

December 14, 2020



VIA CM/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:

We represent Plaintiffs in the above-referenced Freedom of Information Act (“FOIA”) lawsuit, and submit this letter in opposition to Defendants’ request for an extension from December 15, 2020, to January 29, 2021, to make their final production of documents. *See* Letter dated December 11, 2020 (ECF No. 57).

While Plaintiffs are sensitive to the disruptions caused by the coronavirus, and have consented to multiple, lengthy extensions in this matter, Plaintiffs do not believe any further delay is warranted. Defendants were originally due to make their final production of documents on April 3, 2020—more than seven months ago. Order dated April 16, 2019 (ECF No. 35). Ten days before that deadline, Defendants notified the Court that they would be unable to meet the deadline due to the coronavirus disruption. *See* Letter dated March 24, 2020 (ECF No. 42). Defendants began processing FOIA documents again on July 1, 2020, and after conferring with Plaintiffs, they informed the Court that they would make their final production by October 15, 2020. *See* Letter dated August 3, 2020 (ECF No. 47). As that date approached, however, Defendants wrote again to request a two-month extension to produce all remaining records by December 15, 2020, once again with Plaintiffs’ consent. *See* Letter dated October 9, 2020 (ECF No. 55). Now, Defendants seek another six-week extension through the end of January.

Defendants claim new obstacles have made coordination difficult, but they had months to coordinate ahead of the original April deadline, and have had five months more to coordinate since July. Defendant NSD states that it “cannot control” the other agencies involved, but surely it can insist that those agencies (many of whom are likely parties to this case) comply with a Court-ordered production schedule. Letter dated December 11, 2020 (ECF No. 57).

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The document at issue—a comprehensive semi-annual report—is urgently needed because, as *The New York Times* reported recently, Congress is expected to weigh significant surveillance reforms as soon as January. *See, e.g.,* Charlie Savage, *U.S. Used Patriot Act to Gather Logs of Website Visitors*, N.Y. Times, Dec. 3, 2020, <https://nyti.ms/3mb4oKG>. The semi-annual report addresses a wide range of the government’s ongoing surveillance activities, including those Congress will be debating. It is vital that the public have timely access to information about these surveillance activities and their impact on Americans in order to participate as fully as possible in this upcoming debate.

In view of the fact that Defendants were on the verge of making their final production in April, and that Plaintiffs have already consented to extensions of seven months, Plaintiffs believe it is reasonable at this stage for the Court to require Defendants to complete their production by the current deadline or very shortly thereafter.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Patrick Toomey

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