



United States Department of State

Washington, D.C. 20520

FEB 24 2016

Case No. F-2015-13192

Segments: S/ES-S-0001

Ms. Kate Bailey
Judicial Watch
425 Third St., SW, Suite 800
Washington, DC 20024

Dear Ms. Bailey:

In response to your request dated August 18, 2015 under the Freedom of Information Act ("the FOIA"), 5 U.S.C. § 552, we have initiated searches of the following Department of State record system: the Office of the Executive Secretariat.

The search of the records of the Office of the Executive Secretariat is complete and has resulted in the retrieval of two responsive documents. After reviewing these documents, we have determined that both may be released with excisions. All released material is enclosed.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made excisions, the applicable FOIA exemptions are marked on each document. All non-exempt material that is reasonably segregable from exempt material has been released.

We have now completed the processing of your case. If you have any questions, your attorney may contact Marsha Edney, Trial Attorney, at Marsha.Edney@usdoj.gov. Please refer to the case number, F-2015-13192, and the civil action number, 1:15-cv-01817-TSC, in all correspondence about this case.

Sincerely,

Susan A. Weimer for

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated



RELEASE IN PART
B7(C),B6

AUTHORITY:
Archie Bolster,
Senior Reviewer

U.S. Department of State

SEPARATION STATEMENT

I, MILLS, Cheryl D. make the following statement in connection with my
(Please Type or Print)

separation from employment in the U.S. Department of State. As used herein, the term "employment" includes all periods of assignment or detail, as well as any periods of temporary, part-time or intermittent employment therein, and the term "separation" includes suspension for any period in excess of 30 days, retirement from active duty, transfer to another agency, resignation, furlough to enter military service, etc.

- I have surrendered to responsible officials all classified or administratively controlled documents and material with which I was charged or which I had in my possession. I am not retaining in my possession, custody, or control, documents or material containing classified or administratively controlled information furnished to me during the course of such employment or developed as a consequence thereof, including any diaries, memorandums of conversation, or other documents of a personal nature that contain classified or administratively controlled information.
- I have surrendered to responsible officials all unclassified documents, and papers relating to the official business of the Government acquired by me while in the employ of the Department.
- I shall not publish, nor reveal to any person, any classified or administratively controlled information of which I have knowledge, or any other information transmitted to me in confidence in the course of my official duties, unless authorized by officials of the employing Department empowered to grant permission for such disclosure.
- I have been advised by the interviewing officer whose name appears below, and understand the criminal penalties relating to U.S. Government records and information and the use thereof.

Title 18, U.S. Code

- Section 641 - Public Money, Property or Records
- 793 - Gathering, Transmitting or Losing Defense Information
- 794 - Gathering or Delivering Defense Information to Aid Foreign Govt.
- 798 - Disclosure of Classified Information
- 852 - Diplomatic Codes and Correspondence
- 1905 - Disclosure of Confidential Information
- 2071 - Concealment, Removal, or Mutilation of Records

Title 50, U.S. Code

- Section 783(b) - Communication of Classified Information by Government Officer or Employee
- 783(d) - Penalties for Violation

Title 42, U.S. Code

- Section 2272 - Violation of Specific Sections
- 2273 - Violation of General Sections
- 2274 - Communication of Restricted Data
- 2275 - Receipt of Restricted Data
- 2276 - Tampering With Restricted Data
- 2277 - Disclosure of Restricted Data

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

- I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) received a security debriefing.
- I have been advised by the interviewing officer whose signature appears below and fully understand that Section 1001 of Title 18, United States Code, provides criminal penalties for knowingly and willfully falsifying or concealing material fact in a statement or document submitted to any department or agency of the United States Government concerning a matter under its jurisdiction.

Signature of Interviewing Officer

Date (mm-dd-yyyy)

Typed Name of Interviewing Officer

Department of State
Post/Department

Signature in Presence of Interviewing Officer

Date of Birth (mm-dd-yyyy)

Date Signed (mm-dd-yyyy)

MILLS, Cheryl D.
Typed Name of Employee

Other Names Used During This Period of Employment

B6

B6
B7(C)



RELEASE IN PART
B7(C),B6

U.S. Department of State

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

SEPARATION STATEMENT

ABEDIN, Huma M.

make the following statement in connection with my

(Please Type or Print)

separation from employment in the U.S. Department of State. As used herein, the term "employment" includes all periods of assignment or detail, as well as any periods of temporary, part-time or intermittent employment therein, and the term "separation" includes suspension for any period in excess of 30 days, retirement from active duty, transfer to another agency, resignation, furlough to enter military service, etc.

