

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DENNIS FINBARR MURPHY,
Plaintiff,**

v.

**Civil Action No. 3:15CV133
(Judge Groh)**

**U.S. CUSTOMS AND BORDER
PROTECTION,**

Defendant.

ANSWER TO COMPLAINT

FIRST DEFENSE

Comes now defendant, the United States Customs and Border Protection, by counsel, William J. Ihlenfeld, II, United States Attorney for the Northern District of West Virginia, by and through Erin K. Reisenweber, Assistant United States Attorney for said District, and for its Answer to Plaintiff's Complaint (ECF No. 1) states as follows:

JURISDICTION AND VENUE

1. The defendant admits that jurisdiction is proper as pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

2. The defendant admits that venue is proper as pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §1391.

PARTIES

3. The defendant admits that Plaintiff had been employed under a federal contract as an armed security guard at the U.S. Customs and Border Protection's ("CBP's) Advanced Training Center in Harpers Ferry, West Virginia. The defendant denies that Plaintiff was terminated. The defendant admits that Plaintiff filed an EEO Complaint against CBP. The defendant admits Plaintiff electronically submitted a FOIA request on February 5, 2015. The defendant cannot admit or deny Plaintiff's subjective motivations for filing his FOIA request.

4. The defendant admits the allegations contained in Paragraph 4 of the Complaint.

STATUTORY FRAMEWORK

5. The defendant admits that the legal conclusions set forth at Paragraph 5 of the Complaint are generally correct.

6. The defendant admits that the United States Supreme Court case of U.S. Dept. of Justice v. Tax Analysts, 492 U.S. 136, 144-45 (1989) generally stands for the legal conclusion set forth at Paragraph 6 of the Complaint; however, the defendant notes that the proper name of the case is as stated in this response and not as reflected in Paragraph 6 of the Complaint.

7. The defendant admits 5 U.S.C. § 552(a)(6)(A)(i) states that an agency, upon receiving a request for records pursuant to FOIA shall determine within 20 days after the receipt of any such request whether to comply with such request. The defendant further admits that 5 U.S.C. § 552(a)(4)(B) states in part that "the district court of the United States in the district in

which the complainant resides . . . or in which the agency records are situated, . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant” and that the court’s review shall determine the matter *de novo*.

STATEMENT OF FACTS

8. The defendant admits that Paragraph 8 contains a summary of Plaintiff’s claims.

9. The defendant admits Plaintiff had been employed under a federal contract as an armed security guard at the CBP's Advanced Training Center in Harpers Ferry, West Virginia. Upon information and belief, the defendant denies that Plaintiff was terminated. The defendant admits Plaintiff filed an EEO complaint against CBP.

10. The defendant admits the Plaintiff electronically submitted an electronic FOIA request to the defendant on February 5, 2015 requesting various records.

11. The defendant admits that as of April 2015 Plaintiff had not received the information he requested from the defendant. The defendant is without sufficient information or knowledge to either admit or deny whether Plaintiff sought assistance from Senator Capito’s office. The defendant is without sufficient information or knowledge to either admit or deny whether Senator Capito’s office contacted the CBP headquarters in Washington, DC regarding Plaintiff’s FOIA request.

12. The defendant admits the allegations contained in Paragraph 12 of the Complaint.

13. The defendant denies the allegations contained in Paragraph 13. On or about March 18, 2016, the defendant issued its response to Plaintiff's FOIA request via Plaintiff's electronic FOIAonline account. Defendant's search of its databases returned a total of 146 responsive pages to Plaintiff's request, 116 pages of which have been withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). On or about June 14, 2016 the defendant mailed hard copies of the responsive documents, with redactions, to plaintiff's address of record via the United States Postal Service.

CAUSES OF ACTION

First Cause of Action

14. The defendant incorporates its responses to the foregoing paragraphs as if fully set forth herein.

15. The defendant admits the allegations contained in Paragraph 15 of the Complaint.

16. The defendant denies the allegations contained in Paragraph 16 of the Complaint, to the extent that certain of the requested records are subject to withholding pursuant to the statutory exemptions of 5 U.S.C. § 552, *et seq.*

17. The defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. The defendant admits the allegations contained in Paragraph 18 of the Complaint.

Second Cause of Action

19. The defendant incorporates its responses to the foregoing paragraphs as if fully set forth herein.

20. The defendant admits the allegations contained in Paragraph 20 of the Complaint.

21. The defendant denies the allegations contained in Paragraph 21 of the Complaint, to the extent that certain of the requested records are subject to withholding pursuant to the statutory exemptions of 5 U.S.C. § 552, *et seq.*

22. The defendant denies the allegations contained in Paragraph 22 of the Complaint.

Respectfully submitted,

WILLIAM J. IHLENFELD, II
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I, Erin K. Reisenweber, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that on this 8th day of August, 2016, the foregoing Answer to Plaintiff's Complaint was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Dennis Finbarr Murphy
639 Michelle Drive
Hedgesville, WV 25427

WILLIAM J. IHLENFELD, II,
UNITED STATES ATTORNEY

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