

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	Case No. 18-00154 (RBW)
v.)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
)	

**PLAINTIFF’S REPLY IN SUPPORT OF ITS
MOTION FOR PRESERVATION ORDER**

Plaintiff Judicial Watch, Inc., by counsel, respectfully submits this reply in support of its motion for an order requiring Defendant U.S. Department of Justice to take all steps necessary to preserve records at issue in this Freedom of Information Act case.

1. Peter Strzok and Lisa Page should not be afforded the presumption of good faith in this case. Unlike most FOIA cases, the facts here do not warrant it.

2. Defendant does not dispute Strzok and Page communicated with one another using personal email accounts about official government business. Nor could it. As the U.S. Department of Justice Office of the Inspector General concluded:

We found that Strzok used his personal email accounts for official government business on several occasions, including forwarding an email from his FBI account to his personal email account about the proposed search warrant the Midyear team was seeking on the Weiner laptop. This email included a draft of the search warrant affidavit, which contained information from the Weiner investigation that appears to have been under seal at the time in the Southern District of New York and information obtained pursuant to a grand jury subpoena issued in the Eastern District of Virginia in the Midyear investigation. We refer to the FBI the issue of whether Strzok’s use of personal email accounts violated FBI and Department policies.

Finally, when questioned, Page also told us she used personal email for work-related matters at times. She stated that she and Strzok sometimes used these forums for work-related discussions due to the technical limitations of FBI-issued phones. Page left the FBI on May 4, 2018.

U.S. Department of Justice Office of Inspector General, Oversight & Review Division 18-04, A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election (June 2018, available at <https://www.justice.gov/file/1071991>), at xii.

3. Although Strzok suggested to the OIG that he had forwarded all work-related email from his personal account to his government account, there is no evidence whatsoever this occurred. His actual testimony to the OIG is less clear than Defendant represented in its Opposition. Strzok's testimony on the issue reads:

My general practice was not to use personal email for FBI business. The times that I did it was when it wasn't possible or there, there were problems with the FBI systems. In the case of I think the one issue that came out was...the one about the draft affidavit for the Weiner laptop.

Our phones at the time had significant limitations specifically to that. You couldn't view redlines. And so, and, but yet you could on an iPhone. So I remember in the case of that search warrant forwarding it over so I could see what DOJ changed and their comment bubbles in regard to that. There were some other times where I was either out of the office. I think a lot of those were either I was on travel or certainly over the weekends. It is very cumbersome on the old iPhones, or on the old Samsungs of the Bureau because of the way they autocorrect spelling and the nature of the...keyboard, it is difficult to write anything of length whatsoever. So there were times that, I mean, I think there's one where I was very aggravated with a set of circumstances that had unfolded. I was going to tell my boss about it, and I remember talking with Lisa [Page] saying, hey look, did I hit the right tone in this because I wanted to, you know, just be respectful, but at the same time convey my frustration.

I wrote that on my home computer, because it's easier to type it out. I think there was one that might be a holiday greeting that I sent to Bill [Priestap]. But, again, the sort of thing that, you know, for, for convenience, but because on the one hand it was bulky to, our technology was crappy, and it was impossible on the rare occasion I would write these things. And then send them to, you know, my

account and forward it on. So it got incorporated and picked up into the FBI system.

Id. at 427.

4. The OIG sought to ensure that all federal records were returned to the FBI as required by the Federal Records Act. However, Strzok prevented the OIG from doing so. He did not grant the OIG access to his personal email account. *Id.*

5. The OIG “learned that a non-FBI family member had access to Strzok’s personal email account in 2017.” *Id.* at 428.

6. It is unclear what, if any, actions Strzok has taken to preserve emails both during the OIG investigation and after. Strzok told the OIG “that he would double delete any work-related emails in his personal account.” *Id.* at 427. Defendant does not state whether it made any attempt to confirm he took this action or not.

7. With respect to Page, the OIG did not ask her about her email practices and whether she complied with the Federal Records Act. Therefore, it remains unknown whether she complied with the Federal Records Act.

8. Just because Strzok says he preserved records between Page and him, it does not mean that he did. Nor is it reasonable to assume that all emails between the two of them would remain in his personal email account, especially considering his desire to “double delete” emails between the two of them.

9. The OIG found Strzok and Page “brought discredit to themselves, sowed doubt about the FBI’s handling of the Midyear investigation and impacted the reputation of the FBI.” Such individuals do not deserve to get the benefit of the doubt as Defendant suggests.

10. Since Plaintiff's motion was filed, Strzok "was escorted from the FBI building [as a disciplinary process plays out." John Gerstein, *Embattled agent Peter Strzok escorted from FBI headquarters*, POLITICO (June 19, 2018, available at <https://www.politico.com/story/2018/06/19/strzok-fbi-trump-mueller-655307>). Strzok now has even more reason to destroy or delete any federal records remaining in his possession.

11. Based on its own representations, Defendant has not done enough to ensure that any potentially responsive records on the non-official electronic messaging accounts of Strzok and Page will be preserved.

12. Plaintiff therefore respectfully requests the Court order Defendant to take all steps necessary to preserve all records potentially responsive to Plaintiff's FOIA request located on any non-official electronic messaging accounts of Strzok and Page.

Dated: June 25, 2018

Respectfully submitted,

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