

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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COMPETITIVE ENTERPRISE))
INSTITUTE))
1899 L Street, N.W., 12th Floor))
Washington, D.C. 20036))
))
Plaintiff,)	Case No. 1:14-cv-01806-KBJ
))
v.))
))
OFFICE OF SCIENCE AND))
TECHNOLOGY POLICY))
Eisenhower Executive Office Building))
1650 Pennsylvania Avenue, NW))
Washington, DC 20502))
))
Defendant.))
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**DEFENDANT’S ANSWER TO COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant Office of Science and Technology Policy (“OSTP”), through its undersigned counsel, hereby answers Plaintiff Competitive Enterprise Institute’s (“CEI” or “Plaintiff”) Complaint for Declaratory and Injunctive Relief (the “Complaint”) in the above-captioned matter as follows:

The unnumbered introductory paragraph does not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

Plaintiff’s inclusion of footnotes throughout the Complaint does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” As such, no response is required to

these footnotes. To the extent a response is required, each footnote is discussed in the relevant numbered paragraph below.

1. This paragraph consists of Plaintiff's characterization of its Complaint and Plaintiff's characterization of a video posted on the White House web site, to which no response is required. OSTP further avers that the video Plaintiff purports to describe speaks for itself, and respectfully refers the Court to that video for a full and accurate description of its contents.

2. OSTP admits that it received a request for correction under the Information Quality Act from Plaintiff in April 2014, and admits that OSTP subsequently denied Plaintiff's request for correction. The remainder of this paragraph consists of Plaintiff's characterization of correspondence from OSTP to Plaintiff (attached with other relevant correspondence as an exhibit to this Answer), to which no response is required. OSTP further avers that that correspondence speaks for itself, and respectfully refers the Court to that correspondence for a full and accurate description of its contents. To the extent any further response is required, OSTP otherwise denies the allegations in this paragraph.

3. OSTP admits that it received a Freedom of Information Act ("FOIA") request from Plaintiff dated June 13, 2014, admits that it located 11 pages responsive to that request, and admits that it produced those eleven pages in redacted form to Plaintiff on July 9, 2014 while withholding certain portions of those pages pursuant to 5 U.S.C. §§ 552(b)(5) and (b)(6). OSTP further admits that, on August 4, 2014, Plaintiff appealed OSTP's July 9, 2014, response to CEI's FOIA request, admits that OSTP subsequently conducted an additional search of its records, and admits that OSTP produced additional responsive material on September 5, 2014 but withheld 47 pages in full pursuant to 5 U.S.C. § 552(b)(5). The remainder of this paragraph consists of Plaintiff's characterization of the deliberative process privilege and Plaintiff's

characterization of correspondence between OSTP and CEI, to which no response is required. OSTP further avers that that correspondence speaks for itself, and respectfully refers the Court to that correspondence for a full and accurate description of its contents. To the extent any further response is required, OSTP denies the allegations in this paragraph.

4. This paragraph consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, OSTP denies the allegations in this paragraph.

5. Deny, except to state that OSTP lacks knowledge as to Plaintiff's motive for bringing this lawsuit.

6. [The Complaint does not include a paragraph 6]

7. OSTP lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

8. OSTP admits that it is a congressionally established office within the Executive Branch, admits that it advises the President and others within the Executive Office of the President on the effects of science and technology on domestic and international affairs, and admits that OSTP is located in Washington, D.C. Plaintiff's characterization of OSTP as "FOIA-covered" is a legal conclusion to which no response is required.

9. This paragraph consists of Plaintiff's legal conclusions regarding subject matter jurisdiction, to which no response is required.

10. This paragraph consists of Plaintiff's legal conclusions regarding venue, to which no response is required.

11. Denied, except to admit that OSTP received a request for correction under the Information Quality Act from Plaintiff dated April 14, 2014. The remainder of this paragraph consists of Plaintiff's characterization of correspondence from Plaintiff to OSTP, to which no

response is required. OSTP further avers that that correspondence speaks for itself, and respectfully refers the Court to that correspondence for a full and accurate description of its contents. Footnotes 1 and 2 consist of citations to and characterizations of a statute and various Internet sources, to which no response is required. OSTP further avers that the statute and cited sources speak for themselves, and respectfully refers the Court to those materials for a full and accurate description of their contents. OSTP further avers that the phrase “many scientists and commentators” is too vague for OSTP to formulate a response.

- (a) OSTP states that the inclusion of this sub-paragraph does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” As such, no response is required to this sub-paragraph. To the extent a response is required, OSTP denies except to admit that John P. Holdren is the Director of OSTP, admits that a video entitled *The Polar Vortex Explained in 2 Minutes* was posted on the White House web site on January 8, 2014, and that Director Holdren stated in that video that “a growing body of evidence suggests that the kind of extreme cold being experienced by much of the United States as we speak is a pattern that we can expect to see with increasing frequency as global warming continues.” Footnotes 3 and 4 consist of Plaintiff’s characterization of several websites, to which no response is required. With respect to footnote 4, OSTP further states that the phrase “many websites and in many news articles” is too vague for OSTP to formulate a response. OSTP further avers that the materials cited in this sub-paragraph and in footnotes 3 and 4 speak for themselves and respectfully refers the Court to those sources for a full and accurate description of their contents.

