



U.S. Department of Justice

*United States Attorney
Southern District of New York*

MEMO ENDORSED

*86 Chambers Street, 3rd Floor
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April 30, 2015

BY ECF

The Honorable Valerie E. Caproni
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 5/1/2015

Re: Center for Constitutional Rights, Inc. v. Department of Defense et al.,
11 Civ. 3533 (VEC)

Dear Judge Caproni:

Pursuant to Paragraph 2 of the Court's order of March 6, 2015 [Docket No. 65], the parties hereby submit this joint letter setting forth their respective positions as to the proposed schedule for the Department of State's production.

On behalf of the defendants in the above-referenced case (collectively, the "Government"), we first confirm that State completed its supplemental searches for documents by April 15, as the Court ordered. These supplemental searches yielded approximately 7,500 to 8,000 new documents — which, based on very rough estimates, total over 20,000 pages — that must now be processed for release. At State's regular processing rate, completing the production of these documents would take about two years. However, in light of the age of the case, and given the interests of the Court and the parties in moving things forward, State intends to substantially increase the resources available to this matter and will commit to complete its processing of these documents in one year; State will further commit to make monthly rolling productions of these documents as it processes them.

Plaintiff observes that since the October 2014 agreement, the Department of State has produced documents from only one of the eight offices or locations identified for supplemental searches, namely from the Central Foreign Policy Records (the "Central File"). Central File productions in response to the October 2014 agreement were made on January 9, 2015 (31 documents released — consisting largely of media monitoring cables — and 15 documents withheld in full); March 5, 2015 (37 documents released, 19 pages withheld in full); and March 30, 2015 (21 documents released and 8 documents withheld in full). No productions have been made in April and Plaintiff has not been informed of when the next production is anticipated.

When Plaintiff was informed on April 28th that an estimated 7,500 to 8,000 new documents had been located pursuant to the supplemental searches, Plaintiff expressed its

significant concern with the Government's proposal of one year for the completion of production and seeks production to be concluded in line with the time-frame identified by the Court at the March 6, 2015 status conference, namely by the end of 2015. Plaintiff's assessment of what constitutes a reasonable schedule for the completion of State's production is informed by its experiences with State over the five years since the FOIA requests were filed — and CCR was initially informed that there were *no* responsive documents at State — including the period since the October 2014 agreement and the limited production since that date, as well as by its experience with other Defendant agencies, all of which Plaintiff considers having yet to complete the majority of what each agreed to do pursuant to the agreements. State responds that its proposed production rate for these remaining documents — which were collected only when it voluntarily agreed, about six months ago, to conduct numerous supplemental searches in response to Plaintiff's request — *substantially exceeds* the rate at which it has processed any production in this or other FOIA case in recent memory.

The parties have begun discussing ways in which it might be possible to decrease the number of documents processed by State, and thus speed up the completion of this production. Plaintiff has proposed that State should not process any media monitoring from the records located through the supplemental searches, though State notes that it may not be clear which documents contain such monitoring in advance of processing them. Additionally, in light of the Government's comments at the status conference of the need to redirect staff from reviewing records for production to preparing *Vaughn* indexes and addressing exemption issues, Plaintiff has proposed putting a hold on the exemption negotiations, so that State FOIA resources for this case can be devoted to reviewing records for release. For its part, State has proposed, and the parties intend to explore, the possibility of exempting certain other categories of documents from processing (*e.g.*, documents from particular components) in an attempt to further cut down on the processing time. The parties intend to continue these discussions — without interfering with State's ongoing production and taking into account that the offices searched as part of the agreement have already been the basis for extended negotiations during which Plaintiff repeatedly sought supplemental searches due to its believe that the initial searches failed to adequately locate responsive records — and if possible, arrive at a mutually agreeable resolution.

Plaintiff has requested, however, that as part of the releasability review of the newly-located records, State specify which privilege underlies a B(5) claim, reasoning that including this information in the initial review will: (a) allow Plaintiff to more fully assess the claimed exemption, which could narrow its objections to such claimed exemptions and subsequent negotiations, and (b) forestall the need for the Government to devote resources to re-review the documents for the purposes of preparing a *Vaughn* index. State has informed Plaintiff that this additional step might in fact significantly *increase* the processing time, but is willing to continue discussions with Plaintiff on this topic to see whether some of its concerns can be addressed in a way that does not slow down the process.

Finally, Plaintiff informs the Court that it requested that the Department of State promptly undertake a search of former Secretary of State Clinton's emails, that of her immediate staff in the Office of the Secretary (from both personal email accounts and any state.gov accounts that may exist) and conduct a new search of all other records, in all forms, of the Office of the Secretary and the Executive Secretariat. State has responded that it is currently processing all of former Secretary Clinton's emails — not just those potentially relating to this or other

pending FOIA cases — and intends to post them publicly once the process is complete. State further stated, however, that it will not conduct yet another new search of its offices, beyond processing the Clinton emails, and that it does not have the ability to search through emails that are not on State systems.

We thank the Court for its consideration of this matter.

Respectfully,

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United States Attorney

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While the parties are encouraged to continue negotiations targeted at reducing the Department of State's processing and production time, the Department of State is ordered to complete its production in response to Plaintiff's supplemental search requests by December 31, 2015. The parties shall submit a further letter by October 16, 2015 regarding the status of the Department of State's production, including with respect to the publication of former Secretary Clinton's emails. The parties shall next appear before the Court for a status conference on October 23, 2015 at 10:00 a.m.

SO ORDERED.



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

Date: 5/01/2015