response is required, FBI denies the allegations.

PARTIES¹

3. FBI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

4. FBI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

5. FBI admits that it is a component of the U.S. Department of Justice and that its headquarters are located at 935 Pennsylvania Avenue, N.W., Washington, D.C. 20530. The rest of this paragraph consists of legal conclusions to which no response is required.

JURISDICTION AND VENUE

6. Admit.

7. FBI admits that venue is proper in this district under 5 U.S.C. § 552(a)(4)(B). As to the remainder of this paragraph, FBI lacks knowledge or information sufficient to form a belief about the truth of the allegations therein, and on that basis denies them.

INTRADISTRICT ASSIGNMENT

8. FBI admits that assignment to the Oakland Division or the San Francisco Division is proper under Local Rule 3-2(c).

¹ For ease of reference, FBI replicates the headings in the Complaint. Although FBI believes that no response is needed to such headings, if a response is deemed required and as much as those headings and titles could be construed to contain factual allegations, those allegations are denied.

STATUTORY FRAMEWORK

9. This paragraph consists of legal conclusions to which no response is required.

10. This paragraph consists of legal conclusions to which no response is required.

FACTS

11. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA, and denies them on that basis.

12. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA, and denies them on that basis.

13. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA, and denies them on that basis.

14. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA, and denies them on that basis.

15. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA, and denies them on that basis.

16. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA and denies them on that basis.

17. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA and denies them on that basis.

18. FBI avers that the allegations in this paragraph are irrelevant to Plaintiffs' claims under FOIA and denies them on that basis.

PLAINTIFFS' FOIA REQUEST

20. FBI admits that on or around October 18, 2019, it received a FOIA request from Plaintiffs dated October 9, 2019. FBI admits that Exhibit 1 is a copy of the FOIA request without attachments. The FOIA request speaks for itself and is the best evidence of its contents.

21. FBI admits that on or around October 18, 2019, it received a FOIA request from

1 Plaintiffs dated October 9, 2019. FBI admits that Exhibit 1 is a copy of the FOIA request without
2 attachments. The FOIA request speaks for itself and is the best evidence of its contents.

3 22. Admit.

4 23. Admit.

5 24. FBI admits that it responded to the FOIA request by letter dated October 23, 2019, and
6 respectfully refers the Court to that letter for a full and accurate statement of its contents. FBI also admits
7 that it assigned FOIPA number 1449861-000 to categories 3, 4, and 5 of the FOIA request (“Adachi
8 Request”). FBI admits that Exhibit 2 is a copy of the letter. The letter speaks for itself and is the best
9 evidence of its contents.

10 25. FBI admits that it sent an acknowledgment letter to FAC dated November 15, 2019. FBI
11 admits that Exhibit 3 is a copy of the letter without enclosures. The letter speaks for itself and is the best
12 evidence of its contents.

13 26. FBI admits that Plaintiff submitted an administrative appeal to the Department of Justice
14 (“DOJ”), Office of Information Policy (“OIP”), on or around December 30, 2019. FBI admits that
15 Exhibit 4 is a copy of the administrative appeal without exhibits. The administrative appeal speaks for
16 itself and is the best evidence of its contents.

17 27. FBI admits that OIP responded to the appeal by letter dated February 13, 2020. FBI
18 admits that Exhibit 5 is a copy of OIP’s letter. The letter speaks for itself and is the best evidence of its
19 contents.

20 28. FBI admits that it has not produced documents in response to the Adachi Request because
21 they are exempt under FOIA.

22 29. This paragraph consists of legal conclusions to which no response is required.

23 **COUNT I**

24 30. FBI incorporates its responses to the foregoing paragraphs as though set forth fully here.

25 31. Admit.

26 32. This paragraph consists of legal conclusions to which no response is required. To the
27 extent that a response is required, FBI denies the allegations and maintains that the exemptions asserted

by FBI in response to the Adachi Request are proper under FOIA.

33. This paragraph consists of legal conclusions to which no response is required. To the extent that a response is required, FBI lacks sufficient information and denies the allegations on that basis.

34. FBI admits that it cited 5 U.S.C. § 552(b)(7)(A) in response to the requests. The rest of this paragraph consists of legal conclusions to which no response is required. To the extent that a response is required, FBI denies the allegations and maintains that the exemptions asserted by FBI in response to the Adachi Request are proper under FOIA.

35. This paragraph consists of legal conclusions to which no response is required. To the extent that a response is required, FBI denies the allegations and maintains that the exemptions asserted by FBI in response to the Adachi Request are proper under FOIA.

36. This paragraph consists of legal conclusions to which no response is required. To the extent that a response is required, FBI denies the allegations and maintains that the exemptions asserted by FBI in response to the Adachi Request are proper under FOIA.

37. This paragraph consists of legal conclusions to which no response is required. To the extent that a response is required, FBI denies the allegations and maintains that the exemptions asserted by FBI in response to the Adachi Request are proper under FOIA.

38. Deny.

39. Deny.

40. Admit.

PRAYER FOR RELIEF

The remaining paragraph sets forth Plaintiffs' request for relief to which no response is required but, as far as a response is deemed required, FBI denies that Plaintiffs are entitled to the relief requested

DEFENSES

FBI reserves the right to amend, alter, and supplement the defenses in this Answer as the facts and the circumstances prompting the Complaint become known through the course of litigation.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Complaint raises claims that are or will become moot.

THIRD DEFENSE

Plaintiffs have no right to compel the production of records protected from disclosure by law, including one or more of the exemptions to FOIA.

FOURTH DEFENSE

FBI's actions did not violate FOIA or any other statutory or regulatory provision.

FIFTH DEFENSE

Plaintiffs are neither eligible for nor entitled to attorneys' fees or costs.

SIXTH DEFENSE

The Court lacks jurisdiction to award relief that exceeds that authorized by FOIA.

Dated: September 30, 2020

DAVID L. ANDERSON
United States Attorney

/s/ Benjamin J. Wolinsky
BENJAMIN J. WOLINSKY
Assistant United States Attorney

Attorneys for Federal Defendant