

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

JUDICIAL WATCH, INC.,)
425 Third Street, S.W., Suite 800)
Washington, DC 20024)
))
Plaintiff,)
))
v.)
))
U.S. DEPARTMENT OF STATE,)
The Executive Office)
Office of the Legal Adviser, Room 5519)
2201 C Street, NW)
Washington, D.C. 20520)
))
Defendant)

Civ. No. 1:15-cv-00646 (CKK)

JOINT STATUS REPORT

Plaintiff Judicial Watch, Inc. and Defendant U.S. Department of State, by counsel and pursuant to the Court’s order entered June 3, 2015 (ECF No. 7), respectfully submit this Joint Status Report.

This is a Freedom of Information Act (“FOIA”) lawsuit in which Plaintiff submitted a FOIA request to the State Department on March 10, 2015 seeking access to records related to Hillary Rodham Clinton’s requests for approval to use an iPad and/or iPhone for government business during her tenure as the Secretary of State. *See* ECF No. 1 at ¶ 5.

Plaintiff initiated the above-captioned lawsuit on April 28, 2015 and Defendant answered on June 13, 2015. To date, Defendant has not issued a final response to Plaintiff’s FOIA request. Defendant has also not yet produced any non-exempt record responsive to Plaintiff’s FOIA request.

Counsel for the parties conferred but were unable to agree upon joint language for a status report addressing the Court's June 13, 2015 Order. Accordingly, the parties present their separate statements and recommendations to the Court below.

Plaintiff's Statement and Recommendations

1. Judicial Watch's attorney made multiple attempts to confer with agency counsel since June 3, 2015 in the hopes that the parties would have ample time to substantively discuss Defendant's search for and anticipated production of records responsive to Plaintiff's FOIA request. Despite repeated requests by Plaintiff's attorney, Defendant was not prepared to discuss its position until two days before the parties' deadline to file the Joint Status Report. The parties thus conferred by telephone and email on June 30, 2015 and again on July 1, 2015. Plaintiff, therefore, recommends that in advance of any future joint status reports to be filed in this lawsuit, the Court enter an order for the parties to meet and confer at least two weeks before any joint status reports are due with the Court.

2. This is a straightforward FOIA lawsuit. Plaintiff's FOIA request subject to this lawsuit is narrowly tailored and seeks a discrete category of documents related to requests made by or on behalf of Mrs. Clinton to the Executive Secretariat's Office and/or the Office of Security Technology for approval to use an iPhone and/or iPad during her tenure as the Secretary of State. Accordingly, this lawsuit should not tax Defendant's ability to conduct a timely review and production.

3. Given the specificity of Plaintiff's request, Plaintiff believes that Defendant's search can and should be completed promptly, including a search of the 55,000 pages of emails delivered by Mrs. Clinton to the State Department in December 2014 – more than seven months ago.

4. Consistent with agency counsel's representations, Mrs. Clinton's 55,000 pages of emails have been scanned in a database that is electronically searchable to enable Defendant to run specific search terms to locate all responsive records to Plaintiff's FOIA request. In addition, Defendant testified on May 18, 2015 in another FOIA lawsuit, *Leopold v. Department of State*, Case Number 15-cv-00123-RC (D.D.C.) that the State Department's database of Mrs. Clinton's emails would be completed by mid-June. See Decl. of John H. Hackett, EFC. No. 12, *Leopold v. Dep't of State*, Case. No. 15-cv-00123-RC (D.D.C.). We are now in July and the database is complete. There is no reasonable basis to further delay the electronic search to determine the universe of potentially responsive records in this litigation in order to provide the Court and Plaintiff with necessary information to determine a reasonable production schedule.¹

5. The State Department has a statutory duty to search for and produce documents responsive to Plaintiff's FOIA requests in the shortest amount of time. 5 U.S.C. § 552(a)(6)(A); Order, *Leopold*, Case No. 15-00123-RC (D.D.C. May 27, 2015) (DKT No. 17) (ordering the State Department to start producing all 55,000 pages of Hillary Clinton's emails every thirty days, rather than waiting to produce them all at one time in January 2016).

6. Based on the specific request and the nature of the anticipated narrow search, Plaintiff proposes the following proceedings and schedule in this litigation.

7. Defendant should be ordered to complete its search within thirty (30) days. On August 3, 2015, Defendant should file a Status Report with the Court with the results of its

¹ Defendant suggests that it produce responsive, non-exempt records every six weeks – this is similar, although even more elongated, than the production schedule ordered by the court in an unrelated FOIA lawsuit, *Leopold v. Department of State*, Case Number 15-cv-00123-RC (D.D.C.). A prolonged production schedule similar to *Leopold* is not proper in this case. Unlike in this case where Plaintiff seeks records for a very limited nature, the FOIA requester in that case sought every record prepared by Secretary Clinton during her entire four-year tenure. Moreover, for the same stated reasons above, a continuing search through January 2015, as proposed by Defendant, is also not reasonable.

completed search, including the volume of potentially responsive records, when it expects to complete its review of these records, and Defendant's proposal for the final production of all non-exempt, responsive records in this litigation.

8. By August 10, 2015, the parties should be ordered to meet and confer about the final production schedule in this litigation and a file joint status report with the Court by August 24, 2015 with recommendations for a final production schedule.

9. In the meantime, Defendant should be ordered to make its initial production consistent with its suggestion below, by August 20, 2015.

Defendant's Statement and Recommendations

1. Defendant is currently in the process of searching for responsive documents and proposes that it will produce documents responsive to plaintiff's request on a rolling basis beginning on August 20, 2015, and continuing every 6 weeks thereafter with an anticipated completion date of January 29, 2016. This completion date reflects the Department of State's belief that conducting searches for records responsive to Plaintiff's FOIA request will require searching, among other locations, the approximately 55,000 pages of emails provided to the State Department by former Secretary Clinton from her non-'state.gov' account. Per court order in *Leopold v. Dep't of State*, Case No 15-cv-00123 (D.D.C.), the production of the approximately 55,000 pages of emails began on June 30, 2015, and will continue every thirty days thereafter, concluding on January 29, 2016.²

² Plaintiff misconstrues Defendant's proposed six-week production schedule as inconsistent with the order in *Leopold*. As Plaintiff points out, Defendant will be publicly posting productions of the email collection received from former Secretary Clinton every thirty days, which will be available to Plaintiff. The six-week rolling production schedule proposed by Defendant in this case reflects the fact that it is searching multiple components in response to the FOIA request at issue, of which the approximately 55,000 pages of Secretary Clinton's emails would only be one, and thus has determined that six week rolling productions would reasonably allow Defendant to collect, review and produce non-exempt, responsive records. Because the Department is engaging in a multi-layer process

2. Defendant agrees to file a status report regarding the status of the search including the estimated volume of documents on September 1, 2015, and every 90 days thereafter.

3. Defendant proposes that the parties meet and confer once productions are complete to determine if additional briefing is necessary. If additional briefing is necessary, the parties will then submit a joint status report proposing a briefing schedule.

Dated: July 2, 2015

Respectfully submitted,

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to review the approximately 55,000 pages of emails provided to the State Department by Secretary Clinton, Defendant proposes a completion date of January 29, 2016, consistent with the *Leopold* order. Moreover, State currently has numerous FOIA actions which will require Defendant to search the approximately 55,000 pages of emails provided to Defendant by former Secretary Clinton. Thus, even though Plaintiff characterizes this particular FOIA request as narrow, if State performed a “discrete” search in all these FOIA cases, State’s ability to meet the court order in *Leopold* to produce the entire collection by January 29, 2016 may be hampered.