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**ATTORNEY FOR DEFENDANT**  
**United States of America**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**MISSOULA DIVISION**

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**BUFFALO FIELD CAMPAIGN,**

**Plaintiff,**

**vs.**

**UNITED STATES**  
**DEPARTMENT OF**  
**AGRICULTURE, ANIMAL AND**  
**PLANT HEALTH INSPECTION**  
**SERVICE,**

**Defendant.**

**CV 12-35-M-DWM**

**DEFENDANT'S ANSWER**  
**TO THE COMPLAINT**

The United States, on behalf of its agency the United States Department of Agriculture, Animal and Plant Health Inspection Service, by and through undersigned counsel, in answer to Plaintiff's Complaint hereby states as follows:

1. In response to paragraph 1 of the complaint the paragraph purports to identify the jurisdictional basis of this matter. As such it constitutes a statement of law to which no response is required. To the extent a response is deemed required, Defendant admits that Plaintiff seeks to pursue this matter under the cited authority.

2. In response to paragraph 2 the allegations are denied.

3. In response to paragraph 3 of the complaint the Defendant denies that Plaintiff is entitled to the relief requested.

4. In response to paragraphs 4, 5 and 6 of the complaint, the paragraphs identify the jurisdictional basis of this matter and venue. Citations to the jurisdictional and venue statute are a statement of law to which no response is required. To the extent a response is deemed required, Defendant admits that Plaintiff seeks to pursue this matter venued in the Missoula division under the cited authority. The second

sentence of paragraph 5 and the allegations in paragraph 6 are denied for lack of information sufficient to determine the truth thereof.

5. In response to paragraphs 7 and 8 of the complaint the United States denies the allegations.

6. In response to paragraphs 9, 10 and 11 of the complaint, the allegations therein are denied for lack of information sufficient to determine the truth thereof.

7. In response to paragraph 12 of the complaint, it is admitted that the United States Department of Agriculture (USDA) is an Executive agency of the United States, and that the Animal and Plant Health Inspection Service (APHIS) is an agency within USDA that provides leadership in ensuring the health and care of animals and plants, and that it improves agricultural productivity and competitiveness and contributes to the national economy and the public health. It is further admitted that APHIS maintains records responsive to some portions of Plaintiff's Freedom of Information Act requests and is subject to the Freedom of Information Act.

8. In response to paragraphs 13, 14, 15, 16, and 17 of the complaint, these paragraphs are a statement of law to which no

response is required. To the extent a response is deemed required, Defendant asserts that the statutes and regulations are the best evidence of their content.

9. In response to paragraph 18 of the complaint, the first sentence is a statement of law to which no response is required. To the extent a response is deemed required, Defendant asserts that the statute is the best evidence of its content. Further, Defendant denies that APHIS is an "agency" for the purposes of the statute; "agency" as used in the statute refers to the Department of Agriculture, of which APHIS is merely one component. The second sentence is denied. In its acknowledgment letters, APHIS provides FOIA requesters, including Plaintiff, with a case tracking number and telephone number to contact regarding the request.

10. In response to paragraph 19, it is admitted that Plaintiff has submitted a number of FOIA requests to APHIS, six of which are detailed in the complaint.

11. In response to paragraph 20 the allegations are denied.

12. In response to paragraph 21, the allegations are denied for lack of information sufficient to determine the truth thereof.

### **REQUEST ONE**

13. In response to paragraph 22, the allegations are denied for lack of information sufficient to determine the truth thereof. This paragraph appears to be a reiteration of a press release issued by the National Park Service which Defendant has not issued nor can it find on the NPS web-site.

14. In response to paragraph 23, it is admitted that Plaintiff submitted a FOIA request dated May 28, 2011, seeking 10 items of records from APHIS relating to APHIS's immunocontraceptive vaccination program. The best evidence of the content of the request is the request itself. The third sentence is a conclusion of law to which no response is required.

