

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

JOINT STATUS REPORT

Pursuant to the Court’s order of September 15, 2020 (ECF No. 77), the parties jointly submit this status report to address 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 has completed the processing of all responsive records identified in its searches and issued a final response to Plaintiffs by email on September 14, 2020. However, Plaintiffs’ counsel today informed Defendants’ counsel that they did not

1 receive this email, apparently due to the large size of the attached .pdf file. OIP
2 will therefore be re-sending its final response after consultation with Plaintiffs to
3 avoid further technical problems. As indicated in OIP's responses to Plaintiffs, a
4 number of pages are pending consultation with other Department components and
5 Executive Branch agencies. OIP will issue a supplemental response to Plaintiffs
6 once those consultations are completed.

7 II. FBI

8 The FBI issued its twelfth release on September 30, 2020. Approximately
9 2,583 pages remain to be processed. The FBI anticipates processing another set of
10 approximately 500 pages and releasing non-exempt information on or about
11 October 31, 2020.

12 III. State Department

13 On October 9, 2020, the State Department provided its plan for resuming
14 processing of records responsive to the FOIA request in this case. As the State
15 Department conveyed to Plaintiffs:

16 The potentially responsive records that have been collected in this case are
17 stored in a document review system called FREEDOMS2, which is housed on a
18 classified network and is not accessible remotely. The personnel necessary to
19 resume productions in this case have not yet returned to the office. With the
20 continuation of the pandemic's impact and uncertainty over its duration, State, as
21 part of its ongoing efforts to respond to those unprecedented circumstances, is
22 putting in place a plan to begin migrating unclassified documents previously being
23 processed on the FREEDOMS2 platform to the newer FOIAXpress platform,
24 which is accessible remotely. This plan will require classification determinations
25 on a document-by-document basis to ensure that any classified information is
26 managed appropriately.

27 In order to resume productions in this case, State plans to begin the process
28 of transferring potentially responsive documents from FREEDOMS2 to

1 FOIAXpress. State is currently working to identify and onboard, as necessary,
2 personnel who will be involved in this effort. Several steps are required to execute
3 the transfer, including identifying, onboarding, and training personnel, reviewing
4 documents to ensure the appropriate handling of any classified information, and
5 ingesting the documents into FOIAXpress. Accordingly, State expects that it can
6 make its next production in this case by December 30, 2020, and can continue to
7 make rolling productions of responsive, non-exempt records to Plaintiff on a
8 monthly basis thereafter.

9 Because the transfer process is in preliminary stages, State is not in a
10 position to commit to a processing rate at this time. State proposes that the parties
11 confer about the rate of processing after the January 30, 2021 production.

12 IV. DHS Privacy Office (“DHS”)

13 An update regarding the status of DHS’s searches was provided in the joint
14 status report that was submitted to the Court on October 8, 2020. DHS reports that
15 the status remains the same.

16 V. DHS I&A

17 Consistent with the agreed-upon production schedule, I&A continues to
18 process at least 500 pages of potentially responsive records per month. For this last
19 month, I&A processed 750 pages of potentially responsive records and identified
20 no responsive records for release at this time, but did identify likely responsive
21 records originating with one or more other DHS components, and the records have
22 been referred to those component(s) for review.

23 **Plaintiffs’ Report**

24 In the parties’ status report of October 8, 2020, Plaintiffs addressed
25 continued issues surrounding DHS Privacy’s processing of Plaintiffs’ FOIA
26 request and asked that, in light of chronic delays and repeated reversals, DHS
27 Privacy be directed to produce all responsive records by January 15, 2021. *See*
28 ECF No. 79 at 4.

1 **Next Steps**

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

3
4 Respectfully submitted,

5 DATED: October 15, 2020

6 /s/
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