

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
JEFFREY A. DANIK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 17-1792 (TSC)
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
_____	)	

**JOINT STATUS REPORT**

Pursuant to the Court’s June 22, 2020, Minute Order, Plaintiff Jeffrey Danik and Defendant U.S. Department of Justice submit this Joint Status Report in this Freedom of Information Act (“FOIA”) case.

This case involves Plaintiff’s FOIA requests seeking from Defendant various categories of information relating to former FBI Deputy Director Andrew McCabe. On May 31, 2020, the Court entered a Memorandum Opinion and Order denying Defendant’s Renewed Motion for Summary Judgment and Plaintiff’s Renewed Cross-Motion for Summary Judgment. ECF No. 37, 38. The Court concluded that Defendant had not established that (1) McCabe’s text messages constitute agency records; (2) a search for McCabe’s text messages and emails would be unduly burdensome; and (3) the release of information withheld pursuant to Exemption 5 and the deliberate process privilege would result in foreseeable harm. The Court permitted the FBI to supplement the record with respect to all of these issues.

The parties offer their respective positions below:

**Defendant's Position:**

The parties have met and conferred regarding the above issues. With respect to Mr. McCabe's emails and texts, the parties have conferred regarding the search terms and the agency's processing of email chains. The FBI has completed supplemental searches for emails and texts potentially responsive to Plaintiff's request but now the records must be scoped to identify specific records responsive to the request as the results from the search used broad terms that may have identified records outside the scope of Plaintiff's request. The text message search yielded approximately 150 "hits," but the FBI has not determined how many of those results, if any, are responsive to Plaintiff's request. The FBI anticipates that the scoping of the records will be completed by August 28, 2020, and shortly after that time the FBI will be able to identify a page count and production schedule.

**Plaintiff's Position:**

With respect to McCabe's text messages, the FBI has agreed to search them for responsive records. Defendant requested Plaintiff narrow its request before it conducted any searches. Plaintiff declined. Defendant subsequently searched McCabe's text messages and the searches yielded approximately 150 "hits" or potentially responsive records.

With respect to McCabe's emails, the FBI has conducted supplemental searches for records responsive to Plaintiff's FOIA request. On June 25, 2020, Defendant informed Plaintiff that searches for all provided search terms yielded 22,717 emails. On the same day, Plaintiff subsequently narrowed his request. Now only 5,696 emails remain. Plaintiff understands that Defendant must now review these records to ensure they are responsive to his request. Plaintiff asked Defendant how many emails have been reviewed in the past month. Defendant, for

whatever reason, refuses to provide Plaintiff with this information. Plaintiff cannot properly meet and confer with Defendant about how this case should proceed without this information.

Plaintiff submitted his FOIA request in October 2016. He sued in September 2017. He has waited patiently long enough. He therefore respectfully requests the Court schedule a status conference in hopes the Court may assist in bringing a timely and transparent resolution to this case.

Dated: July 22, 2020

Respectfully submitted,

/s/ Michael Bekesha  
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