

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No. 15-cv-684 (BAH)
)	
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO
STAY PENDING RESOLUTION OF ITS MOTION FOR
DESIGNATION OF COORDINATING JUDGE**

Plaintiff Judicial Watch, Inc., by counsel, respectfully submits this opposition to the motion for an indefinite stay by Defendant U.S. Department of State (“State Department”). As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF LAW

1. The State Department’s motion for an indefinite stay of proceedings should be denied. It has presented no evidence whatsoever demonstrating that a stay is necessary.
2. This case involves a Freedom of Information Act (“FOIA”) request from Plaintiff to the State Department seeking all emails of official State Department business received or sent by former Deputy Chief of Staff Huma Abedin from January 1, 2009 through February 1, 2013 using a non-state.gov email address.
3. On June 24, 2015, the parties filed a Joint Status Report. At that time, the State Department proposed

that productions be conducted on a rolling basis, with productions beginning on August 31, 2015 and continuing every sixty days 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. U.S. Dep't of State*, Case No. 15-cv-123-RC (D.D.C.), the production of the approximately 55,000 pages of emails is set to begin on June 30, 2015, continue every thirty days thereafter, and conclude on January 29, 2016.

4. The Court adopted the State Department's proposal and, on June 25, 2015, ordered the State Department to begin making rolling productions on August 31, 2015 and to continue making them every sixty days thereafter until January 29, 2016.

5. The State Department now seeks to stay the production schedule it proposed and the Court adopted.

6. To satisfy the Court's order, it appears as though the State Department intends to conduct searches of and produce records from the following three sets of records:

- A. Records contained within the state.gov email accounts of current and former State Department employees;
- B. The approximately 55,000 pages of records returned by former Secretary Clinton; and
- C. The records returned by Ms. Abedin.

7. Although somewhat unclear, the State Department seeks a partial stay. Specifically, the State Department seeks to stay the searches of and productions from two sets of records: the approximately 55,000 pages of records returned by former Secretary Clinton and the emails returned by Ms. Abedin.¹

¹ It is Plaintiff's understanding that the State Department will continue searching and producing records responsive to Plaintiff's FOIA request that are located within the state.gov email accounts of current and former State Department employees.

8. The indefinite stay should be denied for two reasons. First, the State Department's June 24, 2015 proposal included the search of and production from the approximately 55,000 pages of records returned by former Secretary Clinton. That is why the State Department specifically sought a rolling production that tracked the production schedule in the *Leopold* case. The State Department has not provided a single, compelling reason as to why the searches of and productions from this set of records should now be stayed. If the State Department cannot meet its obligation that it itself proposed, it should move for relief from that obligation, not stay the proceedings. For that reason alone, the State Department's motion for an indefinite stay with respect to the search of and production from the approximately 55,000 pages of records returned by former Secretary Clinton should be denied.

9. Second, the State Department has not provided any evidence whatsoever that a stay is necessary for it to a conduct search of and produce records from the records returned by Ms. Abedin. The State Department does not identify how many records have been returned or how long it will take for it to review such records to determine if any are responsive to Plaintiff's FOIA request. Nor does it identify whether such processing of these records will conflict with other matters. The State Department merely states that "scheduling searches of documents provided to State by former employees, including Huma Abedin, is likely to be an issue in several cases." Defendant's Motion to Stay Pending Resolution of its Motion for Designation of Coordinating Judge at 4.

10. In addition, the State Department has asserted in other litigation that it has no obligation to search records returned by Secretary Clinton's top aides, including those of Ms. Abedin. 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.”); *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.”).

11. Judicial Watch seeks no less and no more than what FOIA requires. If it is the State Department’s position that it must search the records returned by Ms. Abedin to satisfy its FOIA obligations, the agency should say so. Judicial Watch would then be amenable to discussing a reasonable schedule for completion of this task. If the State Department disputes that it has an obligation to search these records, 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 disputes it has any obligation to undertake puts the cart before the horse.² It also demonstrates that the motion to stay is unfounded.

12. As of September 18, 2015, the State Department had filed motions to stay in only 26 lawsuits, not the 32 it identified in its motion for a coordinating judge. 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. 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).

13. Although the State Department downplays it in its motion, it 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

² If the 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 State Department’s search and any claims of exemption.

“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). As a result, it is highly unlikely that the State Department will prevail on its motion for a coordinating judge. There is no reason to stay this action pending a ruling in the 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 21, 2015

Respectfully submitted,

/s/ Michael Bekesha
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[PROPOSED] ORDER

Upon consideration of Plaintiff’s Opposition to Defendant’s Motion to Stay Pending Resolution of its Motion for Designation of Coordinating Judge and the entire record herein, it is hereby ORDERED that:

1. Defendant’s motion for a stay is **DENIED**;

SO ORDERED.

DATE: _____

The Hon. Beryl A. Howell, U.S.D.J.