

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO-OAKLAND DIVISION

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION, *et al.*,

*Plaintiffs,*

v.

DEPARTMENT OF JUSTICE, *et al.*,

*Defendants.*

Case No. 19-CV-00290-EMC

**JOINT STATUS REPORT**

The parties jointly submit this status report pursuant to the Court’s order dated May 7, 2020 (ECF No. 54), addressing the status of searches and processing of records by DOJ’s Office of Information Policy (“OIP”), the Federal Bureau of Investigation (“FBI”), the State Department (“State”), DHS’s Office of Intelligence & Analysis (“I&A”) and the DHS Privacy Office (“DHS”).

**Defendants’ Statement**

I. OIP

OIP reports that it has completed its responsiveness review of records located in its initial search, and has begun to process responsive documents. OIP identified 967 pages of responsive records. Several responsive documents located in OIP’s search originated with other agencies or components, and OIP has

1 referred those documents to the appropriate agencies and components for  
2 processing. OIP anticipates that it will make its first interim release to Plaintiffs on  
3 or before June 12, 2020, and plans to continue making rolling releases on a  
4 monthly basis through September 12, 2020. OIP is open and OIP personnel are  
5 teleworking full-time, though many employees are dealing with childcare issues  
6 that could potentially cause delay.

## 7 II. State Department

8 State reports that although the agency has taken steps to increase its remote  
9 FOIA processing capabilities, it remains unable to process records in this case  
10 because the agency's FOIA office is practicing maximum telework, and the  
11 records at issue reside in a system that is operated exclusively on a classified  
12 network to which FOIA personnel only have access while in State workspace.

13 On April 20, 2020, the Office of Personnel Management directed that plans  
14 for ramping back up Federal Government operations will follow the National  
15 guidelines for Opening Up America Again. Those guidelines include a phased  
16 approach for the resumption of normal activities, which can begin only after  
17 certain epidemiological "gating criteria" are met on a location-by-location basis.  
18 Consistent with this guidance, the Department of State is developing a phased  
19 approach for resumption of operations. At this point, the Department of State's  
20 Washington, D.C. offices have not yet entered the first phase, and State expects  
21 that FOIA processing capabilities will remain similarly limited after entry into the  
22 first phase. State can provide an update on the status of its FOIA operations to  
23 Plaintiffs and the Court in 30 days.

## 24 III. FBI

25 The FBI has resumed FOIA processing on a limited basis, and issued a  
26 further interim response to Plaintiffs on May 19, 2020. As explained in this letter,  
27 the FBI reviewed 102 pages for this response, but release no records because the  
28 pages were all subject to exemptions.

1 Overall, the FBI has processed 3,664 pages of responsive records and  
2 released 596 pages. There are approximately 4,381 pages remaining to be  
3 processed.

4 The FBI expects to continue monthly rolling responses but cannot commit to  
5 a set number of pages per month due to the reduction in staff in the FBI's  
6 Record/Information Dissemination Section ("RIDS"). In light of COVID-19, RIDS  
7 staff – the personnel responsible for processing FOIA requests – were designated  
8 non-mission critical on March 17, 2020, and sent home. RIDS resumed operations  
9 on a limited basis on April 29, but a significant number of employees remain  
10 unavailable to report to work. In addition, initially no more than one-third (and  
11 currently no more than one-half) of RIDS employees are permitted to work on any  
12 given day.

13 Prior to the impact of COVID-19, RIDS standard rate of production in FOIA  
14 litigations was 500 pages per month reviewed in cases where more than 500  
15 responsive pages were identified. In addition to the reduction in staffing and  
16 reduced number of hours in the office, further reductions in productivity will occur  
17 when RIDS facilities must be closed for disinfection if employees who have  
18 entered the space become symptomatic, unknowingly come into contact with  
19 someone who is COVID-19 positive, or test positive for the virus after being  
20 present in RIDS facilities. These efforts to disinfect areas where the virus may  
21 have spread are necessary precautionary measures the FBI is using to prevent the  
22 spread of the virus. RIDS employees cannot be present in facilities while such  
23 cleanings are conducted due to safety concerns.

24 RIDS currently has approximately 86 separate FOIA litigations with  
25 processing demands. Considering these limitations, and in an effort to be equitable  
26 and process records in as many cases as possible (many of which predated  
27 Plaintiff's request and lawsuit), RIDS anticipates that it will be able to make a  
28 release of an undetermined number of pages in this matter with monthly

1 productions but cannot guarantee a set number of pages.

#### 2 IV. DHS

3 Since the parties submitted their last status report, DHS reports that it  
4 undertook a new electronic search using search terms agreed to by Plaintiffs. This  
5 search was divided into 7 parts, and the first part of the search yielded  
6 approximately 540GB of data. This volume of data is too large to be feasibly  
7 processed because the DHS FOIA processing system has difficulty loading more  
8 than 10GB at a time, and loading all 540GB for part 1 of the request would use up  
9 most of the storage space available in the DHS FOIA processing system.

10 Processing the results of even this first part of the search thus would prevent DHS  
11 from processing records in response to numerous other currently pending FOIA  
12 cases in litigation and thousands of FOIA requests currently awaiting responses  
13 from DHS. Moreover, it is likely that the volume of data for parts 2-7 of the  
14 currently defined electronic search would be even larger. The DHS system  
15 therefore would not likely be able to handle those searches either. DHS intends to  
16 further confer with Plaintiffs to attempt to reach agreement on a narrowed search.

#### 17 V. DHS I&A

18 DHS I&A reports that it completed processing of all records located by I&A  
19 personnel in their manual searches, which totaled approximately 850 pages. After  
20 completion, consistent with the Smislova declaration and agreement between the  
21 Parties, I&A began processing the email records located by the automated search  
22 performed by the DHS Office of the Chief Information Officer on I&A's behalf. In  
23 May, I&A processed 500 pages of these records, releasing five pages, referring 300  
24 pages to other DHS offices and components, and finding 195 pages to be  
25 unresponsive or duplicates. I&A will continue to process at least 500 pages of  
26 these records per month. Currently, I&A has the capacity to process the records at  
27 issue remotely and expects to be able to complete its review and processing by  
28 December 31, 2020.

**1 Plaintiffs' Statement**

2 Plaintiffs remain cognizant of the challenges that the current pandemic has  
3 imposed on government operations. Nonetheless, Plaintiffs have communicated to  
4 Defendants their growing concerns that the State Department has not taken  
5 adequate steps to restore its processing capacity, in line with other government  
6 agencies, nor has it made available to Plaintiffs a concrete plan and timeline for the  
7 restoration of processing capacity. Plaintiffs have also requested updated  
8 information from the FBI on its anticipated processing rate in light of the  
9 alterations in its operations due to COVID-19.

10 Separately, Plaintiffs note that the chronic delays in DHS's participation in  
11 conferral over the scope of the request have persisted. Plaintiffs remain willing to  
12 engage in further conferral with DHS regarding the scope of the request but believe  
13 that the conferral process should be subject to a firm deadline. Plaintiffs further  
14 note that the apparent technical limitations in DHS's FOIA processing system—  
15 limitations that other agencies do not appear to have—should not dictate the scope  
16 of Plaintiffs' request for public records.

**17 Next Steps**

18 The parties propose filing a further joint status report on the above issues in  
19 30 days.

20  
21 Respectfully submitted,

22 DATED: June 5, 2020

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