



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 10, 2021

BY ECF

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

The parties shall provide a further update on the Item 6 records by **December 22, 2021**. So Ordered.

Dated: December 13, 2021
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

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

Dear Judge Schofield:

I write on behalf of both parties to respectfully provide a status report, as required by the Court's August 6, 2021 scheduling order, ECF No. 71.

Processing progress. After the government's interim production this week, the government has now processed all of the records listed under Items 4 through 10 in the parties' June 24, 2021 letter, ECF No. 67, with two exceptions: a small number of pages of records under Item 5 (approximately 80 pages); and all of the records under Item 6 (approximately 1150 pages) that meet the parties' agreed criteria. The Item 6 records relate to the appointment of three amici in relation to the government's March 27, 2018 submission made pursuant to Section 702 of the Foreign Intelligence Surveillance Act. Opinions of the Foreign Intelligence Surveillance Court ("FISC") and the Foreign Intelligence Surveillance Court of Review ("FISCR") related to this submission have previously been reviewed and officially disclosed (subject to redactions) outside of the Freedom of Information Act ("FOIA").

Because of the sensitivity of these records, as well as the significant level of coordination required to fully process them, the government now believes it will not be able to process all of these Item 6 records by January 31, 2022, as required by the scheduling order. *See* ECF No. 71. The government raised this issue with Plaintiffs this week, and the parties are discussing whether a consensual modification to the schedule for Item 6 may be possible. The government plans to provide Plaintiffs with an unclassified index of the Item 6 records next week, which might permit Plaintiffs to determine whether it is possible to narrow their request for these records or identify priorities within the set.

Because the parties' discussions are ongoing, we respectfully propose that we provide a further update on the Item 6 records by **Wednesday, December 22, 2021**.

Outstanding questions about processed records. The parties are also conferring over several issues Plaintiffs have raised related to the government's November 1, 2021 production. With respect to Item 5, Plaintiffs have identified several responsive records that appear to be

missing from the production and, in addition, have informed the government that several other records have not been properly processed based on the government's prior official disclosures of FISC opinions. With respect to documents withheld in full, Plaintiffs have requested a list stating the date, title, and number of pages for each fully withheld record unless that information itself is exempt under the FOIA, consistent with the parties' agreement dated August 5, 2021 (ECF No. 71). The government has indicated that it is willing to reprocess certain records related to Item 5. The parties are discussing the scope and schedule for this reprocessing as well as the remaining issues. Plaintiffs are also continuing to review the government's interim production from this week. Neither party requests the Court's involvement at this time, but they will raise any issues with the Court if an impasse is reached.

I thank the Court for its consideration of this matter.

Respectfully,

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