



August 11, 2014

VIA ECF

Hon. Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: ACLU et al. v. NSA et al., No. 13-cv-9198-AT-MHD

Dear Judge Torres:

Plaintiffs respectfully oppose the CIA's request for an extension until August 27, 2014 of its August 8 deadline to complete its search for documents responsive to Plaintiffs' FOIA request. For the reasons below, Plaintiffs request that the Court (1) order the CIA to provide a detailed explanation of the status of its search for and processing of responsive documents, (2) order the CIA to complete its search and describe the nature and volume of documents located within one week of the Court's order, and (3) order that any further extension of the CIA's deadlines—including its existing February 9, 2014 deadline to finish processing records—will not be granted without consent, except under extraordinary and unforeseeable circumstances.

* * *

In this suit, Plaintiffs seek basic information relating to government surveillance of U.S. persons under Executive Order 12,333. All agencies other than the CIA have completed their search for responsive documents and are currently processing those documents in accordance with Court-approved deadlines. The schedule that governs the CIA's search for responsive documents is significantly slower, however, because the CIA has repeatedly requested more time than other agencies to comply with its obligations in this FOIA lawsuit. Although Plaintiffs have accommodated those requests to date, they cannot do so again at this point for three reasons.

First, the CIA's repeated requests for extra time have substantially delayed the processing of documents that are essential now to an ongoing and nationwide debate about the proper scope of the government's surveillance authority. Plaintiffs have accommodated those past requests, but they have done so based on assurances that the CIA would meet its prolonged deadlines. As the CIA's latest request for additional time demonstrates, ECF No. 33, those assurances have not held true.

For example, on May 21, 2014, Plaintiffs agreed to the original August 8 search deadline for the CIA, even though every other agency committed to complete its search almost two

months earlier. ECF No. 31. At the time, Plaintiffs expressed their concern to the Court that the extended CIA deadline “risks undue delay in the final resolution of this litigation,” but nevertheless agreed to the date “in the spirit of cooperation based on the CIA’s pledge to comply with the June 20, 2014 deadline for identifying a date by which the final processing of documents will be completed.” *Id.*

Despite the CIA’s pledge, on June 20, the CIA refused to provide a firm deadline for processing responsive records. Instead, the CIA proposed only a tentative and very lengthy deadline of February 9, 2015, which it expected to revisit after the completion of its searches for responsive documents on August 8. ECF No. 32. In the spirit of cooperation, Plaintiffs again agreed to the CIA’s proposal, setting February 9, 2015 as the CIA’s processing deadline, provided that this timeline could be modified and shortened by the parties if the volume of documents would not require a full six months to process. Now, the CIA has asked for a further extension, having missed its deadline to complete its searches for responsive documents.

Second, although Plaintiffs offered to *consent* to the CIA’s latest request for an extension if the agency provided basic information about the status of its search, the CIA refused to do so. Plaintiffs were understandably reluctant to consent to the government’s request based on the pattern described above. Nonetheless, they offered to do so if the government would provide estimates as to the current status of its review and processing of documents, so that Plaintiffs could be certain that the CIA would in fact be able to comply with the new deadlines it proposed. The government refused without any explanation.

Finally, the CIA was not forthright about the status of its search when it initially sought Plaintiffs’ consent to an extension. In fact, that communication strongly implied that the CIA had already completed its search and simply needed additional time to review the responsive documents it had already compiled before proposing a modified processing deadline. In response, Plaintiffs sought confirmation as to whether the CIA had actually completed its search but stated their willingness to agree to the proposed extension if the CIA provided basic information about the status of its review. The CIA did not provide a substantive response until the afternoon of Friday, August 8, at which point it informed Plaintiffs for the first time that its search for records was not, in fact, complete.

For these reasons, Plaintiffs are unable to consent to an extension that, they fear, will precipitate further delay in the litigation. Moreover, Plaintiffs believe that agreeing to an extension in these circumstances would signal, incorrectly, that the Court’s deadlines are merely advisory. Plaintiffs therefore respectfully request that the Court order the relief set forth above.

Respectfully submitted,

/s/ Patrick Toomey

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