

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 15-cv-692 (APM)
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	
)	

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

Plaintiff Judicial Watch, Inc., by and through counsel, respectfully submits this opposition to Defendant’s motion to stay. As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF LAW

I. Introduction.

Defendant seeks the extraordinary relief of an indefinite stay in order to complete its review of one month of former Secretary of State Hillary Clinton’s emails, which constitute approximately 600 emails. Defendant failed to meet and confer with Plaintiff prior to filing its motion. It also failed to provide any evidence demonstrating how proceeding in this case will affect, adversely or otherwise, the other Freedom of Information Act (“FOIA”) cases in which these same 600 emails might be at issue. Further, the relief Defendant seeks in its miscellaneous action for a “coordinating judge” is unlikely to succeed. As a result, Defendant’s motion must be denied.¹

¹ Plaintiff’s Complaint challenges Defendant’s response to two separate FOIA requests. Defendant’s motion concerns only the first request. 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 first request.

II. Factual Background.

Plaintiff's first request, also referred to as "Request No. 1," seeks Mrs. Clinton's emails about the September 11, 2012 attack on the U.S. Consulate in Benghazi, Libya from September 11, 2012 to January 31, 2013.² *See* Compl. at ¶ 5. Because the U.S. House Select Committee on Benghazi previously requested all of Mrs. Clinton's emails about Benghazi from January 1, 2011 to December 31, 2012,³ Defendant's initial search of the 55,000 pages of emails produced by Mrs. Clinton in response to the Select Committee's request covers Request No. 1 through December 31, 2012. Plaintiff's request extends through the end of Mrs. Clinton's tenure as Secretary of State on February 1, 2013. Therefore, the only remaining emails to be searched and processed from the emails produced by Mrs. Clinton are for a one month period only – January 1, 2013 to January 31, 2013. These records consist of approximately 600 emails. *See* Second Joint Status Report, filed July 29, 2015 (ECF No. 11) ("Joint Status Report"), at 7.

III. Defendant Failed to Meet and Confer.

On July 31, 2015, the Court ordered the parties to confer and "provide an update to the court on their efforts to resolve Plaintiff's concerns regarding the scope of Defendant's search and efforts to preserve responsive federal records in connection with" Request No. 1. 7/31/15 Minute Order, subpart (2). Since the Court issued its July 31, 2015 order, Defendant has made no meaningful effort to confer about the items addressed in the order or the relief it seeks in its motion to stay.

² The second FOIA request seeks communications between Defendant and members of Congress and/or their staff about Secretary Clinton's use of non-"state.gov" email account(s) (also referred to as "Request No. 2.") from June 1, 2014 to the present. *See* Compl. at ¶ 8. Defendant's first production of non-exempt records responsive to Request No. 2 is due September 30, 2015.

³ *See* Subpoena to Hillary Rodham Clinton, dated March 13, 2015, attached as Exhibit 1.

Local Rule 7(m) requires that “[b]efore filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel *in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement.*” LCvR 7(m) (emphasis added). Prior to filing the motion for a stay, Defendant’s counsel sent an email to all Judicial Watch attorneys assigned to FOIA cases between Plaintiff and Defendant. The email stated, in pertinent part:

[T]he 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.

See September 1, 2015 Email from Robert Prince, attached as Exhibit 2.

It is evident from the entire email chain, attached as Exhibit 3, that the parties never met and conferred on the motion to stay Defendant filed in this particular case or how Defendant’s “coordination motion” would affect this particular case, if at all. Defendant only purported to meet and confer on its “coordination motion,” and even then did not engage in any meaningful discussion with Plaintiff about that motion. In response, Plaintiff not only sought to understand Defendant’s proposed “coordination motion,” but also offered to meet and discuss how Defendant’s search and production efforts could be prioritized, among other issues. See Exhibit 3. Defendant filed its “coordination motion” that same day without responding. *Id.* Defendant’s counsel later asserted that they “forgot” to send a response and apologized. *Id.* Defendant’s apology regarding the “coordination motion” notwithstanding, Defendant plainly failed to satisfy Local Rule 7(m) with regard to the instant motion to stay.

