

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 14-cv-1511 (ABJ)
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	
_____)	

THIRD JOINT STATUS REPORT

Plaintiff Judicial Watch, Inc. and Defendant U.S. Department of State (“State”), by counsel and pursuant to the Court’s October 30 2015 minute order, respectfully submit this Third Joint Status Report:

1. State has completed its review and production of emails to or from former Secretary of State Hillary Clinton, including emails to or from former Secretary Clinton recently provided by Huma Abedin, Cheryl Mills, and Jacob Sullivan, that are responsive to the FOIA request. Of the twenty-three (23) emails identified as responsive in State’s October 22, 2015 status report, seven (7) were produced in full or in part on November 2, 2015, fifteen (15) were produced in full or in part on November 30, 2015, and one (1) was determined to be non-responsive upon further review. None required referral to other agencies.

2. In addition, State has completed its review and production of non-email records to or from former Secretary Clinton recently provided by Ms. Abedin, Ms. Mills, and Mr. Sullivan. Twelve (12) responsive records were identified, and all twelve (12) were produced on November 12, 2015, with redactions.

3. No referrals of any responsive records remain outstanding.

4. State intends to file a motion for summary judgment. Plaintiff intends to either oppose the motion and file a cross-motion, or file a Rule 56(d) motion. The parties propose the following briefing schedule:

Defendant's motion for summary judgment:	January 15, 2016
Plaintiff's opposition/cross-motion or Rule 56(d) motion:	February 5, 2016
Defendant's reply/opposition:	March 4, 2016
Plaintiff's reply:	March 18, 2016

5. One issue remains outstanding related to two documents, copies of which are attached collectively as Exhibit 1. The parties state their respective position regarding these two documents below:

PLAINTIFF'S STATEMENT

6. During the course of former Secretary Clinton's October 22, 2015 testimony before the U.S. House of Representatives Special Committee on Benghazi (the "Special Committee"), Plaintiff became aware of two (2) records produced by the State Department to the Special Committee that appear to be notes of telephone conversations between former Secretary Clinton and the President of the Libyan General National Congress and the Prime Minister of Egypt on September 11, 2012 and September 12, 2012, respectively. Both are emails directed to "S_CallNotes," which would appear to be either a group of recipients or some type of repository for notes of the Secretary's telephone calls. The individual who took the notes is not identified, but Plaintiff believes it is reasonable that notes of the Secretary's calls would be taken by someone in the Secretary's office and/or maintained either in the Office of the Secretary or the Office of the Executive Secretariat, which maintains records for the Office of the Secretary. Plaintiff asserts that any such records regarding the September 11, 2012 Benghazi

attack are responsive to the request¹ and that the issue of their responsiveness should be resolved now, before summary judgment briefing, in order to avoid unnecessary delay and a second round of summary judgment briefings. Plaintiff raised the issue of the call notes with State in email exchanges between counsel on October 29, 2015, October 30, 2015, November 4, 2015, and November 5, 2015. The parties were unable to resolve the matter.

DEFENDANT'S STATEMENT

7. Plaintiff provides no basis for its assertion that the notes in question were “taken by someone in the Secretary’s office and/or maintained either in the Office of the Secretary or the Executive Secretariat.” State should be given the chance to address this speculative assertion in the normal course of briefing, which will include the preparation of a declaration related to the adequacy of search. In that declaration, State can provide the factual basis for its preliminary assessment that the records in question were not maintained in the Office of the Secretary (to which the FOIA request was directed), and thus could not be discovered by a reasonable search and are not responsive to the FOIA request.² *See Miscavige v. I.R.S.*, 2 F.3d 366, 369 (11th Cir. 1993) (finding that “[g]enerally, FOIA cases should be handled on motions for summary judgment” in rejecting plaintiff’s “early attempt” to litigate issues before “the government has first had a chance to provide the court with the information necessary to make a decision”). Nor would Plaintiff be prejudiced should the Court choose to follow the normal procedure and allow

¹ Plaintiff’s request, which was directed to State’s Office of the Secretary, seeks the following: “Any and all records concerning, regarding, or related to notes, updates, or reports created in response to the September 11, 2012 attack on the U.S. Consulate in Benghazi, Libya. This request includes, but is not limited to, notes taken by then Secretary of State Hillary Rodham Clinton or employees of the Office of the Secretary of State during the attack and its immediate aftermath. The timeframe for this request is September 11-15, 2012.” Compl. at para. 5.

