

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

**CORRECTED JOINT STATUS
REPORT**

The parties jointly submit this status report pursuant to Judge Illman’s orders dated June 10, 2020, and July 13, 2020 (ECF Nos. 56, 63), addressing the status of searches and processing of records by the Department of Justice’s Office of Information Policy (“OIP”), the Federal Bureau of Investigation (“FBI”), the State Department (“State”), the Department of Homeland Security’s Office of Intelligence & Analysis (“I&A”) and the DHS Privacy Office (“DHS”).

Defendants’ Report

I. OIP

OIP is continuing to process responsive records located in its search and is making monthly rolling releases of non-exempt records. OIP issued its most recent interim response on July 13, 2020, and continues to anticipate that it will make its

1 final release of documents on or about September 12, 2020.

2 II. FBI

3 The FBI has continued to be able to process FOIA requests on a limited
4 basis. In this case, the FBI processed 364 pages for June and released 32 pages on
5 June 30, 2020. Approximately 4,017 pages remain to be processed. For this month
6 (July), the FBI will be returning to processing 500 pages a month.

7 III. State Department

8 The State Department remains in phase one of the resumption of normal
9 operations, which means that the FOIA office is practicing maximum telework. A
10 very limited number of FOIA personnel are coming into the office (most, if not all,
11 on a part-time basis), and they are working first and foremost on the cases to which
12 they are assigned. To the extent these personnel have surplus capacity, they have
13 been instructed to prioritize two categories of cases: (1) cases for which the
14 processing of both unclassified and classified documents is nearly complete, and
15 (2) cases involving requests for which the Department granted expedited
16 processing.

17 The personnel assigned to this case are not among those who have returned
18 to the office, and this case does not fall into either of the two prioritization
19 categories. Accordingly, the State Department is not currently in a position to
20 resume processing of documents in this case. State is currently evaluating trends to
21 determine its readiness to move to phase two of the resumption of normal
22 operations.

23 IV. DHS Privacy Office (“DHS”)

24 The parties have continued to confer in an attempt to reach an agreement
25 regarding the scope of DHS’s searches. On June 26, 2020, the parties and their
26 counsel participated in a conference call to discuss technological limitations that
27 have constrained DHS’s ability to conduct broad electronic searches in response to
28 Plaintiffs’ FOIA request. Following that discussion, Plaintiffs shared a four-part

1 proposal with Defendants' counsel on June 29, 2020 regarding the parameters of
2 DHS's search. DHS raised concerns regarding one portion of that proposal, and the
3 parties are continuing to attempt to reach an agreement.

4 **V. DHS I&A**

5 Consistent with the agreed-upon production schedule, I&A has continued to
6 process at least 500 pages of potentially responsive records per month. I&A made
7 its most recent production on June 30 and is on track to continue processing at least
8 500 pages per month going forward.

9 **Plaintiffs' Report**

10 Plaintiffs are increasingly concerned that the State Department has not taken
11 adequate steps to meet its obligations under FOIA, notwithstanding the constraints
12 associated with the COVID-19 pandemic. While other agencies have implemented
13 contingency plans that enable continued FOIA processing on at least a limited
14 basis, it appears that the State Department has made little progress since the
15 parties' last joint status report on June 5, 2020 (*see* ECF No. 55). Nor has the State
16 Department provided Plaintiffs with any anticipated schedule for resumed
17 processing in this case. The State Department should, consistent with FOIA and in
18 line with other federal agencies, adopt and communicate to Plaintiffs a plan for
19 continued processing of records responsive to Plaintiffs' request within a
20 reasonable timeframe.

21 **Next Steps**

22 The parties propose filing a further joint status report in 30 days.

23
24 Respectfully submitted,

25 DATED: July 23, 2020

26 /s/ _____
27 Hugh Handeyside
28 American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

1 Telephone: 212-549-2500
2 hhandeyside@aclu.org

3 Matthew Cagle
4 American Civil Liberties Union Foundation
5 of Northern California
6 39 Drumm Street
7 San Francisco, CA 94111
8 Telephone: 415-621-2493
9 mcagle@aclunc.org

10 *Attorneys for Plaintiffs*

11 ETHAN P. DAVIS
12 Acting Assistant Attorney General

13 ELIZABETH J. SHAPIRO (D.C. Bar No.
14 418925)
15 Deputy Branch Director

16 /s/
17 ELIZABETH TULIS (NY Bar)
18 Trial Attorney
19 U.S. Department of Justice,
20 Civil Division, Federal Programs Branch
21 1100 L Street, NW
22 Washington, D.C. 20005
23 Telephone: (202) 514-9237
24 elizabeth.tulis@usdoj.gov

25 *Attorneys for Defendants*
26
27
28