

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 18-00490 (TNM)
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
<i>Defendant.</i>)	
_____)	

FOURTH JOINT STATUS REPORT

The parties, by counsel and pursuant to this Court’s order of July 18, 2018, respectfully submit this joint status report:

At issue in this Freedom of Information Act (FOIA) lawsuit is Plaintiff Judicial Watch, Inc.’s December 7, 2017 request to Defendant, the United States Department of Justice, seeking the following records from January 1, 2015 to the present:

- a) Any and all records of contact or communication, including but not limited to emails, text messages, and instant chats between former Associate Deputy Attorney General Bruce G. Ohr and any of the following individuals/entities: former British intelligence officer Christopher Steele; owner of Fusion GPS, Glenn Simpson; and any other employees or representatives of Fusion GPS.
- b) Any and all travel requests, authorizations and expense reports for former Associate Deputy Attorney General Bruce G. Ohr.
- c) Any and all calendar entries of former Associate Deputy Attorney General Bruce G. Ohr.

The parties’ positions are set forth below.

Plaintiff’s Position

1. According to the parties’ most recent Joint Status Report (ECF No. 13), it was the

parties' understanding that Defendant located approximately 3,100 pages of records responsive to Plaintiff's request. *See* July 18, 2018 Joint Status Report, ¶ 3. Since the parties' last Joint Status Report, Defendant has notified Plaintiff that it now believes that only 1,650 pages of documents records are potentially responsive to Plaintiff's request.

2. Consistent with the parties' July 18, 2018 Joint Status Report and the Court's minute order entered that same date, Defendant made its initial production of documents to Plaintiff on August 24, 2018 that consisted of 59 pages of responsive records. According to email communications with agency counsel on August 29, 2018, Defendant processed only 59 pages of potentially responsive records in preparation for the August production, all of which were responsive and produced with some redactions. Discounting the August production, 1,591 pages of potentially responsive records remain to be reviewed, processed and produced to Plaintiff, to the extent they are responsive and non-exempt.

3. Plaintiff believes that Defendant's current pace for the review and processing of potentially responsive records is unreasonably slow and unduly delays the completion of the processing of Plaintiff's request. Since Plaintiff submitted the FOIA request almost nine months ago, Defendant processed and produced only 59 pages of records for production. Defendant does not dispute this fact. At the current pace, the production schedule for 1,591 pages of potentially responsive records would exceed three years since Plaintiff submitted its request to Defendant on December 7, 2017.

4. To ensure judicial economy and minimize further undue delays, Plaintiff has asked Defendant to commit to processing at least 500 pages of potentially responsive records

monthly or to complete all document productions by December 1, 2018.¹ Defendant disagrees with Plaintiff's request.

5. Defendant argues, in part, that it needs more time to process the records because OIP (Department of Justice's Office of Information Policy) "is also consulting on hundreds of pages of records with other agency components that have equities over Mr. Ohr's records." Defendant, however, does not say anything about which components are involved, how many pages of records have been referred to these other DOJ components for consultation or where they are in the review process. Moreover, it is almost always the case that the OIP would confer with various components within the Department of Justice as FOIA requests most always seek records from the Department that would be collected from the various components and offices within the Department of Justice.

6. Defendant also asks the Court to recognize that its efforts in narrowing the volume of potentially responsive records in over a month demonstrates diligence. The record, however, demonstrates that Defendant has been dilatory in processing Plaintiff's request ever since receiving Plaintiff's request. Defendant received Plaintiff's FOIA request almost nine (9) months ago. During these nine months, all Defendant has accomplished is establishing that 1,650 pages of potentially responsive records exist and processing and producing 59 pages of records.

7. Defendant's reliance on *Daily Caller v. U.S. Dep't of State* is also misplaced because the December 1, 2018 document production deadline Plaintiff seeks in this case is

¹ Defendant has committed to processing 500 pages of potentially responsive records in other cases. See e.g. *Judicial Watch, Inc. v. DOJ*, (D.D.C.) (Case No. 18-154) (ECF No. 9) (May 17, 2018 Joint Status Report), *Judicial Watch, Inc. v. DOJ*; (D.D.C.) (Case No. 18-262) (ECF No. 9) (May 7, 2018 Second Joint Status Report).

neither brief nor arbitrary. The Plaintiff in the *Daily Caller* case sought a twenty-day deadline and expedited processing of its FOIA request. Here, Plaintiff asks the Court to impose a 12-month deadline for Defendant to process and produce 1,650 pages of records, to the extent that they are responsive and non-exempt.

