

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

)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17-cv-00029 (EGS)
)	
UNITED STATES DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
)	

OPPOSITION TO PLAINTIFF’S MOTION FOR PRESERVATION ORDER

Defendant United States Department of Justice (“DOJ”) respectfully submits this opposition to Plaintiff Judicial Watch’s Motion for Preservation Order and Request for Expedited Consideration. As discussed below, Plaintiff’s motion should be denied because it is unnecessary in light of the preservation steps DOJ has already taken.

BACKGROUND

Judicial Watch filed its complaint in this matter on January 5, 2017. Compl., Docket Entry 1.¹ The complaint relates to two separate FOIA requests that Judicial Watch alleges that it submitted to DOJ on November 7, 2016. *See id.* ¶¶ 7, 11. Both requests sought documents from both the personal and official email accounts of Peter Kadzik, DOJ’s current Assistant Attorney General for Legislative Affairs.² *Id.* According to the complaint, the first request sought the following documents:

- A. All email correspondence between Peter Kadzik on either his official Justice Department email account or peterkadzik@gmail.com and any non-government employee

¹ Service of process of Plaintiff’s complaint has not yet been completed, and DOJ reserves its right to object to unperfected service.

² Mr. Kadzik will be leaving federal employment on January 19, 2017.

concerning, regarding, or relating to former Secretary of State Hillary Clinton's use of non-state.gov email to conduct official government business;

- B. All email correspondence between Peter Kadzik on either his official Justice Department email account or peterkadzik@gmail.com and John Podesta; and
- C. All email correspondence between Peter Kadzik on either his official Justice Department email account or peterkadzik@gmail.com and any official, officer, or employee of Hillary Rodham Clinton's presidential campaign.

The timeframe for this request is December 1, 2014 to November 7, 2016.

Id. ¶ 7. The second request sought the following documents:

- A. All emails sent to or received by Peter Kadzik using the email address peterkadzik@gmail.com in which he conducted official government business.
- B. All emails copied and/or forwarded as required by 44 U.S.C. § 2911 to Peter Kadzik's Justice Department email account from peterkadzik@gmail.com.

The timeframe for this request is January 1, 2016 to the present.

Id. ¶ 11.

The day after filing the complaint, on January 6, 2017, Judicial Watch filed a motion for a preservation order and a request for expedited consideration. *See* Pl.'s Mot. for Preservation Order, Docket Entry 3. Judicial Watch's motion seeks an order requiring DOJ to "take all necessary and reasonable steps to preserve all agency records in the gmail email account of Assistant Attorney General for Legislative Affairs Peter Kadzik." Pl.'s Proposed Preservation Order, Docket Entry 3-1. Judicial Watch's proposed order further requires DOJ to "advise the Court of the steps it has taken to preserve such records." *Id.* The motion indicated that at the time of filing, DOJ had not yet been able to take any position on the motion. Pl.'s Mot. ¶ 6.

ARGUMENT

Since receiving Plaintiff's FOIA requests, Defendant, including its Office of Information Policy and Office of Legislative Affairs, along with Mr. Kadzik himself, has endeavored to identify any potentially responsive materials. It is the government's understanding that Mr. Kadzik has located no agency records or potential agency records in his Gmail account and that, therefore, there are no such documents to preserve. Nevertheless, out of an abundance of caution and consistent with the preservation order that Judicial Watch seeks, the government has instructed Mr. Kadzik to preserve any potential agency records in his Gmail account, should any exist, and Mr. Kadzik has agreed to do so.

Because the government has already taken the action that Judicial Watch's motion requests, and has informed the Court of that action, Judicial Watch's motion is moot and should be denied. To the extent Judicial Watch seeks some sort of additional judicial review of whether DOJ has taken "all necessary and reasonable steps to preserve all agency records," Pl.'s Proposed Preservation Order, it has provided no legal support or justification for such review. *See, e.g., John B. v. Goetz*, 531 F.3d 448 (6th Cir. 2008) (granting mandamus relief and reversing a district court's order to preserve hard drives by forensic imaging as an abuse of discretion on the grounds that, among other reasons, "nothing in the record indicates that defendants are unwilling, or will refuse, to preserve and produce all relevant ESI in the future," and after acknowledging that "the media at issue will almost certainly contain confidential state or private personal information that is wholly unrelated to the litigation").

CONCLUSION

Judicial Watch's motion for a preservation order should be denied.³

DATE: January 17, 2017

Respectfully submitted,

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³ Undersigned counsel respectfully advises the Court that he has pre-existing international travel plans from late afternoon on Wednesday, January 18, 2017 through noon on Monday, January 23, 2017. Undersigned counsel respectfully requests that the Court take counsel's travel schedule into consideration in the event the Court is inclined to grant Judicial Watch's request for a hearing on this motion.