15. In response to paragraph 24 the allegations are denied.

16. In response to paragraph 25 the allegations are denied. APHIS sent an acknowledgement letter to Plaintiff on June 1, 2011, indicating receipt of the FOIA request on May 31, 2011, assigning a case number, setting forth a due date of June 28, 2011, and providing a number to call with questions about the request. A follow up email was

sent to the Plaintiff on July 5, 2011, indicating that additional time was needed to review the records.

17. In response to paragraph 26, it is admitted that APHIS acknowledged receipt of the FOIA request on May 31, 2011, in its June 1st acknowledgment letter, not its July 5, 2011, e-mail. It is admitted that in its July 5, 2011, email APHIS acknowledged receipt of responsive records, sought an extension under 7 C.F.R. 1.16(b)(2) and indicated that its review was expected to be complete by July 28, 2011.

18. In response to paragraphs 27 and 28, the allegations are a statement of law to which no response is required. To the extent a response is deemed required, Defendant asserts that the statute is the best evidence of its content. Defendant admits that APHIS's July 5, 2011, response indicated that its review was expected to be complete by July 28, 2011.

19. In response to paragraph 29 it is admitted that APHIS's July 5, 2011, letter did not offer Plaintiff an opportunity to limit the scope of its request though it did set forth its anticipated time frame for responding to the request. It is admitted that APHIS's July 5, 2011,

letter did not provide contact information for the USDA FOIA Public Liaison, rather this information is provided on the USDA website.

20. In response to paragraph 30, the first, second, third, and fourth sentences are admitted. The fifth and sixth sentences are conclusions of law to which no response is required. To the extent a response is deemed required, Defendant admits that the August 4, 2011, email did not offer Plaintiff an opportunity to limit the scope of its request and did not provide contact information for the USDA FOIA Public Liaison, which is provided on the USDA website, though it did set forth an anticipated time for responding to the request.

21. In response to paragraph 31, the allegations are conclusion of law to which no response is required. To the extent a response is deemed required, Defendant admits that an August 9, 2011, email from Plaintiff stated that Plaintiff denied Defendant's request for an extension of time to respond to the FOIA request.

22. In response to paragraph 32 of the complaint, it is admitted that Plaintiff sent Defendant a letter, dated October 20, 2011, stating, among other things, that it had yet to receive records responsive to its request, that Plaintiff considered Defendant in violation of the Freedom

of Information Act (“FOIA”), and that Plaintiff would file a complaint against Defendant if Plaintiff did not get a response by November 1, 2011.

23. In response to paragraph 33 of the complaint, Defendant admits that on November 16, 2011, Defendant sent Plaintiff a copy of its September 15, 2011, response to Plaintiff's FOIA request, along with another copy of the responsive records, both of which were originally sent to Plaintiff on September 15, 2011, and Plaintiff's FOIA was closed by Defendant at that time. The second sentence is denied. In response to the third sentence, it is admitted that in the September 15, 2011, response to Plaintiff's request, Defendant identified 54 pages of responsive records, 35 of which were being released to Plaintiff, and the remaining 19 documents were referred to the Department of the Interior, National Park Service (NPS) for a direct response to Plaintiff because the 19 pages originated from NPS. The fifth and sixth sentences are denied.

24. In response to paragraph 34, it is admitted that on December 7, 2011, Plaintiff spoke with Defendant about the Defendant's September 15, 2011, response to Plaintiff's request, and sent an email

to Defendant that contained Plaintiff's summary of the conversation, which included Defendant contacting NPS about the documents referred to it, and Defendant contacting the APHIS program that maintains the responsive documents to obtain additional records. In their letter, Plaintiff agreed to wait until December 14, 2011, before filing a FOIA appeal in order for Defendant to further respond to the request. All other allegations in this paragraph are denied.

25. In response to paragraph 35 of the complaint the allegations are denied.

26. In response to paragraph 36, it is admitted that Plaintiff sent emails to Defendant dated January 9, 18, and 30, 2012, inquiring about the status of the agency's response to the request. It is admitted that APHIS did not respond to these emails. The FOIA specialist assigned the matter was out of the office on sick leave between January 9, 2012, and February 6, 2012. Upon her return, the FOIA Specialist contacted Plaintiff by phone to discuss the request.

