

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. 1:19-cv-879 (CJN)
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE,)	
)	
<i>Defendant.</i>)	
_____)	

JOINT STATUS REPORT

Pursuant to the Court’s December 21, 2022 Minute Order, the parties submit the following joint status report (“JSR”) to inform the Court of the status of the case.

1. This is an action under the Freedom of Information Act (“FOIA”). Plaintiff’s FOIA requests seek two categories of documents related to an April 2017 meeting between Department of Justice (“DOJ” or “Department”), Federal Bureau of Investigation (“FBI”) personnel, and reporters for the Associated Press (“AP”). These records regard, concern, or relate to the meeting and include all records of communication between any official, employee, or representative of the DOJ and any of the individuals present at the aforementioned meeting. Complaint (“Compl.”), ECF No. 1, ¶¶ 6, 8. The requests further stated that, “[f]or purposes of clarification, the meeting that is the subject of his request was reported on by Politico on June 29, 2018,” and provided a hyperlink to a Politico news article entitled “Associated Press May Have Led FBI to Manafort Storage Locker.” *Id*; see <https://www.politico.com/story/2018/06/29/paul-manafort-storage-locker-associated-press-687776>.

2. The records that remain at issue are those of former U.S. Attorney (“AUSA”) Shreve Ariail. Based on records produced to Plaintiff by DOJ’s Criminal Division (“CRM”) during the course of these proceedings, Ariail is known to have attended the meeting in question and the Court ordered on March 28, 2022, that his records must also be searched. *See* Memo. Opinion, March 28, 2022 at p. 13 (ECF No. 32).

3. The parties remain at an impasse, consistent with their respective positions as stated in the previous status reports, and they each submit their positions below separately. *See* JSR, Dec. 2, 2022 (ECF 36); JSR, Dec. 16, 2022 (ECF 37); Pl. Status Report, Jan. 6, 2022 (ECF 38), and Def. Notice Regarding Pl. Status Rpt. (ECF 39).

Plaintiff’s Position

4. In yet another effort to confer, Plaintiff asked Defendant this week to confirm when Ariail’s emails were deleted and details about the deletion. Yet, Defendant continues to refuse to provide direct answers or any answers at all. See Email String between counsel dated January 17, 2023 through January 19, 2023, attached hereto as Exhibit 1. Defendant’s cherry picking which questions to answer or what information to disclose demonstrates the need for the Court to order a status hearing so that the parties can fully present their positions and the Court can ask pointed questions where clarification is needed.

5. Ariail’s records are significant to Plaintiff’s request. He was among the three DOJ attorneys who attended the meeting and according to his current law firm’s website, he was the former Chief of Organized Crime and Gangs for the Eastern District

of New York.¹ Yet all of his records that are known to exist in this case and relevant to Plaintiff's FOIA request are "missing" from the EOUSA's office. It should also be mentioned that Ariail's records are the second set of records that appear to be "missing" or unable to be located by the government in this case. The first set of records was the government's trial binder in the prosecution of Paul Manafort that contained statements about the subject meeting. *See* Pl. Memo. in Opposition to Def. MSJ, pp. 13-15 (ECF 26 – pp. 17-19 using ECF pagination).

6. Since the issue surrounding the government's preservation of Ariail's emails and records surfaced, obvious questions arose from the DOJ's own statement and the Request for Records Disposition Authority ("Records Disposition Authority") that was provided to Plaintiff on November 29, 2022. *See* ECF 38 at ¶¶ 3-7; ECF 37 at ¶¶ 3-9; and ECF 36 at ¶¶ 5-9.

7. On November 29 Defendant provided to Plaintiff the Record Disposition Authority (ECF 36-1) and this general statement when asked about the status of Ariail's records:

In the absence of a litigation hold or some other reason to preserve documents for a longer period of time, [EOUSA's] standard retention policy is that business emails (including attachments) are temporary records that are retained for 3 years, after which they are automatically deleted from the USAMail storage system.

Since then, Defendant has provided only limited, piecemeal information, and continues to press for a premature round of summary judgment motions in an obvious attempt to avoid

¹ *See* <https://www.jenner.com/en/news-insights/news/shreve-ariail-former-cia-deputy-general-counsel-and-section-chief-at-us-attorney-s-office-for-the-eastern-district-of-new-york-joins-jenner-block> (last accessed Jan. 20, 2023).

answering the questions posed by its own submissions. *Id.*; ECF 36-1.

