

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

LARRY KAWA,)
)
)
Plaintiff,) Civil Action No. 15-81560-WPD
)
)
v.)
)
U.S. DEPARTMENT OF STATE,)
)
)
Defendant.)
)

PLAINTIFF'S CONSENT MOTION FOR EXTENSION OF TIME

Plaintiff Larry Kawa, by counsel, respectfully moves for an extension of time, until and including October 24, 2016, in which to file his opposition to the State Department's motion for summary judgment and his cross-motion for summary judgment. Kawa also respectfully moves for an extension of all other, related briefing dates. As grounds therefor, Kawa states as follows:

1. Good cause supports this motion. This case concerns a Freedom of Information Act request for all communications between former Secretary of State Hillary Clinton and the White House from September 11, 2012 through September 18, 2012. In response to Kawa's FOIA request, Defendant searched the approximately 52,455 pages of emails that Secretary Clinton returned to the State Department in December 2014. These emails were previously stored on the clintonemail.com record system, which Secretary Clinton used to conduct official government business while she was secretary.¹

2. Since the State Department filed its motion for summary judgment, the Federal

¹ Secretary Clinton did not use a state.gov email account at any time during her tenure as secretary.

Bureau of Investigation has delivered to the State Department eight discs of material that the FBI obtained during its investigation of Secretary Clinton’s use of a personal email system. *See* State Department’s Status Report, *Judicial Watch, Inc. v. U.S. Department of State*, 13-cv-1363 (EGS) (D.D.C.) (filed on Aug. 15, 2016) at ¶¶ 1 and 3, which is attached as Exhibit A. The State Department has described disc one as “contain[ing] e-mails and attachments that were sent directly to or from former Secretary Clinton, or e-mails that were sent to or from the former Secretary at a point in time in an e-mail chain, and were not included in the materials provided to the State Department by former Secretary Clinton in December 2014.” *Id.* at ¶ 1. The State Department identified disc two as containing “classified information.” *Id.* The State Department has represented that the remainder of the discs contain “materials from custodians other than former Secretary Clinton that were retrieved during the course of the FBI’s investigation.” *Id.* at ¶ 3.

3. Kawa believes that for the same reasons that the State Department determined the emails returned by Secretary Clinton would likely contain responsive records, the material delivered by the FBI is also likely to contain records responsive to Kawa’s FOIA request.

4. The State Department has agreed to search this material and produce all non-exempt, responsive records to Kawa. The State Department has informed Kawa that it will search the material, determine whether any responsive records exist, and complete its first production of non-exempt records, to the extent any exist, by September 30, 2016.

5. Having the State Department review the new material and produce all non-exempt, responsive records to Kawa before briefing continues is both efficient and economical. Kawa does not challenge the State Department’s searches of the five separate record systems maintained by its Executive Secretariat or the search of the emails returned by Secretary Clinton

in December 2014. Therefore, Kawa anticipates this case proceeding in one of three ways. First, if the State Department's search of the material delivered by the FBI identifies no records responsive to Kawa's FOIA request, Kawa anticipates voluntarily dismissing the case. Second, if the State Department's search of the material delivered by the FBI identifies records responsive to Kawa's FOIA request and the records are produced in their entirety, Kawa anticipates voluntarily dismissing the case. Third, if the State Department's search of the material delivered by the FBI identifies records responsive to Kawa's FOIA request and any record is withheld in whole or in part, Kawa anticipates substantive briefing concerning the withholdings.

6. Kawa therefore respectfully requests that he have until October 24, 2016 to file his opposition to the State Department's motion for summary judgment and his cross-motion for summary judgment. This will allow the State Department to have an opportunity to search the material recently delivered by the FBI and begin to produce any non-exempt, responsive records to Kawa.

7. Kawa's counsel has conferred with the State Department's counsel, and the State Department consents to the proposed extension. The State Department also intends to file a status report on September 15, 2016, updating Kawa and the Court on the status of its search.

WHEREFORE, Kawa respectfully moves for an extension of time, until and including October 24, 2016, in which to file his opposition to the State Department's motion for summary judgment and his cross-motion for summary judgment as well as an extension of all other, related briefing dates.

Dated: August 23, 2016

Michael Bekesha
Admitted *Pro Hac Vice*
JUDICIAL WATCH, INC.
425 Third Street, SW, Suite 80
(202) 646-5172
(202) 646-5199

Respectfully submitted,

/s/ Horatio G. Mihet
Horatio G. Mihet
Florida Bar No. 0026581
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854-0774
800-671-1776 Telephone
407-875-0770 Facsimile
court@lc.org

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2016, a copy of the foregoing motion was filed electronically via the Court's ECF system, which effects service upon all counsel of record.

