

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, OFFICE
OF THE DIRECTOR OF NATIONAL
INTELLIGENCE, DEPARTMENT OF
JUSTICE, and CENTRAL INTELLIGENCE
AGENCY,

Defendants.

USDC SDNY
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DATE FILED: 2/8/17

16-cv-8936 (RMB)

RMB

~~PROPOSED~~ STIPULATION AND ORDER SETTING FORTH ADDITIONAL
PROVISIONS REGARDING THE SCOPE OF REQUIRED SEARCHES AND
DEADLINES FOR COMPLETION OF CERTAIN SEARCHES FOR AND
PROCESSING OF RESPONSIVE RECORDS

WHEREAS:

- A. In this Freedom of Information Act ("FOIA") case, the Court has approved and entered a Stipulation and Order Setting Forth Case Management Plan and Related Agreements (the "January 11 Order," Dkt. No. 31, January 11, 2017).
- B. The January 11 Order acknowledged the existence of certain issues about which the parties had not reached agreement, but were to continue their discussions in an attempt to reach agreement by January 25, 2017.

C. The parties engaged in good faith discussions and, subject to Court approval, have now reached agreement on all remaining case management and search-related issues, as provided herein.

IT IS HEREBY STIPULATED, AGREED, AND ORDERED THAT:

1. The January 11 Order shall remain in force except to the extent modified herein.
2. Defendants shall search for, process, and release non-exempt portions, if any, of documents referenced in the "Summary of Notable Section 702 Requirements" that is referenced in paragraph 8 and Exhibit A of the January 11 Order. For half of these documents, processing and release of any non-exempt portions shall be complete by June 6, 2017; for the remaining half of these documents, processing and release of any non-exempt portions shall be complete by July 11, 2017. In order to facilitate efficient completion of required processing and to help prioritize issues of particular importance to ACLU, Defendants reserve the right to subsequently ask ACLU to modify the scope of its request with respect to particular documents referenced in the "Summary of Notable Section 702 Requirements," and ACLU agrees to consider any such request in good faith. In the absence of agreement by ACLU, Defendants agree to process all documents referenced in that summary.
3. Plaintiffs' FOIA request number 7 as set forth in paragraph 28 of the Complaint (Dkt. No. 1) is hereby modified to consist solely of two parts, referred to herein as Category 7(a) and Category 7(b).
4. Category 7(a) consists of reports produced for NSA senior leadership that include metrics concerning the scope of Section 702 surveillance, types or volume of Section 702 collection, and Section 702 reporting, dated on or after January 1, 2013 (the

“NSA Senior Leadership Reports”). Defendants shall search for and process all NSA Senior Leadership Reports dated or provided to NSA senior leadership during calendar year 2016, and shall search for and process only the last-dated Senior Leadership Report that was generated in each of the calendar years 2013, 2014, and 2015, based on Defendant NSA’s assurance that these reports are generally representative of other NSA Senior Leadership Reports issued during the respective calendar year. Processing and release of any non-exempt portions of documents responsive to Category 7(a) shall be complete by August 22, 2017.

5. Category 7(b) constitutes records created on or after January 1, 2013, reflecting the most recent estimate, measure, or tabulation available, if any, of:
 - a. The number of wholly domestic communications collected via Section 702;
 - b. The number of internet content records collected via Section 702, for PRISM, for Upstream, and in total;
 - c. The number of internet non-content or metadata records collected via Section 702, for PRISM, for Upstream, and in total;
 - d. The number of telephone content records collected via Section 702;
 - e. The number of telephone non-content or metadata records collected via Section 702;
 - f. The number of communications or transactions filtered, screened, or searched using Upstream surveillance under Section 702;
 - g. The number of Section 702 targets who were later determined to be located in the United States or to be U.S. persons, and the number of communications of such targets that were reviewed;
 - h. The number of communications retained or disseminated as evidence, or possible evidence, of criminal activity; and
 - i. The number of targeted selectors for PRISM, for Upstream, and in total.

If and where it would facilitate public release of the requested information, the

agency may substitute a less recent record reflecting the same category of data—i.e., another record from on or after January 1, 2013. Processing and release of any non-exempt portions of documents within this Category 7(b) shall be complete on or before September 15, 2017. Defendants will attempt in good faith to complete processing of records within this Category 7(b), if possible, by August 22, 2017.

6. This Stipulation and Order does not modify Defendants' authority to determine in the first instance how to conduct the required searches in accordance with their legal obligations. Notwithstanding the foregoing, defendant NSA shall not be required to search agency emails for records responsive to Request 7(b). Nor shall NSA be required to perform term-based searches of agency emails for records responsive to Request 4 as set forth in paragraph 28 of the Complaint; but, if NSA personnel tasked with locating or identifying responsive records are aware of specific policies, procedures, or guidance responsive to Request 4 that exist in agency email records, and if those responsive records are not located elsewhere, NSA shall perform targeted email searches in an attempt to locate any such specific policies, procedures, or guidance. NSA can satisfy its search obligation with regard to emails that may be responsive to Request 4 by (i) having an agency declarant certify that all personnel who were queried in connection with NSA's search for documents responsive to Request 4 were instructed to inform NSA FOIA personnel if they were aware of any such specific policies, procedures, or guidance that exist in email files but may not be located elsewhere, and (ii) demonstrating that reasonable search efforts were undertaken with respect to those specific policies, procedures, or guidance (if any).

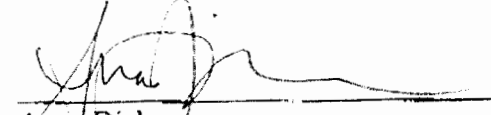
7. Paragraph 11 of the January 11 Order is modified by extending to October 13, 2017, from September 22, 2017, the date by which the parties are to propose a briefing schedule to the Court in connection with any contemplated consolidated motion for summary judgment.

**Subject to adherence to Court's rules
re: pre-motion letters and conference.**

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Dated: New York, New York
February 3, 2017

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

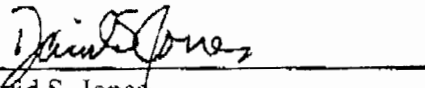
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Counsel for Defendants

SO ORDERED



The Honorable Richard M. Berman
United States District Judge

2/8/17

Date