

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civ. No. 1:15-cv-00646 (CKK)
)	
U.S. DEPARTMENT OF STATE,)	
)	
<u><i>Defendant.</i></u>)	

JOINT STATUS REPORT

Plaintiff Judicial Watch, Inc. and Defendant U.S. Department of State, by counsel and pursuant to the Court's Minute Order entered July 7, 2015, respectfully submit this Joint Status Report. In the July 7 Minute Order, the Court required (1) Defendant to make its first production of documents by no later than August 20, 2015 and (2) the parties to file a joint status report by no later than September 1, 2015 in which the parties propose a schedule for further productions and indicate the volume and scope of responsive documents. The parties are unable to agree on a proposed schedule and submit their separate statements and recommendations to the Court below.

Plaintiff's Statement and Recommendations

1. The Court's July 7 Minute Order clearly required Defendant to "make its first production of responsive records by no later than August 20, 2015," and indicate the volume and scope of responsive documents. Defendant failed to meet its obligations on all fronts.

2. In the past sixty (60) days – since the parties' last Joint Status Report on July 2, 2015 – Defendant produced two pages of responsive email records (see emails attached as Exhibit 1), its production was late (see August 27, 2015 email attached as Exhibit 2) and it has

not provided the information requested in the Court's July 7, 2015 order concerning the scope and volume of all potentially responsive records.

3. On August 27, 2015, one week after the Court-ordered production deadline, Defendant produced its first set of records via email in response to Plaintiff's FOIA requests. The production consisted of two pages of an email string dated February 2, 2009 between Eric J. Boswell, Donald R. Reid, Patrick D. Donovan and one other unidentified official, with the subject line "PDAs for S and S Staff." *See* Ex. 1. Defendant withheld a third email in full on the allegation that it is exempt under FOIA. *Id.*

4. Concerning the scope of the search, Defendant indicates only that it initiated searches of the Bureau of Diplomatic Security ("DS") and the Office of the Executive Secretariat ("S/ES"). *Id.* Defendant did not indicate how many records it reviewed as part of the initial production of two emails.

5. On August 27, 2015, Defendant indicated while conferring with Plaintiff that it located an additional 250 pages of potentially responsive records. Defendant did not indicate when it located these records, where it located these records and why it did not include these records in its review of the initial production. Defendant also stated that its search was ongoing, but did not give any indication when it will complete its search of all potentially responsive records. It also did not indicate the scope of the search or the volume of all potentially responsive records. Plaintiff requested that Defendant supplement its response and provide this information before today's Joint Status Report. Defendant did not do so.

6. Defendant remains unwilling to provide a time estimate of when it will complete its initial search of potentially responsive records, the scope of its search, and the volume of all potentially responsive records. Defendant has yet to identify the search terms it used to

commence its search of DS and S/ES. For example, two emails posted late yesterday evening by Defendant on its FOIA online page refer to the iPad requested by Secretary Clinton as an “hPad.” The email communications are between Secretary Clinton (hrod17@clintonemail.com), Philippe Reines (an unidentified non-state.gov email account, “PIR<preines...”), and Huma Abedin and are dated June 25, 2010 and June 26, 2010. A copy of the email communications is attached hereto as Exhibit 3. The terms “hPad” and “hPhone” should be among the searched terms for emails potentially responsive to Plaintiff’s FOIA requests.

7. As previously stated, Plaintiff is in the same position it was on July 2, 2015, without any understanding of the complete volume of potentially responsive records and the scope of the search. Defendant took two months to produce two emails and will not disclose how many records it reviewed to produce those emails. Now, Defendant identifies only 250 pages of potentially responsive records and requests a rolling production schedule until January 29, 2015. Plaintiff respectfully requests an order mandating that Defendant take the following actions within one week of the Court’s Order:

- a. Identify the search terms used to locate potentially responsive records;
- b. Identify all sources that are reasonably likely to contain responsive records; and
- c. Complete the search of those sources and identify the volume of all potentially responsive records to Plaintiff’s FOIA requests.¹

¹ Defendant’s request to complete its production of records on a rolling basis until January 29, 2015 is unreasonable based on the facts known to date. See 7/2/15 Joint Status Report (ECF No. 8) at Def. Stmt. ¶ 1. To date, Defendant identified only 250 pages of potentially responsive records. Moreover, Defendant acknowledged on May 18, 2015 that it has already completed digitizing the 30,940 emails returned by Secretary Clinton in December. See e.g. Declaration of John F. Hackett, filed in *Leopold v. Dep’t of State* (Case No. 15-123) (RC) (D.D.C.) (ECF No. 12-1) at ¶ 15. An electronic search of the emails with agreed upon search terms should not be time consuming and would yield the volume of potentially responsive records.