IV. Defendant's "Coordination Motion" Is Unlikely To Succeed.

The purported basis for the motion to stay is the "coordination motion" Defendant filed on September 2, 2015. On that date, Defendant initiated a "miscellaneous action," seeking to have the Chief Judge order "17 different district judges" to transfer "more than 30 FOIA lawsuits," including 16 lawsuits filed by Judicial Watch, to a "coordinating judge" at least for a period of time.⁴ *See* United States Department of State's Motion for Designation of Coordinating Judge and Memorandum in Support at 15, *In Re U.S. Dep't of State FOIA Litigation Regarding Emails of Certain Former Officials*, Case No. 15-mc-01188 (D.D.C.). Regardless of how Defendant describes it, this "miscellaneous action" is a new lawsuit. It suffers from numerous fatal flaws, not the least of which is Defendant's failure to identify any basis for the District Court's subject matter jurisdiction or demonstrate why the relief it seeks is properly the subject of a miscellaneous action. Defendant also has failed to identify any basis for the District Court to assert personal jurisdiction over respondents – the FOIA requestors who have bought the lawsuits in question. There plainly has been no service of process, and mere notice of an action is no substitute for proper service of process. *See, e.g., Omni Capital Int'l Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); *see also Ibiza Business Ltd. v. United States*, 2010 U.S. Dist. LEXIS 70903 (D.D.C. July 8, 2010) (RCL) (denying motion for default judgment in miscellaneous action due to insufficiency of service of process). Defendant also failed to join at least 16 indispensable parties, namely the district judges against whom they seek relief.⁵

⁴ By Plaintiff's count, Defendant's new miscellaneous action references 32 lawsuits before 16 different judges.

⁵ On September 10, 2015, the Hon. Richard J. Leon denied Defendant's same motion to stay in one of the "more than 30 FOIA lawsuits." *See* Minute Order, *Joseph v. U.S. Dep't of State*, Case. No. 14-1896 (D.D.C.) (RJL) (Sept. 10, 2015).

Most fatal of all, however, is the complete absence of any substantive legal basis for Defendant's claim.⁶ One district judge cannot order another district judge to take action in a case pending before that judge. *Klayman v. Kollar-Kotelly*, 2013 U.S. App. LEXIS 10148 (D.C. Cir. May 20, 2013), *reh'g denied* 2013 U.S. App. LEXIS 16769 (D.C. Cir. Aug. 12, 2013), *reh'g en banc denied* 2013 U.S. App. LEXIS 16770 (D.C. Cir. Aug. 12, 2013); *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995); *Jones v. Supreme Court of the United States*, 405 Fed. Appx. 508 (D.C. Cir. 2010) (per curium); *Prentice v. United States District Court*, 307 Fed. Appx. 460 (D.C. Cir. 2008) (per curium); *Adams v. United States District Court*, 2014 U.S. Dist. LEXIS 151044 (D.D.C. Oct. 23, 2014) (ABJ); *Mason v. Kahn* 2008 U.S. Dist. LEXIS 50258 at *1 (D.D.C. June 30, 2008). Not only does a district judge lack such power, but the District Court lacks subject matter jurisdiction to consider a claim that it does. *Klayman*, 2013 U.S. App. LEXIS 10148 at *2.

