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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 CAITLIN KELLY HENRY and JESSE ) Case No. C13-05924 DMR  
13 STOUT, )  
14 Plaintiffs, ) **FEDERAL DEFENDANT’S ANSWER**  
15 v. )  
16 DEPARTMENT OF JUSTICE, )  
17 Defendant. )

18 Federal defendant Department of Justice hereby answer the complaint filed by plaintiffs Caitlin  
19 Kelly Henry and Jesse Stout on December 21, 2013.

20 **THE PARTIES**

- 21
- 22 1. Defendant lacks sufficient information to admit or deny the allegations of paragraph 1, and on that  
23 basis, denies the allegations.
  - 24 2. Defendant lacks sufficient information to admit or deny the allegations of paragraph 2, and on that  
25 basis, denies the allegations.
  - 26 3. Admit.
  - 27 4. Defendant denies the allegations of paragraph 4, but avers that the Federal Bureau of Investigation  
28 (“FBI”) is a component of DOJ.

**JURISDICTION AND VENUE**

- 1
- 2 5. Paragraph 5 contains plaintiffs' characterization of the claims in this action to which no response is
- 3 required.
- 4 6. Paragraph 6 contains plaintiffs' allegations of jurisdiction and conclusions of law to which no
- 5 response is required.
- 6
- 7 7. Paragraph 7 contains plaintiff's allegations of venue and conclusions of law to which no response is
- 8 required.

9 **STATEMENT OF FACTS**

10 **BACKGROUND**

- 11 8. Defendant lacks sufficient information to admit or deny the allegations of paragraph 8, and on that
- 12 basis, denies the allegations.
- 13
- 14 9. Defendant lacks sufficient information to admit or deny the allegations of paragraph 9, and on that
- 15 basis, denies the allegations.
- 16 10. Defendant lacks sufficient information to admit or deny the allegations of paragraph 10, and on that
- 17 basis, denies the allegations.
- 18 11. Defendant lacks sufficient information to admit or deny the allegations of paragraph 11, and on that
- 19 basis, denies the allegations.
- 20
- 21 12. Defendant lacks sufficient information to admit or deny the allegations of paragraph 12, and on that
- 22 basis, denies the allegations.
- 23 13. Defendant lacks sufficient information to admit or deny the allegations of paragraph 13, and on that
- 24 basis, denies the allegations.
- 25 14. Defendant lacks sufficient information to admit or deny the allegations of paragraph 14, and on that
- 26 basis, denies the allegations.
- 27
- 28

1 15. Defendant admits that plaintiffs submitted FOIA/PA requests to the FBI. Except as expressly  
2 admitted, defendant lacks sufficient information to admit or deny the remaining allegations of  
3 paragraph 15, and on that basis denies the allegations.

4 16. The first and last sentences of paragraph 16 consist of plaintiffs' characterization of and speculation  
5 concerning public interest and debate regarding surveillance issues in the United States, to which no  
6 response is required. The second sentence consists of plaintiffs' characterization and belief about  
7 the value of the records they requested, to which no response is required. Defendant lacks sufficient  
8 knowledge to admit or deny the allegations of the third sentence in this paragraph, and on that basis,  
9 denies the allegations.  
10

11 **I. PLAINTIFFS' FOIA/PA REQUESTS**

12 **A. PLAINTIFFS' FOIA/PA REQUESTS TO THE FBI**

13 17. Defendant admits only that plaintiffs sent a FOIA request to FBI on or about May 1, 2013 and  
14 respectfully refers the court to the document for a true and accurate statement of its contents.  
15

16 18. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 18.

17 **B. PLAINTIFFS' FOIA/PA REQUESTS TO THE DOJ**

18 18. Defendant lacks sufficient information to admit or deny the allegations of paragraph 18.

19 19. Defendant lacks sufficient information to admit or deny the allegations of paragraph 19.  
20

21 **II. RESPONSES TO PLAINTIFFS' FOIA REQUESTS**

22 **A. FBI'S RESPONSE TO PLAINTIFFS' FOIA/PA REQUESTS**

23 **i. FBI'S RESPONSE TO PLAINTIFFS' FOIA/PA REQUESTS REGARDING**  
24 **PLAINTIFF HENRY**

25 19. Defendant admits only that FBI sent a letter to plaintiff on or about May 7, 2013 and respectfully  
26 refers the court to the document for a true and accurate statement of its contents.  
27  
28

1           **ii. FBI’S RESPONSE TO PLAINTIFF’S FOIA/PA REQUESTS REGARDING**  
2           **PLAINTIFF STOUT**

3 19. Defendant admits only that FBI sent a letter on or about May 6, 2013 and respectfully refers the  
4 court to the document for a true and accurate statement of its contents.

5           **B. EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS’S RESPONSE TO**  
6           **PLAINTIFFS’ FOIA/PA REQUESTS REGARDING PLAINTIFF HENRY**

7           **i. RESPONSE TO PLAINTIFFS’ FOIA/PA REQUESTS REGARDING PLAINTIFF**  
8           **HENRY**

9  
10 20. Defendant lacks sufficient information to admit or deny the allegations of paragraph 20.

11 21. Defendant lacks sufficient information to admit or deny the allegations of paragraph 21.

12 22. Defendant lacks sufficient information to admit or deny the allegations of paragraph 22.

13 23. This paragraph consists of legal conclusions to which no response answer is required, but to the  
14 extent a response is required, defendant denies the allegations of paragraph 23.

