

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARITIME LEGAL AID & ADVOCACY, LTD,

Plaintiff,

-v-

U.S. COAST GUARD,

Defendants.

22 Civ. 5501 (DLC)

ANSWER

Defendant the United States Coast Guard (“USCG” or “Defendant”), by its attorney, Damian Williams, United States Attorney for the Southern District of New York, hereby answers the Complaint for Injunctive and Declaratory Relief (“Complaint”) of Maritime Legal Aid & Advocacy, Ltd. (“Plaintiff”), upon information and belief as follows:

1. Paragraph 1 of the Complaint contains Plaintiff’s characterization of its claims to which no response is required.

2. Paragraph 2 of the Complaint contains Plaintiff’s characterization of its claims to which no response is required. To the extent a response is required, denies that the USCG violated the Freedom of Information Act (“FOIA”) or failed to conduct an adequate search of its records in response to Plaintiff’s FOIA request(s).¹

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 3 because the term “FOIA Request” is not sufficiently defined to permit a response. The allegations contained in the second sentence of

¹ In the Complaint, Plaintiff references the defined term “FOIA Request” without specifying to which request(s) that term pertains. As alleged in the Complaint, Plaintiff submitted multiple FOIA requests. The USCG has endeavored to answer any allegations relating to Plaintiff’s “FOIA Request” to the extent such allegations can be understood.

Paragraph 3 of the Complaint constitute legal conclusions to which no response is required. To the extent a response is required, denies that the USCG violated the FOIA.

4. Paragraph 4 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, denies that the USCG violated the FOIA.

5. Paragraph 5 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, denies that the USCG violated the FOIA and denies that Plaintiff has constructively exhausted its administrative remedies.

AS TO JURISDICTION AND VENUE

6. Paragraph 6 of the Complaint contains legal conclusions regarding jurisdiction to which no response is required.

7. Paragraph 7 of the Complaint contains legal conclusions regarding venue to which no response is required. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 regarding Plaintiff's principal place of business.

AS TO PARTIES

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint. The allegations contained in the last sentence of Paragraph 8 of the Complaint contain legal conclusions to which no response is required.

9. Paragraph 9 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, admits that the USCG is a military service and branch of the armed forces of the United States, see 14 U.S.C. § 101, is subject to the FOIA, and

has produced records in response to one or more of Plaintiff's FOIA requests, and denies the remainder of the allegations contained in Paragraph 9 of the Complaint.

AS TO BACKGROUND

10. Denies the allegations contained in Paragraph 10 of the Complaint, except admits that the USCG's primary duties include enforcing or assisting in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. See 14 U.S.C. §§ 102, 501, 504, 522, 523.

11. Paragraph 11 of the Complaint contains legal conclusions to which no response is required, and respectfully refers the Court to the statutes cited in Paragraph 11 for complete and accurate statements of their contents. The USCG further avers that its primary duties include enforcing or assisting in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. See 14 U.S.C. §§ 102, 501, 504, 522, 523.

12. Paragraph 12 of the Complaint contains legal conclusions to which no response is required, and respectfully refers the Court to the report cited therein for a complete and accurate statement of its contents.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and respectfully refers the Court to the article cited therein for a complete and accurate statement of its contents.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint, and denies the allegation that “over the past more than 30 years the USCG has released zero public information regarding its actual enforcement of 46 U.S.C. § 10104.”

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint, except admits that the first two request items in Plaintiff’s FOIA requests dated June 30 and July 29, 2020, concern 46 U.S.C. § 10104. See ECF Nos. 1-2, 1-3 (Compl., Exhs. B, C). The USCG respectfully refers the Court to Exhibits B, C, and O of the Complaint for complete and accurate statements of their contents.

18. Denies the allegations contained in Paragraph 18 of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint regarding MLAA’s conclusions about USCG, and denies that the USCG has violated the FOIA, 46 U.S.C. § 10104, or any other law.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 20 of the Complaint. Denies the characterization of the allegations contained in the second sentence of Paragraph 20 of the Complaint, except admits that the USCG is responsible for credentialing mariners.

21. Paragraph 21 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, denies the allegations contained in Paragraph 21 of the Complaint, except admits that the USCG may consider criminal convictions, including sexual offenses, in the mariner credentialing process. See 46 C.F.R. § 10.211.

22. Denies the allegations contained in Paragraph 22 of the Complaint, except admits that the USCG’s primary duties include enforcing or assisting in the enforcement of all

applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. See 14 U.S.C. §§ 102, 501, 504, 522, 523.

