

April 15, 2019

Via ECF

Hon. Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *American Civil Liberties Union, et al. v. Office of the
Director of National Intelligence, et al.*, 18-cv-12131
(LGS)

Dear Judge Schofield:

The parties in the above-captioned Freedom of Information Act (“FOIA”) lawsuit submit this joint letter pursuant to the Court’s order dated March 18, 2019 (ECF No. 32). Counsel for the Plaintiffs have conferred with counsel for the agencies (the “Government”), who join this letter.

This is a suit to enforce FOIA requests that Plaintiffs submitted on November 21, 2018 to four government agencies: ODNI, NSA, CIA, and DOJ (including its components FBI, National Security Division, and Office of the Inspector General). Plaintiffs seek records concerning the scope of the government’s surveillance activities under the USA Freedom Act. *See* Am. Compl. (ECF No. 17). Plaintiffs believe that these records will help inform the ongoing public debate about whether Congress should reauthorize certain surveillance powers scheduled to expire in December 2019. *See id.* ¶¶ 15–23.

The parties request that the Court endorse this letter to set deadlines for each defendant agency to complete production of responsive, non-exempt documents in connection with Plaintiffs’ FOIA requests. The parties’ agreed-upon deadlines are as follows:

- **CIA** will provide Plaintiffs with a final response to their FOIA request, including any “Glomar” response, by **May 6, 2019**.
- **ODNI** will complete processing and production of all responsive, non-exempt records by **May 6, 2019**.
- **NSA** will complete processing and production of all responsive, non-exempt records by **June 17, 2019**.



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- **FBI** will complete its production in installments. FBI will make its first production by **June 3, 2019**, will make another production by **July 8, 2019**, and, if needed, will complete processing and production of all remaining responsive, non-exempt records by **August 2, 2019**.
- **DOJ Office of the Inspector General** provided Plaintiffs with a final response to their FOIA request by letter dated March 1, 2019, and considers its production complete.
- **DOJ National Security Division (NSD)** will make its initial production on **June 3, 2019**, which will include all responsive, non-exempt records that do not require consultation with officials at other agencies. In addition, NSD will make the following productions:
 - By **September 3, 2019**, NSD will complete processing and production of all non-exempt records responsive to Categories 1, 3, 4, and 7 of Plaintiffs' FOIA request, *see* Am. Compl. at 6-7.
 - By **November 18, 2019**, NSD will make an interim production of non-exempt records responsive to Categories 2, 5, 9, and 11 of Plaintiffs' FOIA request, *see id.*¹
 - By **February 3, 2020**, NSD will complete processing and production of all non-exempt records responsive to Categories 2, 5, 9, and 11 of Plaintiffs' FOIA request.
 - By **April 3, 2020**, NSD will complete processing and production of all non-exempt records responsive to Categories 6, 8, 10, and 12 of Plaintiffs' FOIA request, *see id.*²

NSD will endeavor to process and produce documents responsive to the priority categories by the dates listed above, but will update Plaintiffs if the processing of certain documents within any categories cannot be completed within the above timelines, and if so, when their processing will be complete.

¹ The parties will confer over the records to be processed by this interim production date, as well as an agreement to narrow the processing of certain reports responsive to Category 2, *see* Am. Compl. at 6.

² With regard to Category 12, the parties have agreed that, in lieu of Plaintiffs' original request, *see* Am. Compl. at 7-8, the agencies will process documents responsive to the following request: "The criminal complaint or indictment for each criminal proceeding initiated on or after June 1, 2015, in which investigators or prosecutors sought authorization from the Assistant Attorney General for National Security (or other authorized official under 50 U.S.C. § 1801(g)) for the use or disclosure of information obtained or derived from Section 215, 50 U.S.C. § 1861."

To the extent that any documents fall into multiple categories, NSD will process them as part of the higher priority category.

With each production of records, the agencies shall identify to Plaintiffs the number of records withheld in full as well as the exemption(s) claimed as a basis for withholding, as well as any “Glomar” response with respect to the requested records. The parties will confer over whether the agencies can provide any additional information with each production concerning any records that are withheld in full, such as the title and date of those records.

The parties understand that the above deadlines are based on the agencies’ initial estimates of the time necessary to process the documents at issue, and that the agencies will provide further updates regarding their processing to the Plaintiffs and the Court over the course of the productions. The agencies will not exceed any of the above deadlines without either the agreement of Plaintiffs or the Court’s approval. The parties propose that they submit a status report to the Court on **June 1, 2020**, regarding the agencies’ productions and how they propose the case should proceed.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Noor Zafar _____

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