27. In response to paragraph 37, of the complaint it is admitted that the FOIA Specialist contacted Plaintiff in early February 2012 to advise Plaintiff of her absence from the office between January 9, 2012,

and February 6, 2012 on sick leave, and that the additional responsive records were still being reviewed.

28. In response to paragraph 38, the allegations are denied. On May 14, 2012, Defendant provided Plaintiff with 284 additional pages, released in full, responsive to this FOIA request. Defendant's final response letter, sent on May 14, 2012, inadvertently contained the wrong date (April 2, 2012) so a corrected copy of the final response letter was resent on May 16, 2012.

29. In response to paragraph 39, of the complaint the allegations constitute a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant admits that it issued a final response to Plaintiff's request on May 16, 2012.

## **REQUEST TWO**

30. In response to paragraph 40, of the complaint it is admitted that Plaintiff submitted a FOIA request to Defendant, dated October 12, 2011. The best evidence of the content of the request is the request itself. The third sentence is a conclusion of law to which no response is required.

31. In response to paragraph 41, regarding the first sentence Defendant admits that APHIS responded to the request on November 16, 2011, granting the request in full, providing responsive records, and providing Plaintiff with appeal rights. No appeal of this response was filed by Plaintiff. The remainder of the first sentence is a conclusion of law to which no response is required. The second sentence is denied.

### **REQUEST THREE**

32. In response to paragraph 42, it is admitted that Plaintiff submitted a FOIA request to Defendant, dated October 20, 2011. The second sentence is a conclusion of law to which no response is required.

33. In response to paragraph 43, Defendant admits that APHIS responded to the request on December 5, 2011, granting the request in part, providing responsive records containing redactions pursuant to Exemption 6 of the FOIA, and providing Plaintiff with appeal rights. No appeal of this response was filed by Plaintiff.

### **REQUEST FOUR**

34. In response to paragraph 44, it is admitted that the Plaintiff submitted a FOIA request to Defendant, dated November 2, 2011. The best evidence of the content of the request is the request itself. The

third sentence is a conclusion of law to which no response is required.

The last two sentences are admitted.

35. In response to paragraph 45, the first sentence is a conclusion of law to which no response is required. With respect to the second sentence, it is admitted that APHIS did not respond to the request by December 2, 2011.

36. In response to paragraph 46, it is admitted that Plaintiff sent an email to APHIS, dated November 28, 2011, pertaining to the request and indicating that a response was due on December 2, 2011.

37. In response to paragraph 47, it is admitted that APHIS sent a letter to Plaintiff, dated December 7, 2011, seeking an extension of time to process the request pursuant to 7 C.F.R. 1.16(b)(1) and 1.16(b)(2), and estimated that its review of the records would be completed by February 24, 2012. All other statements are conclusions of law to which no response is required.

38. In response to paragraph 48, it is admitted that APHIS's December 7, 2011, letter did not offer Plaintiff an opportunity to limit the scope of its request though it did set forth its anticipated time frame for responding to the request. It is admitted that APHIS's

December 7, 2011, letter did not provide contact information for the USDA FOIA Public Liaison, which is instead provided on the USDA website.

39. In response to paragraph 49, it is admitted that APHIS's December 7, 2011, letter did not include its final determination, reason for its decision, or appeal rights. It is admitted that APHIS's December 7, 2011, letter was not a final determination on Plaintiff's FOIA request, dated November 2, 2011. The last sentence is a conclusion of law to which no response is required.

40. In response to paragraph 50, it is admitted that Plaintiff, through the Law Office of Charles M. Tebbutt, sent a letter, dated December 30, 2011, to APHIS regarding the November 2, 2011, FOIA request. The best evidence of the content of the letter is the letter itself.