15           **ii. RESPONSE TO PLAINTIFFS’ FOIA/PA REQUEST REGARDING PLAINTIFF**  
16           **STOUT**

17  
18 24. Defendant lacks sufficient information to admit or deny the allegations of paragraph 24.

19 25. Defendant lacks sufficient information to admit or deny the allegations of paragraph 25.

20 26. Defendant lacks sufficient information to admit or deny the allegations of paragraph 26.

21 27. This paragraph consists of legal conclusions to which no response is required, but to the extent a  
22 response is required, defendant denies the allegations of paragraph 27.

23  
24 **III. ADMINISTRATIVE APPEALS OF PLAINTIFFS’ FOIA/PA REQUEST TO THE FBI**

25           **A. ADMINISTRATIVE APPEALS OF PLAINTIFFS’ FOIA/PA REQUESTS TO THE FBI**  
26           **REGARDING PLAINTIFF HENRY**

1 28. Defendant admits only that plaintiff Henry appealed to DOJ's Office of Information Policy ("OIP")  
2 on or about May 29, 2013 and respectfully refers the court to the document for a true and accurate  
3 statement of its contents.

4 29. Defendant admits only that OIP acknowledged plaintiff Henry's appeal on or about June 20, 2013  
5 and respectfully refers the court to the document for a true and accurate statement of its contents.  
6

7 30. This paragraph consists of legal conclusions to which no response is required, but to the extent a  
8 response is required, defendant denies the allegations of paragraph 30.

9 31. Defendant denies the allegations of paragraph 31 and avers that OIP emailed plaintiff Henry on or  
10 about September 10, 2013 and affirmed FBI's action. Defendant respectfully refers the court to the  
11 document for a true and accurate statement of its contents.

12 32. This paragraph consists of legal conclusions to which no response is required, but to the extent a  
13 response is required, defendant denies the allegations of paragraph 32.  
14

15 **B. ADMINISTRATIVE APPEALS OF PLAINTIFFS' FOIA/PA REQUESTS TO THE FBI**  
16 **REGARDING PLAINTIFF STOUT**

17 33. Defendant admits only that plaintiff Stout appealed to OIP on or about May 29, 2013 and  
18 respectfully refers the court to the document for a true and accurate statement of its contents.

19 34. Defendant admits only that OIP acknowledged plaintiff Stout's appeal on or about June 20, 2013  
20 and respectfully refers the court to the document for a true and accurate statement of its contents.  
21

22 35. This first sentence of this paragraph consists of legal conclusions to which no response is required.  
23 As to the second and third sentences of this paragraph, defendant admits that OIP e-mailed plaintiff  
24 Stout on September 10, 2013 with OIP's appeal decision affirming the FBI's action and respectfully  
25 refers the court to the e-mail and attachment for a true and accurate statement of their contents.

26 36. This paragraph consists of legal conclusions to which no response is required, but to the extent a  
27 response is required, defendant denies the allegations of paragraph 36.  
28

**COUNT I:**

**VIOLATION OF THE FOIA**

37. Defendants incorporate their responses to paragraphs 1 through 36 above, and incorporate each response therein as though fully set forth herein.

38. Paragraph 38 contains no factual allegations and thus, no response is required. To the extent the Complaint contains characterization of documents no response is required. Defendant refers to the court to the cited documents for a full and accurate statement of their content.

39. Paragraph 39 contains legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations.

40. Paragraph 40 contains legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations.

41. Paragraph 41 contains legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations.

42. Defendant denies the allegations of paragraph 42.

**PRAYER FOR RELIEF**

Paragraphs (1) – (4) represent plaintiffs’ prayer for relief to which no response is required, but to the extent a response is required, defendant denies that plaintiffs are entitled to the requested relief or any other relief whatsoever. All allegations not specifically responded to above are denied.

AND FURTHER answering, defendant avers:

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Court lacks subject matter jurisdiction over some of all of the claims alleged.

**SECOND AFFIRMATIVE DEFENSE**

The Court lacks jurisdiction over any matter to the extent plaintiff failed to satisfy prerequisites to suit, as well as over any requests or allegations that are not contained in a Freedom of Information Act

1 or Privacy Act request at issue in this action.

2 THIRD AFFIRMATIVE DEFENSE

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

4 FOURTH AFFIRMATIVE DEFENSE

5 Plaintiffs have failed to exhaust administrative remedies.

6 FIFTH AFFIRMATIVE DEFENSE

7 Plaintiffs have not alleged sufficient factual and/or legal bases for its request for costs and/or  
8 attorney's fees.

9 SIXTH AFFIRMATIVE DEFENSE

10 At all times alleged in the Complaint, defendant was acting with good faith with justification,  
11 and pursuant to authority.

12 SEVENTH AFFIRAMTIVE DEFENDANT

13 The Freedom of Information Act does not authorize the injunctive relief requested.

14 EIGHTH AFFIRMATIVE DEFENSE

15 There is no provision under the Freedom of Information Act for obtaining declaratory relief.  
16 Defendant reserves the right to assert additional affirmative defense in the event that such affirmative  
17 defenses would be appropriate.

18 WHEREFORE, defendant prays that:

- 19 1. The Complaint be dismissed with prejudice;  
20 2. Plaintiffs take nothing by this action;  
21 3. No injunctive relief be awarded to plaintiffs;  
22 4. The Court enter judgment in favor of defendant; and  
23 5. The Court grant such other and further relief as it deems just and proper.

24  
25 DATED: May 5, 2014

Respectfully submitted,  
MELINDA HAAG  
United States Attorney

26  
27 /s/  
JENNIFER S WANG  
Assistant United States Attorney