In *Klayman*, the plaintiff filed an action seeking, among other relief, to have one district judge issue an injunction against another district judge. Then Assistant United States Attorney Rudolph Contreras – now Judge Contreras – argued to Judge Leon that he had no authority to issue an order to Judge Kollar-Kotelly: “This Court lacks jurisdiction to order a District Judge to take judicial action in cases pending before that judge.” Defendants’ Memorandum in Support of Motion to Dismiss at 6, *Klayman v. Kollar-Kotelly, et al.*, Case No. 11-1775 (RJL) (D.D.C. Dec. 5, 2011) (ECF No. 11). Judge Leon agreed. *Klayman v. Kollar-Kotelly*, 892 F. Supp.2d

⁶ On September 3, 2015, the Hon. Reggie B. Walton also raised concerns about the lack of authority by anyone, including the Chief Judge, to order another judge to consolidate these cases. “But at least from information I’ve heard I think there may be some reluctance on the part of judges to go along with that because we’re so far along in the process and there’s so many different cases at different procedural postures that I’m not sure that the judges, because it would have to be a buy in. I don’t know if anyone even the chief judge would have the authority to order us to consolidate the cases, so there’d have to be a buy in on the part of the judges that consolidation would be appropriate.” *See* Transcript of Status Conference, *Judicial Watch, Inc., v. U.S. Dep’t of State*, Case No. 12-2034 (D.D.C.) (RBW) (Sept. 3, 2015), attached hereto as Exhibit 4, at 13.

261 (D.D.C. 2012). So did the appellate court, which summarily affirmed. *Klayman*, 2013 U.S. App. LEXIS 10148 at *1. The relief Defendant seeks – that a district judge order 16 other district judges to transfer more than 30 FOIA lawsuits to a single “coordinating judge” – is unwarranted by any existing law. *See* Fed.R.Civ.P. 11(b)(2). Nor is it warranted by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. *Id.*

In addition, Local Civil Rules 40.5(c) and 40.6(a), both of which Defendant cites, also do not provide a legal basis for the relief Defendant seeks. Both rules make clear that the assignment and transfer processes they establish are effectuated only with the consent of the judges involved. Again, no district judge can order another district judge to do anything. Defendant’s motion for an indefinite stay should be denied because its “coordination motion” is unlikely to succeed.

V. An Indefinite Stay Is Inappropriate.

Notwithstanding Defendant’s failure to meet and confer with Plaintiff or the fact that its “coordination motion” is unlikely to succeed, an indefinite stay is still inappropriate. The records presently at issue are 600 emails sent or received by Mrs. Clinton between January 1, 2013 and January 31, 2013, all of which have already been scanned into a database and are readily capable of being searched electronically. Search terms are not at issue. The same terms used to search Mrs. Clinton’s January 1, 2011 to December 31, 2012 emails can be applied to the remaining 600 emails from January 1, 2013 to January 31, 2013. Moreover, Defendant has already admitted the need to prioritize the search of Mrs. Clinton’s emails relating to the

Benghazi attack in light of the great public interest in these records.⁷ An indefinite stay to search one month's worth of emails about a matter of substantial public interest is unreasonable and inappropriate. It also would bring to a halt the progress already being made towards a final resolution of Plaintiff's claims.

In addition to the search of the 600 emails, another issue that remains is whether additional federal records exist that are potentially responsive to Request No. 1 and, if so, where those records are likely to be located and what steps Defendant must undertake to ensure that they are preserved, searched, reviewed, and produced to Plaintiff in response to Request No. 1. Any such records undoubtedly include all emails sent or received by Mrs. Clinton using the "clintonemail.com" email server regardless of whether Mrs. Clinton or her attorneys subsequently claimed that these emails are "personal." *See, e.g.*, Transcript of Status Conference, *Judicial Watch, Inc. v. State Dep't.*, Case No. 13-1363 (D.D.C.) (EGS) (Aug. 20, 2015), attached as Exhibit 5, at 20 "(If any e-mails pertaining to official government business are found in the 30,000, quote, unquote, personal e-mails through the FBI, DOJ search, will those documents be returned to State? I guess that would be the second part of that directive. I think the State Department should ask they be returned."); *see also* 26 C.F.R. § 1222.12(a) ("agencies must distinguish between records and nonrecord material by applying the definition of records . . . to any agency documentary material in all formats and media") (emphasis added); 26 C.F.R. § 1222.10(b)(6) (determining which materials are "[a]ppropriate for preservation" as evidence of