41. In response to paragraph 51, it is admitted that Defendant has not issued a final determination, or provided Plaintiff with responsive records, on Request Four. On April 26, 2012, Defendant sent out letters to businesses whose information is contained in the responsive records, pursuant to Executive Order 12600, seeking input

regarding commercial or financial information contained in those records. Responses to these inquiries were due on May 12, 2012, though none were provided. One letter was returned as undeliverable, though Defendant was able to obtain a new address and the letter was resent on May 22, 2012. Defendant notified the remainder of the businesses, by letter dated May 21, 2012, of its intent to release these records in full, and provided the businesses with a deadline of May 29, 2012, to notify Defendant of the business's intent to initiate a suit or judicial intervention to prevent disclosure of records

#### **REQUEST FIVE**

42. In response to paragraph 52, it is admitted that Plaintiff submitted a FOIA request to Defendant, dated January 6, 2012. The best evidence of the content of the request is the request itself. The third sentence is a conclusion of law to which no response is required.

43. In response to paragraph 53, with respect to the first sentence, it is admitted that Defendant responded to Plaintiff's FOIA request in a letter inadvertently dated February 23, 2011, which should have been dated February 23, 2012. The remainder of the sentence is denied for lack of information sufficient to determine the truth thereof.

The second sentence is a conclusion of law to which no response is required.

44. In response to paragraph 54, it is admitted that the letter dated February 23, 2011, indicated that Defendant received the request on January 6, 2012, sought an extension of time to both collect and then review the records pursuant to 7 C.F.R. 1.16(b), and explained that review of the responsive records would be completed by approximately May 23, 2012. The remaining allegations are conclusions of law to which no response is required.

45. In response to paragraph 55, it is admitted that APHIS's February 23, 2011, letter did not offer Plaintiff an opportunity to limit the scope of its request though it did set forth its anticipated time frame for responding to the request. It is admitted that APHIS's February 23, 2011, letter did not provide contact information for the USDA FOIA Public Liaison, which is instead provided on the USDA website.

46. In response to paragraph 56, it is admitted that APHIS's February 23, 2011, letter did not include its final determination, reason for its decision, or appeal rights. It is admitted that APHIS's February

23, 2011, letter was not a final determination on Plaintiff's FOIA request, dated January 6, 2012. The last sentence is a conclusion of law to which no response is required.

47. In response to paragraph 57, the allegations are denied. On May 17, 2012, APHIS provided a final response to Plaintiff's request, providing Plaintiff with 72 pages of responsive records containing redactions of ranchers'/ranch names pursuant to Exemption 6 of the FOIA.

### **REQUEST SIX**

48. In response to paragraph 58, it is admitted that Plaintiff submitted a FOIA request to Defendant, dated January 12, 2012. The best evidence of the content of the request is the request itself. The third sentence is a conclusion of law to which no response is required.

49. In response to paragraph 59, the first sentence is a conclusion of law to which no response is required. With respect to the second sentence, it is admitted that APHIS responded to the request on February 17, 2012, assigning the request a tracking number and noting receipt of the request on January 12, 2012.

50. In response to paragraph 60, it is admitted that APHIS sent a letter to Plaintiff, dated February 22, 2012, which noted that the request has been inadvertently overlooked, thereby causing a delay in the agency's response to the request, and seeking an extension of time for the search, collection and review of responsive records pursuant to 7 C.F.R. 1.16(b). The letter explained that the search for responsive records would be completed by approximately March 5, 2012, and that the agency would then contact Plaintiff to advise about the time needed to complete a review of the records. The remaining allegations are conclusions of law to which no response is required.

51. In response to paragraph 61, it is admitted that APHIS's February 22, 2012, letter did not offer Plaintiff an opportunity to limit the scope of its request though it did set forth its anticipated time frame for collecting responsive records. It is admitted that APHIS's February 22, 2012, letter did not provide contact information for the USDA FOIA Public Liaison, which is provided on the USDA website.

52. In response to paragraph 62, it is admitted that APHIS's February 22, 2012, letter did not specify a date on which a determination would be complete.

53. In response to paragraph 63, it is admitted that APHIS's February 22, 2012, letter did not include its final determination, reason for its decision, or appeal rights. It is admitted that APHIS's February 22, 2012, letter was not a final determination on Plaintiff's FOIA request, dated January 12, 2012. The last sentence is a conclusion of law to which no response is required.

