

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

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 12-00893 (JDB)
)	
U.S. DEPARTMENT OF STATE, et al.)	
)	
<i>Defendants.</i>)	
_____)	

PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO STAY

Plaintiff Judicial Watch, Inc. (“Judicial Watch”), by counsel, respectfully submits this opposition to Defendants’ Motion to Stay Pending Resolution of Its Motion for Designation of Coordinating Judge (“coordination motion”).¹ As grounds therefor, Judicial Watch states as follows:

STATEMENT OF POINTS AND AUTHORITIES

1. Defendant U.S. Department of State seeks to stay – and further delay – at least a portion of its response to the nearly 4 year old Freedom of Information Act (“FOIA”) request at issue in this litigation. The proposed stay would appear to encompass any issues regarding the emails of former Secretary of State Hillary Rodham Clinton and certain emails and records of at least four of Secretary Clinton’s top aides – Huma Abedin, Cheryl Mills, Philippe Reines, and Jacob Sullivan.

2. On September 30, 2011, Plaintiff served two FOIA requests for records related to Anwar al-Awlaki, a/k/a Anwar Aulaqi, deceased on September 30, 2011. One request was

¹ The motion to stay is styled on behalf of both Defendants, although the relief requested appears to be on behalf of Defendant Department of State only. Whether the request to stay proceedings is made on behalf of one or both Defendants, the request should be treated as opposed by Plaintiff in its entirety.

served on Defendant State Department and the second request for the same records was submitted to Defendant Federal Bureau of Investigation (“FBI”).² *See* Exhibit 1. This lawsuit is much farther along than most other FOIA lawsuits Defendant seeks to stay in its “coordination motion.” A stay would only halt the progress made by the parties of these long over-due responses to Plaintiff’s FOIA requests.

3. The Court ordered Defendant State Department to begin releasing its first production of non-exempt responsive records by September 28, 2012 and continue to release additional productions of any non-exempt responsive records every month, beginning January 31, 2013, until the review and processing of all potentially responsive records is complete. *See* Aug. 30, 2012 Order (ECF No. 15).

4. Two years later, on December 18, 2014, Defendants represented that production of all non-exempt records responsive to Plaintiff’s requests were complete, except for certain records referred by Defendant State Department to non-party agencies for processing and review. *See* Dec. 18, 2014 Joint Status Rpt. at pp. 1-2 (ECF No. 27). Defendant State Department did not inform Plaintiff or the Court at that time about the 30,490 federal records returned by Secretary Clinton.

5. On August 10, 2015, the Department of Defense, the last of the non-party agencies that was referred records for review by Defendant State Department, completed its review and produced the final non-exempt responsive records to Plaintiff. Sep. 14, 2015 Joint Status Rpt. at p. 1 (ECF No. 32).

² Plaintiff’s Complaint challenges responses to the FOIA requests served on each of the Defendants on September 30, 2011. Defendant’s motion concerns only the request submitted to Defendant State Department, and not to Defendant Federal Bureau of Investigation (“FBI”). Accordingly, in the unlikely event the Court might consider a stay, it would only be a partial stay of that portion of the litigation concerning the request to Defendant State Department.

6. Additionally, Defendants produced draft *Vaughn* indexes to Plaintiff on June 19, 2015. Defendant State Department produced a supplemental draft *Vaughn* index on August 10, 2015 to include all responsive records recommended for withholding by the Department of Defense. *Id.* The parties agreed to limit draft *Vaughn* indexes to records withheld in full in an effort to narrow any claims of exemptions, if possible. July 24, 2015 Joint Status Rpt. at pp. 1-2 (ECF No. 28).

7. The only remaining issue concerning Defendant State Department's production of records before the parties can begin to narrow claims of exemption or commencement of summary judgment briefing is the production of the emails and records of former Secretary Clinton and some of her senior aides – Cheryl Mills, Huma Abedin, Jacob Sullivan and Philippe Reines – to the extent the records are potentially responsive. In light of the revelation that Secretary Clinton exclusively used a “clintonemail.com” email server for her government work at the State Department, Plaintiff raised concerns about Defendant State Department's production of responsive records.³ *See* Exhibit 2; *see also* Sep. 14, 2015 Joint Status Rpt. at p. 2. Plaintiff has asked that the search of all remaining potentially responsive records be conducted expeditiously given that Defendant State Department has acknowledged that the records are now readily searchable and have been searched in response to other FOIA requests. *Id.*; *see e.g.*, Sep. 22, 2015 Minute Order entered in *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 13-1363 (EGS) (D.D.C.); Defendant's Status Report, filed in *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 13-1363 (EGS) (D.D.C.) (ECF No. 26), at 2; Declaration of John F. Hackett, filed in

³ Plaintiff reserves all rights to challenge Defendants' search and withholdings in this case. Former Secretary Clinton's exclusive use of a “clintonemail.com” email server during her term as the head of the agency raises a host of legal questions about Defendant State Department's obligations under FOIA. On September 16, 2015, Plaintiff most recently raised concerns about reported gaps in the records returned by Secretary Clinton. *See* Exhibit 2 at p. 1. Defendant has not yet responded to Plaintiff's communication about this issue.

