

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**JOINT STATUS REPORT**

Plaintiff Jeffrey Danik and Defendant U.S. Department of Justice submit this Joint Status Report in this Freedom of Information Act (“FOIA”) case.

In its August 13, 2020, Order, the Court directed Defendant to inform Plaintiff how many emails the agency has reviewed since June 25, 2020. The Court ordered Defendant, in each subsequent Joint Status Report, to include the number of emails reviewed since the last report.

The parties offer their respective positions below:

**Defendant’s Position:**

To date, Defendant has not reviewed—that is, processed for release—any emails. As set forth in the previous Joint Status Report, the FBI completed its scoping of the potentially responsive documents. The FBI identified 50,000 potentially responsive pages, but anticipates that number will be reduced to an estimated 30,000 once it eliminates less-inclusive emails. In response to Plaintiff’s inquiries regarding the total pages and number of emails for review, Defendant proposed several ways to reduce the number of potentially responsive pages by narrowing the scope of the request. Plaintiff has stated that he is not open to narrowing his request. Accordingly, in view of its processing obligations in dozens of other litigated FOIA

requests, the FBI anticipates reviewing approximately 500 pages per month in this case, with the first release of any responsive, nonexempt documents on December 21, 2020, and continuing releases on or about the 21<sup>st</sup> of each month until completion.

Plaintiff states that Defendant fails to provide information regarding a discrepancy in the page count. Defendant has explained that the page count is based on ingested, potentially responsive pages, and thus there is no need to estimate the length of emails or their attachments.

Regarding Plaintiff's request to identify the number of pages responsive to each search term, Defendant was unable to provide a breakdown of the number of pages responsive to each search term, but it was able to provide Plaintiff with an approximate breakdown of the number of emails responsive to each search term, giving some insight as to the volume associated with each search term. Defendant therefore proposes that, in accordance with the Court's Minute Order of July 2, 2020, the parties file a further Joint Status Report on or before October 21, 2020.

**Plaintiff's Position:**

Plaintiff is tired of waiting. The Court ruled almost four months ago, on May 31, 2020, that Defendant failed to satisfy its burdens under FOIA. We however are no closer to a resolution of this case.

In response to the Court's ruling, Defendant conducted searches of former FBI Deputy Director Andrew McCabe's text messages and conducted supplemental searches of his emails. In the parties' July 22, 2020 Joint Status Report, Plaintiff reported that Defendant's search of the text messages yielded approximately 150 "hits" of potentially responsive records and that its search of the emails yielded 22,717 emails. Plaintiff also reported that he narrowed his request so that only 5,696 remained.

Since then, Defendant has determined that approximately 11 pages of text messages exist. On September 14, 2020, Defendant agreed to process the 11 pages of text messages by October 15, 2020. Although Plaintiff believes one month is rather extensive to process 11 pages, Plaintiff is pleased Defendant has finally agreed to begin processing some records.

Defendant also informed Plaintiff that the universe of potential responsive emails is 2,362. Generally, the government estimates that an email is approximately 1.5 to 2 pages. Here, the emails appear to be 13 pages long (30,000 pages / 2,362 emails). Plaintiff has asked Defendant for greater detail about this discrepancy. For whatever reason, Defendant did not provide Plaintiff with an answer. Plaintiff also asked Defendant if it could breakdown the number of pages by search term. Defendant states that it cannot do so. Instead it provided Plaintiff with the approximate breakdown of the number of emails responsive to each search term, which Defendant had previously provided to Plaintiff and which allowed Plaintiff to narrow its request in July.

On September 17, 2020, Defendant asked Plaintiff if he was willing to once again narrow his request. He is not inclined to do so at this time. He already substantially narrowed his request. He also does not believe 11 pages of text messages and 2,362 emails is too onerous to review. Plaintiff believes he has waited long enough – almost four years since he sent his FOIA requests – for the agency to satisfy its burdens and produce all non-exempt, responsive records to him. Plaintiff therefore proposes the following:

- Defendant produce all non-exempt, responsive text messages by October 15, 2020;
- Defendant process 750 pages of emails and produce all non-exempt, responsive pages to Plaintiff by October 21, 2020;
- Defendant process monthly 750 pages of emails and produce all non-exempt, responsive pages to Plaintiff by the 21st of each month until completion; and

- The parties file a joint status report by the 29th of each month.

Dated: September 21, 2020

Respectfully submitted,

/s/ Michael Bekesha

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