

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

JUDICIAL WATCH, INC., )  
 )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 18-02563 APM  
 )  
 DEPARTMENT OF JUSTICE, )  
 )  
 )  
 Defendant. )  

---

JOINT STATUS REPORT

The parties submit the following status report:

Defendant Status Report:

Pursuant to an Order issued by the Honorable Tanya S. Chutkan, who is presiding over a related sealed criminal matter the Government is prohibited from disclosing certain information pursuant to formal and informal information request in this matter. The Government advised Judge Chutkan of the instant FOIA matter and sought clarification from Judge Chutkan concerning the Government's permissible response in light of her Order in the sealed matter. Defendant received the clarification December 5, 2019, the date of this filing, that permitted Defendant to say the following: The Government is prohibited from disclosing any information pursuant to an Order issued by the Honorable Tanya S. Chutkan.

Contrary to Plaintiff's claims of "gamesmanship," Defendant, out of respect of the sealed criminal matter and upon finding out about the Order, immediately sought clarification from the issuing Court, while making every effort not to refer to the sealed matter without permission from the issuing Court. After receiving permission from issuing Court to make a statement Defendant, the same day, informed Plaintiff of the difficulties in providing a responsive material. The "difficulties" in providing responsive material was due to the unexpected and unique set of facts described above that was out of the control of the Defendant. Defendant's only motivation was to maintain the integrity of the sealed matter as much as possible, until the issuing Court provided guidance. Defendant requests to be able to update the Court and Plaintiff concerning any changes to the circumstance or possible production of responsive material not implicated in Judge Chutkan's Order on or before January 30, 2020.

Plaintiff's Status Report:

1. Plaintiff filed this FOIA lawsuit was filed on November 7, 2018. From the beginning, Defendant has "slow walked" its handling of this case. Extensive delays were claimed to be necessary due to two changes in counsel representing the agency and the alleged volume of potentially responsive records.
2. Finally, as reflected in the August 2, 2019 joint status report submitted

to the Court (ECF No. 16), Defendant agreed to begin producing responsive records by November 5, 2019. That deadline came and went with no records being produced.

3. On a telephone call with undersigned counsel on November 13, 2019, counsel for Defendant claimed that “technical difficulties” had resulted in a delay. No further details were provided but no indication was given that the production would not be provided soon.

4. In response to Plaintiff’s subsequent inquiry, Defendant’s counsel represented yesterday in an e-mail that “difficulties with the production remain.”

5. Only today, in a telephone call with Plaintiff’s counsel, did Defendant’s counsel disclose that the agency’s failure to produce records as agreed was not due to “technical difficulties,” but in fact because the agency was waiting for some unspecified action by Judge Chutkan in some other matter so as to avoid having to produce records in this case. *See* Def’s Status Report above.

6. Plaintiff strongly objects to this gamesmanship and misleading behavior by Defendant. Plaintiff asks that Defendant be ordered to explain the “technical difficulties” it claimed and explain why it never disclosed to the Court or Plaintiff the possible relatedness of another action before Judge Chutkan prior to today. The after-the-fact “explanation” offered by Defendant above, consisting only of representations by counsel, does not adequately excuse or explain the

failure of Defendant to meet its obligations in this case, including, in particular, candor to the Court and Plaintiff.

7. Plaintiff requests a status conference in this matter at the Court's earliest opportunity.

Respectfully submitted,

JESSICA K. LIU, D.C. Bar #472845  
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092  
Chief, Civil Division

BY: */s/ Benton Peterson*  
BENTON PETERSON Bar #1029849  
Assistant United States Attorney  
555 Fourth Street, N.W., Room E-4907  
Washington, D.C. 20530  
202.252.2534

JUDICIAL WATCH, INC.

*/s/ James F. Peterson*  
\_\_\_\_\_  
James F. Peterson  
D.C. Bar No. 450171  
425 Third Street S.W., Suite 800  
Washington, DC 20024  
(202) 646-5175  
jpeterson@judicialwatch.org

Counsel for Plaintiff