23. Paragraph 23 of the Complaint contains legal conclusions and Plaintiff's characterization of the article cited therein, to which no response is required, except admits that the USCG is authorized to suspend or revoke merchant mariner credentials for certain violations of law, acts of misconduct, negligence, or incompetence, or the use of dangerous drugs. See 46 C.F.R. Parts 5, 10; 46 U.S.C. Chpt. 7. The USCG respectfully refers the Court to the article cited in Paragraph 23 of the Complaint for a complete and accurate statement of its contents.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint. To the extent a response is required, denies the allegations contained in Paragraph 24 of the Complaint.

25. Paragraph 25 of the Complaint consists of legal conclusions and Plaintiff's characterization of a USCG administrative proceeding to which no response is required. To the extent a response is required, denies that the USCG violated the Administrative Procedures Act ("APA") or any other law, denies that the referenced settlement agreement was in any way inappropriate or unjust, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25 of the Complaint. The USCG respectfully refers the Court to the article cited in Paragraph 25 of the Complaint for a complete and accurate statement of its contents.

26. Paragraph 26 of the Complaint consists of legal conclusions and Plaintiff's characterization of a USCG administrative proceeding to which no response is required. To the extent a response is required, denies that the USCG violated the APA or any other law, denies that the referenced settlement agreement was in any way inappropriate or unjust, and denies

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 26 of the Complaint. The USCG respectfully refers the Court to the article cited in Paragraph 26 of the Complaint for a complete and accurate statement of its contents.

27. Paragraph 27 of the Complaint consists of legal conclusions and Plaintiff's characterization of a USCG administrative proceeding to which no response is required. To the extent a response is required, denies that the USCG violated the APA or any other law, denies that the referenced settlement agreement was in any way inappropriate or unjust, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 27 of the Complaint. The USCG respectfully refers the Court to the article cited in Paragraph 27 of the Complaint for a complete and accurate statement of its contents.

28. Denies the allegations contained in Paragraph 28 of the Complaint.

29. Denies the allegations contained in Paragraph 29 of the Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first clause of Paragraph 30 of the Complaint, and denies the allegations contained in the second clause of Paragraph 30 of the Complaint that "the USCG gave extraordinarily lenient punishments to USCG-credentialed mariners who the USCG knew were sexual predators."

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint.

AS TO PROCEDURAL HISTORY

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 32 of the Complaint, except admits that Plaintiff submitted a FOIA request dated June 30, 2020. Admits the allegations contained in the second sentence of Paragraph 32 of the Complaint. The USCG respectfully refers the Court to the document cited in Paragraph 32 of the Complaint, attached to the Complaint as Exhibit B, for a complete and accurate statement of its contents.

33. Denies the allegations contained in Paragraph 33 of the Complaint, except admits that Plaintiff submitted a FOIA request to the USCG dated July 29, 2020, containing three request items. The USCG respectfully refers the Court to the document cited in Paragraph 33 of the Complaint, attached to the Complaint as Exhibit C, for a complete and accurate statement of its contents.

34. Denies the allegations contained in the first clause of Paragraph 34 of the Complaint concerning Plaintiff's characterization of its July 29, 2020, FOIA request, except admits that Paragraphs 34(a), 34(b), and 34(c) of the Complaint accurately quote Exhibit C of the Complaint, to which the USCG respectfully refers the Court for a complete and accurate statement of its contents.

35. Admits that Plaintiff's July 29, 2020, FOIA request, attached to the Complaint as Exhibit C, sought expedited processing and waiver of fees.

36. Denies the allegations contained in Paragraph 36 of the Complaint, except admits that Plaintiff corresponded with Amanda Ackerson and Denise Robinson regarding its FOIA requests.

37. Admits that on or about September 8, 2020, the USGC granted Plaintiff's request for a fee waiver and expedited processing of its July 29, 2020, FOIA request.

38. Denies the allegations contained in Paragraph 38 of the Complaint that the USCG's response to Plaintiff's FOIA requests was delayed and denies Plaintiff's characterization of its communications with the USCG regarding the status of its requests, except admits that the USCG sent Plaintiff an interim FOIA response letter from Barbara Whitelaw dated December 22, 2020.

39. Admits that the quoted language contained in Paragraph 39 of the Complaint is contained within Ms. Whitelaw's December 22, 2020, letter attached to the Complaint as Exhibit E, and respectfully refers the Court to the cited letter for a complete and accurate statement of its contents.

40. Admits that the quoted language contained in Paragraph 40 of the Complaint is contained within Ms. Whitelaw's December 22, 2020, letter attached to the Complaint as Exhibit E, and respectfully refers the Court to the cited letter for a complete and accurate statement of its contents.