² State neither confirms nor denies at this time that the documents in question are true copies of records that State maintains in its possession and provided to Congress; it should be given time to properly investigate this issue and present its position in the course of briefing.

these issues to be addressed during briefing on summary judgment: Plaintiff has a copy of the documents at issue in its possession.

8. Summary judgment briefing is the most efficient way to resolve the issues related to the two records identified by Plaintiff. Attempts to litigate these issues in a piecemeal fashion would only serve to delay final resolution of this case. This Court has already rejected Plaintiff's similar requests to resolve contested issues related to the adequacy of the search before summary judgment briefing. *See* Joint Status Report, June 19, 2015 (ECF No. 13) (Plaintiff requesting that the Court order State to conduct discovery and perform further searches before summary judgment briefing); Minute Order, June 22, 2015 (setting a briefing schedule in response to June 19 Joint Status Report because "[i]t is defendant's position that the search for documents responsive to plaintiff's FOIA request is complete and was adequate").

9. Without stating so explicitly, Plaintiff appears to seek an order requiring State to turn over the two documents in question. Such a request for relief is inappropriate without a written motion that states with particularity the grounds for seeking the order, *see* Fed. R. Civ. P. 7(b), and, under this Court's local rules, without a proposed order, Local Civil Rules 7(c), a statement of specific points of law and authority included with the motion, *id.* 7(a), and time for State to file a written opposition, *id.* 7(b). Plaintiff should not seek, nor be granted, relief without filing a proper motion. At minimum, Plaintiff should be required to submit a proper motion for relief, and State should be allowed enough time to file an appropriate response. But addressing this issue in a separate round of briefs is not necessary for an efficient resolution of this case. This issue can and should be addressed in due course during summary judgment briefing.

Dated: December 7, 2015

Respectfully submitted,

/s/ Paul J. Orfanedes

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EXHIBIT 1

to

Third Joint Status Report

in

Judicial Watch, Inc. v. U.S. Dep't of State,
Case No 14-1511 (ABJ)

STATE DEPT. - REPRODUCED TO BENGHAZI SELECT COMM.
REDACTED BY STATE DEPT. FOR PUBLIC RELEASE BY CONGRESS. NO FOIA WAIVER.
UNCLASSIFIED U.S. Department of State Case No. O-2015-15055 Doc No. C05561906 Date: 10/13/2015

STATE-SCB0071244

RELEASE IN FULL

Johnson, Brock A

From: Randolph, Lawrence
Sent: Tuesday, September 11, 2012 11:34 PM
To: S_CallNotes
Subject: Call Notes: S-Libyan General National Congress President Magariaf

The Secretary's Call with Libyan General National Congress President Mohammed Magariaf

Please Note: This is not a transcript of this call.

Call UP: 09/11 @ 1849

Secretary Clinton: Mr. President.

Libyan General National Congress President Magariaf: Your Excellency.

S: I appreciate you taking my call at this late hour.

M: No problem. It's my duty.

S: As you know, our diplomatic mission in Benghazi was attacked earlier this evening. We need your immediate help, as one of our diplomats was killed and our Ambassador, who you know, is missing. We have asked for the Libyan government to provide additional security to the compound immediately as there is a gun battle ongoing, which I understand Ansar as-Sharia is claiming responsibility for. We also need you to provide additional capacity for firefighting as there are reports that the principle officer's residence has been bombed or set on fire. We believe that it is important for your government, as well as ours, to condemn this attack in the strongest possible terms and promise that these criminals will be brought to justice. I also need you to help us secure our mission in Tripoli. We have seen serious threats on social media sites, like Facebook, and it is important that your government take all possible measures, in an urgent manner, to secure our facilities. We need you to have people who you are confident in, who will follow your direction, and that your government trusts to secure our compounds.

