



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

March 12, 2021

BY ECF

Hon. Lorna G. Schofield
United States District Judge
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *American Civil Liberties Union et al. v. Office of the Director of National Intelligence, et al.*, 18 Civ. 12131 (LGS)

Dear Judge Schofield:

This Office represents the defendant government agencies in this FOIA case. I write jointly with plaintiffs to provide an update per the Court's January 20, 2021 Order, Dkt. No. 61 (requiring "a joint status letter regarding the need for further litigation in this matter"). As detailed below, the parties have been working to resolve any questions about the government's search and production without litigation. Based on those discussions, the parties have identified certain gaps in the initial searches conducted by DOJ's National Security Division ("NSD"), and they are also addressing certain questions regarding specific records. The parties respectfully request additional time to attempt to resolve these issues without litigation.

Further NSD search and processing, and proposal for further update by April 2, 2021. After reviewing productions from NSD and comparing them against publicly available documents, plaintiffs have identified gaps in NSD's search related to proceedings involving amici curiae in the FISC and FISCR (Category 8 of the FOIA request). NSD is conducting supplemental searches and has identified additional potentially responsive records. NSD may identify additional potentially responsive records. These records are classified and require extensive interagency review, which NSD expects will take significant additional time.

The parties have begun discussions to see if it is possible to reach an agreement to narrow the set of additional potentially responsive records that NSD will process, in order to complete processing more quickly. We respectfully propose that the parties provide a joint letter in three weeks, by **Friday, April 2, 2021**. If the parties reach agreement, then the letter will contain any narrowing agreement and a proposed timeline for NSD to complete this search and processing; if there is no agreement, the letter will instead set out each side's position on next steps with regard to any further NSD search and processing.

Other issues. The parties are also continuing to discuss certain other questions about the defendant agencies' productions. Neither party requests the Court's involvement at this time. Instead, the parties hope to work through these issues without litigation, but will raise any issues with the Court if they reach an impasse. These issues are identified below in summary form.

- Referrals: Plaintiffs have asked the defendant agencies to confirm that records referred by ODNI and NSD to other agencies have been processed and produced. Agency production letters do not always identify whether records being produced (or withheld) were referred from other agencies. The government is working to confirm that all referred records have been fully processed and responded to by any agency receiving a referral.
- Withheld information: Plaintiffs have identified certain instances in which they believe that the government may have withheld information that is similar to information the government has officially disclosed elsewhere. The government is working through these instances to determine whether any additional information may properly be released.
- Withheld records: Plaintiffs have requested titles and dates of certain records or pages withheld in full by NSD (unless that information is itself exempt under FOIA). The government is working to determine the status of these records.
- OIG report: The government is working to determine whether a specific record held by the Office of the Inspector General of the U.S. Department of Justice (“DOJ-OIG”) has been completely processed, including all necessary coordination with equity holders. This document, which was originally classified, was previously released in a public form in 2016 at <https://www.oversight.gov/sites/default/files/oig-reports/o1604.pdf>. After receiving plaintiff’s FOIA request, the government undertook a subsequent review to determine whether any additional information may now be released. The government is working to determine the status of this further review.

I thank the Court for its consideration of this matter.

Respectfully,

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