

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

PHILIP EIL,)	
Plaintiff,)	
)	
v.)	C.A. No. 15-99M
)	
U.S. DRUG ENFORCEMENT)	
ADMINISTRATION,)	
Defendant.)	

ANSWER OF DEFENDANT U.S. DRUG ENFORCEMENT ADMINISTRATION

Defendant, U.S. Drug Enforcement Administration (“DEA”), by undersigned counsel,
hereby answers Plaintiff’s Complaint as follows:

PARTIES

1. The DEA admits that the Plaintiff brings this action under the Freedom of Information Act and that the Plaintiff’s Complaint seeks this Court to enjoin the DEA from withholding documents and to order the DEA to release certain documents to the Plaintiff. The remainder of Paragraph 1 is an allegation of law to which no answer is required, and therefore the remainder of Paragraph 1 is denied.

JURISDICTION AND VENUE

2. Paragraph 2 is an allegation of law to which no answer is required. By way of further answer, the DEA admits that United States District Courts have subject matter jurisdiction over actions properly brought under 5 U.S.C. § 552(a)(4)(B) and that United States District Courts have personal jurisdiction over the DEA. The DEA is without personal knowledge regarding the Plaintiff’s residence, but accepts Plaintiff’s assertion for purposes of venue.

THE PARTIES

3. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3, and therefore, each and every allegation contained in Paragraph 3 is denied.
4. The DEA admits that it is an agency within the Department of Justice of the United States, and that it is an agency within the meaning of 5 U.S.C. § 552(f).

FACTS

5. The DEA admits that the docket in the matter United States v. Paul Volkman indicates that in May 2007, the United States filed a grand jury indictment containing 22 counts in the United States District Court for the Southern District of Ohio, charging Paul Volkman, among other defendants, with multiple offenses, including violations of 21 U.S.C. § 841(a) and (C); 21 U.S.C. § 856(a)(1); 18 U.S.C. § § 924(c)(1) and (2).
6. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and therefore, each and every allegation contained in Paragraph 6 is denied.
7. The DEA admits that the docket in the matter United States v. Paul Volkman indicates that the trial of Paul Volkman began on March 1, 2011, that the jury reached a verdict on May 9, 2011, that the jury found Paul Volkman guilty of counts 1-3, 5-11, 14, and 16-22. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 7, and therefore, each and every allegation contained in Paragraph 7 is denied.
8. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8, and therefore, each and every allegation contained in Paragraph 8 is denied.

9. The DEA admits that the docket in the matter United States v. Paul Volkman does not indicate that the trial exhibits were ordered to be filed under seal. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 9, and therefore, each and every allegation contained in Paragraph 9 is denied.
10. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10, and therefore, each and every allegation contained in Paragraph 10 is denied.
11. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, and therefore, each and every allegation contained in Paragraph 11 is denied.
12. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, and therefore, each and every allegation contained in Paragraph 12 is denied.
13. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore, each and every allegation contained in Paragraph 13 is denied.
14. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and therefore, each and every allegation contained in Paragraph 14 is denied.
15. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and therefore, each and every allegation contained in Paragraph 15 is denied.

16. The DEA admits that it received a transfer of Plaintiff's FOIA request from the Executive Office of U.S. Attorneys on or about December 2012.
17. The DEA admits that on or about May 7, 2013, the DEA sent Plaintiff a First Partial Release in response to Plaintiffs' February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself.
18. The DEA admits that the May 7, 2013 letter cites specifically to 5 U.S.C. §§ 552(b)(7)(C) and (b)(7)(E), which speak for themselves.
19. The DEA admits that the May 7, 2013 letter states: "Number of pages withheld: 105" and "Number of pages released: 45." The DEA admits that portions of the documents released pursuant to its May 7, 2013 letter were redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. § 552a. The DEA further states that the documents released, including excerpts attached to Plaintiff's Complaint, speak for themselves.
20. The DEA admits that on or about July 1, 2013, the DEA sent Plaintiff a Second Partial Release in response to Plaintiffs' February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself.
21. The DEA admits that the July 1, 2013 letter states: "Number of pages withheld: 1287" and "Number of pages released: 13 (45 pages prev. released)." The DEA further states that the documents released, including excerpts attached to Plaintiff's Complaint, speak for themselves.
22. The DEA admits that on or about July 30, 2013, the DEA sent Plaintiff a Third Partial Release in response to Plaintiff's February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself.