(b) The inclusion of this sub-paragraph does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” As such, no response is required to this sub-paragraph. OSTP further states that this sub-paragraph and footnote 5 consist of Plaintiff’s characterization of a post contained on the White House website, to which no response is required. OSTP further avers that the cited post speaks for itself, and respectfully refers the Court to that post for a full and accurate description of its contents.

12. OSTP denies except to admit that, on June 6, 2014, it responded to Plaintiff in a letter denying Plaintiff’s request for correction, and refers the Court to that letter for a full and accurate account of its contents. The remaining allegations in this paragraph and in footnotes 6 and 7 consist of Plaintiff’s citation to and characterization of correspondence from OSTP to Plaintiff, to which no response is required. OSTP further avers that that correspondence speaks for itself, and respectfully refers the Court to that correspondence for a full and accurate description of its contents.

13. OSTP denies except to admit that, on June 19, 2014, Plaintiff appealed OSTP’s decision and further admits that, in an August 4, 2014 letter, OSTP denied the appeal. The Court is respectfully referred to these letters for an accurate and complete account of their contents. The remainder of this paragraph and footnotes 8 and 9 consist of Plaintiff’s legal conclusions and Plaintiff’s characterization of correspondence between Plaintiff and OSTP as well as Plaintiff’s characterization of OSTP’s website and certain guidelines, none of which requires a response. OSTP further avers that the correspondence, OSTP’s website, and the cited guidelines speak for themselves, and respectfully refers the Court to those sources for a full and accurate

description of their contents. To the extent any further response is required, OSTP otherwise denies the allegations in this paragraph.

14. OSTP admits that Plaintiff submitted a FOIA request to OSTP, dated June 13, 2014. The remaining allegations in this paragraph consist of Plaintiff's characterization of correspondence from Plaintiff to OSTP, to which no response is required. OSTP further avers that the correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents. With respect to footnote 10, OSTP states that it cannot determine with certainty the source being cited, because the footnote uses an "*Id.*" cite but does not appear to relate to the source cited in the previous footnote. To the extent footnote 10 was intended as a citation to Plaintiff's June 13, 2014 FOIA request, footnote 10 consists of Plaintiff's characterization of correspondence from Plaintiff to OSTP, to which no response is required. OSTP further avers that the correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents.

(a) The inclusion of this sub-paragraph does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated "in numbered paragraphs, each limited as far as practicable to a single set of circumstances." As such, no response is required to this sub-paragraph. OSTP further states that this sub-paragraph consists of Plaintiff's characterization of correspondence from Plaintiff to OSTP, to which no response is required. OSTP further avers that the correspondence speaks for itself, and respectfully refers the Court to that correspondence for a full and accurate statement of its contents.

(b) The inclusion of this sub-paragraph does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated "in numbered paragraphs, each

limited as far as practicable to a single set of circumstances.” As such, no response is required to this sub-paragraph. OSTP further states that this sub-paragraph consists of Plaintiff’s characterization of correspondence from Plaintiff to OSTP, to which no response is required. OSTP further avers that the correspondence speaks for itself, and respectfully refers the Court to that correspondence for a full and accurate statement of its contents.

- (c) The inclusion of this sub-paragraph does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” As such, no response is required to this sub-paragraph. OSTP further states that this sub-paragraph consists of Plaintiff’s characterization of correspondence from Plaintiff to OSTP, to which no response is required. OSTP further avers that that correspondence speaks for itself, and respectfully refers the Court to that correspondence for a full and accurate statement of its contents. With respect to footnote 11, OSTP further states that it cannot determine with certainty the source being cited, because the footnote uses an “*Id.*” cite but does not appear to relate to the source cited in full in footnote 9. To the extent footnote 11 was intended as a citation to Plaintiff’s June 13, 2014 FOIA request, OSTP states that footnote 11 consists of Plaintiff’s characterization of correspondence from Plaintiff to OSTP, to which no response is required. OSTP further avers that the correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents.

15. OSTP admits that it assigned the above-referenced FOIA request identification number OSTP FOIA No. 14-66, and admits that OSTP sent Plaintiff a letter dated July 9, 2014.

The remainder of this paragraph consists of Plaintiff's characterization of correspondence from OSTP to Plaintiff, to which no response is required. OSTP further avers that the correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents.

16. In response to the first sentence of this paragraph, OSTP admits that Plaintiff submitted an appeal in response to the above-referenced letter, and that that appeal was dated August 4, 2014. The remainder of this paragraph consists of Plaintiff's citation to and characterization of correspondence from Plaintiff to OSTP, to which no response is required. OSTP further avers that the correspondence speaks for itself and respectfully refers the Court to that correspondence for a full and accurate statement of its contents.