41. Admits that the quoted language contained in the first sentence of Paragraph 41 of the Complaint is contained within Ms. Whitelaw's December 22, 2020, letter attached to the Complaint as Exhibit E, and respectfully refers the Court to the cited letter for a complete and accurate statement of its contents. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 41 of the Complaint; to the extent a response is required, denies.

42. Paragraph 42 of the Complaint contains Plaintiff's characterization of his communications with the USCG to which no response is required, except admits that USCG's

interim FOIA response dated December 22, 2020, contained four case management reports from the Coast Guard Investigative Service (“CGIS”) concerning cases from 2016 and after.

43. Denies the allegations contained in Paragraph 43 of the Complaint, except admits that USCG’s interim FOIA response dated December 22, 2020, contained records from the USCG-ALJ component dated before 2000.

44. Paragraph 44 of the Complaint contains Plaintiff’s characterization of the interim FOIA response provided to him on or about December 22, 2020, to which no response is required, and respectfully refers the Court to the cited letter for a complete and accurate statement of its contents.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint, except admits that the USCG Office of Investigations and Casualty Analysis (“CG-INV”) sent Plaintiff an interim FOIA response letter signed by Captain J.D. Neubauer.

46. Admits that the quoted language contained in Paragraph 46 of the Complaint is contained within Captain Neubauer’s interim FOIA response letter attached to the Complaint as Exhibit F, and respectfully refers the Court to the cited letter for a complete and accurate statement of its contents.

47. Admits that the quoted language contained in Paragraph 47 of the Complaint is contained within Captain Neubauer’s interim FOIA response letter attached to the Complaint as Exhibit F, and respectfully refers the Court to the cited letter for a complete and accurate statement of its contents.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint, except avers that CG-INV is still processing Plaintiff's July 29, 2020, FOIA request.

49. Admits that Plaintiff filed an administrative FOIA appeal with the USCG dated March 22, 2021, concerning the USCG's interim FOIA response, dated December 22, 2020.

50. Admits that Plaintiff filed an administrative FOIA appeal with the USCG, dated April 1, 2021, concerning the USCG's interim FOIA response from Captain Neubauer.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 51 of the Complaint, and admits that the email attached to the Complaint as Exhibit I contains the language quoted in the second sentence of Paragraph 51 of the Complaint, to which the USCG respectfully refers the Court for a complete and accurate statement of its contents.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 52 of the Complaint, and denies as misquoted the excerpted language from Exhibit J of the Complaint contained in the second sentence of Paragraph 52 of the Complaint, to which the USCG respectfully refers the Court for a complete and accurate statement of its contents.

53. Paragraph 53 of the Complaint contains Plaintiff's characterization of Chief Kathleen Claffie's August 27, 2021, letter, attached to the Complaint as Exhibit J, to which no response is required. The USCG respectfully refers the Court to Exhibit J for a complete and accurate statement of its contents. To the extent a response is required, denies the allegations contained in Paragraph 53 of the Complaint, except admits that Chief Claffie's August 27, 2021,

letter stated that certain of Plaintiff's appeal items were being remanded to the Chief, Administrative Law Judge (CG-OOJ), Coast Guard Hearing Office, and CG-INV.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint, except admits that G.T. Vachon, Chief, USCG Hearing Office, sent Plaintiff a letter dated September 10, 2021, attached to the Complaint as Exhibit K, regarding item 8 of Plaintiff's administrative FOIA appeal dated March 21, 2021, stating that the USCG identified 156 pages of responsive records, all of which were being withheld pursuant to FOIA exemptions. The USCG respectfully refers the Court to Exhibit K to the Complaint for a complete and accurate statement of its contents.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint, except admits that Lauren S. Staiti, Senior Attorney Advisor, USCG, Office of the Chief Administrative Law Judge, wrote a letter to Plaintiff dated May 2, 2022, regarding appeal items 1, 2, 3, and 5 of Plaintiff's administrative FOIA appeal dated March 21, 2021, which enclosed 871 pages of records. The USCG respectfully refers the Court to the cited letter, attached to the Complaint as Exhibit L, for a complete and accurate statement of its contents.