23. The DEA admits that the July 30, 2013 letter states: “Number of pages withheld: 1,225” and “Number of pages released: 7 (58 pages prev. released).” The DEA further states that the documents released, including excerpts attached to Plaintiff’s Complaint, speak for themselves.
24. The DEA admits that on or about February 20, 2014, the DEA sent Plaintiff a Fourth Partial Release in response to Plaintiffs’ February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself.
25. The DEA admits that the February 20, 2014 letter states: “Number of pages withheld: 513” and “Number of pages released: 108 (65 pages prev. released).”
26. The DEA admits that in early May 2014, the DEA sent Plaintiff a Fifth Partial Release in response to Plaintiffs’ February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself.
27. The DEA admits that the May 2014 letter does not include a tally of pages withheld and released.
28. The DEA admits that the Plaintiff made a telephone inquiry on or about November 7, 2014, regarding his request for documents. The DEA further admits that Plaintiff Eil made an inquiry to the FOIA email mailbox on or about November 3, 2014. By way of further answer, the DEA states that Plaintiff’s email was acknowledged by letter sent to the Plaintiff on or about November 7, 2014, which provided an estimated date for the next release of documents. DEA provided further response to both inquiries in its November 10, 2014 correspondence with the Plaintiff. All other allegations contained in Paragraph 28 of the Complaint are denied.
29. The DEA admits that on or about November 10, 2014, the DEA sent Plaintiff a Sixth Partial Release in response to Plaintiffs’ February 1, 2012 FOIA request addressed to the

U.S. Executive Office for United States Attorneys. The document speaks for itself. The DEA is without knowledge or information sufficient to form a belief regarding what the Plaintiff knows or does not know, and thus, the remaining allegations contained in Paragraph 29 are denied.

30. The DEA admits that documents were released to the Plaintiff containing redactions made pursuant to 5 U.S.C. § 552 and 5 U.S.C. § 552a. The DEA further states that the documents released, including excerpts attached to Plaintiff's Complaint, speak for themselves.

31. The DEA admits that its November 10, 2014 letter to the Plaintiff states as follows:

"Also, to address your request for 'completion date of your FOIA request' submitted via email dated November 03, 2014 as well as your telephone inquiry on November 7, 2014 regarding the same matter, SARF has estimated a timeline of completion for this FOIA request to be within 5 months from receipt of this letter."

32. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32, and therefore, each and every allegation contained in Paragraph 32 is denied.

33. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33, and therefore, each and every allegation contained in Paragraph 33 is denied.

34. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34, and therefore, each and every allegation contained in Paragraph 34 is denied.

35. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35, and therefore, each and every allegation contained in Paragraph 35 is denied.

36. The DEA admits that on or about December 15, 2014, the DEA sent Plaintiff a Seventh Partial Release in response to Plaintiffs' February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself. The DEA admits that portions of the documents released pursuant to its December 15, 2015 letter were redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. § 552a. The DEA further states that the documents released, including excerpts attached to Plaintiff's Complaint, speak for themselves. The DEA is without knowledge or information sufficient to form a belief regarding what the Plaintiff knows or does not know, and thus the remaining allegations contained in Paragraph 36 are denied.

37. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37, and therefore, each and every allegation contained in Paragraph 37 is denied.

38. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38, and therefore, each and every allegation contained in Paragraph 38 is denied.

39. The DEA admits that on or about January 26, 2015, the DEA sent Plaintiff an Eighth Partial Release in response to Plaintiffs' February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself. The DEA further admits that portions of the documents released pursuant to its January 26, 2015 letter were redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 552,

and/or the Privacy Act, 5 U.S.C. § 552a. The DEA is without knowledge or information sufficient to form a belief regarding with the Plaintiff knows or does not know, and thus, the remaining allegations contained in Paragraph 39 are denied.

40. The DEA admits that on or about February 11, 2015, the DEA sent Plaintiff an Ninth Partial Release in response to Plaintiffs' February 1, 2012 FOIA request addressed to the U.S. Executive Office for United States Attorneys. The document speaks for itself. The DEA is without knowledge or information sufficient to form a belief regarding what the Plaintiff knows or does not know, and thus the remaining allegations contained in Paragraph 40 are denied.

