

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS UNITED,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 18-0326 CRC
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	
_____)	

JOINT STATUS REPORT

Defendant United States Department of State (“State”), through undersigned counsel, submits this status report as a follow-up to the parties’ joint status report of May 7, 2018 (ECF No. 8).

Parties continued in their efforts to narrow the scope of Plaintiff’s Freedom of Information Act request which seeks:

“All e-mails sent and received by former Assistant Secretary of State for European and Eurasian Affairs Victoria Nuland [from March 1, 2016 through January 25, 2017]...and all telephone message slips and/or telephone message logs for former Assistant Secretary...Nuland.”

The parties have reached some agreement on narrowing the scope of the request. State has informed Plaintiff that its search has uncovered approximately 104,629 potentially responsive documents. Plaintiff has agreed that State may exclude from this universe e-mails and attachments that hit on five keywords. Because State has already begun preparing its June 7, 2018 production, it will apply this exclusion to productions after June 7, 2018. However, this agreement has only reduced the amount of material that State has to review by approximately 9,000 documents.¹

¹ Additional documents may be excluded because Plaintiff has also agreed that if

Defendant's Position

Moving forward, State is able to propose monthly productions in this case in which it will process a minimum of 300 pages per month. It understands that Plaintiff would like State to commit to a higher a processing minimum in this case. Unfortunately, constraints on its resources will not make this possible.

As this Court is aware, State has faced a heavy FOIA workload for some time. *See Order, Citizens United v. U.S. Dep't of State*, 16-cv-67-CRC (ECF No. 17) (D.D.C. Aug. 16, 2016) (noting the “high volume of FOIA litigation confronting” State and adopting State’s proposed processing rate of 300 pages per month); Minute Order, *Judicial Watch v. State*, 17-cv-205-CRC (D.D.C. June 30, 2017) (considering State’s status report and adopting a proposed processing rate of 300 pages per month). State’s FOIA workload continues to be very heavy. In a recent submission in this District to Judge Trevor McFadden , State described the review and production burden it is facing in other FOIA cases in litigation. *See Attachment to Notice of Filing by U.S. Department of State re Status Report, American Center for Law and Justice v. Dep't of State*, 16-cv-1975-TNM (ECF No. 53-1) (D.D.C. April 18, 2018) (“Stein Declaration”) (copy attached). The chart in that filing identified 15 cases in which State is subject to minimum production orders totaling approximately 9,500 pages per month. It also listed 22 cases with production orders that do not specify minimum pages, but that State must continue to work diligently on. These cases do not represent the total volume of State’s workload. FOIA litigation cases that do not have regular production schedules also

one of the five keywords hits on an e-mail, its attachment may also be excluded and vice versa.

require resources for various tasks such as drafting and reviewing *Vaughn* indices or conducting searches for, and uploading of, potentially responsive material. In response to its recent filing Judge McFadden ordered State to aspire to process 600 pages per month in that case, but eliminated State's processing requirement in another case. *See* Minute Order, *American Center for Law and Justice v. Dep't of State*, 16-cv-1975-TNM (D.D.C. May 3, 2018) (stating State "shall aspire to process 600 pages per month"); *See* Minute Order, *American Center for Law and Justice v. Nat'l Security Agency*, 17-cv-1991-TNM (D.D.C. May 3, 2018) (lifting "the requirement that the State Department aspire to process 400 pages per month" in that case).

State regrets that it is unable to commit to a higher processing minimum, but will always strive to process more pages in a given month if resources allow. However, a commitment to process more than this volume would reduce State's capacity to comply with production orders issued by courts in existing cases. *See* Stein Declaration ¶ 26. Plaintiff's proposal would require State to process 7,969 documents per month. This would far exceed all of State's current court ordered processing minimums combined. State, therefore, respectfully proposes that it make rolling productions based on a minimum processing rate of 300 pages per month every 30 days in this case. State also respectfully requests that the Court set a date for it to provide a *Vaughn* index once it has completed production in this matter.

State would welcome the opportunity to provide further briefing on this issue if it would be useful to the Court.

Plaintiff's Position

In the more than six months since Plaintiff's FOIA request was submitted in

October 2017, Defendant has neither produced documents nor has claimed any FOIA exemptions.

Plaintiff, Citizens United, is a nonprofit organization whose mission it is to inform and educate the public on matters of national importance, including through documentary films and other media productions. Plaintiff believes the documents it seeks are likely to contain information whose dissemination will help inform the public regarding various investigations into events involving the 2016 federal elections, and in the coming months as the nation enters its next federal election cycle. Thus, prompt release of the information sought may be critical both for Plaintiff to fulfill its mission, and for the public to be fully informed with respect to issues of national importance.

In its minute order of May 8, 2018, this Court ordered the parties to submit to the Court a joint proposed schedule for production. The Plaintiff would like to begin to receive document production on a much more expeditious production schedule than the Defendant proposes.

Defendant apparently has completed its searches for records. Defendant now remarkably asks for 45 years¹ to 66 years² to review less than a year's worth of emails for one individual. Eliminating the 9,000 documents of excluded keywords that the parties agreed upon still would require roughly 41-61 years to produce and process responsive records. The Defendant proposes to review documents at a rate of 300 pages per month (a little over half a ream of paper).

Furthermore, Defendant has not persuasively demonstrated that it faces pressures

¹ At a conservative estimate of 1.5 pages per email and 2 pages per attachment.

² At 2 pages per email and 5 pages per attachment.

that justify such a small rate.

Plaintiff has requested 11 months of emails for one individual, and believes that no more than one year should be sufficient for Defendant to review and produce the emails in that time, if it applies a reasonable level of resources to review those emails.

Defendant attaches a declaration filed last month in *American Center for Law and Justice v. Dep't of State*, 16-cv-1975-TNM. It should be noted that Judge McFadden in that case did not find that declaration persuasive, and ordered the Defendant to process twice the number proposed by Defendant. *See id.*, Minute Order (May 3, 2018).

Thus, in view of the above, Plaintiff through counsel requests that this Court order Defendant to:

1. immediately begin processing those documents that are responsive to Plaintiff's request;
2. produce all documents to Plaintiff within one year, with proportional monthly productions beginning on June 7, 2018, and continuing until completed thereafter on June 5, 2019; and
3. provide Plaintiff with a draft *Vaughn* Index by June 19, 2019, providing a description of and claim of exemption for those documents which have been withheld.

Plaintiff believes that Defendant should be directed to commit sufficient resources to processing Plaintiff's FOIA requests reasonably, not only because of the breached statutory deadline, but also because of the half year of lost time in which Defendant does not appear to have done more than an initial search (and only recently has begun to process responsive records). Furthermore, as our nation approaches the upcoming 2018

federal elections, and then as our nation will turn to the presidential primary season for the 2020 elections, it will be extremely important for the American people to have a more complete picture of the State Department's alleged political activities, including any role in opposition research of a presidential candidate during the 2016 elections.

Respectfully submitted,

_____/s/
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