/s/ Horatio G. Mihet
Horatio G. Mihet

Exhibit A

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-CV-1363 (EGS)
)	
UNITED STATES DEPARTMENT OF)	
STATE,)	
)	
Defendant.)	
)	

STATUS REPORT

Defendant United States Department of State (“State”) respectfully submits the following status report concerning the transmission of documents from the FBI to State and State’s work to search those documents for records responsive to the underlying FOIA request in this case.

1. As State indicated in its July 29, 2016 Status Report, the FBI delivered to the State Department on July 21, 2016, a disc containing information recovered by the FBI in the course of its investigation. The disc contained e-mails and attachments that were sent directly to or from former Secretary Clinton, or e-mails that were sent to or from the former Secretary at a point in time in an e-mail chain, and were not included in the materials provided to the State Department by former Secretary Clinton in December 2014. *See ECF No. 116 (“July 29 Status Report”)* ¶ 1. The FBI also sent State a second disc containing classified documents. *See id.* ¶ 1 n.1.

2. State has completed a search of the two discs described in the preceding paragraph using the search terms and date range agreed upon by the parties.¹ After reviewing the search results, State determined that there were no records responsive to Plaintiff's FOIA request.

3. On August 5, 2016, the FBI made its second and final transmission of documents to State, consisting of six discs. As State indicated in its July 29 Status Report, this transmission includes materials from custodians other than former Secretary Clinton that were retrieved during the course of the FBI's investigation, including materials from Ms. Abedin's clintonemail.com account. *See* July 29 Status Report ¶ 3.

4. As of the date of this filing, State has loaded all but two of the discs provided on August 5 into a document management system and searched them using the search terms and date range previously agreed to by the parties. State is currently working to determine whether any of the documents that satisfied the search terms are records responsive to Plaintiff's FOIA request, and anticipates completing this determination by the time of its next status report. *See infra* ¶ 7.

5. It is State's understanding that one of the two discs yet to be searched contains the collection of documents previously returned to the State Department by former Secretary Clinton, which has already been reviewed by the State Department and posted on its FOIA website. State is currently working to verify that all of the documents on this disc are in fact duplicative of those previously reviewed by State and searched for records responsive to this case.

¹ The second disc contained some documents that were already in the State Department's possession and were previously searched for responsive records in this case using the search terms and date range agreed to by the parties. State has not re-searched those documents.

6. Because of the volume of materials located on the final disc, State requires additional time to load them into a document management system so that they can be searched. As with the other materials that State has received from the FBI, State will search these materials for documents potentially responsive to Plaintiff's FOIA request prior to determining whether any documents are agency records. If potentially responsive documents are identified by this search, State will assess whether the identified documents are agency records and, if they are, review them for release to Plaintiff pursuant to the FOIA. State anticipates completing an initial search of these documents, using the search terms and date range previously agreed upon by the parties, no later than August 26, 2016.

7. State proposes submitting a further status report on Monday, August 29.

Dated: August 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

MARCIA BERMAN
Assistant Director

/s/ Steven A. Myers
CAROLINE LEWIS WOLVERTON (DC 496433)
Senior Trial Counsel
STEVEN A. MYERS (NY 4823043)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
Tel.: (202) 305-8648
Fax: (202) 616-8460
Email: steven.a.myers@usdoj.gov

Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

LARRY KAWA,)
)
)
Plaintiff,) Civil Action No. 15-81560-WPD
)
)
v.)
)
U.S. DEPARTMENT OF STATE,)
)
)
Defendant.)
)

[PROPOSED] ORDER

Upon consideration of Plaintiff's Consent Motion for Extension of Time and the entire record herein, it is hereby **ORDERED** that:

1. The motion is **GRANTED**;
2. Defendant shall file a Status Report by September 15, 2016;
3. State Department will search the material delivered by the FBI, determine whether any responsive records exist, and complete its first production of non-exempt records, to the extent any exist, by September 30, 2016;
4. Plaintiff's Opposition to Defendant's Motion for Summary Judgment and its Cross-Motion for Summary Judgment shall be filed by October 24, 2016;
5. Defendant's Reply in Support of its Motion for Summary Judgment and in opposition to Plaintiff's Motion for Summary Judgment shall be filed by November 21, 2016; and
6. Plaintiff's Reply in Support of its Motion for Summary Judgment shall be filed by December 5, 2016.

SO ORDERED this ____ day of _____, 2016.

William P. Dimitrouleas
UNITED STATES DISTRICT JUDGE

Service List:

Michael Bekesha, *Counsel for Plaintiff*

James Bickford, *Counsel for Defendant*

Horatio G. Mihet, *Counsel for Plaintiff*

Carlos Javier Raurell, *Counsel for Defendant*