8. Plaintiff respectfully requests that the Court order Defendant to process monthly a minimum of 500 pages of potentially responsive records monthly or to complete production of all non-exempt, responsive records by December 1, 2018.

9. Pursuant to the Court's July 18, 2018 minute order, Defendant will make its second monthly production by October 1, 2018² and the parties will file the next joint status report by October 9, 2018.³

Defendant's Position

1. Defendant does not agree with Plaintiff's assessment of Defendant's diligence in processing its search request, nor does it concur in its recommendations to the Court.

2. Defendant completed its search for records potentially responsive to Plaintiff's request on July 11, 2018, and identified 3,100 potentially responsive records. As Plaintiff notes, Defendant has made substantial progress since the last status report in determining that some potentially responsive records identified in the previous status report are, in fact, not responsive and in finalizing the total volume of travel records. This narrowing of the volume of potentially

² Because September 30, 2018 falls on the weekend, Defendant will make its September production on Monday, October 1, 2019.

³ Pursuant to the Court's July 18, 2018 minute order, the parties shall file a Joint Status Report to the Court regarding the progress of Defendant's production no later than seven days after each rolling production. Because September production falls on Monday, October 1, 2018 and Monday, October 8, 2018 is Columbus Day, the parties will file the Joint Status Report the next business day, Tuesday, October 9, 2018.

responsive documents by nearly half in just over a month is an important aspect of processing search results and demonstrates Defendant's diligence in processing the request at issue in this case.

3. A significant portion of the remaining volume of potentially responsive records consists of nearly three years of calendars. Plaintiff's request for these calendars, unlike parts (a) and (b) of its request, is not limited to the topic of communications with particular individuals. The material implicates a significant number of calendar entries covering varying appointments, which need to be processed and many of which need to be consulted on by multiple components. Plaintiff has declined to narrow its request for calendars by subject matter.

4. To ensure that Defendant meets its obligation to protect information that is properly exempt from disclosure under the FOIA, OIP needs to carefully review this material and engage in high-level consultation on the contents of each record. OIP has been and continues to process Plaintiff's FOIA request as soon as practicable, but needs sufficient time to ensure that public interests are not harmed through inadvertent disclosure of exempt records that could contain potentially sensitive information.

5. OIP is also consulting on hundreds of pages of records with other agency components that have equities over Mr. Ohr's records. *See* 28 C.F.R. § 16.4(d)(1) (providing for consultation when "records originated with the component processing the request ... contain within them information of interest to another component"). These consultations take time to complete, as agency components have their own time-sensitive workloads to manage, and OIP cannot control the time it takes to complete consultations with each component. The consultation process is important to "safeguard[] potentially sensitive information," and "forcing the agency to produce all requested records on an impracticably brief deadline raises a significant

risk of harm to the public and private interests served by the thorough processing of responsive agency records prior to their ultimate production.” *Daily Caller v. U.S. Dep’t of State*, 152 F. Supp. 3d 1, 14-15 (D.D.C. 2015). Defendant anticipates that the volume of released documents will increase in future rolling productions as documents clear consultations and are deemed appropriate for release.

6. In light of the foregoing, Defendant will be able to provide a final response to Plaintiff’s request by February 1, 2019. Defendant also anticipates that parts (a) and (b) of Plaintiff’s request will be responded to by December 1, 2018.⁴ The additional two months of time over Plaintiff’s proposed schedule is reasonable in light of the heavy FOIA caseload OIP is currently managing, including many other matters in litigation that have competing production schedules and other court-ordered deadlines, and the need to complete consultations with other agency components before documents can be released.⁵ The calendar entries Plaintiff has requested are a particularly complicated category of documents for purposes of processing and consultation, and Plaintiff has requested all of Mr. Ohr’s calendar entries for a period of nearly three years without regard to subject matter.

7. Releases of responsive documents will continue to be made on a rolling basis in accordance with the schedule previously agreed to by the parties.

⁴ Defendant reserves the right to file an *Open America* stay in the event the Court enters a different processing schedule.

⁵ Plaintiff directs the Court to two cases in which Defendant “has committed to processing 500 pages of potentially responsive documents” per month, but both cases involved requests directed at the FBI, which processes its own FOIA requests, rather than OIP, which handles FOIA requests directed at senior leadership offices of the Department of Justice. Pl.’s Resp. ¶ 4 n.1. The FBI’s agreements on processing rates in other cases are not relevant to determining what processing speed OIP can reasonably maintain in this case.

Respectfully submitted,

August 31, 2018

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