

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON,)
)
Plaintiff,)
)
v.)
)
) Case No. 1:06-CV-01835 (RMU)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES,)
)
Defendant)
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DEFENDANT'S ANSWER

Defendant U.S. Department of Health and Human Services hereby answers the Complaint of Plaintiff Citizens for Responsibility and Ethics in Washington (CREW).

First Defense

Plaintiff is not entitled to compel the production of records protected from disclosure by one or more exemptions to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Second Defense

The Court lacks subject-matter jurisdiction over Plaintiff's request for relief to the extent that the request exceeds relief authorized by the FOIA.

Third Defense

Defendant responds to the Complaint as follows:

1. Paragraph one contains Plaintiff's characterization of this action and legal conclusions to which no response is required. To the extent that a response is required, Defendant admits that Plaintiff purports to bring this action under the FOIA.

2. Paragraph two contains Plaintiff's characterization of this action and legal conclusions to which no response is required. To the extent that a response is required, Defendant admits that Plaintiff's Complaint purports to seek declaratory and injunctive relief.

3. Paragraph three constitutes legal conclusions to which no response is required.

4. Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in paragraph four.

5. Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in paragraph five.

6. The first sentence of paragraph six is based upon legal conclusions to which no response is required, and to the extent that a response is required, Defendant denies the averments contained in paragraph six. In response to the second sentence of paragraph six, Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained therein.

7. Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in paragraph seven.

8. Paragraph eight constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute speaks for itself, and Defendant denies the allegations set forth in paragraph eight to the extent that they are inconsistent with the cited statute.

9. Paragraph nine constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute speaks for itself, and Defendant denies the allegations set forth in paragraph nine to the extent that they are inconsistent with the cited

statute.

10. Paragraph ten constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute speaks for itself, and Defendant denies the allegations set forth in paragraph ten to the extent that they are inconsistent with the cited statute.

11. Paragraph eleven constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute speaks for itself, and Defendant denies the allegations set forth in paragraph eleven to the extent that they are inconsistent with the cited statute.

12. Paragraph twelve constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute speaks for itself, and Defendant denies the allegations set forth in paragraph twelve to the extent that they are inconsistent with the cited statute.

13. Paragraph thirteen constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute speaks for itself, and Defendant denies the allegations set forth in paragraph thirteen to the extent that they are inconsistent with the cited statute.

14. Paragraph fourteen constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute speaks for itself, and Defendant denies the allegations set forth in paragraph fourteen to the extent that they are inconsistent with the cited statute.

15. Paragraph fifteen constitutes legal conclusions to which no response is required. To the extent that a response is required, the cited statute and regulations speak for themselves,

and Defendant denies the allegations set forth in paragraph fifteen to the extent that they are inconsistent with the cited statute or regulations.

16. Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in paragraph sixteen.

17. Defendant avers that the report cited in paragraph seventeen speaks for itself, and respectfully refers the Court to the report for a full and complete statement of its contents.

18. Defendant denies the first sentence of paragraph eighteen, and avers that the cited report alleges that, in total, pregnancy resource centers have received more than \$30 million in federal funding and that most of that funding has been obtained through funding of abstinence education. Defendant denies the second sentence of paragraph eighteen, and avers that the cited pages of the report allege that pregnancy resource centers have received approximately \$1 million of the total federal funding available through the Compassion Capital Fund.

19. Defendant avers that the report cited in paragraph nineteen speaks for itself, and respectfully refers the Court to the report for a full and complete statement of its contents. Moreover, Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in paragraph nineteen.

20. Defendant avers that the report cited in paragraph twenty speaks for itself, and respectfully refers the Court to the report for a full and complete statement of its contents. Moreover, Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in paragraph twenty.

21. Defendant avers that the report cited in paragraph twenty-one speaks for itself, and respectfully refers the Court to the report for a full and complete statement of its contents.

22. Defendant avers that the article cited in paragraph twenty-two speaks for itself, and respectfully refers the Court to the article for a full and complete statement of its contents.