8. The Record Disposition Authority appears to apply to “Temporary” records only. *See* ECF 36-1 at p. 5 (using ECF pagination) (“Final Disposition – Temporary”). This begs the questions what happened to Ariail’s permanent records, such as his substantive emails the Court and parties know about in this case, and why would EOUSA consider them “Temporary,” if that indeed is its position. *Id.*; ECF 38-1. Emails with Ariail that were previously produced by other custodians – substantively commenting on the government’s prosecution strategy of Paul Manafort and briefing – appear on their face to be permanent federal records. *See* ECF 38-1. Certainly, Defendant agreed with Plaintiff’s assessment when it produced these records in response to Plaintiff’s FOIA request. ECF 38 at ¶ 5; *Id.* It is unclear whether Defendant is now taking the opposite view and considering these emails non-federal records or “Temporary.” Nonetheless, it should state so if it is, and if DOJ does not consider them “Temporary,” it needs to sufficiently explain to the Court and Plaintiff what happened to these records and what retention policy applies to them. As Defendant previously disclosed, some of Ariail’s emails were retained while others were not. ECF 38 at ¶¶ 4-5.

9. The Record Disposition Authority further states that “DOJ components covered by this item must use the longest retention in the range unless the Component submits to the Office of Records Management Policy (ORMP) their written policy and practice establishing standardized retentions within the retention range set by this schedule.” ECF 36-1 at p. 5 (using ECF pagination). The retention range set forth by the written Disposition Authority is 3 to 7 years. Defense counsel has noted that EOUSA

retains “business emails” for 3 years but Defendant has not provided any such “written policy and practice establishing” the 3-year retention policy. If there is no such written policy and practice established by EOUSA, the retention period would be 7 years, not 3.

10. Defendant’s general statement explaining EOUSA’s policy also fails to provide any more clarity on the status of Ariail’s permanent records and raises the same questions as before. How does Defendant define “business emails” as used by its attorney? Was the “standard retention policy” as stated above followed for Ariail’s records? In other words, were the emails produced by the other custodians deleted as “business emails,” and what does that mean? ECF 38-1. DOJ disclosed that some of Ariail’s emails were retained while others were not, but it has yet to explain how EOUSA determined which emails were retained and which were not. Defendant has provided conflicting information that requires an explanation about what process or policy EOUSA used to delete emails and how it determined which of Ariail’s emails to delete. Further, is the automatic deletion permanent or are the emails archived so that they may be restored if necessary? To this date, Defendant refuses to answer when Ariail’s emails were deleted and specifically the emails the Court and the parties know about. ECF 38-1.

11. As noted in the previous Status Reports, these questions and those raised in Plaintiff’s previous filings cannot remain unanswered. ECF 38 at ¶ 7; ECF 37 at ¶ 9; ECF 36 at ¶¶ 6, 8. Summary judgment briefing at this juncture as requested by Defendant would only further delay the answers to these questions and the adjudication and resolution of this four-year old case.

12. Therefore, Plaintiff respectfully requests that the Court order a Status

Conference to address the issues raised herein or for the Defendant to submit the requested information in detailed declarations to the Court.

Defendant's Position

13. Defendant incorporates its position set forth in the previous joint status reports with respect to the issues addressed above. Defendant has answered Plaintiff's questions, and those answers have just beget more questions and more argument in status reports, all of which is far afield from a FOIA case. Since the previous JSR, in response to outreach from Plaintiff, Defendant informed Plaintiff, in the interest of avoiding further briefing, that neither former AUSA Ariail, nor any other DOJ official on the records CRM produced and on which former AUSA Ariail was copied, was a Capstone official. Plaintiff was not satisfied with this additional information. Defendant therefore reiterates its position that the parties brief the adequacy of DOJ's search of former AUSA Ariail's records, according to the following briefing schedule, which varies slightly from the one previously proposed:

- Defendant shall file a motion for summary judgment on or before March 9, 2023.
- Plaintiff shall file a combined cross-motion for summary judgment and opposition to Defendant's motion on or before April 20, 2023.
- Defendant shall file a combined reply in support of its motion and opposition to Plaintiff's motion on or before May 18, 2023.
- Plaintiff shall file a reply in support of its motion on or before June 19, 2023.