Leopold v. U.S. Dep't of State, Case No. 15-123 (RC) (D.D.C.) (ECF No. 12-1), at ¶¶ 15, 19.

Defendant State Department prefers to wait until January 2016 to commence the search. *See* Sep. 14, 2015 Joint Status Rpt. at p. 2. Judicial Watch offered to meet with the State Department to try to reach agreement on a schedule for completing searches of Secretary Clinton's emails that would take into account other FOIA cases and other FOIA requestors, but the State Department did not respond.⁴ *See* Exhibit 3. Regardless, neither a "coordinating judge" nor a stay pending the designation of a "coordinating judge" is necessary to resolve the relatively simple scheduling dispute about federal records remaining to be searched, to the extent Defendant believes it has an obligation to search them in response to Plaintiff's FOIA request.

8. The State Department has asserted in other litigation that it has no obligation to search records returned by Secretary Clinton's top aides. *See* Joint Status Report, *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 15-692 (APM) (D.D.C.) (July 29, 2015) (ECF No. 11) at 7 n.3. ("Defendant maintains that a reasonable search . . . only requires a search of the Clinton emails. While it is true that Defendant has agreed to an additional discrete search – specifically, to search any emails that . . . it has received from Ms. Mills, Mr. Sullivan, and Ms. Abedin – it did not do so because it believes the FOIA requires such a search."); Defendant's Opposition to Plaintiff's Motion to Allow Time for Limited Discovery Pursuant to Rule 56(d), *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 14-1242 (RCL) (D.D.C.) (Sept. 18, 2015) (ECF No. 27) at 3 ("Despite the fact that it had no obligation under FOIA to do so, State was willing to stay summary judgment briefing and ask the Court to set a schedule to allow it to search those documents for records responsive to the FOIA request, notwithstanding that those records were not in State's possession and control at the time the FOIA search was conducted.");

⁴ The lack of a response by Defendant State Department constitutes a failure to meet and confer. LCvR 7(m).

see also Defendant's Motion to Stay Pending Resolution of Its Motion for Designation of Coordinating Judge, *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 14-1511(ABJ) (D.D.C.) (ECF No. 17) at 4 ("State is willing to search [these records] if Plaintiff so wishes, notwithstanding that those records were not in State's possession and control at the time the FOIA search was conducted.").

9. Plaintiff seeks no less and no more than what FOIA requires. If it is Defendant State Department's position that it must search these materials to satisfy its FOIA obligations, the agency should say so. Plaintiff would then be amenable to discussing a reasonable schedule for completion of this task. If Defendant State Department disputes that it has an obligation to search these materials, it should say so as well. Staying this action indefinitely so that a "coordinating judge" can be appointed to oversee the completion of a task the agency may dispute it has any obligation to undertake puts the cart before the horse.⁵ It also demonstrates that the motion to stay is unfounded.

10. As of September 26, 2015, Defendant State Department had filed motions to stay in only 26 lawsuits, not the 32 it identified in its "consolidation motion." Of those 26 motions, 6 have been denied. *See* Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 13-1363 (EGS) (D.D.C.) (Sept. 11, 2015); Minute Order, *Bauer v. Central Intelligence Agency*, Case No. 14-963 (APM) (D.D.C.) (Sept. 16, 2015); Minute Order, *Joseph v. U.S. Dep't of State*, Case No. 14-1896 (RJL) (D.D.C.) (Sept. 10, 2015); Minute Order, *Citizens United v. U.S. Dep't of State*, Case No. 15-374 (EGS) (D.D.C.) (Sept. 11, 2015); Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-692 (APM) (D.D.C.) (Sept. 16, 2015); Minute Order, *Citizens United v.*

⁵ If Defendant State Department disputes that it has an obligation to search these materials, but asserts that it will do so voluntarily, it has provided no assurances to this effect. A voluntary search also would raise substantial questions about this Court's jurisdiction to adjudicate issues about the scope of the agency's search and any claims of exemption.

U.S. Dep't of State, Case No. 15-1031 (EGS) (D.D.C.) (Sept. 11, 2015). Only one motion has been granted, and that ruling was issued before the requestor even filed a response. *See* Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 14-1511 (ABJ) (D.D.C.) (Sept. 10, 2015). A second was granted in part and denied in part. *See* Minute Order, *Citizens United v. U.S. Dep't of State*, Case No. 15-518 (ABJ) (D.D.C.) (Sept. 18, 2015). A third is being held in abeyance. *See* Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of Justice*, Case No. 15-321 (CKK) (D.D.C.) (Sept. 9, 2015).