23. Defendant denies the allegation in paragraph twenty-three. Contrary to the assertion in paragraph twenty-three, Defendant avers that the article alleges that there are about 2,000 centers in the United States and Canada, but does not allege that that number of centers receives federal funding.

24. Defendant denies the allegation in paragraph twenty-four. Defendant further avers that, although pregnancy resource centers may be included amongst the grantees receiving funding through the Compassion Capital Fund, funding through the Compassion Capital Fund is available to a wide variety of entities and is not conditioned upon them being pregnancy resource centers, contrary to the suggestion of paragraph twenty-four.

25. In response to paragraph twenty-five, Defendant admits that it received a FOIA request from Plaintiff by a letter dated August 4, 2006. Defendant avers that the FOIA request speaks for itself, and respectfully refers the Court to the FOIA request for a full and complete statement of its contents.

26. In response to paragraph twenty-six, Defendant avers that the FOIA request speaks for itself, and respectfully refers the Court to the FOIA request for a full and complete statement of its contents.

27. In response to paragraph twenty-seven, Defendant admits that its Office of the Secretary sent a postcard dated August 21, 2006 to Plaintiff, and that its Administration for Children and Families sent a postcard dated September 5, 2006 to Plaintiff. Defendant avers that the postcards speak for themselves, and respectfully refers the Court to the postcards for a full

and complete statement of their contents. To the extent that the allegations in paragraph twenty-seven are inconsistent with the postcards, Defendant denies them.

28. In response to paragraph twenty-eight, Defendant admits that its Freedom of Information Office for the Public Health Service sent a letter dated August 23, 2006 to Plaintiff. Defendant avers that the letter speaks for itself, and respectfully refers the Court to the letter for a full and complete statement of its contents. To the extent that the allegations in paragraph twenty-eight are inconsistent with the letter, Defendant denies them.

29. In response to paragraph twenty-nine, Defendant admits that it received a letter dated September 13, 2006 from CREW. Defendant avers that the letter speaks for itself, and respectfully refers the Court to the letter for a full and complete statement of its contents.

30. Defendant denies the allegations contained in paragraph thirty. Defendant avers that its Office of the Secretary sent a letter to CREW dated October 24, 2006, the Freedom of Information Office for the Public Health Service (PHS) sent letters to CREW dated November 29, 2006 and January 29, 2007, Defendant's counsel sent letters to CREW's counsel dated January 5, 2007 and January 9, 2007, and the Freedom of Information Office for the Administration for Children and Families (ACF) sent a letter to CREW dated January 31, 2007. A copy of the letters dated October 24, 2006, November 29, 2006, January 5, 2007, January 9, 2007, January 29, 2007, and January 31, 2007 are attached as Exhibits A through F, respectively, and are incorporated herein by reference.

31. Paragraph thirty-one constitutes legal conclusions to which no response is required.

32. In response to paragraph thirty-two, Defendant incorporates by reference its

answers to the preceding paragraphs.

33. Paragraph thirty-three constitutes legal conclusions to which no response is required.

34. Paragraph thirty-four constitutes legal conclusions to which no response is required.

35. Paragraph thirty-five constitutes legal conclusions to which no response is required.

36. In response to paragraph thirty-six, Defendant incorporates by reference its answers to the preceding paragraphs.

37. Paragraph thirty-seven constitutes legal conclusions to which no response is required.

38. Paragraph thirty-eight constitutes legal conclusions to which no response is required.

The remaining paragraphs of the Complaint contain Plaintiff's Prayer for Relief to which no response is required. To the extent that a response is required, Defendant denies Plaintiff's Prayer for Relief.

Except to the extent expressly admitted or qualified in this Answer, Defendant denies each and every allegation in the Complaint.

WHEREFORE, Defendant respectfully requests that this action be dismissed with prejudice and that Defendant be granted such further and other relief as the Court deems just and proper, including costs.

Respectfully submitted,

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Dated: January 31, 2007