54. In response to paragraph 64, it is admitted that APHIS sent a letter to Plaintiff, dated March 5, 2012, seeking another extension to complete the processing of Plaintiff's request, pursuant to 7 C.F.R. 1.16(b). The letter explained that the search for responsive records would be completed by approximately March 16, 2012, and that the agency would then contact Plaintiff to advise about the time needed to complete a review of the records. The remaining allegations are conclusions of law to which no response is required.

55. In response to paragraph 65, it is admitted that APHIS's March 5, 2012, letter did not offer Plaintiff an opportunity to limit the scope of its request though it did set forth its anticipated time frame for collecting responsive records. It is admitted that APHIS's March 5,

2012, letter did not provide contact information for the USDA FOIA Public Liaison, which is provided on the USDA website.

56. In response to paragraph 66, it is admitted that APHIS's March 5, 2012, letter did not specify a date on which a determination would be complete. However, Defendant attempted to contact Plaintiff on three occasions between February 29, 2012, and March 15, 2012, to clarify the scope of Plaintiff's request. On March 15, 2012, Plaintiff responded to these inquiries by directing Defendant to its attorney in this lawsuit.

57. In response to paragraph 67, it is admitted that APHIS's March 5, 2012, letter did not include its final determination, reason for its decision, or appeal rights. It is admitted that APHIS's March 5, 2012, letter was not a final determination on Plaintiff's FOIA request, dated January 12, 2012. The last sentence is a conclusion of law to which no response is required.

58. In response to paragraph 68 the allegations are admitted.

**CAUSES OF ACTION**

**COUNT I**

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:  
DETERMINATION DEADLINE VIOLATION**

59. Defendant hereby reincorporates and realleges its answers to paragraphs 1-68 of the complaint set forth above.

60. In response to paragraph 70, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant admits that it has issued a final response to Plaintiff's Request One, by letter dated May 16, 2012, and Request Five by letter dated May 17, 2012; issued a final response to Plaintiff's Request Two and Request Three as stated by Plaintiff in their complaint; is still processing its response to Requests Four and Six; and has not received any appeals of any of these responses to date.

61. In response to paragraph 71, this paragraph is denied for lack of information sufficient to determine the truth thereof.

62. In response to paragraphs 72 and 73, these paragraphs constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

## COUNT II

### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO PROPERLY INVOKE UNUSUAL CIRCUMSTANCES EXCEPTION**

63. In response to paragraph 74, Defendant hereby reincorporates and realleges its answers to paragraphs 1-73 of the complaint set forth above.

64. In response to paragraph 75, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

65. In response to paragraph 76, Defendant admits that APHIS sent letters to Plaintiff seeking extensions to complete the processing of Plaintiff's requests, pursuant to 7 C.F.R. 1.16(b), in response to Requests One, Four, Five, and Six. The second sentence is a conclusion of law to which no response is required. To the extent a response is required, Defendant admits that the letters sought varying time periods longer than 10 days in which to respond to the requests.

66. In response to paragraph 77, this paragraph constitutes a conclusion of law to which no response is required. The statute itself is the best evidence of its content.

67. In response to paragraph 78, it is admitted that APHIS's letters to Plaintiff did not offer Plaintiff an opportunity to limit the scope of its requests, though each letter did set forth its anticipated time frame for collecting and/or reviewing responsive records. All other allegations are denied.

68. In response to paragraph 79, it is admitted that APHIS's letters did not provide contact information for the USDA FOIA Public Liaison, which is provided on the USDA website.

69. In response to paragraph 80, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

70. In response to paragraph 81, it is admitted that APHIS's March 5, 2012, letter did not specify a date on which a determination on Request Six would be complete. However, Defendant attempted to contact Plaintiff on three occasions between February 29, 2012, and March 15, 2012, to clarify the scope of Plaintiff's request. On March 15, 2012, Plaintiff responded to these inquiries by directing Defendant to its attorney in this lawsuit.

71. In response to paragraph 82, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

72. In response to paragraph 83, this paragraph is denied for lack of information sufficient to determine the truth thereof.

73. In response to paragraph 84, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

### **COUNT III**

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT FAILURE TO PROVIDE NON-EXEMPT PUBLIC RECORDS**

74. In response to paragraph 85, Defendant hereby reincorporates and realleges its answers to paragraphs 1-84 of the complaint set forth above.

