

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 18-00154 (RBW)
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

PLAINTIFF’S MOTION FOR PRESERVATION ORDER

Plaintiff Judicial Watch, Inc., by counsel, respectfully submits this motion for an order requiring Defendant U.S. Department of Justice to preserve records at issue in this Freedom of Information Act case. Pursuant to LCvR 7(f), Plaintiff requests a hearing on this motion. Plaintiff also requests expedited consideration of this motion because it is concerned records responsive to Plaintiff’s FOIA request will be lost. As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

1. This FOIA case seeks, in part, emails and text messages between Peter Stroz, a senior Federal Bureau of Investigation official, and Lisa Page, a recently departed FBI lawyer.¹

2. Although Defendant has not yet produced to Plaintiff a single text message between Stroz and Page, Defendant has produced to Congress official FBI text messages between the two individuals. Several of the text messages produced to Congress reference work-related communications between the two individuals taking place on personal email accounts and

¹ Page left the FBI’s employ on or about May 4, 2018.

iMessages. *See, e.g.*, Exhibit A at pp. 6 (“Imsg? . . . Imsg is good all day”); 7 (“Just imsged”); 15 (“Going to start driving, but feel free to imsg. Or text here. Or call.”); 18 (“Sent something to your gmail, work-related.”); 19 (“Can I imsg something work-related?”); 20 (“Am I ok to imsg you a Q? . . . Can I msg a work q?”); 34 (“Check the email with the attachment I just sent. . . . Gmail. . . .”); 36 (“You have your iPhone?”); 41 (“What?!?! Imsg?”).

3. In a January 25, 2018 letter to Senator Charles Grassley, Charles Thorley, Acting Assistant Director of the FBI, wrote, “FBI has not requested from Ms. Page or Mr. Strzok any information from their personal email accounts, nor has the FBI conducted searches of non-FBI-issued communications devices or non-FBI email accounts associated with Mr. Strzok or Ms. Page.” *See* Exhibit B; *see also* Exhibit C.

4. Under the law, “[a]n officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee- (1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or (2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.” 44 U.S.C. § 2911.

5. Defendant has informed Plaintiff that, on May 21, 2018, Defendant sent letters to Strzok and Page asking them to preserve agency records on their personal accounts and personal devices and requesting confirmation that they are doing so.

6. Plaintiff has asked for copies of those letters and of any responses it has received from Strzok and Page. Defendant refuses to provide any evidence supporting this assertion.

7. Because Plaintiff does not know specifically what Defendant asked Strzok and Page to do and what, if any, steps Strzok and Page are taking to ensure preservation, Plaintiff is

concerned Defendant's mere requests to Strzok and Page are insufficient. Plaintiff therefore is concerned records responsive to Plaintiff's FOIA request will be lost or not otherwise searched.

8. Plaintiff's request is nothing out of the ordinary. At least three other judges of this Court have granted such requests in the last 18 months. *See* Preservation Order, *Judicial Watch, Inc. v. U.S. Department of Homeland Security*, Case No. 16-00967-RDM (D.D.C. Jan. 18, 2017); *see also* Minute Order, *Judicial Watch, Inc. v. U.S. Department of Justice*, Case No. 17-cv-00029-EGS (D.D.C. Jan. 17, 2017); Memorandum Opinion and Order, *Competitive Enterprise Institute v. Office of Science and Technology Policy*, Case No. 14-00765-GK (D.D.C. Dec. 12, 2016).

9. In particular, Judge Moss ordered individuals – including two *former* government officials – “to copy any emails from the relevant time period in any private email accounts that might contain responsive materials onto portable thumb drives, to be kept in the individuals’ personal possessions.”

10. Plaintiff respectfully requests expedited consideration of this motion.

11. Defendant opposes this motion.

WHEREFORE, Plaintiff respectfully requests the Court order Defendant to preserve all records potentially responsive to Plaintiff's FOIA request located on any non-official electronic messaging accounts of Strzok and Page.

Dated: June 1, 2018

Respectfully submitted,

/s/ Michael Bekesha

Michael Bekesha

D.C. Bar No. 995749

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Counsel for Plaintiff

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[Proposed] Order

Upon consideration of Plaintiff’s Motion for Preservation Order and the entire record herein, it is hereby ORDERED that:

1. Plaintiff’s Motion for Preservation Order is GRANTED; and
2. Defendant shall preserve all records potentially responsive to Plaintiff’s FOIA request located on any non-official electronic messaging accounts of Stroz and Page.

SO ORDERED.

DATE: _____

The Hon. Reggie B. Walton, U.S.D.J.