



ERIC A. O. RUZICKA
Partner
(612) 340-2959
FAX (612) 340-8738
ruzicka.eric@dorsey.com

October 20, 2014

VIA ECF FILING

The Honorable Colleen McMahon
United States District Court
Southern District of New York
Room 1350
500 Pearl Street
New York, NY 10007

Re: ACLU v. DOJ et al., Case No. 12-cv-00794-CM

Dear Judge McMahon:

On September 22, 2014, the Court approved the summary judgment briefing schedule proposed by the parties. Under that schedule, the Government's motion for summary judgment with regard to the remaining OLC documents was due October 3, the ACLU's opposition and cross-motion is due October 31, the Government's reply and opposition is due November 21, and the ACLU's reply is due December 12. The ACLU is writing to propose a change in that schedule to which the government has consented.

In proposing the schedule, the ACLU anticipated that it would have the Court's decision with regard to the set of OLC memoranda that the government provided the Court for *in camera* review before its motion papers are due. The Court issued its decision on October 2, but the Order has not yet been released to the ACLU. The Government refers to the Order in its Memorandum of Law and specifically claims that it resolved any dispute with respect to one of the documents at issue. The ACLU would be at a disadvantage if it had to submit its summary judgment papers without the opportunity to first review the Court's Order both because it would not know whether or not to dispute the Government's point with regard to a specific document and because it would not have the benefit of having seen the Court's most recent analysis with regard to the scope of relevant Freedom of Information Act exemptions and the Government's waiver of those exemptions.

Accordingly, the ACLU proposes that the briefing schedule for the summary judgment motion with respect to the OLC documents be extended so that the ACLU's opposition and cross-motion is not due until at least a week following the public filing and service of the Court's Order with respect to the withheld OLC memoranda. If the Order is released by October 24, then the ACLU would not have any extension. If, however, the Order is publicly filed at some date after October 24, then the ACLU's papers would be due one week after such filing. The



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subsequent deadlines would then be extended consistent with the extension to the deadline for the ACLU's opposition and cross-motion. So, for example, if the ACLU's deadline was extended by one week as a result of the date on which the Court's Order is filed, then the other deadlines would also be extended by one week. The Government has conferred with the ACLU and has provided its consent to this proposal.

Thank you for your attention to this matter.

Sincerely,

/s Eric A. O. Ruzicka

*Counsel for Plaintiffs American Civil Liberties Union
and American Civil Liberties Union Foundation*