1. I have surrendered to responsible officials all classified or administratively controlled documents and material with which I was charged or which I had in my possession. I am not retaining in my possession, custody, or control, documents or material containing classified or administratively controlled information furnished to me during the course of such employment or developed as a consequence thereof, including any diaries, memorandums of conversation, or other documents of a personal nature that contain classified or administratively controlled information.
2. I have surrendered to responsible officials all unclassified documents, and papers relating to the official business of the Government acquired by me while in the employ of the Department.
3. I shall not publish, nor reveal to any person, any classified or administratively controlled information of which I have knowledge, or any other information transmitted to me in confidence in the course of my official duties, unless authorized by officials of the employing Department empowered to grant permission for such disclosure.
4. I have been advised by the interviewing officer whose name appears below, and understand the criminal penalties relating to U.S. Government records and information and the use thereof.

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- 793 - Gathering, Transmitting or Losing Defense Information
- 794 - Gathering or Delivering Defense Information to Aid Foreign Govt.
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- 2273 - Violation of General Sections
- 2274 - Communication of Restricted Data
- 2275 - Receipt of Restricted Data
- 2276 - Tampering With Restricted Data
- 2277 - Disclosure of Restricted Data

These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12958; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798 and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

5. I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) received a security debriefing.
6. I have been advised by the interviewing officer whose signature appears below and fully understand that Section 1001 of Title 18, United States Code, provides criminal penalties for knowingly and willfully falsifying or concealing material fact in a statement or document submitted to any department or agency of the United States Government concerning a matter under its jurisdiction.

Signature of Interviewing Officer

Signature in Presence of Interviewing Officer

02-13-2013

Date of Birth (mm-dd-yyyy)

Date of Birth (mm-dd-yyyy)

Typed Name of Interviewing Officer

02-13-2013

Date Signed (mm-dd-yyyy)

Department of State

ABEDIN, Huma M.
Typed Name of Employee

Post/Department

Other Names Used During This Period of Employment

B6
B7(C)

B6

B6
B7(C)

OF-109
06-2005

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

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 15-cv-688-RC
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
_____)	

**PLAINTIFF’S RESPONSE TO STATUS REPORT IN PARTIAL OPPOSITION TO
DEFENDANT’S PROPOSED PRODUCTION SCHEDULE**

Pursuant to this Court’s January 28, 2016 Minute Order, Plaintiff Judicial Watch, Inc. (“Judicial Watch”) submits this response to Defendant State Department’s (“State”) recent Status Report (ECF No. 23). In that Status Report, State explains how it failed to meet the Court’s October 23, 2015 deadline for the production of all documents in this case due to State’s document management mistakes. Plaintiff recognizes that, as a practical matter, Defendant’s conduct in this case has now made it impossible for Plaintiff to obtain all records to which it is entitled without some additional delay. ECF No. 21 at ¶ 6. However, Plaintiff opposes Defendant’s proposed open-ended production and briefing schedule, which is unreasonable given the circumstances.

1. In its recent Status Report, State proposes that the Court impose no production deadline at all. Instead, State suggests that it merely inform Plaintiff of State’s own self-selected production schedule a month from now. ECF No. 23 at ¶ 9. The basis for State’s request for such leniency is the reported failure of its employees to communicate with each other concerning

which State Department files were moved where by whom, and what those files contained.¹ ECF No. 23 at ¶¶ 6-7. As a result of these reported miscommunications, State has failed to comply with this Court’s previously-established production deadline of October 23, 2015. *See* Minute Order, Aug. 21, 2015. State now acknowledges that it has missed this Court-imposed deadline by over four months, and asks this Court’s indulgence for a another month before State must inform Plaintiff whether it will ultimately wind up five, six, or seven months in arrears.

2. The Court should decline to reward State’s failure to satisfy its statutory obligations to produce records. The Defendant’s failure to comply with this Court’s reasonable deadlines does not constitute proper grounds for such a broad extension of time. *See, e.g., In re Guantanamo Bay Detainee Litig.*, 577 F. Supp. 2d 309, 312 (D.D.C. 2008) (“[T]he government cannot claim as a basis for failing to meet deadlines imposed by this Court that it “simply did not appreciate the full extent of the challenges posed...””).

3. Rather than adopt Defendant’s proposed open-ended production schedule (ECF No. 23 at ¶ 9), Plaintiff respectfully requests that the Court order State to produce all responsive documents from the newly discovered files no later than **April 18, 2016**. This gives State over two months to review and produce from a set of 2,500 potentially responsive documents, which is more than reasonable in light of standard Court-ordered deadlines in FOIA litigation.