⁷ State Department Office of Information Programs and Services Director John F. Hackett testified by declaration in other FOIA litigation that "[i]n the weeks following the Department's receipt of the emails from Secretary Clinton, the Department conducted a separate manual review of a date-limited portion of the 55,000 pages to locate any that were responsive to requests of the House Select Committee on Benghazi. As a result of that manual review, the Department located and produced to the House Select Committee 296 emails composed of approximately 850 pages. In light of the public interest in those records and the fact that the Department already had identified them within the larger collection, the Department has prioritized the FOIA review of those 296 emails." *See* Declaration of John F. Hackett, *Jason Leopold v. Dep't of State*, Case No. 15-123 (D.D.C.) (RC) (ECF No. 12-1) (May 18, 2015) at para. 16.

agency activity – and therefore within the definition of a federal record – is a matter entrusted to the “*judgement of the agency*”) (emphasis added). They also may include emails to or from Mrs. Clinton contained in records subsequently provided to the State Department by former State Department officials Huma Abedin, Cheryl Mills, Philippe Reines, and Jacob Sullivan. *See* Joint Status Report at 7 n.3.

Defendant provides no evidence whatsoever demonstrating that a stay is necessary to address this other, remaining issue. In fact, Defendant previously asserted that it had no obligation to search the records returned by Ms. Abedin, Ms. Mills, or Mr. Sullivan in order to satisfy its FOIA obligations to Plaintiff. *See* Joint Status Report at 7 n.3. (“Defendant maintains that a reasonable search responsive to [] Request No. 1 . . . only requires a search of the Clinton emails. While it is true that Defendant has agreed to an addition 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.”). Plaintiff seeks no less and no more than what FOIA requires. If Defendant now believes it must search these returned records to satisfy its FOIA obligations, Plaintiff is amenable to discussing a reasonable schedule for completion of this task. But the fact that Defendant would seek an indefinite stay of this litigation so that a coordination judge can be appointed to oversee the completion of a task Defendant denies it has any obligation to undertake demonstrates that Defendant’s motion is baseless.

VI. Conclusion.

For the foregoing reasons, Defendant's motion for a stay should be denied.

Dated: September 11, 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

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To The Honorable Hillary R. Clinton

You are hereby commanded to be and appear before the _____
Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi
of the House of Representatives of the United States at the place, date and time specified below.

to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 1036 Longworth House Office Building, Washington, D.C. 20515
Date: Friday, March 13, 2015 Time: 12:00 p.m.

To any authorized staff member or the U.S. Marshals Service _____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 4th day of MARCH, 2015

[Signature]
Chairman or Authorized Member

Attest: Karen P. Haas
Clerk

PROOF OF SERVICE

Subpoena for

The Honorable Hillary R. Clinton

Address Per agreement with David E. Kendall, Esq. the service will be completed by email to

David Kendall at Williams & Connolly LLP at dkendall@wc.com

before the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi

U.S. House of Representatives
114th Congress

Served by (print name)

DANA K. CHIPMAN

Title

Chief Counsel, House Select Committee on Benghazi

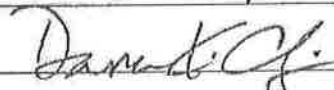
Manner of service

EMAIL TRANSMISSION - BY CONSENT

Date

March 4, 2015

Signature of Server



Address 1036 Longworth House Office Building, Washington, D.C. 20515

SCHEDULE

In accordance with the attached schedule instructions and definitions, you, Hillary R. Clinton, are required to produce all records in unredacted form described below:

1. For the time period of January 1, 2011 through December 31, 2012, any and all documents and communications in your possession, and/or sent from or received by the email addresses "hdr22@clintonemail.com," "hrod17@clintonemail.com," or any other email address or communications device used by you or another on your behalf, referring or relating to:
 - (a) Libya (including but not limited to Benghazi and Tripoli);
 - (b) weapons located or found in, imported or brought into, and/or exported or removed from Libya;
 - (c) the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012; or
 - (d) statements pertaining to the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012.