Dated: January 20, 2023

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca

Ramona R. Cotca (D.C. Bar No. 501159)

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Counsel for the Defendants

Exhibit 1

(January 17-19, 2023 Emails)

Re: Judicial Watch, Inc. v. DOJ, Case No. 19-879

Ramona Cotca <rcotca@JUDICIALWATCH.ORG>

Thu 1/19/2023 1:18 PM

To: Konkoly, Antonia (CIV) <Antonia.Konkoly@usdoj.gov>

 1 attachments (270 KB)

05222020_p77.pdf;

Toni-

I think there are some obvious questions that arise out of your client's general statement below that can be easily answered by DOJ and which may help the parties move the needle with respect to next steps. Such as, was the "standard policy" followed for Ariail's emails? DOJ indicated that some were not deleted while others were. There is conflicting information here that clarification from your client is needed to help Plaintiff and the Court understand the facts and how to proceed. Is the automatic deletion permanent or are the emails archived so that they can be restored if needed? Are the emails deleted on a rolling basis such that is each email automatically deleted at the 3 year anniversary from the date that the email was either received or sent? For example, was the email string between Shreve Airial and Andrew Weissman dated April 12, 2017 (see attached pdf) deleted on April 12, 2020? Your client's general statement below and the piecemeal information provided with each JSR still do not answer these questions, all of which obviously flow from the email retention issue that has only come to light in the last few weeks. Your client holds all of the information and until the information is disclosed, it is impossible for Plaintiff to determine what appropriate next steps would be.

If DOJ is unwilling to confer and be forthcoming with basic information about what happened to Ariail's emails relevant to this case by providing this information, I appreciate you forwarding a draft of the JSR today so we can submit a timely JSR tomorrow. Please note that I will not be available tomorrow after 6pm.

Thank you,

Ramona R. Cotca
JUDICIAL WATCH, INC.

From: Konkoly, Antonia (CIV) <Antonia.Konkoly@usdoj.gov>**Sent:** Thursday, January 19, 2023 12:10 PM**To:** Ramona Cotca <rcotca@JUDICIALWATCH.ORG>**Subject:** RE: Judicial Watch, Inc. v. DOJ, Case No. 19-879**[EXTERNAL EMAIL]**

Hi Ramona,

As I explained in my November 29 email:

In the absence of a litigation hold or some other reason to preserve documents for a longer period of time, [EOUSA's] standard retention policy is that business emails (including attachments) are temporary records that are retained for 3 years, after which they are automatically deleted from the USAMail storage system.

The simple phrasing of your question “when were the emails deleted” doesn’t take into account any of the nuanced information we’ve provided you thus far that attempts to answer your questions, and so continuing to confer about this does not seem fruitful. Our position for tomorrow’s JSR therefore will be that there are no new updates since the last JSR.

Thanks,
Toni

From: Ramona Cotca <rcotca@JUDICIALWATCH.ORG>
Sent: Wednesday, January 18, 2023 8:25 PM
To: Konkoly, Antonia (CIV) <Antonia.Konkoly@usdoj.gov>
Subject: [EXTERNAL] Re: Judicial Watch, Inc. v. DOJ, Case No. 19-879

Thank you for the response below. The key question that still remains is when the emails were deleted. I don’t believe DOJ has provided an answer to this question in any of the filings or any of our communications. Can DOJ provide when the emails were deleted. I look forward to your response.

Thank you,
Ramona R. Cotca

On Jan 18, 2023, at 7:54 PM, Konkoly, Antonia (CIV) <Antonia.Konkoly@usdoj.gov> wrote:

[EXTERNAL EMAIL]

Hi Ramona,

Thanks for your email. DOJ has already provided JW with all available information regarding EOUSA’s search efforts. Although we do not agree that the question of who qualifies as a “Capstone Official” is in any way relevant to that question, in the interest of attempting to avoid the need for further briefing, I can also tell you that within US Attorney’s Offices, only the US Attorney qualifies as such an official – and that neither former AUSA Ariail, nor any other DOJ official on the records CRM produced and on which former AUSA Ariail was cc’d, was such an official.

As stated in our last JSR we are prepared to defend the adequacy of EOUSA’s search should JW seek to challenge it, and barring some other action or directive from the court in the interim, we plan to simply reiterate that position in the JSR currently due on Friday.