56. Paragraph 56 of the Complaint contains Plaintiff's characterization of the letter attached to the Complaint as Exhibit L, to which no response is required. To the extent a response is required, admits that the letter attached to the Complaint as Exhibit L contains the language quoted in Paragraph 56 of the Complaint, to which the USCG respectfully refers the Court for a complete and accurate statement of its contents.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint, except denies the allegation that FOIA Request No. 2020-CGFO-01886 is still open.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint regarding the drafting and submission of Plaintiff's interim appeals, and denies the remainder of the allegations contained in Paragraph 58 of the Complaint as vague and argumentative, except admits that appeal items 1, 2, 3, and 5 addressed in Ms. Staiti's May 2, 2022, letter, attached as Exhibit L to the Complaint, concerned Plaintiff's administrative FOIA appeal dated March 21, 2021, which was assigned No. 2021-CGFO-02053 on remand.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first clause of the first sentence of Paragraph 59 of the Complaint, and denies the remaining allegations contained in Paragraph 59 of the Complaint. The USCG respectfully refers the Court to the letters cited in Paragraph 59 of the Complaint for complete and accurate statements of their contents.

60. Denies the allegations contained in Paragraph 60 of the Complaint.

61. Paragraph 61 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, admits that Plaintiff submitted an administrative FOIA appeal to the USCG dated May 18, 2022.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 62 of the Complaint, except admits that Plaintiff's May 18, 2022, administrative FOIA appeal is currently pending. The remainder of the allegations contained in Paragraph 62 of the Complaint are legal conclusions to which no

response is required, except admits that more than 20 business days have passed since May 18, 2022.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint.

64. Denies the allegations contained in the first clause of Paragraph 64 of the Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second clause of Paragraph 64 of the Complaint. The USCG respectfully refers the Court to the email cited in Paragraph 64 of the Complaint, attached to the Complaint as Exhibit N, for a complete and accurate statement of its contents.

65. Denies the allegations contained in Paragraph 65 of the Complaint, and respectfully refers the Court to the cited letter, attached to the Complaint as Exhibit N, for a complete and accurate statement of its contents.

66. Admits that the language quoted in Paragraph 66 of the Complaint is contained in the letter attached to the Complaint as Exhibit N, to which the USCG respectfully refers the Court for a complete and accurate statement of its contents.

67. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 68 of the Complaint. The allegations contained in the second sentence of Paragraph 68 of the Complaint constitute legal conclusions to which no response is required. To the extent a response is required, denies.

AS TO MLAA’S CLAIMS FOR RELIEF

COUNT 1: FAILURE TO COMPLY WITH FOIA

69. Repeats and incorporates its responses to Paragraph 1 through Paragraph 68 of the Complaint as if fully set forth herein.

70. Paragraph 70 of the Complaint contains legal conclusions to which no response is required.

71. Denies the allegations contained in Paragraph 71 of the Complaint.

AS TO PRAYER FOR RELIEF

The “WHEREFORE” paragraph immediately following the “Prayer for Relief” section header of the Complaint, together with Paragraph 72 through Paragraph 80 of the Complaint, contain Plaintiff’s claims for relief, to which no response is required. To the extent a response is deemed required, denies that Plaintiff is entitled to the relief that it seeks or to any relief.

DEFENSES

For further defenses, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Some or all of the requested records are exempt from disclosure. See 5 U.S.C. § 552(b).

THIRD AFFIRMATIVE DEFENSE

At all times alleged in the Complaint, Defendant acted in good faith, with justification, and pursuant to authority.

FOURTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction to the extent Plaintiff's request for relief exceeds the relief authorized under FOIA.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to declaratory relief. See 5 U.S.C. § 552(a)(4)(B).

SIXTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks expedited processing of its FOIA request(s), and to the extent the USCG has not already granted such request(s), Plaintiff is not entitled to expedited processing. See 5 U.S.C. § 552(a)(6)(E).

SEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks fee waivers for the processing of its FOIA request(s), and to the extent the USCG has not already granted such request(s), Plaintiff is not entitled to a waiver of fees. See 5 U.S.C. § 552(a)(4)(A).

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to exhaust its administrative remedies prior to filing this action.

NINTH AFFIRMATIVE DEFENSE

Some or all of the relief sought by Plaintiff is barred by the Privacy Act. See 5 U.S.C. § 552a.

TENTH AFFIRMATIVE DEFENSE

Exceptional circumstances exist that necessitate additional time for Defendant to process Plaintiff's FOIA requests.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorneys' fees or costs.

TWELFTH AFFIRMATIVE DEFENSE

Any relief is limited to that provided for in 5 U.S.C. § 552(a)(4)(B).

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's FOIA requests do not reasonably describe the records sought, and therefore do not comply with the FOIA and/or do not trigger a search or production obligation.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's FOIA requests are not enforceable to the extent a reasonable search cannot be undertaken to identify and locate all responsive records.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant performed an adequate search in response to Plaintiff's FOIA requests.

Defendant may have additional defenses that are not known at this time but may become known. Accordingly, Defendant reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

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

Dated: August 19, 2022
New York, New York

Respectfully submitted,

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Southern District of New York

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