Schedule Instructions

1. In complying with this subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the subpoena was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the subpoena cannot be made in full by March 13, 2015 at 12:00 p.m., compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided no later than March 12, 2015 at 12:00 p.m.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this subpoena is from January 1, 2011 to December 31, 2012.
16. This subpoena is continuing in nature and applies to any newly-discovered information as to the time period January 1, 2011 to December 31, 2012. Any responsive record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 1036 of the Longworth House Office Building and the Minority Staff in Room B241 of the Longworth House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, cables, records, correspondence, letters, notes, manuals, instructions, financial reports, working papers, inter-office and intra-office communications, messages, electronic mail (e-mail), summaries or notations of any type of conversation, telephone or cellular call, meeting or other communication, transcripts, diaries, analyses, minutes, projections, comparisons, contracts, press releases, reviews, opinions, studies and investigations, (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document, or otherwise, and whether in a meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise. Communications “sent to or received by” includes any means of transmission or receipt including but not limited to communications that are copied, blind copied or forwarded. Additionally, any communication that incorporates, contains, or attaches another document or communication shall include that additional document or communication.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request/subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
5. The term “weapons” includes any instrument, tool, or device for use in an attack or defense, to include but not be limited to firearms, grenades, mortars, missiles, MANPADS (man-portable air-defense systems), CBRNE (chemical, biological, radiological, nuclear, explosives) devices.

EXHIBIT 2

Ramona Cotca

From: Prince, Robert (CIV) <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

The information in this transmittal (including attachments, if any) is intended only for the recipient(s) listed above and contains information that is confidential. Any review, use, disclosure, distribution, or copying of this transmittal is prohibited except by or on behalf of the intended recipient. If you have received this transmittal in error, please notify me immediately and destroy all copies of the transmittal. Your cooperation is appreciated.

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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EXHIBIT 4

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.	.	
Plaintiff,	.	
vs.	.	Docket No. CV 12-2034
	.	
U.S. DEPARTMENT OF STATE	.	Washington, D.C.
	.	September 3, 2015
Defendant.	.	
.	
	.	x 9:33 a.m.

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE JUDGE REGGIE B. WALTON

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Chris Fedeli, Attorney-at-Law
 Paul Orfanedes, Attorney-at-Law
 Tom Fitton, Attorney-at-Law
 JUDICIAL WATCH, INC.
 425 third Street, SW - Suite 800
 Washington, DC 20024

For the Defendant: Elizabeth Shappiro, Attorney-at-Law
 Marsha Edney, Attorney-at-Law
 U.S. DEPARTMENT OF JUSTICE
 Civil Division
 P.O. Box 883
 Washington, DC 20044

Court Reporter: Cathryn J. Jones, RPR
 Official Court Reporter
 Room 6521, U.S. District Court
 333 Constitution Avenue, N.W.
 Washington, D.C. 20001

Proceedings recorded by machine shorthand, transcript produced by computer-aided transcription.

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: Civil Action Number 12-2034,
3 Judicial Watch, Inc. versus U.S. Department of State.
4 Counsel, can you come forward and identify yourselves for
5 the record.

6 MR. FEDELI: Good morning, your Honor. Chris
7 Fedeli for the plaintiffs Judicial Watch.

8 THE COURT: Good morning.

9 MS. SHAPPIRO: Good morning, your Honor.
10 Elizabeth Shappiro on behalf of the Department of State and
11 with me is Marsha Edney.

12 THE COURT: Good morning. How do you all propose
13 we deal with this case? As you know, this case was closed
14 out at one point, but the parties ask it be reopened based
15 upon the revelation that there had been some additional,
16 actually a large number of emails that had been identified
17 that may be subject to a disclosure pursuant to this case.
18 But there are as I understand, I don't how many, but a
19 number of other cases also pending in this court before
20 other judges. And as I understand it at least in some of
21 those cases or at least one of them, all of the documents
22 being requested in this case would be encompassed by the
23 production in at least one of the cases.

