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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

20 Civ. 833 (PAE)

ANSWER

Defendant the Federal Bureau of Prisons (“BOP”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby answers the Complaint (Dkt. No. 1) of Plaintiff the New York Times Company on information and belief as follows:

COMPLAINT¹

1. Paragraph 1 of the Complaint consists of Plaintiff’s characterization of this action, to which no response is required.

2. The first sentence of Paragraph 2 consists of Plaintiff’s characterization of its Freedom of Information Act (“FOIA”) request, and BOP respectfully refers the Court to Plaintiff’s FOIA request for a complete and accurate statement of its contents. To the extent a further response is required, BOP admits that Jeffrey Epstein died at the Metropolitan

¹ Defendant replicates the headings from Plaintiffs’ Complaint solely for ease of reference, without admitting any allegations set forth thereunder.

Correctional Center (“MCC”) on August 10, 2019, and respectfully refers the Court to the indictment entered in *United States v. Jeffrey Epstein*, No. 19-CRIM-00490 (S.D.N.Y.). BOP denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the second sentence of Paragraph 2.

PARTIES

3. BOP denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 3 of the Complaint.

4. BOP denies the allegations of Paragraph 4 of the Complaint, except admits that it is an agency of the United States.

JURISDICTION AND VENUE

5. Paragraph 5 of the Complaint sets forth legal conclusions regarding jurisdiction, to which no response is required.

6. Paragraph 6 of the Complaint sets forth legal conclusions regarding venue, to which no response is required.

7. Paragraph 7 of the Complaint sets forth legal conclusions, to which no response is required.

8. Paragraph 8 of the Complaint sets forth legal conclusions, to which no response is required. To the extent a response is required, BOP denies the allegation that it has failed to comply with any applicable statutory deadlines.

FACTS

The August 12, 2019 Requests

9. Denies the allegations set forth in Paragraph 9 of the Complaint.

10. Paragraph 10 consists of Plaintiff's characterization of its FOIA request, and BOP respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents.

11. Paragraph 11 consists of Plaintiff's characterization of its FOIA request, and BOP respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents.

12. Paragraph 12 consists of Plaintiff's characterization of its FOIA request, and BOP respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents.

13. Paragraph 13 consists of Plaintiff's characterization of its FOIA request, and BOP respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents.

14. Paragraph 14 consists of Plaintiff's characterization of its FOIA request, and BOP respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents.

15. Admits that BOP assigned Plaintiff's August 13, 2019 requests Number 2019-05665 and sent Plaintiff a response letter dated September 23, 2019. BOP respectfully refers the Court to its response letter dated September 23, 2019, for an accurate statement of its contents. BOP otherwise denies the allegations of Paragraph 15, including to the extent they fail to reflect or accurately characterize BOP's September 23, 2019 response letter.

16. BOP denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 16 of the Complaint, and avers that on October 7, 2019, BOP's Office of Information Policy received a letter from Plaintiff seeking review of BOP's decision on Plaintiff's FOIA request. With respect to the last

sentence of Paragraph 16, BOP admits that it sent Plaintiff an e-mail on October 9, 2019, and respectfully refers the Court to BOP's October 9, 2019 e-mail for a complete and accurate statement of its contents. Paragraph 16 otherwise consists of Plaintiff's characterization of its FOIA appeal; BOP respectfully refers the Court to Plaintiff's FOIA appeal for a complete and accurate statement of its contents and denies the allegations to the extent they fail to reflect or accurately characterize Plaintiff's FOIA appeal.

17. BOP denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 17 of the Complaint.

18. Admits the allegations of Paragraph 18 of the Complaint.

The December 12, 2019 Request

19. Paragraph 19 consists of Plaintiff's characterization of its FOIA request, and BOP respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents.

20. Admits the allegations of Paragraph 20 of the Complaint, and respectfully refers the Court to BOP's letter to Plaintiff dated December 16, 2019 for a complete and accurate statement of its contents.

21. Paragraph 21 of the Complaint sets forth legal conclusions, to which no response is required. To the extent a response is required, BOP denies the allegation that it has failed to comply with any applicable statutory deadlines.

The January 2, 2020 Request

22. BOP admits the allegations in the first sentence of Paragraph 22 of the Complaint. The remainder of Paragraph 22 consists of Plaintiff's characterization of its FOIA request, and BOP respectfully refers the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents.

23. Admits the allegations of Paragraph 23, and respectfully refers the Court to BOP's letter to Plaintiff dated January 9, 2020, for a complete and accurate statement of its contents.

24. Paragraph 24 of the Complaint sets forth legal conclusions, to which no response is required. To the extent a response is required, BOP denies the allegation that it has failed to comply with any applicable statutory deadlines.

COUNT ONE

25. BOP realleges and incorporates its answers to Paragraphs 1 through 25 as though fully set forth herein.

26. Paragraph 26 of the Complaint consists of legal conclusions, to which no response is required.

27. Paragraph 27 of the Complaint consists of legal conclusions, to which no response is required. To the extent a response is required, BOP denies the allegation that it has failed to comply with any applicable statutory deadlines.

28. Paragraph 28 of the Complaint consists of legal conclusions, to which no response is required. To the extent a response is required, BOP denies the allegations of Paragraph 28 of the Complaint.

29. Paragraph 29 of the Complaint consists of legal conclusions, to which no response is required. To the extent a response is required, BOP denies the allegations of Paragraph 29 of the Complaint.

REQUEST FOR RELIEF

The remainder of the Complaint, Paragraphs 30 through 33, sets forth Plaintiff's requested relief, to which no response is required. To the extent a response is required, BOP denies that Plaintiff is entitled to the relief sought, or to any relief whatsoever from Defendant.

* * *

DEFENSES

FIRST DEFENSE

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

SECOND DEFENSE

Some or all of the requested records are not agency records subject to FOIA, *see* 5 U.S.C. § 552(a)(4)(B).

THIRD DEFENSE

Plaintiff is not entitled to compel the production of records protected from disclosure by any applicable FOIA exemption, *see* 5 U.S.C. § 552(b).

FOURTH DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized under FOIA, 5 U.S.C. § 552.

FIFTH DEFENSE

Plaintiff's FOIA request does not reasonably describe the records sought.

SIXTH DEFENSE

Plaintiff is not entitled to have this action expedited under 28 U.S.C. § 1657.

SEVENTH DEFENSE

Plaintiff is not entitled to attorney fees under 5 U.S.C. § 552(a)(4)(E).

* * *

BOP may have additional defenses that are presently unknown but may be ascertained at a later time. Defendant reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Federal Rules of Civil Procedure 8 and 12.

WHEREFORE, Defendant respectfully requests that the Court: (1) dismiss the Complaint with prejudice; (2) enter judgment in favor of BOP; and (3) grant such further relief as the Court deems just and proper.

Date: New York, New York
March 4, 2020

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