M: Please accept my condolences for the death of the American at the compound and our sincere apologies for what has happened. We promise to find the criminals and bring them to justice. We will do our utmost to protect American buildings and every American citizen in Libya. We were just in the midst of an emergency meeting with the Prime Minister and all of his deputies to address this situation.

S: If there is anything that you need or that I can do please do not hesitate to call me at any time, day or night.

M: Thank you.

S: Thank you

M: Good night

Call DOWN: 1853

REVIEW AUTHORITY: Charles Daris, Senior Reviewer

STATE DEPT. - REPRODUCED TO BENGHAZI SELECT COMM.
REDACTED BY STATE DEPT. FOR PUBLIC RELEASE BY CONGRESS. NO FOIA WAIVER.
UNCLASSIFIED U.S. Department of State Case No. O-2015-15055 Doc No. C05561911 Date: 10/13/2015

STATE-SCB0071245

RELEASE IN PART
1.4(B), 1.4(D)

Johnson, Brock A

From: Randolph, Lawrence
Sent: Wednesday, September 12, 2012 7:11 PM
To: S_CallNotes
Subject: Call Notes: S-Egyptian PM Kandil

The Secretary's Call with Egyptian PM Kandil

Please Note: This is not a transcript of this call.
Call UP: 09/12 @ 1504

Classified by JBass, S/ES, DoS on 02/24/2014 ~ Class: SECRET
~ Reason: 1.4(B), 1.4(D), B1 ~ Declassify on: 02/24/2039

Secretary Clinton: Prime Minister, this is Hillary Clinton. Thank you for taking time to speak to me. I want to thank you for reaching out to offer condolences.

Prime Minister Kandil:

[Redacted]

1.4(B)
1.4(D)

S: Thank you for the condolences and your explanation. We care about our relationship with Egypt as you saw based on the successful visit by business leaders and investors. We need to work together to make sure there is a concrete action plan to prevent this from happening again. [Redacted] government cannot be held responsible for the behavior of a small fringe group. In that vein, it would be very helpful if the President would make a statement in support of the safety and security of our personnel and condemn the attacks. We want to lower the temperature on everything that is going on and to make sure this does not happen again today, tomorrow, or after Friday prayer. I know you care about this and again I appreciate you reaching out.

K: [Redacted]

S: I consider myself a person of faith and it is important to speak out against violence and intolerance.

K: [Redacted]

REVIEW AUTHORITY: Charles Daris, Senior Reviewer

S: [Redacted] They really represent only a handful of people but in the internet age it only takes a handful of people to cause big problems.

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K: [REDACTED] 1.4(B)
[REDACTED] 1.4(D)

S: We know that the attack in Libya had nothing to do with the film. It was a planned attack- not a protest.

K: [REDACTED]

S: Your not kidding. Based on the information we saw today we believe the group that claimed responsibility for this was affiliated with al Qaeda.

K: [REDACTED]

S: We are trying to draw distinctions and communicate that we value our relationship with Egypt and Libya and that these incidents are not representatives of the governments as the videos that were produced here are not representative of us.

K: [REDACTED]
[REDACTED]

S: Yes sir. Our Ambassador in Libya was so involved in the liberation of Libya and was loved by so many there. He really was committed to the freedom of the Libyan people. That's why the President and I decided to send him into Benghazi early on.

K: [REDACTED]

S: Thank you. I look forward to meeting with you and having further discussions.

K: [REDACTED]

S: Thank you sir.

K: Thank you.

Call DOWN: 1514