24 Am I wrong in that regard?

25 MR. FEDELI: Yes. If I can address that briefly.

1 MS. SHAPPIRO: But what he's suggesting is wild
2 speculation. Has no basis to think they exist elsewhere.

3 THE COURT: Well, unfortunately, if this private
4 server had not been used we wouldn't be in this situation.

5 MS. SHAPPIRO: I understand that, your Honor. We
6 are, the government is trying to cope the best we can with
7 these circumstances. And have really gone, taken great
8 lengths to reopen cases like these to ensure that searches
9 are done pursuant to FOIA, and to remedy the FOIA situation
10 the best that we can, which is what we're here in this court
11 about. That's why we asked former employees to return
12 records. That's why we are undergoing this enormous
13 production process of putting all of them on online.

14 THE COURT: What's your position regarding the
15 plaintiff's request for some type of order from this court
16 related to that 31,000-plus documents which I assume are
17 documents that former secretary Clinton concluded were
18 private documents and therefore, not subject to disclosure?

19 MS. SHAPPIRO: We would oppose it because I don't
20 know how we could comply with such an order, one. And two,
21 we think the court should stay its hand entirely because
22 there's a motion pending to appoint a coordinating judge who
23 would deal with all of these sorts of issues across all of
24 the cases.

25 THE COURT: I don't know how successful you'll be

1 in reference to that. I can understand why you would want
2 it. But at least from information I've heard I think there
3 may be some reluctance on the part of judges to go along
4 with that because we're so far along in the process and
5 there's so many different cases at different procedural
6 postures that I'm not sure that the judges, because it would
7 have to be a buy in. I don't know if anybody even the chief
8 judge would have the authority to order us to consolidate
9 the cases, so there'd have to be a buy in on the part of the
10 judges that consolidation would be appropriate. And at
11 least from what I've heard there may be some reluctance to
12 do that because the cases are in different postures and this
13 request wasn't made earlier.

14 MS. SHAPPIRO: Right. I guess I would just say
15 that at least two judges have expressed a desire to have
16 some sort of coordination. What we're asking for is not
17 consolidation because of the very reasons you cite. But
18 just coordination of these particular search and discovery
19 issues and courts --

20 THE COURT: I mean that may make sense in this
21 case since we are early on in the process. Because the
22 process had been halted based upon the parties'
23 understanding of what the status of the matter was late,
24 back I think it was in May.

25 What do you propose? I mean, obviously to the

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CERTIFICATE

I, Cathryn J. Jones, an Official Court Reporter for the United States District Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, the proceedings had and testimony adduced in the above case.

I further certify that the foregoing 30 pages constitute the official transcript of said proceedings as transcribed from my machine shorthand notes.

In witness whereof, I have hereto subscribed my name, this the 8th day of September, 2015.

/s/ Cathryn J. Jones
Cathryn J. Jones, RPR
Official Court Reporter

EXHIBIT 5

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Judicial Watch, Inc.,)	Civil Action
)	No. CA 13-1363
Plaintiff,)	
)	STATUS CONFERENCE
vs.)	
)	Washington, DC
Department of State,)	August 20, 2015
)	Time: 1:00 p.m.
Defendant.)	

TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE
THE HONORABLE JUDGE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For the Plaintiff:	Michael Bekesha JUDICIAL WATCH, INC. 425 Third Street, SW Suite 800 Washington, DC 20024
For the Defendant:	Peter T. Wechsler Robert J. Prince UNITED STATES DEPARTMENT OF JUSTICE Civil Division, Federal Programs Branch P.O. Box 883 Benjamin Franklin Station Washington, DC 20044

Court Reporter:	Janice E. Dickman, RMR, CRR Official Court Reporter United States Courthouse, Room 6523 333 Constitution Avenue, NW Washington, DC 20001 202-354-3267
-----------------	--

1 THE COURTROOM DEPUTY: Civil case number 13-1363,
2 Judicial Watch, Inc., versus Department of State.

3 Counsel, please come forward and identify yourselves
4 for the record.

5 MR. BEKESHA: Good afternoon, Your Honor. Michael
6 Bekesha on behalf of Judicial Watch. Along with me is Chris
7 Farrell, our Director of Investigations.