4. Defendant’s proposal regarding the briefing schedule is similarly unreasonable and

¹ While this explanation technically complies with the Court’s Jan. 28, 2016 Minute Order directing State to describe “why” these files were overlooked, Plaintiff notes that State’s answer merely describes certain actions and inactions of employees, but does not assume accountability for those actions or identify oversight failures. *See* State Department Office of Inspector General, “Evaluation of the Department of State’s FOIA Processes for Requests Involving the Office of the Secretary,” Jan. 2016, available at <https://oig.state.gov/system/files/esp-16-01.pdf>, at p. 13 (“These procedural weaknesses, coupled with the lack of oversight by leadership and failure to routinely search emails, appear to contribute to inaccurate and incomplete responses. ... [State Officials] recalled several instances when S/ES searches have yielded inaccurate or incomplete results, though they were unable to determine the magnitude of this problem.”); *Id.* at p. 14 (“[I]n litigated cases, incomplete searches by S/ES can expose the Department to financial liability, including attorney fees and other litigation costs.”).

inappropriate. ECF No. 23 at ¶ 9. Plaintiff has already challenged all exemption 5 withholdings from Defendant's original October 23, 2015 productions. *See* Exh. 1, Letter from Chris Fedeli to Daniel Riess, October 29, 2015. Accordingly, there is currently no question as to whether summary judgment briefing will be necessary in this case. State's proposal that the parties confer and ask the Court once again to adopt a briefing schedule "if necessary" at some unspecified future date therefore constitutes a needless waste of the Court's and the parties' time. Rather, Plaintiff asks the Court to adopt the following shortened (but very reasonable) briefing schedule now to partially make up for the delay in these proceedings and to save the parties' time:

Defendant's Motion for Summary Judgment: **May 18, 2016**

Plaintiff's Opposition and Cross Motion for Summary Judgment: **June 17, 2016**

Defendant's Opposition and Reply: **July 18, 2016**

Plaintiff's Reply: **August 8, 2016**

Dated: February 10, 2016

Respectfully submitted,

s/ Chris Fedeli

Chris Fedeli

JUDICIAL WATCH, INC.

425 Third St. SW, Ste. 800

Washington, DC 20024

Tel: (202) 646-5185

cfedeli@judicialwatch.org

Attorney for Plaintiff



**Judicial
Watch**[®]
*Because no one
is above the law!*

October 29, 2015

VIA EMAIL

Mr. Daniel Riess
U.S. Department of Justice
20 Massachusetts, Avenue, NW
Washington, DC 20530
(202) 353-3098
daniel.riess@usdoj.gov

**Re: *Judicial Watch v. Department of State*, Case No. 15-688-RC (DDC)
State Department FOIA Case No. F-2015-05559**

Dear Daniel:

I received the October 23, 2015 letter from John F. Hackett to Kate Bailey and the accompanying document production in this case. As an initial matter, please instruct your client to send all documents and correspondence in this case directly to me going forward. Thank you.

We have a Joint Status Report due in this case on November 6, 2015 concerning summary judgment briefing. On July 9, 2015, the Court issued an order directing the State Department to complete its search for responsive records by August 17, 2015. On August 21, 2015, the Court issued an order requiring the completion of the production from that search by October 23, 2015. As that production has been made, this case is now ripe for summary judgment briefing.

My client challenge all exemption 5 withholdings identified in the October 23 Letter. This includes all documents subject to exemption 5 withholdings in this matter, whether withheld in full or partially released. We also challenge the sufficiency of the State Department's search.

I am enclosing a draft Joint Status Report with a proposed summary judgment briefing schedule. Once you have had a chance to review it, I hope you'll agree it is reasonable and we should file it with the Court as drafted. If you have any changes to this Joint Status Report, please let me know. Also, please note that I will be out of the office travelling and unreachable on November 6th, as well as out of the office after 6 pm on November 5. Accordingly, I would ask you to please obtain your client's agreement now to approve and file this report on November 5. In the alternative, or if you or your client are not able to accommodate my request for any reason, I will plan to file a status report for Plaintiff on November 5.

Mr. Daniel Riess
October 29, 2015
Page | 2

Please let me know if you have any questions. I look forward to your prompt response.

Sincerely,



Chris Fedeli

Attorney for Plaintiff Judicial Watch, Inc.

encl.

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

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 15-cv-688-RC
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
_____)	

[PROPOSED] ORDER

Upon consideration of the Defendant’s February 5, 2016 Status Report (ECF No. 23) and Plaintiffs’ response thereto, it is hereby

ORDERED that Defendant’s shall complete its production of all responsive documents from the recently-discovered files no later than April 18, 2016; Defendant’s Motion for Summary Judgment is due May 18, 2016; Plaintiff’s Opposition and Cross Motion for Summary Judgment is due June 17, 2016; Defendant’s Opposition and Reply is due July 18, 2016; and Plaintiff’s Reply is due August 8, 2016.

Date

Rudolph Contreras
United States District Judge