

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

JUDICIAL WATCH, INC.,  
Plaintiff,  
v.  
U.S. DEPARTMENT OF JUSTICE,  
Defendant.

## STATUS REPORT

Pursuant to the Court’s Minute Order of July 18, 2022, Defendant U.S. Department of Justice (“Defendant”) submits the following Status Report.

This matter arises under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended. It concerns a FOIA request made by Plaintiff Judicial Watch, Inc. (“Plaintiff”) to the Federal Bureau of Investigation (“FBI”), a component of Defendant, seeking, *inter alia*, the following:

Any and all records concerning or relating to the FBI's efforts to discover, recover, retrieve, or find emails or text messages stored on the Datto device, equipment, or hardware referenced in [the first part of the request].

*See* Compl., ECF No. 1.<sup>1</sup>

As reported in prior status reports, although the FBI has completed its initial processing of records that would be responsive to this part of Plaintiff's FOIA request, the FBI had referred for consultation records originating from or containing the equities of more than a dozen government agencies. The FBI has been making rolling, monthly productions to its electronic

<sup>1</sup> The first part of the original request is no longer at issue.

FOIA library of the nonexempt portions of responses to these consultation requests as it receives those responses back from other government agencies, on or before the first Friday of every month. As reported in April, 2022, the FBI reached out to the other government agencies to which it had sent the referenced consultation requests. The FBI was able to clarify and confirm the number of pages outstanding and determined that the remaining outstanding consultation requests then comprised approximately 2,223 pages.<sup>2</sup> The FBI further confirmed that the other government agencies were in receipt of all the consultation requests and advised them of the Court's concern regarding progress as to those requests.

On August 11, 2022, the FBI again reached out to the other government agencies to which it had sent consultation requests to inquire about the status of the agencies' responses concerning, collectively, approximately 2,211 remaining pages (some of the same pages were sent to different agencies). Since that communication, the FBI received one agency's final response concerning the material sent to it, and received responses from the other government agencies advising that additional time is needed to complete their review of the records. One of these agencies, reviewing a large volume of the pages sent in consultation, is conferring with the FBI about ways to facilitate the processing of the material. Based on communications with this agency so far, the FBI anticipates that it will be able to begin producing the non-exempt portions of these remaining materials by the November production.

After the last status report, filed on July 7, 2022 (ECF No. 36), the FBI received one consult response from another government agency containing material that is being processed for

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<sup>2</sup> In many instances, the same pages or records were sent to multiple different agencies for review. In some instances, the FBI has received input back from some agencies but not others regarding the same records.

the October 7, 2022, release. The FBI did not make a production to Plaintiff on August 5, 2022, or September 2, 2022, as it had not received the one response in time to complete its processing of the responsive material.

Defendant will continue to make rolling, monthly productions of all non-exempt records, or non-exempt portions of records, subject to the FOIA on or before the first Friday of every month as it receives complete responses to its consultation requests from other government agencies. Defendant proposes filing a next status report on January 6, 2023, or earlier if the production of responsive records is completed before then. If the production is completed, Defendant anticipates meeting and conferring with Plaintiff about any issues to be litigated and proposing a briefing schedule, if necessary, to the Court at that time.

Dated: September 8, 2022

Respectfully submitted,

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