75. In response to paragraphs 86, 87, 89 and 90 these paragraphs constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations. The allegations in paragraph 88 are denied for lack of information sufficient to determine the truth thereof.

## COUNT IV

### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: PATTERN OR PRACTICE OF FAILING TO TIMELY RESPOND TO FOIA REQUESTS**

76. In response to paragraph 91, Defendant hereby reincorporates and realleges its answers to paragraphs 1-90 of the complaint as set forth above.

77. In response to paragraphs 92 and 94, these paragraphs constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations. Paragraph 93 is denied for lack of information sufficient to determine the truth thereof.

## COUNT V

### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: PATTERN OR PRACTICE OF UNLAWFULLY INVOKING THE "UNUSUAL CIRCUMSTANCES" EXCEPTION**

78. In response to paragraph 95, Defendant hereby reincorporates and realleges its answers to paragraphs 1-94 of the complaint as set forth above.

79. In response to paragraphs 96 and 97, these paragraphs constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

80. In response to paragraph 98, this paragraph constitutes a conclusion of law to which no response is required. The statute itself is the best evidence of its content.

81. In response to paragraph 99, it is admitted that APHIS's letters to Plaintiff did not offer Plaintiff an opportunity to limit the scope of its requests though each letter did set forth its anticipated time frame for collecting and/or reviewing responsive records. It is admitted that APHIS's letters did not provide contact information for the USDA FOIA Public Liaison, which is provided on the USDA website. All other allegations are denied.

82. In response to paragraph 100, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

83. In response to paragraph 101, it is admitted that APHIS's March 5, 2012, letter did not specify a date on which a determination on Request Six would be complete. However, Defendant attempted to

contact Plaintiff on three occasions between February 29, 2012, and March 15, 2012, to clarify the scope of Plaintiff's request. On March 15, 2012, Plaintiff responded to these inquiries by directing Defendant to its attorney in this lawsuit.

84. In response to paragraph 102, this paragraph is denied for lack of information sufficient to determine the truth thereof.

85. In response to paragraph 103, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

## **COUNT VI**

### **VIOLATION FO THE FREEDOM OF INFORMATION ACT: FAILURE TO ESTABLISH INTERNET/PHONE SYSTEM**

86. In response to paragraph 104, Defendant hereby reincorporates and realleges its answers to paragraphs 1-103 of the complaint set forth above.

87. In response to paragraph 105, this paragraph constitutes a conclusion of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

88. In response to paragraph 106, this paragraph is denied for lack of information sufficient to determine the truth thereof.

98. In response to paragraphs 107 and 108, these paragraphs constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

## **COUNT VII**

### **VIOLATIONS OF THE ADMINISTRATIVE PROCEDURES ACT**

90. In response to paragraph 109, Defendant hereby reincorporates and realleges its answers to paragraphs 1-108 of the complaint as set forth above.

91. In response to paragraphs 110 through 120, these paragraphs constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

92. Defendant denies each and every allegation contained in the complaint not specifically admitted herein.

### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to exhaust administrative remedies for some or all of the FOIA requests.

**THIRD AFFIRMATIVE DEFENSE**

There is no subject matter jurisdiction or waiver of sovereign immunity for some or all of the relief requested in the complaint.

**WHEREFORE**, having answered the complaint of the Plaintiff, Defendant respectfully requests that the complaint be dismissed with prejudice, that Plaintiff take nothing by virtue of the Complaint, and that the Defendant be awarded its costs of suit, and for such other and further relief as the court deems just and proper.

**DATED** this 22nd day of May, 2012.

**MICHAEL W. COTTER**  
**United States Attorney**

/s/ Victoria L. Francis  
**Assistant U.S. Attorney**  
**Attorneys for Defendants**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of May, 2012, a copy of the foregoing document was served on the following persons by the following means:

- 1,2,3 CM/ECF
- Hand Delivery
- U.S. Mail
- Overnight Delivery Service
- Fax
- E-Mail

1. Clerk, U.S. District Court

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