

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

| | | |
|---------------------------|---|-------------------------------|
| JUDICIAL WATCH, INC., |) | |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | Civil Action No. 15-cv-688-RC |
| v. |) | |
| |) | |
| U.S. DEPARTMENT OF STATE, |) | |
| |) | |
| <i>Defendant.</i> |) | |
| _____ |) | |

**PLAINTIFF’S RESPONSE TO STATUS REPORT IN PARTIAL OPPOSITION TO
DEFENDANT’S PROPOSED PRODUCTION SCHEDULE**

Pursuant to this Court’s January 28, 2016 Minute Order, Plaintiff Judicial Watch, Inc. (“Judicial Watch”) submits this response to Defendant State Department’s (“State”) recent Status Report (ECF No. 23). In that Status Report, State explains how it failed to meet the Court’s October 23, 2015 deadline for the production of all documents in this case due to State’s document management mistakes. Plaintiff recognizes that, as a practical matter, Defendant’s conduct in this case has now made it impossible for Plaintiff to obtain all records to which it is entitled without some additional delay. ECF No. 21 at ¶ 6. However, Plaintiff opposes Defendant’s proposed open-ended production and briefing schedule, which is unreasonable given the circumstances.

1. In its recent Status Report, State proposes that the Court impose no production deadline at all. Instead, State suggests that it merely inform Plaintiff of State’s own self-selected production schedule a month from now. ECF No. 23 at ¶ 9. The basis for State’s request for such leniency is the reported failure of its employees to communicate with each other concerning

which State Department files were moved where by whom, and what those files contained.¹ ECF No. 23 at ¶¶ 6-7. As a result of these reported miscommunications, State has failed to comply with this Court’s previously-established production deadline of October 23, 2015. *See* Minute Order, Aug. 21, 2015. State now acknowledges that it has missed this Court-imposed deadline by over four months, and asks this Court’s indulgence for a another month before State must inform Plaintiff whether it will ultimately wind up five, six, or seven months in arrears.

2. The Court should decline to reward State’s failure to satisfy its statutory obligations to produce records. The Defendant’s failure to comply with this Court’s reasonable deadlines does not constitute proper grounds for such a broad extension of time. *See, e.g., In re Guantanamo Bay Detainee Litig.*, 577 F. Supp. 2d 309, 312 (D.D.C. 2008) (“[T]he government cannot claim as a basis for failing to meet deadlines imposed by this Court that it “simply did not appreciate the full extent of the challenges posed...””).

3. Rather than adopt Defendant’s proposed open-ended production schedule (ECF No. 23 at ¶ 9), Plaintiff respectfully requests that the Court order State to produce all responsive documents from the newly discovered files no later than **April 18, 2016**. This gives State over two months to review and produce from a set of 2,500 potentially responsive documents, which is more than reasonable in light of standard Court-ordered deadlines in FOIA litigation.

4. Defendant’s proposal regarding the briefing schedule is similarly unreasonable and

¹ While this explanation technically complies with the Court’s Jan. 28, 2016 Minute Order directing State to describe “why” these files were overlooked, Plaintiff notes that State’s answer merely describes certain actions and inactions of employees, but does not assume accountability for those actions or identify oversight failures. *See* State Department Office of Inspector General, “Evaluation of the Department of State’s FOIA Processes for Requests Involving the Office of the Secretary,” Jan. 2016, available at <https://oig.state.gov/system/files/esp-16-01.pdf>, at p. 13 (“These procedural weaknesses, coupled with the lack of oversight by leadership and failure to routinely search emails, appear to contribute to inaccurate and incomplete responses. ... [State Officials] recalled several instances when S/ES searches have yielded inaccurate or incomplete results, though they were unable to determine the magnitude of this problem.”); *Id.* at p. 14 (“[I]n litigated cases, incomplete searches by S/ES can expose the Department to financial liability, including attorney fees and other litigation costs.”).

inappropriate. ECF No. 23 at ¶ 9. Plaintiff has already challenged all exemption 5 withholdings from Defendant's original October 23, 2015 productions. *See* Exh. 1, Letter from Chris Fedeli to Daniel Riess, October 29, 2015. Accordingly, there is currently no question as to whether summary judgment briefing will be necessary in this case. State's proposal that the parties confer and ask the Court once again to adopt a briefing schedule "if necessary" at some unspecified future date therefore constitutes a needless waste of the Court's and the parties' time. Rather, Plaintiff asks the Court to adopt the following shortened (but very reasonable) briefing schedule now to partially make up for the delay in these proceedings and to save the parties' time:

Defendant's Motion for Summary Judgment: **May 18, 2016**

Plaintiff's Opposition and Cross Motion for Summary Judgment: **June 17, 2016**

Defendant's Opposition and Reply: **July 18, 2016**

Plaintiff's Reply: **August 8, 2016**

Dated: February 10, 2016

Respectfully submitted,

s/ Chris Fedeli

Chris Fedeli

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Attorney for Plaintiff



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

October 29, 2015

VIA EMAIL

Mr. Daniel Riess
U.S. Department of Justice
20 Massachusetts, Avenue, NW
Washington, DC 20530
(202) 353-3098
daniel.riess@usdoj.gov

**Re: *Judicial Watch v. Department of State*, Case No. 15-688-RC (DDC)
State Department FOIA Case No. F-2015-05559**

Dear Daniel:

I received the October 23, 2015 letter from John F. Hackett to Kate Bailey and the accompanying document production in this case. As an initial matter, please instruct your client to send all documents and correspondence in this case directly to me going forward. Thank you.

We have a Joint Status Report due in this case on November 6, 2015 concerning summary judgment briefing. On July 9, 2015, the Court issued an order directing the State Department to complete its search for responsive records by August 17, 2015. On August 21, 2015, the Court issued an order requiring the completion of the production from that search by October 23, 2015. As that production has been made, this case is now ripe for summary judgment briefing.

My client challenge all exemption 5 withholdings identified in the October 23 Letter. This includes all documents subject to exemption 5 withholdings in this matter, whether withheld in full or partially released. We also challenge the sufficiency of the State Department's search.

I am enclosing a draft Joint Status Report with a proposed summary judgment briefing schedule. Once you have had a chance to review it, I hope you'll agree it is reasonable and we should file it with the Court as drafted. If you have any changes to this Joint Status Report, please let me know. Also, please note that I will be out of the office travelling and unreachable on November 6th, as well as out of the office after 6 pm on November 5. Accordingly, I would ask you to please obtain your client's agreement now to approve and file this report on November 5. In the alternative, or if you or your client are not able to accommodate my request for any reason, I will plan to file a status report for Plaintiff on November 5.

Mr. Daniel Riess
October 29, 2015
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Please let me know if you have any questions. I look forward to your prompt response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Fedeli". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Chris Fedeli

Attorney for Plaintiff Judicial Watch, Inc.

encl.

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[PROPOSED] ORDER

Upon consideration of the Defendant’s February 5, 2016 Status Report (ECF No. 23) and Plaintiffs’ response thereto, it is hereby

ORDERED that Defendant’s shall complete its production of all responsive documents from the recently-discovered files no later than April 18, 2016; Defendant’s Motion for Summary Judgment is due May 18, 2016; Plaintiff’s Opposition and Cross Motion for Summary Judgment is due June 17, 2016; Defendant’s Opposition and Reply is due July 18, 2016; and Plaintiff’s Reply is due August 8, 2016.

Date

Rudolph Contreras
United States District Judge