

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

JUDICIAL WATCH, INC.

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

Civil Action No. 14-cv-1511 (ABJ)

DEFENDANT’S MOTION TO STAY BRIEFING SCHEDULE

Defendant Department of State (“State”) hereby moves to stay the briefing schedule in this case to allow it to conduct searches of a recently identified source of potentially responsive documents. In support of this motion, State, through undersigned counsel, states the following.

1. State’s Motion for Summary Judgment is currently due on January 15, 2016. Minute Order of Dec. 8, 2015. However, State recently identified a source of potentially-responsive documents—a collection of electronic files—that had not previously been identified or searched. During the period to which the FOIA request is limited (September 11, 2012 through September 15, 2012), these files resided in the Office of the Secretary. At the time the original searches were completed, on or before December 17, 2014, *see* Def.’s Status Report ¶ 3 (ECF No. 9), these files resided in the Executive Secretariat (S/ES), which is generally responsible for coordinating search responses for the Office of the Secretary of State.¹ The files have since been retired and transferred to the custody of the Bureau of Administration, Office of Information Programs and Services.

2. When S/ES conducted the search for responsive records, it identified a number of sources where potentially responsive records might reasonably be expected to be found. These

¹ The FOIA request at issue in this case was directed to the Office of the Secretary.

sources of records included several electronic databases and the email accounts of several state employees, which S/ES searched for responsive records. In the course of these extensive searches, which resulted in the retrieval of 403 responsive records,² the files at issue here were overlooked. The potential need to search these materials first came to the attention of the State employees working on this FOIA request in December, when the issue arose in connection with the preparation of a search declaration in another litigation matter. In the days before Christmas, State employees investigated and determined that these files should be searched for records responsive to this FOIA request. Last week, State determined that it would not be able to complete these searches before the date set for State's motion for summary judgment.

3. To conduct these searches, State must upload the files to a system in which they can be electronically searched, a process that is currently underway. Because it is not possible at this time to estimate the volume of potentially responsive documents, if any, that will be found, State proposes that it first complete the upload of the files so they are electronically searchable and then conduct searches for potentially responsive documents. State estimates it can complete this process and file a status report disclosing the volume of potentially responsive documents and proposing a revised schedule by February 1, 2016.

4. This request is not for purposes of delay, but is necessary for State to properly process and produce any responsive records to Plaintiff and move for summary judgment. In the absence of the requested extension, State would submit a motion for partial summary judgment on January 15, 2016, and then submit a subsequent motion after production of any responsive records that may be found in the unsearched files. Such duplicative proceedings, resulting in two rounds of briefing, would be needlessly inefficient for both the parties and the Court. Granting

² State released 320 of these documents in full and 71 documents in part; State withheld 12 documents in full.

the extension would allow State to complete its production of responsive documents and permit the parties to brief summary judgment in a single, consolidated round.

5. Counsel for State has consulted with counsel for Judicial Watch, who in his written position did not object to a schedule change resulting from the requested stay of briefing: “We [(Judicial Watch)] will not oppose a motion to stay the current summary judgment briefing schedule in 14-1511 provided that State explains in its motion: (1) where exactly these newly identified records are located; (2) why they were not identified and searched previously; and (3) how and when they were just identified. Also, our non-opposition is conditioned on State agreeing to file a status report no later than Feb. 1 disclosing the volume of records at issue and proposing a reasonable schedule for search, review, and production.” Ex. A (Email from Paul J. Orfanedes).

6. State, therefore, respectfully moves the Court to stay the briefing schedule and set the following deadlines: (1) by no later than February 1, 2016, State shall complete its additional searches and file a status report disclosing the volume of potentially responsive documents that must be reviewed and proposing a revised schedule for the production of the non-exempt portions of responsive documents subject to the FOIA; (2) by no later than February 5, 2016, Plaintiff shall file a response to State’s proposed production schedule.

Date: January 12, 2016

Respectfully submitted,

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