Thanks,
Toni

From: Ramona Cotca <rcotca@JUDICIALWATCH.ORG>
Sent: Tuesday, January 17, 2023 3:33 PM
To: Konkoly, Antonia (CIV) <Antonia.Konkoly@usdoj.gov>
Subject: [EXTERNAL] Judicial Watch, Inc. v. DOJ, Case No. 19-879

Toni-

It appears that the parties may be at an impasse until the Court rules. In an effort to move the needle, would your client be amenable to providing the answers to Plaintiff’s questions informally? Thank you in advance.

Ramona R. Cotca

JUDICIAL WATCH, INC.

From: [Ariail, Shreve \(USANYE\)](#)
To: [Weissmann, Andrew \(CRM\)](#)
Cc: [\(b\) \(6\), \(b\) \(7\)\(C\) CRM](#); [\(b\) \(6\), \(b\) \(7\)\(C\) \(USANYE\)](#)
Subject: Re: AP's latest stories on Paul Manafort
Date: Wednesday, April 12, 2017 6:52:25 PM

Well, given that don't know what's been done, I'm working on investigative plan that focuses broadly on what we think should be done, and possible theories of prosecution, coming up with theoretical predicate acts etc.

Per our prior discussion, I'd like to see/know what MLARS is doing/has done so we don't overlap.

Sent from my iPhone

On Apr 12, 2017, at 6:48 PM, Weissmann, Andrew (CRM) <[\(b\) \(6\), \(b\) \(7\)\(C\)@usdoj.gov](mailto:(b) (6), (b) (7)(C)@usdoj.gov)> wrote:

Thx. Are you all putting a written plan together including what's been done and what steps you will take?

Andrew Weissmann
Chief
Fraud Section
Criminal Division
Office [\(b\) \(6\), \(b\) \(7\)\(C\)](#)

On Apr 12, 2017, at 6:42 PM, Ariail, Shreve (USANYE) [\(b\) \(6\), \(b\) \(7\)\(C\)@usdoj.gov](mailto:(b) (6), (b) (7)(C)@usdoj.gov)<[mailto:\(b\) \(6\), \(b\) \(7\)\(C\)@usdoj.gov](mailto:(b) (6), (b) (7)(C)@usdoj.gov)>> wrote:

Sent from my iPhone

Begin forwarded message:

From: "Bridis, Ted" <TBridis@ap.org<<mailto:TBridis@ap.org>>>
Date: April 12, 2017 at 6:36:15 PM EDT
To: [\(b\) \(6\), \(b\) \(7\)\(C\)@usdoj.gov](mailto:(b) (6), (b) (7)(C)@usdoj.gov)<[mailto:\(b\) \(6\), \(b\) \(7\)\(C\)@usdoj.gov](mailto:(b) (6), (b) (7)(C)@usdoj.gov)>"
[\(b\) \(6\), \(b\) \(7\)\(C\)@usdoj.gov](mailto:(b) (6), (b) (7)(C)@usdoj.gov)<[mailto:\(b\) \(6\), \(b\) \(7\)\(C\)@usdoj.gov](mailto:(b) (6), (b) (7)(C)@usdoj.gov)>>
Subject: AP's latest stories on Paul Manafort

<https://apnews.com/20cfc75c82eb4a67b94e624e97207e23/AP-Exclusive:-Manafort-firm-received-Ukraine-ledger-payout>

... Now, financial records newly obtained by The Associated Press confirm that at least \$1.2 million in payments listed in the ledger next to Manafort's name were actually received by his consulting firm in the United States. They include payments in 2007 and 2009, providing the first evidence that Manafort's firm received at least some money listed in the so-called Black Ledger.

<https://apnews.com/7820703c490a45a8a5608274e24e827b/Former-Trump-campaign-chairman-to-register-as-foreign-agent>

WASHINGTON (AP) — President Donald Trump's former campaign chairman Paul Manafort will register with the Justice Department as a foreign agent for lobbying work he did on behalf of political interests in Ukraine, led at the time by a pro-Russian political party, his spokesman said Wednesday.... By registering retroactively, Manafort will be acknowledging that he failed to properly disclose his work to the Justice Department as required by federal law.

Ted Bridis, news editor