Without this information, Plaintiff and the Court are unable to establish a reasonable production schedule of all records responsive to Plaintiff's FOIA requests.²

8. At approximately 9:38 a.m. this morning, undersigned counsel received an email from agency counsel seeking Plaintiff's position on two motions referenced in Paragraphs 3 through 5 under Defendant's Statement below. Defendant gave Plaintiff six hours and twenty-two minutes, until 4:00 p.m., to decide its position on the motions, which Defendant proposed would affect sixteen pending cases filed by Plaintiff. Plaintiff has not had an opportunity to yet understand what Defendant proposes to file in these cases, and certainly has not an opportunity to consider its position on the motions Defendant proposes.

Defendant's Statement and Recommendations

1. As required by the previous Court Order, the Defendant has made one initial production of responsive documents.³ Contrary to Plaintiff's assertions, the Defendant has communicated to Plaintiff both the volume and scope of potentially responsive records retrieved to date, identifying the locations reasonably likely to retain responsive records as the Office of the Executive Secretariat and the Bureau of Diplomatic Security. The search is an iterative process, in which the retrieval of certain records may provide the Defendant with more information regarding potential search terms or custodians. This search for responsive records is ongoing, and to date, approximately 250 pages of potentially responsive records have been

² Plaintiff reserves its rights to challenge the scope and adequacy of Defendant's search for responsive records.

³ Plaintiff asserts that Defendant has failed to meet its obligations as required by the July 7 Order because the initial production was received later than August 20. As the attached cover letter shows, in accordance with the Court's order, the initial production was processed and assembled for release on August 20, 2015. (Def. Ex.A) The Defendant and Defendant's counsel were unaware that the envelope was not processed by the mailroom until August 24th. Regardless, once counsel was notified that Plaintiff had not received the documents, the Defendant was immediately contacted and electronic versions of the documents were sent to Plaintiff's counsel that same day. Thus, the few days delay was inadvertent and corrected immediately.

retrieved. The Defendant proposes that the current six week rolling production schedule be maintained, and anticipates that it can process the approximately 250 pages of potentially responsive material retrieved to date no later than November 12, 2015.

2. In addition to the ongoing search for responsive documents, as explained to the Court in the previous status report, the Defendant also intends to search for records responsive to Plaintiff's FOIA request in the approximately 55,000 pages of emails that have been provided to the State Department by former Secretary Clinton from her non-'state.gov' account (the "Clinton email collection"). Per the 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 will conclude on January 29, 2016.⁴

3. On September 1, 2015, counsel for the Department of Justice contacted counsel for Judicial Watch seeking plaintiff's position on two motions. First, the Department of State intends to file a motion with the Chief Judge seeking designation of a coordinating judge for resolution and management of common issues of law, fact, and procedure across numerous FOIA suits, including this case, that implicate the search and production of documents that were provided to the Department by former Secretary of State Hillary Clinton and, to the extent applicable, certain other former employees (Cheryl Mills, Huma Abedin, Jacob Sullivan, and Philippe Reines) (the "recently provided documents"). The Department of Justice counsel

⁴ Plaintiff disagrees with this proposed schedule and asserts that it should be completed on a shorter schedule. See footnote 1. As explained in the July 2, 2015 Joint Status Report, the Defendant is publicly posting productions of the email collection received from former Secretary Clinton every thirty days, which are and will be available to Plaintiff. Because the Defendant is engaging in a multi-layer process 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 suggests an immediate search of the records would be narrow, if State performed a "discrete" search in all these FOIA cases, Defendant's ability to meet the court order in *Leopold* to produce the entire collection by January 29, 2016 may be hampered.

explained that, in this case as in all the coordinated cases, the original Court would retain the case for all other purposes, including searches for responsive records other than the recently provided documents. The motion envisions coordination of common issues such as the scheduling of searches of the recently provided documents, potential requests for information and discovery about those documents, and potential requests for orders relating to preservation. The Department of Justice counsel further explained that the coordination motion will be filed in a miscellaneous action. Once it is filed, the Department will file a notice in this case, along with a copy of the motion itself.