41. The DEA admits that portions of the documents released pursuant to its February 11, 2015 letter were redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. § 552a. The DEA further states that the documents released, including excerpts attached to Plaintiff's Complaint, speak for themselves.

42. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42, and therefore, each and every allegation contained in Paragraph 42 is denied.

43. The DEA denies the allegations contained in Paragraph 43. By way of further answer, the DEA states that on or about March 12, 2015, it sent a Tenth Partial Release to the Plaintiff, stating that it had completed its final review of approximately 15,000 pages. The DEA denies that it has not processed information within its possession that is the subject of Plaintiff's FOIA request.

44. The DEA admits that portions of the documents released to the Plaintiff were redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. § 552a. The DEA is without knowledge or information sufficient to form a belief

regarding what the Plaintiff knows or does not know, and thus, the remaining allegations contained in Paragraph 44 are denied.

45. The DEA admits that portions of the documents released to the Plaintiff were redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. § 552a.

46. The DEA denies that Plaintiff's FOIA request is currently pending.

47. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47, and therefore, each and every allegation contained in Paragraph 47 is denied.

48. The DEA admits that it received a transfer of Plaintiff's FOIA request from the Executive Office of U.S. Attorneys on or about December 2012.

49. The DEA admits that it received a transfer of Plaintiff's FOIA request from the Executive Office of U.S. Attorneys on or about December 2012.

50. The DEA admits that the criminal court docket in the matter United States v. Paul Volkman indicates that the defendant was sentenced on February 14, 2012, which included life imprisonment on Counts 10, 11, 18 and 20 to run consecutive to each other and concurrent to all other counts, with exceptions. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 50, and therefore, the remaining allegations contained in Paragraph 50 are denied.

COUNT I

51. Paragraph 51 repeats and re-alleges Paragraphs 1-50, and therefore the DEA repeats its responses to Paragraphs 1-50.

52. The DEA admits that the Plaintiff has submitted a FOIA request and that portions of the information requested by the Plaintiff have been withheld pursuant to the applicable law.

53. The DEA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53, and therefore, each and every allegation contained in Paragraph 53 is denied.

54. The allegations contained in Paragraph 54 are allegations of law, to which no response is required, and therefore the allegations contained in Paragraph 54 are denied.

55. The allegations contained in Paragraph 55 are allegations of law, to which no response is required, and therefore the allegations contained in Paragraph 55 are denied.

The remainder of the Complaint contains Plaintiff's pray for relief as to which no response is required. To the extent that a response is deemed necessary, the United States denies that Plaintiff is entitled to a declaration or order regarding any claim raised herein, that Plaintiff is entitled to have this proceeding expedited under 28 U.S.C. § 1657, that Plaintiff is entitled to any costs or attorneys fees in this action, or any other relief.

The United States denies all other allegations made in Plaintiff's Complaint that are not specifically admitted herein.

FIRST DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

SECOND DEFENSE

The FOIA request that is the subject of this lawsuit implicates certain information that is protected from disclosure pursuant to the exemptions to the Freedom of Information Act, 5 U.S.C. § 552, including, but not limited to, Exemptions (b)(6) and (b)(7), and the Privacy Act, 5 U.S.C. § 552a. Disclosure of such information is not required or permitted by federal law.

THIRD DEFENSE

Subsequent to the filing of the Complaint, Plaintiff has received all information in the Defendant's possession that may properly be disclosed under the applicable law, and there is therefore no further relief to which the Plaintiff is entitled.

WHEREFORE, having fully answered all counts of the Complaint, the United States prays that Plaintiff take nothing by way of his Complaint, that the same be dismissed, and that judgment be awarded in favor of the United States.

Respectfully submitted,

U.S. Drug Enforcement Administration

By Its Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2015, I electronically filed the within Answer with the Clerk of the United States District Court for the District of Rhode Island using the CM/ECF System. The following participant has received notice electronically:

Neal J. McNamara, Esquire
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/s/ Richard B. Myrus
RICHARD B. MYRUS
Assistant U.S. Attorney