

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

_____)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-CV-1363 (EGS)
)	
UNITED STATES DEPARTMENT OF)	
STATE,)	
)	
Defendant.)	
_____)	

DEFENDANT’S RESPONSE TO PLAINTIFF’S PROPOSED DISCOVERY PLAN

In accordance with the Court’s Order of February 23, 2016, Defendant U.S. Department of State (“State”) hereby responds to Plaintiff Judicial Watch’s Proposed Discovery Plan, ECF No. 58-1, Mar. 15, 2016.

I. BACKGROUND

In response to Plaintiff’s request under the Freedom of Information Act (“FOIA”), State conducted numerous searches for responsive records, including a search of the records from clintonemail.com that former Secretary of State Hillary Clinton and Huma Abedin, who also had an account on clintonemail.com, determined were federal records or potential federal records and provided to State. Additionally, at the request of this Court, State sent letters to the representatives of former Secretary Clinton, Huma Abedin, and Cheryl Mills, seeking confirmation that they provided to State all federal records or potential federal records that were in their possession as a result of their employment at the State Department. Among other responses, former Secretary Clinton provided a sworn declaration stating that she directed that all her emails on clintonemail.com in her custody that were or potentially were federal records be

provided to State and that, on information and belief, this had been done. Clinton Declaration (Aug. 8, 2015) (ECF No. 22-1). State does not have possession or control over clintonemail.com. State filed its Motion for Summary Judgment on November 13, 2015 (ECF No. 47), and Plaintiff filed its Motion for Discovery on December 11, 2015 (ECF No. 48). On February 23, 2016, over State's opposition, the Court granted Plaintiff's motion for discovery.

II. ANY ORDERED DISCOVERY MUST BE "NARROWLY TAILORED."

It remains State's position that discovery in this action is not appropriate for the reasons set forth in its Opposition to Plaintiff's Motion for Discovery Pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, ECF No. 49, Jan. 8, 2016, and at the February 23, 2016 hearing in this matter. In light of the Court's February 23, 2016 Order, State responds to Plaintiff's proposed discovery plan as follows, without waiving its objection to discovery.

Scope of discovery. At the February 23 hearing, the Court directed Plaintiff to submit a discovery plan that is "narrowly tailored." Tr. of Feb. 23, 2016 Hr'g at 83:17-20, 84:16-17, 85:13-15. Although Plaintiff's proposed plan identifies certain individuals whom Plaintiff wishes to depose, it makes no proposal whatsoever regarding the scope of those depositions. *See* ECF No. 58-1. State submits that the scope of discovery must be limited and specified at the outset to prevent questioning that exceeds the limited inquiry that the Court has authorized.

Based on the Court's statements at the February 23 hearing, State understands the scope of permissible discovery to be "the reasons for the creation of [the clintonemail.com] system." Tr. of Feb. 23, 2016 Hr'g at 78. State respectfully submits that the Court's order should specify that discovery is limited to this topic. To that end, State requests that the Court clarify that Plaintiff is not entitled to discovery on matters unrelated to the topic identified by the Court, to include without limitation: the substantive information sought by Plaintiff in its FOIA request in

this case, which involves the employment status of a single employee; the storage, handling, transmission, or protection of classified information, including cybersecurity issues; and questions about any pending investigations. In particular, consistent with the invocation of FOIA Exemption 7(A) by the Federal Bureau of Investigation (“FBI”) in *Leopold v. U.S. Department of Justice*, No. 1:15-cv-2117-RDM (D.D.C. filed Dec. 8, 2015) (Motion for Summary Judgment, ECF Nos. 7-9), State objects to any discovery requests pertaining to the FBI’s pending investigation into matters referred to it by the Inspectors General of the Intelligence Community and State in connection with former Secretary Clinton’s use of a private email server.

State does not anticipate that any classified information or information relating to the pending FBI investigation will be inadvertently disclosed during depositions, especially with an appropriate limitation of the scope of discovery by the Court. But to prevent public release of any such information inadvertently disclosed, State also requests a reasonable period of time to review deposition transcripts before they may be publicly released, quoted or paraphrased. State proposes that it be permitted three business days from the time that a deposition transcript is made available to the parties within which to conduct such a review and, if necessary, seek an order precluding public release, quotation or paraphrase of any inadvertently disclosed classified information, information specifically exempted from disclosure by statute, or information relating to the pending FBI investigation.

Additional discovery. Plaintiff’s plan indicates that it may seek permission to conduct certain additional discovery beyond the depositions identified in paragraph 1 and the interrogatories identified in paragraph 5. ECF No. 58-1 ¶¶ 3, 4 and 7. State understands Plaintiff’s proposal to require it to request the Court’s permission to conduct any such discovery,

and State reserves the right to object to this additional discovery if Plaintiff requests it. By not objecting at this time to the depositions identified in paragraph 1, State does not represent or imply that any of those named individuals have relevant information.

Current employees. Within 10 days of the Court's ruling regarding the scope of discovery, State further proposes that it have the opportunity to submit declarations from any of the current State employees identified by Plaintiff in its discovery plan regarding the extent of their knowledge of information potentially relevant to the ordered scope. The parties could then meet and confer regarding whether there is a need to take that individual's deposition and, if necessary, apply to the Court for appropriate relief.

Former employees. State notes that the individuals identified in paragraphs 1(F)-(H) of Plaintiff's proposed discovery plan are not current State employees and are not parties to this litigation. State reiterates its position that no discovery is appropriate in this case, including as to non-parties, and notes that State cannot accept notices of deposition on behalf of the non-parties identified in Plaintiff's proposed discovery plan.

Timing and mechanics. The Federal Rules limit the number of depositions a party may take to ten, Fed. R. Civ. P. 30(a)(2)(A)(i), and the length of each deposition to one day of seven hours, Fed. R. Civ. P. 30(d)(1). State requests that the order for discovery explicitly incorporate these limits and further state that all discovery is to be conducted consistent with the Federal Rules of Civil Procedure, subject to the scope and other limitations designated by the Court. State further reserves the right to question the deponents at the conclusion of Plaintiff's questioning. State also objects to Plaintiff's request that the Court shorten the time period for State to respond to Plaintiff's proposed interrogatories, ECF 58-1 ¶ 6, as Plaintiff identifies no

basis for shortening the time provided by Federal Rule of Civil Procedure 33(b)(2) (30 days after service). State of course reserves the right to object to individual interrogatories as appropriate.

Finally, State believes that eight weeks from the Court's order on Plaintiff's discovery plan is a sufficient period for the parties to conduct the discovery that Plaintiff has proposed, *see* ECF No. 58-1 ¶ 2, and respectfully requests that the Court require discovery to be completed within that timeframe.

Dated: April 5, 2016

Respectfully submitted,

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