17. OSTP admits that it sent Plaintiff a letter dated September 5, 2014, and admits that it released additional responsive material but withheld 47 pages in full pursuant to 5 U.S.C. § 552(b)(5). The remainder of this paragraph consists of Plaintiff's citation to and characterization of correspondence from OSTP to Plaintiff, to which no response is required. OSTP further avers that that correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents. With respect to footnotes 12, 13, and 14, OSTP further states that it cannot determine with certainty the source(s) being cited, because the footnotes use "*Id.*" cites but do not appear to relate to the source cited in full in footnote 9, and also do not appear to relate to the same source as footnotes 10 and 11. To the extent footnotes 12, 13, and 14 were intended as citations to OSTP's September 5, 2014 letter to CEI, OSTP further states that footnotes 12, 13, and 14 consist of Plaintiff's characterization of correspondence from OSTP to Plaintiff, to which no response is required. OSTP further avers that the correspondence speaks for itself and respectfully refers the Court to the correspondence

for a full and accurate statement of its contents. To the extent any further response is required, OSTP denies that its September 5, 2014 letter contained no “elaboration or specifics” as to why the 47 pages contained “no reasonably segregable factual or non-deliberative information responsive to [CEI’s] request” and otherwise denies the allegations in this paragraph.

18. The allegations contained in this paragraph consist of Plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, OSTP denies.

19. This paragraph and footnotes 16, 17, 18, and 19 consist of Plaintiff’s legal conclusions, Plaintiff’s citation to and characterization of certain judicial decisions, and Plaintiff’s characterization of correspondence from OSTP to Plaintiff, none of which requires a response. OSTP further avers that these materials speak for themselves and respectfully refers the Court to these sources for a full and accurate statement of their contents. To the extent any further response is required, OSTP otherwise denies the allegations in this paragraph.

20. This paragraph and footnotes 20 and 21 consist of Plaintiff’s characterization of correspondence from OSTP to Plaintiff and Plaintiff’s characterization of certain judicial decisions, none of which requires a response. OSTP further states that this correspondence and the cited judicial decisions speak for themselves, and respectfully refers the Court to these sources for a full and accurate statement of their contents. To the extent any further response is required, OSTP denies Plaintiff’s allegation that the September 5 letter “did not contain any specifics on why it could not segregate and produce the factual portions of the 47 pages it claimed contained privileged material” and otherwise denies the allegations in this paragraph.

21. This paragraph and footnote 22 consist of Plaintiff’s characterization of correspondence from OSTP to Plaintiff, to which no response is required. OSTP further avers

that that correspondence speaks for itself and respectfully refers the Court to the correspondence for a full and accurate statement of its contents. To the extent a response is required, OSTP admits the allegations in footnote 22 but otherwise denies the allegations in this paragraph, except to admit that OSTP's September 5 letter informed Plaintiff that Plaintiff could seek judicial review in an appropriate federal district court.

22. OSTP incorporates by reference its answers to paragraphs 1-21 as if fully set out herein.

23. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

24. This paragraph consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, OSTP denies the allegations in this paragraph.

25. Denied.

26. This paragraph consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, OSTP denies the allegations in this paragraph.

27. This paragraph contains Plaintiff's requested relief, to which no response is required. OSTP further states that the inclusion of subparagraphs "ii.", "ii.", and "iii." does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated "in numbered paragraphs, each limited as far as practicable to a single set of circumstances." To the extent a response is required, OSTP denies the allegations contained in this paragraph, denies the allegations in each of the three subparagraphs, and further avers that Plaintiff is not entitled to any relief.

28. OSTP incorporates by reference its answers to paragraphs 1-27 as if fully set out herein.

29. This paragraph consists of Plaintiff's legal conclusions regarding its requested relief, to which no response is required. To the extent a response is required, OSTP denies the allegations contained in this paragraph, and further avers that Plaintiff is not entitled to any relief.

30. This paragraph contains Plaintiff's requested relief, to which no response is required. To the extent a response is required, OSTP denies the allegations contained in this paragraph and further avers that Plaintiff is not entitled to any relief.

31. This paragraph contains Plaintiff's requested relief, to which no response is required. To the extent a response is required, OSTP denies the allegations contained in this paragraph and further avers that Plaintiff is not entitled to any relief.

32. This paragraph contains Plaintiff's requested relief, to which no response is required. To the extent a response is required, OSTP denies the allegations contained in this paragraph and further avers that Plaintiff is not entitled to any relief.

33. OSTP incorporates by reference its answers to paragraphs 1-32 as if fully set out herein.

34. This paragraph consists of Plaintiff's legal conclusions, to which no response is required.

35. This paragraph contains Plaintiff's requested relief, to which no response is required. To the extent a response is required, OSTP denies the allegations contained in this paragraph and further avers that Plaintiff is not entitled to any relief.

OSTP hereby denies all allegations in the Complaint not expressly admitted or denied.

WHEREFORE, having fully answered the Complaint, OSTP asserts that Plaintiff is not entitled to the relief requested, or to any relief whatsoever, and requests that this action be

dismissed in its entirety with prejudice and that OSTP be given such other relief as this Court deems proper, including costs and disbursements.

Dated: December 4, 2014

JOYCE R. BRANDA
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director

/s/ Andrew M. Bernie

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2014, a copy of the foregoing Defendant's Answer to Complaint for Declaratory and Injunctive Relief was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Andrew Bernie
Andrew Bernie