11. Although Defendant State Department downplays it in its motion, the agency not only seeks an order designating a “coordinating judge,” but also an order transferring 32 ongoing FOIA cases pending before 16 district judges to whomever is designated as the “coordinating judge.” This “coordinating judge” will then decide “common legal, factual, and procedural issues.” The law could not be any clearer that one district judge cannot order another district judge to take action in a case pending before that judge. *See, e.g., Klayman v. Kollar-Kotelly*, 2013 U.S. App. LEXIS 10148 (D.C. Cir. May 20, 2013); *In re McBryde*, 117 F.3d 208 (5th Cir. 1997). It makes no difference if the district judge issuing the order is the chief judge or the order is an order of reassignment. *In re McBryde*, 117 F.3d at 225 (“[N]ot one case upholds reassignment of a pending case by a chief judge without the consent of the presiding judge.”). As a result, it is highly unlikely that Defendant State Department will prevail on its coordination/transfer motion. There is no reason to stay this action pending a ruling in Defendant’s State Department’s meritless miscellaneous action. *See also* Respondent Judicial Watch, Inc.’s Motion to Dismiss, or, in the Alternative, Opposition to Designation/Transfer Motion, *In re U.S. Dep't of State FOIA Litigation Regarding Emails of Certain Former Officials*, Case No. 15-ms-1188 (Unassigned) (D.D.C.) (ECF No. 24) (Sept. 14, 2015).

WHEREFORE, Judicial Watch respectfully requests that the motion to stay be denied.

Dated: September 28, 2015

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca

Ramona R. Cotca, D.C.

Bar No. 501159

425 Third Street SW, Suite 800

Washington, DC 20024

Tel: (202) 646-5172

Fax: (202) 646-5199

Email: rcotca@judicialwatch.org

Attorneys for Plaintiff

EXHIBIT 1



**Judicial
Watch®**
*Because no one
is above the law!*

September 30, 2011

VIA CERTIFIED MAIL & FACSIMILE (202) 261-8579

Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, DC 20522-8100

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Department of State produce, within twenty (20) business days, any and all records concerning, regarding or related to a deceased individual named Anwar al-Awlaki, a/k/a Anwar Aulaqi. This individual was born on April 22, 1971 in Las Cruces, New Mexico and died on or about September 30, 2011. As proof of death, I have enclosed a copy of the New York Times obituary of the individual.

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA...The presumption of disclosure should be applied to all decisions involving FOIA.¹

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a

¹ Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

Department of State

September 30, 2011

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responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)(defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial

Department of State

September 30, 2011

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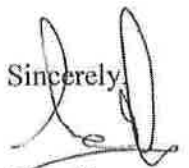
Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or sdunagan@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,

Sean Dunagan
Judicial Watch



**Judicial
Watch®**
*Because no one
is above the law!*

September 30, 2011

VIA CERTIFIED MAIL & FACSIMILE

Federal Bureau of Investigation
Records/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Federal Bureau of Investigation produce, within twenty (20) business days, any and all records concerning, regarding or related to a deceased individual named Anwar al-Awlaki, a/k/a Anwar Aulaqi. This individual was born on April 22, 1971 in Las Cruces, New Mexico and died on or about September 30, 2011. As proof of death, I have enclosed a copy of the New York Times obituary of the individual. As part of this request, Judicial Watch asks that the Federal Bureau of Investigation search its automated indices, its older general (manual) indices, and its Electronic Surveillance (ELSUR) Data Management System (EDMS).

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA...The presumption of disclosure should be applied to all decisions involving FOIA.¹

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the

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Federal Bureau of Investigation

September 30, 2011

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propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term “record” shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

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Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

Federal Bureau of Investigation

September 30, 2011

Page 3 of 3

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).


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Sincerely,



Sean Dunagan
Judicial Watch

EXHIBIT 2

Ramona Cotca

From: Ramona Cotca
Sent: Wednesday, September 16, 2015 1:07 PM
To: Elliott, Stephen (CIV) (Stephen.Elliott@usdoj.gov)
Cc: Powell, Amy (CIV)
Subject: Judicial Watch v. State/FBI (12-893)
Attachments: Doc. re email gap.pdf

Stephen,

In another FOIA case against the State Department (*Judicial Watch v. Dep't of State*, Case No. 15-687), Judicial Watch recently obtained records about the emails Mrs. Clinton returned to the State Department. In one of the emails, which is attached, Deputy Director of Global Information Systems Eric Stein appears to list gaps in the emails that the State Department received from Mrs. Clinton. The documents posted on State Department's FOIA website also reflect the gaps referenced in the attached email.

As you know, Judicial Watch requested records from the State Department while Mrs. Clinton was Secretary of State that relate to Anwar al-Awlaki, a/k/a Anwar Aulaqi. In light of the information recently revealed in the attached email, please confirm that the State Department has received from Mrs. Clinton emails sent by her from January 21, 2009 – April 12, 2009 and December 30, 2012 – February 1, 2013 as well as emails received by her from January 21, 2009 to March 17, 2009. Thank you for your attention to this matter. I look forward to your response.

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

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. Sec. 2510-2521 and may be legally privileged. This email is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential or otherwise exempt from disclosure under applicable law. This message may be an attorney-client communication and as such is PRIVILEGED AND CONFIDENTIAL. If you are not the intended recipient, any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and permanently delete the original message. Thank you.

