

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

<b>JUDICIAL WATCH, INC.</b>	)	
	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 1:10-CV-00443</b>
	)	
	)	
<b>DEPARTMENT OF HEALTH AND</b>	)	
<b>HUMAN SERVICES,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Defendant, the Department of Health and Human Services (HHS), hereby answers Plaintiff's Complaint for Declaratory and Injunctive Relief as follows:

**JURISDICTION AND VENUE**

1. This paragraph contains a conclusion of law to which no response is required.
2. This paragraph contains a conclusion of law to which no response is required.

**PARTIES**

3. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.
4. Defendant admits the first sentence of this paragraph. The second sentence of this paragraph contains a conclusion of law to which no response is required.

**STATEMENT OF FACTS**

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

6. Defendant denies the first sentence of this paragraph except to admit that government officials met during this time to discuss health care reform. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the remainder of the paragraph.

7. This paragraph contains Plaintiff's characterization of events, and not averments of fact in support of a claim for relief under Federal Rule of Civil Procedure 8(a)(2), and therefore no response is required. To the extent that a response is required, Defendant denies the averments contained in this paragraph.

8. Defendant admits that on January 15, 2010, Plaintiff sent a FOIA request to Defendant seeking access to "[a]ll records of Kathleen Sebelius, Secretary of Health and Human Services, concerning meetings with the White House on health care legislation" for the period of January 1, 2010 to January 15, 2010. Defendant denies the remaining averment contained in this paragraph.

9. Defendant admits the averment contained in this paragraph.

10. To the extent that this paragraph contains Plaintiff's characterizations of response letters dated January 21, 2010 and March 12, 2010, these letters speak for themselves and no response is therefore required. Defendant avers that on January 21, 2010, it sent a letter to Plaintiff stating that "[t]he Office of the Health Reform (OHR) conducted a search and is unable to locate any records responsive to your request," and on March 12, 2010, it sent another letter to Plaintiff stating that "[t]he Office of the Executive Secretariat (OSES) conducted a search and is unable to locate any records responsive to your request." January 21, and March 12, 2010 letters from Robert Eckert to John Althen, attached hereto as Exhibits A & B. These letters both indicated that Plaintiff's FOIA request was "still pending" with other components of HHS, and that

Defendant would “provide a response to the remainder of [the] request as soon as possible.” *Id.*

11. This paragraph contains a legal conclusion to which no response is required.

12. Defendant admits that it did not produce any records responsive to Plaintiff’s request as of March 17, 2010. Further answering, Defendant states that it was still processing Plaintiff’s FOIA request when Plaintiff filed this lawsuit, but that Defendant has since completed its processing and on April 8, 2010, Defendant sent Plaintiff a final response and provided to Plaintiff all documents responsive to Plaintiff’s request which are not exempt from disclosure. April 8, 2010 letter from Robert Eckert to John Althen, attached hereto as Exhibit C.

13. This paragraph contains a legal conclusion to which no response is required.

**COUNT 1**

14. Defendant repeats and realleges the responses contained in paragraphs 1 through 13.

15. This paragraph contains a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the averments contained in this paragraph and again affirms that all responsive documents not exempt from disclosure have been released to Plaintiff.

16. This paragraph contains a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

The remaining paragraphs of Plaintiff’s Complaint contains Plaintiff’s requested relief, to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations contained in the remaining paragraphs of Plaintiff’s Complaint and further avers that Plaintiff is not entitled to any relief. Any allegation not specifically addressed is denied.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

The Court lacks subject matter jurisdiction over Plaintiff's Complaint because Defendant has not improperly withheld information within the meaning of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

**SECOND DEFENSE**

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

**WHEREFORE**, Defendant respectfully requests that the Court enter judgment dismissing this action with prejudice and awarding Defendant costs and such other relief as the Court may deem appropriate.

Respectfully submitted this 21<sup>st</sup> day of May, 2010.

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OF COUNSEL  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2010, a true and correct copy of the foregoing was served electronically by the U.S. District Court for the District of Columbia Electronic Document Filing System (ECF) and that the document is available on the ECF system.

/s/ Varu Chilakamarri  
VARU CHILAKAMARRI