8 THE COURT: Good afternoon, gentlemen.

9 MR. WECHSLER: Good afternoon, Your Honor. Peter
10 Wechsler of the Department of Justice. Along with me is
11 Robert Prince, also of the Department, representing the
12 State Department.

13 THE COURT: Good afternoon.

14 I've got a few questions. Anything new since the
15 last filing, before I start asking questions?

16 MR. WECHSLER: (Shakes head.)

17 THE COURT: Let me invite government counsel to
18 approach. I have a few questions for you.

19 Thank you very much for your reply. Sorry I
20 couldn't accommodate you on the request, there were just too
21 many other matters pending right now.

22 What's the -- sometimes it's best to recap, to get
23 a feel for where we are now and what direction we're heading
24 with this case. So let me just recap a few things.

25 My understanding is as follows: The Department --

1 documentation.

2 So consistent with that then, the State Department
3 acknowledges that it has an obligation to at least establish
4 that dialogue with the investigating agency and request to
5 be informed of documents that are, arguably, responsive to
6 the plaintiff's FOIA requests. Agree?

7 MR. WECHSLER: Agreed.

8 THE COURT: Thank you. I appreciate the candor in
9 that regard. Because, I mean, that's consistent with law.
10 I'm surprised the government -- the State didn't do that,
11 hasn't done that already though.

12 MR. WECHSLER: Perhaps they're being nudged.

13 THE COURT: Well, all right. I'll gently nudge
14 the State Department to do it. But I appreciate your
15 candor. Thank you.

16 I was going to get into another area, but I'm not
17 so sure I need to right now. Let's see. If any e-mails
18 pertaining to official government business are found in the
19 30,000, quote, unquote, personal e-mails through the FBI,
20 DOJ search, will those documents be returned to State? I
21 guess that would be the second part of that directive. I
22 think the State Department should ask they be returned.

23 You know, the thing that makes me feel a little
24 uncomfortable is -- and I'm not being critical of the FBI,
25 but the State Department is going to be in the best position

1 to determine whether or not there is information on those
2 devices that are, arguably, responsive to the plaintiff's
3 FOIA request. You're going to be in the best position to do
4 that, aren't you? Right?

5 MR. WECHSLER: Yes.

6 THE COURT: All right. So, how can the Court
7 nudge anyone to put you in that best position? I'll help
8 you any way I can.

9 MR. WECHSLER: I think if the dialogue is
10 established and we report on the results of that in a status
11 report, that might be helpful to the Court.

12 THE COURT: All right. Okay. But see, the
13 problem is, I don't have any control over the FBI because
14 the FBI is not a party to this. Should the FBI be a party?

15 MR. WECHSLER: No.

16 THE COURT: Why not?

17 MR. WECHSLER: We don't think so. This is part of
18 their duties. This is not part of their recordkeeping.
19 This would create problems, I think, for them.

20 THE COURT: But they have the devices, though.

21 MR. WECHSLER: Nothing that I'm saying should be
22 construed as any criticism. They have their own job to do.

23 THE COURT: No one is criticizing the FBI. No.

24 No.

25 MR. WECHSLER: They have their own job to do. And

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenograph notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 22nd day of August, 2015.

/s/ _____

Janice E. Dickman, CRR, RMR
Official Court Reporter
Room 6523
333 Constitution Avenue NW
Washington, D.C. 20001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 15-cv-692 (APM)
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
_____)	

[PROPOSED] ORDER

Upon consideration of Defendant’s 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