Ramona Cotca

From: Elliott, Stephen (CIV) <Stephen.Elliott@usdoj.gov>
Sent: Wednesday, May 20, 2015 6:47 PM
To: Ramona Cotca
Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)
Attachments: Declaration of John Hackett.pdf

Good Evening Ramona:

In my May 1, 2015 e-mail (below), I said that I would provide you more information about the State Department's efforts to review the approximately 55,000 e-mails from former Secretary Clinton once more information became available.

I have attached to this correspondence the Declaration of John F. Hackett, which was recently filed in *Leopold v. Department of State*, 15-123 (RC). As described by Mr. Hackett, the purpose of the declaration was: (i) to describe to the Court the Department's plan to review approximately 55,000 pages of e-mails and attachments to those e-mails that former Secretary of State Hillary Clinton provided to the Department in December 2014 and to post the releasable portions of the 55,000 pages on the Department's website, and (ii) to provide a date by which the Department proposes to complete that review and production.

Thanks and enjoy your evening.

Stephen M. Elliott
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
Tel: 202.305.8177
Email: stephen.elliott@usdoj.gov

From: Elliott, Stephen (CIV)
Sent: Friday, May 01, 2015 6:12 PM
To: Ramona Cotca
Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Good Evening Ramona:

I am writing to respond to the two questions you posed on Monday. To begin, the State Department should be able to release the extraneous documents next week. With regard to your question about the approximately 55,000 pages of emails from former Secretary Clinton, the State Department continues to believe that focusing its limited resources on processing and posting the full set of emails first will make the maximum number of records available in the shortest amount of time. This approach will be considerably more efficient than reviewing the documents piecemeal in individual cases. In fact, the Department of Justice and Judicial Watch recently agreed in another FOIA case that this approach made the most sense. In a Joint Motion to Reopen filed today in *Judicial Watch, Inc. v. U.S. Dep't of State*, the parties agreed that "[o]nce the [State] Department has publicly posted the full set of agency records from the emails provided to the [State] Department by former Secretary Clinton, Defendant will search the set for any records responsive to Plaintiff's FOIA request." Case No. 1:12-cv-2034 (RBW), Dkt. No. 21 at 2. In the next several weeks, the State Department will have a better idea about how long it will take to complete the processing of the 55,000 pages, and I will be sure to provide you an update when I have more information.

Enjoy your weekend.

Stephen M. Elliott
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
Tel: 202.305.8177
Email: stephen.elliott@usdoj.gov

From: Ramona Cotca [<mailto:rcotca@JUDICIALWATCH.ORG>]
Sent: Tuesday, April 28, 2015 8:41 PM
To: Elliott, Stephen (CIV)
Subject: Re: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Thank you. Same to you.
Ramona

On Apr 28, 2015, at 7:37 PM, Elliott, Stephen (CIV) <Stephen.Elliott@usdoj.gov> wrote:

Hi Ramona: Thanks for your email. I will get back to you later this week about your specific questions.

Have a nice evening.

Stephen M. Elliott
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
Tel: 202.305.8177
Email: stephen.elliott@usdoj.gov

From: Ramona Cotca [<mailto:rcotca@JUDICIALWATCH.ORG>]
Sent: Monday, April 27, 2015 6:19 PM
To: Patton, Rodney (CIV)
Cc: Elliott, Stephen (CIV)
Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Rodney,
Thank you for clarifying that all emails found in FBI's searches from a [non-state.gov](#) email address, even ones from State Department officials, were included in the records processed by the FBI in response to Judicial Watch's FOIA request.

With respect to a couple of the items listed below, Judicial Watch has some concerns. Specifically, could you please provide a more definite date when Judicial Watch should expect State Department's supplemental production. Judicial Watch was first informed on February 25 that records were left out of the State Department's final production and it has been told since then several times that it should expect these records "shortly."

With respect to the State Department's search of the 55,000 pages of Secretary Clinton's emails, Judicial Watch objects to the Department's further delays in searching those records. The State Department has had a hard copy of those emails from Secretary Clinton since early December and Judicial Watch submitted the FOIA request to the State Department nearly four years ago, when Secretary Clinton was

still in office. This case has been pending three years and Plaintiff should not have to continue to wait for the State Department to search these records further, and certainly not until some uncertain date when the State Department will post the records on its website. Please let me know when you are available to confer by telephone about these pending issues. I can be available most days this week. Thank you very much.

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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From: Patton, Rodney (CIV) [<mailto:Rodney.Patton@usdoj.gov>]
Sent: Monday, April 13, 2015 12:37 PM
To: Ramona Cotca
Cc: Elliott, Stephen (CIV)
Subject: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Ramona:

In your email, dated March 26, you sought clarification of some of the answers I provided to a prior set of questions you posed.

For all documents already produced by State and by FBI, as well as the referred documents processed by other components for which Judicial Watch does not yet have disclosures, I can confirm that the *Vaughn* indices for all of these productions will be served on or before June 19. I can also confirm that the one government component that may not be able to meet the production deadline of May 15 is the Defense Intelligence Agency (DIA). The DIA is processing approximately 1,000 pages, though that number may include duplicates that could be removed from the final production number, and will disclose those documents as well as its *Vaughn* index on or before June 19. Additionally, the State Department's supplemental production is being finalized and responsive documents will be disclosed shortly.