4. Second, Defendant intends to file a motion in this case seeking a stay of those portions of the case addressing the recently provided documents until the coordination motion is decided, and, if it is granted, until the coordinating judge issues an order determining how the search and production of the recently provided documents is to proceed in the cases listed in that motion. The stay sought would not affect those portions of this case that deal with the search and production of other documents. Counsel for Judicial Watch has not yet indicated whether plaintiff will oppose either motion.

5. For those documents outside of the scope of the coordination motion, Defendant will continue to provide responsive documents to plaintiff on a rolling basis every six weeks consistent with this previous Court's Minute Order. At this point, Defendant continues to anticipate a completion date of January 29, 2016. If, due to the anticipated motion for coordination, this date should change, Defendant will notify the Court of such change in a status report.

6. In paragraph 7, Plaintiff inappropriately requests an order mandating that Defendant takes the following actions within one week of the Court's Order:

- a. Identify the search terms used to locate potentially responsive records;
- b. Identify all sources that are reasonably likely to contain responsive records; and
- c. Complete the search of those sources to identify the volume of all potentially responsive records to Plaintiff's FOIA requests.

7. This request should be denied. First, Plaintiff's request is not appropriately made in a joint status report; it asks for specific relief and should be brought as a motion. Second, until Defendant completes its search for documents responsive to Plaintiff's FOIA request, Defendant is unable to provide Plaintiff with a reasonable estimate of the volume of documents that is likely to be responsive to that request. As we stated above, the search is still ongoing. Finally, Plaintiff's requests that Defendant identify search terms and all sources that are reasonably likely to contain responsive records are premature. The specific details of the search are generally provided by an agency in a declaration filed with the Court during summary judgment briefing. Rather than seeking this information via a status report while Defendant's searches are ongoing, Plaintiff should present any objections it may have concerning any search declarations if and when it opposes Defendant's motion for summary judgment. *See Miscavige v. IRS*, 2 F.3d 366, 369 (11th Cir. 1993) (finding that "[g]enerally, FOIA cases should be handled on motions for summary judgment" in rejecting plaintiff's "early attempt" to litigate discovery before "the government has first had a chance to provide the court with the information necessary to make a decision").

8. Defendant will file a status report updating the Court of the status of the search every 90 days.

9. The parties will 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: September 1, 2015

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director

/s/ Ramona R. Cotca
RAMONA R. COTCA
D.C. Bar No. 501159
Judicial Watch, Inc.
425 Third Street, S.W., Suite 800
Washington DC 20024
Tel: (202)646-5172
Fax (202)646-5199

Counsel for Plaintiff

/s/ Marsha Stelson Edney
MARSHA STELSON EDNEY(DC Bar #414271)
Senior Trial Counsel
U.S. Department of Justice, Civil Division
Federal Programs Branch
20 Massachusetts Ave N.W.
Washington DC 20530
Tel: (202) 514-4520
Fax: (202) 616-8470
Email: marsha.edney@usdoj.gov

Attorneys for Defendant

EXHIBIT 1

DS011

RELEASE IN PART
B5, B7(C)

Reid, Donald R

From: Reid, Donald R
Sent: Monday, February 02, 2009 2:03 PM
To:
Subject: RE: PDAs for S and S Staff

REVIEW AUTHORITY: Barbara Nielsen, Senior
Reviewer

B7(C)

Stay in the loop

B5
B7(C)

From: [REDACTED]
Sent: Monday, February 02, 2009 1:46 PM
To: Reid, Donald R
Subject: RE: PDAs for S and S Staff

B7(C)

[REDACTED] is making contact

B7(C)
B5

With knowledge on the exact device....we can determine how to proceed with Brief for Boswell. [REDACTED]

B7(C)

From: Reid, Donald R
Sent: Monday, February 02, 2009 12:32 PM
To: [REDACTED]
Subject: FW: PDAs for S and S Staff

B7(C)

Don't know much about this...any insight [REDACTED]

B5

From: Boswell, Eric J
Sent: Monday, February 02, 2009 8:46 AM
To: Reid, Donald R
Cc: [REDACTED] Donovan, Patrick D
Subject: PDAs for S and S Staff

B7(C)

On the off chance that S staff continues to push for S or TS-capable PDAs, [REDACTED]

B5

I'll need a briefing on what we know [REDACTED] Pls schedule.

