

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION and  
THE AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

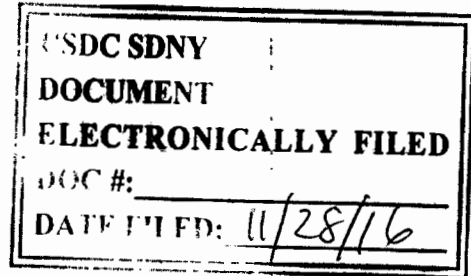
v.

DEPARTMENT OF DEFENSE, DEPARTMENT  
OF JUSTICE, including its components the  
OFFICE OF LEGAL COUNSEL and OFFICE OF  
INFORMATION POLICY, DEPARTMENT OF  
STATE, and CENTRAL INTELLIGENCE  
AGENCY,

Defendants.  
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: **ORDER PROPOSING**  
: **PROCEDURE FOR**  
: **RESOLVING DEFENDANT'S**  
: **MOTION FOR SUMMARY**  
: **JUDGMENT**

: 15 Civ. 9317 (AKH)



ALVIN K. HELLERSTEIN, U.S.D.J.:

The court seeks advice of counsel how to conduct argument for defendants' motion for summary judgment, filed on October 14, 2016 (Dkt. No. 47). The supporting and opposition papers have been filed. Defendants' reply is due December 12, 2016.

Oral argument will be held on January 23, 2017 at 10:00 a.m., and continue throughout that day. Defendants have invoked a number of statutory exemptions to disclosure under FOIA. To determine whether defendants have carried their burden to show that the exemptions were properly invoked, I will have to understand how the propositions of law applicable to those exemptions apply to the specific documents that defendants seek to withhold or redact. To that end, I propose the following procedure:

1. Courtroom 14D will be sealed, open only to the parties and those assisting them. Sealing of the courtroom is necessary to avoid compromise of government secrets.
2. Defendants shall bring to the courtroom all documents in issue. Plaintiffs shall not have the right to see any of the documents claimed to be exempt.
3. Using the Vaughn Index attached to the declaration of Antoinette B. Shiner (Dkt. No. 48-1), plaintiffs will identify ten documents they wish the court to inspect, selected as best as possible to provide a sample of defendants' grounds for exemption.
4. Defendants, without showing same to plaintiffs, will provide the court with redacted and unredacted copies of the documents selected by plaintiffs.
5. The court will inspect the documents, hear arguments by counsel supporting and opposing the exemptions, rule on the merits of each claimed exemption, order production or sustain the claim of exemption as to each such document or redacted portion thereof, and return the documents to defendants.
6. The 10-document procedure shall be repeated, and continue, until the parties form a consensus that they can extend the court's rulings to all documents in issue.
7. The entire proceeding shall be on the record. Defendants shall have ten days to request redactions to the transcript to the extent necessary to prevent disclosure of the materials defendants assert should be withheld or redacted. Following resolution by the court, a transcript will be made available to the public.


8. Within 60 days after the court's rulings, defendants shall produce the documents that the court ordered be produced or, if defendants decline to produce any such documents, file an appeal from the order with regard to such documents.

The parties shall consult as to these proposed procedures and, by December 8, 2016, advise the court in a jointly written letter if the proposed procedures are acceptable, and if not, set out any objections, proposed modifications, or disagreements. In the event there is disagreement as to how to proceed, the court will resolve all outstanding issues regarding the procedure at a conference to be held on December 13, 2016 at 11:00 a.m.

SO ORDERED.

Dated:

November 28, 2016  
New York, New York

  
ALVIN K. HELLERSTEIN,  
United States District Judge