With respect to records that may be affected by the earlier agreement involving documents in the possession of the FBI, the FBI has indicated that, to the extent that emails it found in its searches were from an address *other than* a state.gov email address, those emails would have been included within the pages the FBI processed. With regard to your questions about the approximately 55,000 pages of emails, as stated previously the State Department will review the emails from former Secretary Clinton and will make those emails available to the public, consistent with FOIA, by posting them on the State Department's website. The review of these materials will likely require consultation with a broad range of subject matter experts within the Department and other agencies. After that review and production has occurred, State will review the same 55,000 pages for documents responsive to the specific FOIA requests at issue in this case. As stated in our previous email to you, allowing the

Department to focus its limited resources on processing and posting the full set of emails first will make the maximum number of records available in the shortest amount of time, and will be considerably more efficient than reviewing the documents piecemeal in response to multiple subject-specific FOIA requests, including those in litigation.

Finally, to the extent you seek additional information about guidance provided to the Executive Branch regarding capturing official business sent from or received in a personal account, recent guidance can be found at <http://www.archives.gov/records-mgmt/bulletins/2013/2013-03.html> and at <http://www.archives.gov/records-mgmt/bulletins/2014/2014-06.html>.

Thanks,

Rodney

Rodney Patton

Trial Attorney

Federal Programs Branch, Civil Division

U.S. Department of Justice

20 Massachusetts Avenue, NW, Suite 7320

Washington, D.C. 20001

(202) 305-7919 (phone)

(202) 305-2685 (fax)

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From: Ramona Cotca [<mailto:rcotca@JUDICIALWATCH.ORG>]

Sent: Friday, April 03, 2015 4:38 PM

To: Patton, Rodney (CIV)

Cc: Elliott, Stephen (CIV)

Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Sure. Thank you.

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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From: Patton, Rodney (CIV) [<mailto:Rodney.Patton@usdoj.gov>]
Sent: Friday, April 03, 2015 4:35 PM
To: Ramona Cotca
Cc: Elliott, Stephen (CIV)
Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Ramona:

With me being on leave this week until today and others with whom I need to speak unavailable today, I am not able to provide you with a response to your questions today. I should be able to do so on Monday.

Thanks,

Rodney

From: Ramona Cotca [<mailto:rcotca@JUDICIALWATCH.ORG>]
Sent: Friday, March 27, 2015 6:05 PM
To: Patton, Rodney (CIV)
Cc: Elliott, Stephen (CIV)
Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Thank you. Look forward to it. Have a great weekend.

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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From: Patton, Rodney (CIV) [<mailto:Rodney.Patton@usdoj.gov>]
Sent: Friday, March 27, 2015 6:08 PM
To: Ramona Cotca
Cc: Elliott, Stephen (CIV)
Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Ramona:

I received your email below, and I will look into the various questions you pose. Although I will be out of the office for much of next week, I will send a response at some point next week.

Thanks,

Rodney

From: Ramona Cotca [<mailto:rcotca@JUDICIALWATCH.ORG>]
Sent: Thursday, March 26, 2015 6:02 PM
To: Patton, Rodney (CIV)
Cc: Elliott, Stephen (CIV)
Subject: RE: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Thank you Rodney for the response below. I have some follow-up questions and will number them as they appear in your email.

1. To confirm, all draft *Vaughns* will be served by June 19, 2015. With respect to the "one government component" that will produce records by June 19, JW would like the draft *Vaughn* that corresponds to that search by June 19 as well. Can you please confirm?
2. Which "government component" may not be able to produce the records by May 15? How many pages of records are we talking about? As Stephen and I have discussed in prior conversations, Judicial Watch is very interested in moving the case forward. This case has been pending for nearly three years now.
3. With respect to records that may be affected by the earlier agreement, is the FBI declaring that it did not withhold any email originating from the State Department official/employee with a non-"state.gov" email address as non-responsive due to the earlier agreement? In other words, is the FBI declaring that it reviewed and produced all non-exempt emails that originated from State Department official(s) with a non-"state.gov" email address sent to the FBI or other agencies to the extent they include information relevant to Judicial Watch's FOIA request?
4. In reference to the emails returned by Secretary Clinton in December, when does the State Department expect to produce those in this litigation? As I stated during our conference call with respect to the other pending productions, Judicial Watch needs a proposed schedule for all productions still pending. We can't just let a production remain pending until some indefinite time. This litigation has been pending against the State Department since June 2012. FYI, the State Department has agreed in another pending litigation (Judicial Watch v. State 14-1242) that it will review those emails and produce all responsive, non-exempt emails to that request by April 2. Why can it not do the same here? Please provide the State's expected production of those emails or let me know if State will not provide an expected production date in this litigation.
5. When was the notice sent to State Department's employees referenced in paragraph 5? Could you please provide a copy of the notice?

Your email did not address the supplemental production by State Department. As I understood from Stephen before he left on leave, a limited number of records from State "fell through the cracks" and were inadvertently not produced. I understood this production to be coming quickly, especially in light of the error, but it has been some time now since then. Please provide the status of this production.

