

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

JUDICIAL WATCH,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 17-600 (CKK)

ORDER

(September 20, 2018)

This civil action brought by Plaintiff Judicial Watch against Defendant United States Department of Justice is based upon Plaintiff's March 9, 2015 FOIA request, directed to the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), seeking:

Any and all records of communications, including but not limited to, emails, to or from employees or officials of the ATF regarding, concerning, or related to the decision to revise the ATF 2014 Regulation Guide to no longer exempt 5.56 mm SS109 and M855 (i.e., 'green tip' AR-15) ammunition from the definition of 'armor-piercing' ammunition. The time frame of this request is for the period March 9, 2014 to March 9, 2015.

Def.'s Mot. for Sum. Judg., ECF 14, at 3. Currently pending before this Court are the parties' cross-motions for summary judgment addressing the adequacy of ATF's search. *See* Def.'s Mot. for Summary Judg., ECF No. 14; Pl.'s Cross-Mot. for Summary Judg., ECF No. 15.

On July 14, 2017, ATF released to Plaintiff 69 pages in part and 15 pages in full, in response to this FOIA request. *See* Supp. Decl. of Peter J. Chisholm, Acting Chief, Disclosure Div. Bureau of ATF, ECF No. 19-1, ¶ 4. During its search for documents responsive to Plaintiff's FOIA request, ATF uncovered other documents; namely, 1,900 pages of documents, which were

“carefully reviewed line-by-line for responsiveness” but were “ultimately determined to be non-responsive” and were not released to the Plaintiff. *Id.* ¶ 9. Plaintiff argues that ATF interpreted its FOIA request too narrowly in excluding those 1,900 pages. In summary, Plaintiff asserts that:

[A]ny records that discuss both [the Notice of Proposed Rulemaking and the 2014 Reference Guide] are responsive to its request, even if certain other portions of the withheld records are not. Since Defendant’s declarant has failed to unequivocally state that none of the 1,900 pages discuss both the AFR-15 ammunition and the Reference Guide, the Court should order the production of all records.

Pl.’s Consolidated Reply Brief in support of Cross-Mot. and Mem. in support of Mot. to Stay, ECF No. 20, at 4.

Ultimately, however, Plaintiff requested that the cross-motions for summary judgment be held in abeyance for 60 days pending ATF’s response to Plaintiff’s second FOIA request, dated May 14, 2018, which asks for “[t]he 1,900 pages of records referenced at paragraph 9 of the Supplemental Declaration of Peter J. Chisholm, Acting Chief, ATF Disclosure Division, filed on May 1, 2018 in the U.S. District Court for the District of Columbia, civil action case number 17-600-CKK. . . .” *Id.*, Ex. 1 [May 14, 2018 FOIA Request]. Defendant United States Department of Justice (“DOJ”) did not oppose a stay being entered but instead contested the length of the stay proposed by Plaintiff. Defendant noted that it “does not believe a 60-day stay will result in any meaningful change to the current state of affairs” and suggested a stay “until 60 days following ATF’s final response to Plaintiff’s recently submitted FOIA request.” Def.’s Resp. to Pl.’s Mot. to Stay, ECF No. 25-1, at 1.

After receiving Plaintiff’s Reply concerning the motion for a stay, this Court issued a Minute Order denying the motion for a stay. The Court’s rationale was that because responsiveness of the 1,900 pages was a disputed issue in this case as well as the driving force

behind the second FOIA request, a resolution of the summary judgment motions might resolve that second FOIA request. Therefore, if this Court issued a decision on the pending cross-motion in favor of the Plaintiff, that decision would likely moot Plaintiff's second FOIA request and avoid everyone having to wait for the Defendant's processing of that second FOIA request.¹ This Court noted further that it would proceed to evaluate the parties Cross-Motions for Summary Judgment. *See* July 16, 2018 Minute Order. Having now reviewed the cross-motions for summary judgment, the Court has determined that the most expeditious and reasonable course of action is to stay this case for 120 days to allow for the review of the Plaintiff's second FOIA request. This stay should in no way be interpreted as any indication of the Court's consideration regarding the underlying dispositive motions.

If, prior to the end of the stay, the Defendant's processing of Plaintiff's second FOIA request affects the resolution of the pending motions for summary judgment, the parties may file a request to lift the stay for purposes of filing a notice in this case. Furthermore, if the Plaintiff brings a civil action regarding that second FOIA request, Plaintiff should note that the action is "related" to this civil action so that it will assigned to the undersigned. Finally, at the end of the 120-day stay, the parties shall file a Joint Report informing the Court regarding the status of Defendant's processing of the second FOIA request and how the parties want to proceed. At that time, the parties will either decide to continue the stay while pursuing the processing of the second FOIA request, or this Court will lift the stay and make its decision on the cross motions. Accordingly, it is this 20th day of September, 2018,

ORDERED that *Judicial Watch v. U.S. DOJ*, Civil Action No. 17-600 (CKK) is STAYED

¹ In contrast, a decision in favor of Defendant on their summary judgment motion would not relieve Defendant from having to process Plaintiff's second FOIA request.

until January 18, 2019, at which time the parties shall file a Joint Status Report with this Court.

IT IS SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE