IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.	)	
	)	
Plaintiff,	)	Civil Action No. 17-CV-00029 (EGS)
	)	
v.	)	
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S REPLY IN SUPPORT OF ITS
CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, respectfully submits this reply in support of its Cross-Motion for Summary Judgment. As grounds thereof, Plaintiff states as follows:

I. Introduction.

This case concerns Defendant's search of former Assistant Attorney General Peter Kadzik's Gmail account for official government business. In its cross-motion, Plaintiff argued Defendant failed to demonstrate that it conducted a reasonably calculated search of Kadzik's Gmail account for records responsive to Plaintiff's FOIA request. It did not argue Defendant failed to conduct an adequate search as a matter of law. Nonetheless, Defendant asserts it conducted an adequate search while ignoring the fact that even if it did conduct an adequate search – Plaintiff does not concede Defendant did – Defendant has not sufficiently demonstrated an adequate search. Plaintiff's Cross-Motion for Summary Judgment should be granted, and Defendant should be ordered to submit an additional declaration describing in sufficient detail the search it conducted on Kadzik's Gmail account.

II. Argument.

Plaintiff's argument could not be clearer. In its memorandum of points and authorities in support of its cross-motion for summary judgment, Plaintiff plainly stated:

> Defendant failed to demonstrate that it conducted adequate searches in two respects. First, Defendant has not provided any evidence whatsoever about how Defendant searched for all work-related emails on Mr. Kadzik's Gmail account. Second, Defendant has not explained why it did not use the same search terms to conduct searches of Mr. Kadzik's Gmail account as were used to conduct searches of Mr. Kadzik's Justice Department email account.

Plf's Mem. at 2. In response, Defendant did not provide additional evidence. It merely recited the same problematic statements. Def's Opp. at 12 ("[T]he declaration explains who conducted the relevant search (Mr. Kadzik himself), the methods that he used (specific word searches, and two manual reviews), the comprehensive breadth of his search (any folder that might have contained responsive records), and what he was searching for (any agency records or potential agency records."). Defendant still does not identify the specific words used to conduct the searches, describe how the manual reviews were conducted, or state which folders were searched. *See generally* Def's Opp. at 10-14. Without such information, the Court cannot determine as a matter of law whether the search was adequate. *James Madison Project v. U.S. Department of State*, 2017 U.S. Dist. LEXIS 12176, *6 (D.D.C. Jan. 30, 2017) (quoting *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 92 (D.D.C. 2009)).

Contrary to Defendant's claim, case law does not support its contention that a declaration does not have to provide much detail. *See* Def's Opp. at 12-13. Defendant's sole case in support only highlights Plaintiff's position. In *Bigwood v. U.S. Department of Defense*, the government agency provided a declaration identifying specific search terms (such as Manuel Zelaya, Zelaya Exile, Zelaya Oust, Zelaya Arrest, Zelaya Removal, Honduras Coup, Romeo Vasquez, and CHOD Vasquez), describing how the manual search was conducted (using the identified search

terms and specific date ranges), and stating the basis for how and why the searches were conducted. 132 F. Supp. 3d 124, 136-140 (D.D.C. 2015). Defendant, for whatever reason, refuses to provide such specificity to the Court. It has therefore failed "to supply [the Court] with even the minimal information necessary to make a determination" (*Coastal States Gas Corporation v. U.S. Department of Energy*, 617 F.2d 854, 861 (D.C. Cir. Feb. 15, 1980)) about whether its search was "'reasonably calculated to uncover all relevant documents.'" *Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995) (*quoting Truitt v. U.S. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)).

Defendant's other argument is also without merit. Defendant asserts that it "had no obligation to search Mr. Kadzik's personal email account at all, with the possible exception of searching for agency records sent to or from John Podesta." Def's Opp. at 4. It fails to provide any case law to support its assertion, however. Nor could it. Case law makes clear that an agency has an obligation to search personal email accounts if there is evidence that those accounts were used to conduct official government business. *See* Preservation Order, *Judicial Watch, Inc. v. U.S. Department of Homeland Security*, Case Number 16-cv-00967 (RDM) (Jan. 18, 2017); *see also* Memorandum Opinion and Order, *Judicial Watch, Inc. v. U.S. Department of State*, Case Number 15-cv-00692 (APM) (Aug. 8, 2017); Memorandum Opinion, *Hunton & Williams LLP v. U.S. Environmental Protection Agency*, Case Number 15-cv-01203 (RC) (Mar. 31, 2017); *Landmark Legal Foundation v. Environmental Protection Agency*, 959 F. Supp. 2d 175, 182 (Aug. 14, 2013).

In addition, just one email is enough to require the agency to search a government official's personal email account. *Landmark Legal Foundation*, 959 F. Supp. 2d at 182 ("The allegations are supported by one concrete example of personal email being used for official

purposes."). Here, Plaintiff has pointed to one concrete example. Defendant has an obligation to search Assistant Attorney General Kadzik's email account.[1]

III. Conclusion.

For the reasons set forth in Plaintiff's opening memorandum and the additional reasons set forth above, Plaintiff respectfully requests its Cross-Motion for Summary Judgment be granted.

Dated: August 17, 2017

Respectfully submitted,

/s/ Michael Bekesha
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[1] Defendant makes a mountain out of a mole hill with respect to paragraph 24 of its statement of facts. Paragraph 24 merely states that Defendant believed it did not have to conduct any additional searches. That may be true; however, it is irrelevant. The Court is required to determine whether Defendant's search was adequate and whether any additional searches are necessary. The fact that Plaintiff does not dispute Defendant's belief is nonconsequential.