If you have any questions or think it may be easier to discuss by telephone, please don't hesitate to give me a call. Thanks again for your attention to this.

Regards,
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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From: Patton, Rodney (CIV) [<mailto:Rodney.Patton@usdoj.gov>]
Sent: Thursday, March 19, 2015 10:01 PM
To: Ramona Cotca
Cc: Elliott, Stephen (CIV)
Subject: Judicial Watch v State/FBI; 12-cv-893 (DDC)

Ramona:

I am writing to respond to various questions you raised in your March 4 and March 6 emails as well as requests you made during our telephone conference of March 16. First, I can confirm that, with regard to documents withheld in full, the Government will provide Judicial Watch with draft *Vaughn* indices for the pertinent government components (including those to whom documents were referred) on or before June 19, 2015, except with respect to the documents described in the fourth paragraph of this email or as may otherwise be noted below.

Second, with the exception of documents from one government component and the documents described in the fourth paragraph of this email, I can confirm that disclosure of responsive, non-exempt documents will be completed on or before May 15. Although the Government will make all practicable efforts to disclose the documents from that one government component prior to May 15, those documents will be disclosed no later than the production of the *Vaughn* indices on June 19. In the meantime, the Government will disclose responsive, non-exempt documents on a rolling basis as they become available for production.

Third, we do not believe it is necessary for the FBI to process and disclose responsive, non-exempt documents that were subject to the parties' prior agreement. Under that agreement, the FBI did not need to process and review documents that originated from the State Department. As I understand your March 6 email, Judicial Watch's concern with this agreement now is that any potentially responsive emails sent by State Department officials through non-"state.gov" email addresses would not have been captured by the State Department's FOIA searches. As a result, Judicial Watch now wants the FBI to process those documents that originated from the State Department so as to capture any emails sent to FBI by employees or officials of the State Department who used a non-"state.gov" email address to send the message. We do not believe this is necessary, however, because the FBI has confirmed that emails that were responsive to the search it previously conducted in this case and that did not contain "state.gov" email addresses have already been processed and, if appropriate, disclosed. We have therefore not included the additional time that may be necessary to restart this process in our calculation of deadlines.

Fourth, you requested on March 4 that we "confirm that the State Department has searched the 55,000 pages of emails turned over by Secretary Clinton." Given the considerable public interest in the emails provided by former Secretary Clinton to the Department of State, the Department of State plans to review the collection for public release, consistent with the

FOIA, and to make the documents available to the public by posting them on a Department website. This will make the maximum number of records available in the shortest amount of time, and will be considerably more efficient than reviewing the documents piecemeal in response to subject-specific FOIA requests. Once the collection has been posted, the Department will search for records responsive to your request.

Finally, in response to the request in your March 4 email asking us to confirm that the State Department is searching or has searched the non-"state.gov" email addresses of other State Department officials and employees who may have used their personal email to conduct official business, please note that State Department employees have been put on notice that email messages covering official business sent from or received in a personal account are to be captured and preserved in one of the Department's official electronic records systems. The FOIA does not create an obligation on an agency to search for and produce records that it does not possess or control and so the State Department searches only official records systems for records responsive to a FOIA request.

Thanks,

Rodney

Rodney Patton

Trial Attorney

Federal Programs Branch, Civil Division

U.S. Department of Justice

20 Massachusetts Avenue, NW, Suite 7320

Washington, D.C. 20001

(202) 305-7919 (phone)

(202) 305-2685 (fax)

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EXHIBIT 3

Paul Orfanedes

From: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>
Sent: Thursday, September 03, 2015 11:17 AM
To: Paul Orfanedes; Berman, Marcia (CIV)
Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Paul,
I asked Rob, and he simply forgot to send the follow up message he had written. Apologies.

From: Paul Orfanedes [mailto:POrfanedes@JUDICIALWATCH.ORG]
Sent: Thursday, September 03, 2015 11:07 AM
To: Shapiro, Elizabeth (CIV); Berman, Marcia (CIV)
Subject: FW: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Elizabeth/Marcia:

Further to our conversation this morning, the last communication I received from Robert Prince was at 11:01 a.m. yesterday. I sent him this email at 1:51 p.m. and a second at 4:04 p.m., which I'm sending you separately. I received no response to either email.

PJO

From: Paul Orfanedes
Sent: Wednesday, September 02, 2015 1:51 PM
To: 'Prince, Robert (CIV)'
Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Robert:

We'd also like to see these cases move forward more efficiently and expeditiously, but I'm not sure how your proposal does that. Maybe I'm not understanding your concerns.

Your proposed order would have the coordinating judge "resolve and manage" all "issues of law, fact, and procedure" regarding the "search and production of responsive records within the recently provided documents." If your concern is coming up with an order for completing searches of the 55,000 Clinton emails between now and the January 29, 2016 date set by Judge Contreras, we're happy to do that for our cases, and we would try to do so in a way that accommodates the other requestors as well. The same would be true for the Abedin, Mills, Reines, and Sullivan materials. At this point however, I'm not sure we have enough information about these latter sets of materials to have an informed discussion, but I'm sure we could work something out. Off the top of my head, I'm not even sure which (or how many) of our 16 cases you listed might implicate these latter sets of materials such that it makes sense to include them all in your proposal. I'm sure the judges in our various cases also would not object to reasonable, agreed, coordinated production schedules.

