

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

JUDICIAL WATCH, INC.)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 13-1559-EGS
)	
INTERNAL REVENUE SERVICE)	
)	
<u><i>Defendant.</i></u>)	

**PLAINTIFF’S STATUS REPORT AND
RECOMMENDATION FOR FURTHER PROCEEDINGS**

Plaintiff, Judicial Watch, Inc., by counsel, and pursuant to the Court’s July 10, 2014 Minute Order, respectfully submits this Status Report in the above-captioned matter. Plaintiff also submits to the Court its Recommendation for Further Proceedings individually as the IRS does not joint in Plaintiff’s recommendation for limited discovery.

The parties appeared before this Court for a status conference on July 10, 2014, after startling news reports indicated that a large volume of the records at issue in this FOIA litigation were missing due to allegations of multiple hard drive crashes. Mot. For Status Conference, ¶ 6 (DKT No. 20). During the July 10, 2014 status conference and by subsequent Minute Orders dated July 10, 2014 and August 14, 2014, the Court ordered the IRS to provide sworn declarations from agency officials describing, in part, how the missing e-mails may be retrieved from other sources, and what efforts, if any, the IRS had undertaken to obtain the missing e-mails from those sources. The IRS provided two series of inadequate declarations on August 11, 2014 and August 22, 2014 that omitted material information about where and how the missing e-mails may be retrieved.

Consistent with the Court's instructions during the Status Conference held on July 10, 2014, Plaintiff filed a motion for limited discovery after September 10, 2014. Judicial Watch filed the motion due to serious questions posed by the IRS's conflicting public reports about the missing e-mails and its failure to disclose to this Court material information about the IRS's system of records and other sources for the missing e-mails. As such, Judicial Watch respectfully proposes limited discovery to obtain such highly relevant information for this case to be fairly adjudicated, and incorporates by reference the facts and arguments set forth in its motion for limited discovery as if fully asserted herein, in support of its recommendation. *See generally* Mot. for Limited Discovery (DKT No. 31). Pursuant to Defendant's Notice of September 10, 2014, limited discovery on these issues would no longer interfere with relevant investigation by the Treasury Inspector General for Tax Administration. IRS Notice (DKT No. 30).

As the IRS did not join in Judicial Watch's recommendation for discovery, Judicial Watch has submitted its own report, consistent with the Court's July 10, 2014 Minute Order. With respect to the IRS' request for a thirteen-day extension to respond to Plaintiff's pending motion for limited discovery, Judicial Watch has advised agency counsel that it seeks to resolve this matter as expeditiously as possible. However, it will defer to the Court's determination whether Defendant has shown good cause for the requested extension.

Specific to the IRS' production of records responsive to Plaintiff's FOIA requests, the IRS has continued to produce monthly productions, many of which are heavily redacted. Judicial Watch does not object to the IRS's continued monthly rolling production and recommendation to file a status report by January 15, 2015. However, the IRS has still not provided an estimated time frame for when it will complete its document production and has continued to produce records in

reverse chronological order, despite Judicial Watch's repeated request that future document productions are released in chronological order. The production in reverse chronological order further delays the IRS' disclosure of the gaps for the missing records. Judicial Watch respectfully requests that the Court order the IRS to provide an estimated time when it will complete its production of all non-exempt, responsive records and that all future productions of documents are released in chronological order, starting with the earliest records from January 1, 2010.

Judicial Watch, in a good faith effort to narrow disputed issues in this litigation, agreed with previous counsel for the IRS, Norah E. Bringer, to narrow the scope of Plaintiff's FOIA request referenced in paragraph nine (9) of Plaintiff's Complaint to the actual number of applications seeking 501(c)(4) status since January 1, 2010. Compl., ¶ 9. Since the IRS was not required to produce any records in light of the narrowed scope and since it has provided the number of such applications, Defendant's satisfaction of that FOIA request is no longer in dispute. Defendant's production of information requested in the three other FOIA requests referenced in Plaintiff's Complaint remain contested and under dispute in this litigation. Compl., ¶¶ 10-12.

Dated: September 24, 2014

Respectfully submitted,

JUDICIAL WATCH, INC.

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