B5

UNCLASSIFIED U.S. Department of State Case No. F-2015-05028 Doc No. C05838712 Date: 08/20/2015

DS012

Reid, Donald R

RELEASE IN PART
B5,B7(C)

From: Reid, Donald R
Sent: Monday, February 02, 2009 5:55 PM
To: [REDACTED]
Subject: FW: PDAs for S and S Staff

B7(C)

REVIEW AUTHORITY: Barbara Nielsen, Senior
Reviewer

From: Donovan, Patrick D
Sent: Monday, February 02, 2009 5:12 PM
To: Boswell, Eric J; Reid, Donald R
Cc: [REDACTED]
Subject: RE: PDAs for S and S Staff

B7(C)

ERIC, Don and I will coordinate a briefing for you from ST and SI. Pat

From: Boswell, Eric J
Sent: Monday, February 02, 2009 8:46 AM
To: Reid, Donald R
Cc: [REDACTED] Donovan, Patrick D
Subject: PDAs for S and S Staff

B7(C)

On the off chance that S staff continues to push for S or TS-capable PDAs, [REDACTED]

B5

I'll need a briefing on what we know [REDACTED] Pls schedule.

B5

1



United States Department of State

Washington, D.C. 20520

AUG 20 2015

Case No. F-2015-05028

Segments: DS-0001

Kate Bailey
Judicial Watch
425 Third Street, SW, Suite 800
Washington, DC 20024

Dear Ms. Bailey:

In response to your request dated March 10, 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 systems: the Bureau of Diplomatic Security (DS) and the Office of the Executive Secretariat (S/ES).

The search of the records of DS is ongoing and has resulted in the retrieval three records responsive to your request. After reviewing these documents, we have determined that two may be released in part and one must be withheld in full.

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. For the one document withheld in full, we have cited the following FOIA exemptions: 5 U.S.C. § 552 (b)(1), (b)(5) and (b)(7)(C). All released material is enclosed.

If you have any questions, you may contact Marsha Edney, Trial Attorney, at (202) 514-4520 or Marsha.Edney@usdoj.gov. Please be sure to refer to the case number, F-2015-05028, and the civil action number, 15-cv-00646, in all correspondence about this case.

Sincerely,

A handwritten signature in cursive script, reading "Susan O. Williams" followed by a small "for" in the margin.

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

Enclosures: As stated

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

- (b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

- (b)(2) Related solely to the internal personnel rules and practices of an agency

- (b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

- (b)(4) Trade secrets and confidential commercial or financial information

- (b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

- (b)(6) Personal privacy information

- (b)(7) Law enforcement information whose disclosure would:
- (A) interfere with enforcement proceedings
 - (B) deprive a person of a fair trial
 - (C) constitute an unwarranted invasion of personal privacy
 - (D) disclose confidential sources
 - (E) disclose investigation techniques
 - (F) endanger life or physical safety of an individual

- (b)(8) Prepared by or for a government agency regulating or supervising financial institutions

- (b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

- NR Material not responsive to a FOIA request excised with the agreement of the requester

EXHIBIT 2

Ramona Cotca

From: Ramona Cotca
Sent: Thursday, August 27, 2015 4:21 PM
To: Tom Fitton; Paul Orfanedes (POrfanedes@JUDICIALWATCH.ORG); Chris Farrell
Subject: FW: Here is an electronic version of the production that was sent last week
Attachments: 2015.8.30 Production 1.pdf

Attached is State's initial production re requests for iPad/iPhone use. 2 records so far. 1 State withheld in its entirety under b(1), b(5) and b(7)

From: Edney, Marsha (CIV) [<mailto:Marsha.Edney@usdoj.gov>]
Sent: Thursday, August 27, 2015 4:09 PM
To: Ramona Cotca
Subject: Here is an electronic version of the production that was sent last week

Ramona Cotca

From: Ramona Cotca
Sent: Thursday, August 27, 2015 1:16 PM
To: 'Edney, Marsha (CIV)'
Subject: RE: I put together a draft of a status report for you to review before

Thanks. I appreciate that. If you could see about having them emailed since it's been a week past the deadline, that would be most appreciated. In regards to the third item, my inquiry relates to where the State Department is searching and the status of the search. The language proposed in the draft statement you emailed earlier today has an indefinite period for the search. I think it will be easier to address these issues by telephone, but I wanted to let you know my initial concerns in advance of the call, based on the proposed filing.