If your concern is something broader than completing searches of the 55,000 Clinton emails and the Abedin, Mills, Reines, and Sullivan materials, what would your proposal leave for the originally assigned judges to decide? For example, in 14-1242, which is before Judge Lamberth, State moved for summary judgment and we filed Rule 56(d) motion in response. Would your proposal take those motions away from Judge Lamberth and put them on hold? If so,

for how long? What about Judge Sullivan's order in 13-1363 requiring State to ask the FBI for information about what the FBI recovers from the server? Is that within or outside your proposal? You say it's not feasible to have a detailed discussion about how each case might proceed under your proposal, but as I'm sure you can imagine, that is a very important issue, at least for us. In some of our cases, we've been trying to obtain records for more than four years.

If your concern is about requests for information or discovery about the "Clinton server" and related issues – it's not clear to me if that is within or outside your proposal or if it is even an issue in all 16 of our cases, or all 30+ cases you seek to include in your proposal – we might be able to work something out there as well. If the State Department would work with us to enable us to get answers to some of our basic questions in one case, that same information could be used in other cases as well. We wouldn't need to make requests for information or discovery in multiple lawsuits. I'm not aware of any non-Judicial Watch cases in which these issues have been raised. I'm not asserting that it hasn't; I'm just not aware of any. How many others are there?

In the end, and without more time for us to discuss logistics and think about these questions, I could see a fair amount of disputes – and more delay – about what is within or outside the scope of the referral to the coordinating judge, what is still within the purview of the originally assigned judge, how these disputes will be resolved, etc. We could end up wasting or at least diminishing the substantial progress made to date and the substantial efforts expended by the courts. If you'd like to sit down and discuss your concerns, how we might try to accommodate them, and the status of our various cases, as I offered Ms. Shapiro in early July, we'd be happy to do so.

Finally, one more concern about your proposed procedure, under LCvR 40.3, miscellaneous cases are assigned on a random basis. How do you propose getting your motion in front of the Chief Judge in light of the Court's rule?

PJO

From: Prince, Robert (CIV) [<mailto:Robert.Prince@usdoj.gov>]

Sent: Wednesday, September 02, 2015 11:01 AM

To: Paul Orfanedes

Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Paul,

The plan is to seek to coordinate 30+ cases (a specific list will be included in the motion).

What we're proposing is actually very simple. We plan to leave the involved questions to the coordinating judge, whom I assume would seek input from the parties. I've attached the proposed order and, as you can see, it simply asks for the designation of a coordinating judge to "to resolve and manage issues of law, fact, and procedure arising in the Coordinated Cases from the search and production of responsive records within the recently provided documents" ("recently provided documents" is defined in the order). That is the relief we're requesting.

In the email I sent yesterday morning, I gave some specific examples of what those issues would include ("scheduling of searches of the recently provided documents, requests for information and discovery about those documents, and requests for orders relating to preservation"); the motion explains why the Court and the parties would benefit from coordination of these issues that have arisen in multiple cases in the district. But we are not specifically asking the Court to manage those issues in a particular way. So the motion we're addressing here does not seem particularly involved.

Given that there are 12 other plaintiffs (all but one of whom have responded with a position statement to include in the motion), it is not feasible to engage in detailed discussions about how these cases will proceed once coordinated. This is one of the reasons that our motion contemplates that the coordinating judge resolve the detailed, involved questions, with input from all parties. We've described the relief we are seeking; discussing questions not addressed by the motion are not necessary to meaningfully confer.

Regarding the use of a miscellaneous action, there is no precise rule that provides for what we are seeking, which is not traditional consolidation. Since we will be filing a notice with the motion attached in each case, all 17 judges and 13 plaintiffs will receive notice, and the Court will be able to respond as it sees fit. We will, of course, follow direction from the Court if it turns out a miscellaneous action is inappropriate.

Rob
Robert Prince
Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
(202) 305-3654

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From: Paul Orfanedes [<mailto:POrfanedes@JUDICIALWATCH.ORG>]
Sent: Tuesday, September 01, 2015 9:26 PM
To: Prince, Robert (CIV)
Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions In 16 cases v. State Department

Robert:

I'm familiar with miscellaneous actions relating to discovery subpoenas, administrative subpoenas, judgment enforcement, registration of foreign judgments, etc. Frankly, I've never heard of a party to an ongoing lawsuit opening a miscellaneous action in the same court to move for the designation of a "coordinating judge." In order to better understand what you propose, can you explain, as a preliminary matter, how you settled on this particular procedure? What rule or statute are you relying on? I recall that a coordinating judge was designated for the Guantanamo Bay detainee cases, but it was my understanding that was done administratively by the court – I think it was by resolution of the Executive Session – not by a party or motion. Also, which other cases do you propose to include in this miscellaneous action? All 35 or so? As I indicated previously, what you propose is a involved question and it's going to take some time for us to even understand it. I'm sure we'll have more question, but don't think we can say we've "met and conferred" unless we understand it better.

Elizabeth Shapiro told Judge Contreras on July 9th, "And there are approximately 35 at various stages and in various forms. There are difficulties in terms of how they would be consolidated, and since some of them are different claims, there are different parties, there are different stages. So the mechanics of that have eluded us to date, but we haven't given up on the idea." I asked her after the hearing if DOJ wanted to try to talk about it. There was no real response, and we never heard anything further until your email of this morning. Not only do I not understand what you are proposing, but I don't understand why there seems to be a sudden rush to file something.

PJO

From: Prince, Robert (CIV) [<mailto:Robert.Prince@usdoj.gov>]
Sent: Tuesday, September 01, 2015 3:44 PM
To: Paul Orfanedes; Ramona Cotca; Michael Bekesha; Jason Aldrich; Lauren Burke; Chris Fedeli
Cc: Elliott, Stephen (CIV); Edney, Marsha (CIV); Wechsler, Peter (CIV); Todd, James (CIV); Thurston, Robin F. (CIV); Carmichael, Andrew E. (CIV); Anderson, Caroline J. (CIV); Olson, Lisa (CIV); Riess, Daniel (CIV)

Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Paul, can I put your position down as "has not yet taken position" (or, if you prefer, "needs to see motion before taking position")?

From: Paul Orfanedes [<mailto:POrfanedes@JUDICIALWATCH.ORG>]

Sent: Tuesday, September 01, 2015 10:43 AM

To: Prince, Robert (CIV); Ramona Cotca; Michael Bekesha; Jason Aldrich; Lauren Burke; Chris Fedeli

Cc: Elliott, Stephen (CIV); Edney, Marsha (CIV); Wechsler, Peter (CIV); Todd, James (CIV); Thurston, Robin F. (CIV); Carmichael, Andrew E. (CIV); Anderson, Caroline J. (CIV); Olson, Lisa (CIV); Riess, Daniel (CIV)

Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Robert:

We'll give it some thought. We won't decide by your 4:00 p.m. deadline. At this point, it's a more involved question than that.

PJO

From: Prince, Robert (CIV) [<mailto:Robert.Prince@usdoj.gov>]

Sent: Tuesday, September 01, 2015 9:38 AM

To: Ramona Cotca; Paul Orfanedes; Michael Bekesha; Jason Aldrich; Lauren Burke; Chris Fedeli

Cc: Elliott, Stephen (CIV); Edney, Marsha (CIV); Wechsler, Peter (CIV); Todd, James (CIV); Thurston, Robin F. (CIV); Carmichael, Andrew E. (CIV); Anderson, Caroline J. (CIV); Olson, Lisa (CIV); Riess, Daniel (CIV)

Subject: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Dear counsel,

This email is in reference to the following cases:

Judicial Watch v. U.S. Dep't of State, et al., Civil No. 12-893 (JDB)
Judicial Watch v. U.S. Dep't of Defense, et al, Civil No. 14-812 (KBJ)
Judicial Watch v. U.S. Dep't of State, Civil No. 12-2034 (RW)
Judicial Watch v. U.S. Dep't of State, Civil No. 13-1363 (EGS)
Judicial Watch v. U.S. Dep't of State, Civil No. 13-772 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 14-1242 (RCL)
Judicial Watch v. U.S. Dep't of State, Civil No. 14-1511 (ABJ)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-1128 (EGS)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-321 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-646 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-684 (BAH)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-687 (JEB)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-688 (RC)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-689 (RDM)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-691 (APM)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-692 (APM)

I seek your 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 these cases, 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 Phillippe Reines). In each case, the transferring judge would retain the case for all other purposes, including searches for responsive records other than the provided documents. The motion envisions coordination of common issues such as the scheduling of searches of the recently provided documents, requests for information and discovery about those documents, and requests for orders relating to preservation.

This coordination motion will be filed in a miscellaneous action. Once it is filed, the Department will file a notice in each of the above-listed cases, along with a copy of the motion itself.

Second, the Department will be filing a motion in each of the above-listed cases seeking a stay of those portions of each case addressing the documents provided to the Department by former Secretary Clinton and the other former employees until the coordination motion is decided, and, if it is granted, until the coordinating judge issues an order determining how to proceed in the cases listed in that motion. The stay sought would not affect those portions of the cases that deal with the search and production of other documents.

Could you please let me know your position with respect to each above-listed case by 4 PM today?

Best,

Rob

Robert Prince
Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
(202) 305-3654

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE, et al.

Defendants.

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Civil Action No. 12-00893 (JDB)

[PROPOSED] ORDER

Upon consideration of Defendants' Motion to Stay Pending Resolution of Its Motion for Designation of Coordinating Judge, Plaintiff's Opposition thereto, any reply, oral argument, and the record herein, it is hereby

ORDERED that Defendant's Motion to Stay Pending Resolution of Its Motion for Designation of Coordinating Judge is **DENIED**.

Dated:

U.S. District Court Judge

Cc: All counsel of record