Ramona

Ramona R. Cotca
Judicial Watch
(202)646-████, direct

From: Edney, Marsha (CIV) [<mailto:Marsha.Edney@usdoj.gov>]
Sent: Thursday, August 27, 2015 1:07 PM
To: Ramona Cotca
Subject: RE: I put together a draft of a status report for you to review before

I will check with the client on the documents and see how to get it sent again.
The 250 set for the were not included in the initial production.
As for your third question I am not sure I understand what specific information you are asking for.

Marsha

From: Ramona Cotca [<mailto:rcotca@JUDICIALWATCH.ORG>]
Sent: Thursday, August 27, 2015 12:55 PM
To: Edney, Marsha (CIV)
Subject: RE: I put together a draft of a status report for you to review before

Marsha,

A few initial points I would like to discuss this afternoon:

- It has been a week and my client has still not received the production. If you could email me a copy of what supposed to have been mailed on Thursday, 8/20, I would appreciate it.
- The 250 pages of potentially responsive records referenced in paragraph 1, are those the records allegedly mailed on 8/20? Are they a separate set of potentially responsive records?
- What is the status of the search (outside of the 55,000 pages of Mrs. Clinton returned in December)? What are the parameters of the search?

I look forward to speaking with you. Thank you.
Ramona

Ramona R. Cotca
Judicial Watch
(202)646-████, direct

Ramona Cotca

From: Ramona Cotca
Sent: Monday, August 31, 2015 2:46 PM
To: 'Edney, Marsha (CIV)'
Subject: RE: Judicial Watch v. State Department (15-646)

Judicial Watch received the records mailed by State on Friday, 8/28. The postage stamp is dated Monday, August 24 and USPS date stamped the envelope Tuesday, August 25.

From: Edney, Marsha (CIV) [<mailto:Marsha.Edney@usdoj.gov>]
Sent: Monday, August 24, 2015 9:19 AM
To: Ramona Cotca
Subject: RE: Judicial Watch v. State Department (15-646)

I was informed last Friday that the production was mailed to Judicial Watch on Thursday so you should receive it shortly. I understand that we have to file a joint status report on Sept 1. I will be out of the office on Aug 28 and 31 so we should set up a time to talk—are you available on either Wed the 26th or Thurs the 27th in the afternoon to have a discussion

From: Ramona Cotca [<mailto:rcotca@JUDICIALWATCH.ORG>]
Sent: Saturday, August 22, 2015 5:16 PM
To: Edney, Marsha (CIV)
Subject: Judicial Watch v. State Department (15-646)

Marsha,

I notice the first production of records in the case referenced above was due Thursday, August 20. My client has not received the production. I appreciate if you could let me know the status. Thank you.

Ramona

Ramona R. Cotca
Senior Attorney
Judicial Watch, Inc.
425 Third Street, SW
Suite 800
Washington, DC 20024
(202)646-5172, ext. 328
(202)646-5199, *facsimile*
rcotca@JudicialWatch.org

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AUGIS IPS
RM 8100, SA-2
WASHINGTON, DC 20522

AN EQUAL OPPORTUNITY EMPLOYER



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



RETURNED TO
RECEIVER

EXHIBIT 3

RELEASE IN
PART B6

From: H <hrod17@clintonemail.com>
Sent: Saturday, June 26, 2010 7:24 AM
To: 'preines' [redacted]
Subject: Re: hPad

B6

That is exciting news--do you think you can teach me to use it on the flight to Kyev next week?

----- Original Message -----

From: PIR <preines [redacted]>
To: H
Cc: Huma Abedin
Sent: Fri Jun 25 20:23:28 2010
Subject: hPad

your iPad has arrived!

DEFENDANT'S EXHIBIT A



United States Department of State

Washington, D.C. 20520

AUG 20 2015

Case No. F-2015-05028

Segments: DS-0001

Kate Bailey
Judicial Watch
425 Third Street, SW, Suite 800
Washington, DC 20024

Dear Ms. Bailey:

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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. For the one document withheld in full, we have cited the following FOIA exemptions: 5 U.S.C. § 552 (b)(1), (b)(5) and (b)(7)(C). All released material is enclosed.

If you have any questions, you may contact Marsha Edney, Trial Attorney, at (202) 514-4520 or Marsha.Edney@usdoj.gov. Please be sure to refer to the case number, F-2015-05028, and the civil action number, 15-cv-00646, in all correspondence about this case.

Sincerely,

A handwritten signature in cursive script that reads "Susan A. Weimer" followed by a small "for" and a flourish.

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

Enclosures: As stated