

EXHIBIT A

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August 28, 2017

BY EMAIL: brad.rosenberg@usdoj.gov

Brad P. Rosenberg
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, D.C. 20530

Re: Doyle, et al. v. U.S. Dep't of Homeland Security,
Civil No. 17-2542 (KPF)

Dear Brad:

Thank you for your letter of August 24, 2017, responding to our inquiry of whether the Secret Service has retained custody and control of at least copies of all WAVES and ACR records at issue in the above-captioned case.

Your letter states that the Secret Service has transferred all requested WAVES and ACR records to the White House Office of Records Management (“WHORM”) and deleted them from the Secret Service’s system. You further state that the Secret Service has received assurances from the WHORM – a component of the Executive Office of the President that is not subject to the Freedom of Information Act (“FOIA”) – that these records will be preserved during the pendency of this litigation and, if determined to be subject to the FOIA, will be made available to the Secret Service for processing and production.

As you know, the Secret Service has a duty to preserve all potentially relevant evidence and documents commencing no later than service of process of the complaint. *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216-17 (S.D.N.Y. 2003). That obligation requires a litigant to “suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.” *Id.* at 218. Beyond a litigation hold, a party’s counsel also “must oversee compliance with the litigation hold” and “ensure . . . that all relevant information (or at least all sources of relevant information) is discovered . . . [and] that relevant information is retained on a continuing basis[.]” *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004). Further, “[c]ounsel must also make sure that all backup media which the party is required to retain is identified and stored in a safe place.” *Id.* at 434.

The actions of the Secret Service as described in your letter do not appear to comport with these legal obligations. The Department of Homeland Security (“DHS”), along with the Attorney General and the U.S. Attorney for the Southern District of New York, were served with the complaint on April 21, 2017. *See* Dkt. 12 and 12-1. Nothing in your letter indicates a litigation hold was put in place. Moreover, according to your letter, the Secret Service continued to transfer all the requested records to the WHORM after that date, and continued its practice of deleting the records on its system until August 19, 2017. This is further confirmed in the

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declaration of Robert R. Buster, Assistant Director of the Secret Service Office of Protective Operations filed by the Secret Service on August 22, 2017, in *Public Citizen, Inc. v. U.S. Secret Service*, No. 17-1669 (D.D.C.). According to Mr. Buster, “[i]n light of pending litigation, and with the permission of the White House, for litigation hold purposes, the Secret Service has shut off the auto-delete of WAVES records *effective August 19, 2017*[.]” (emphasis added).

Accordingly, so that we may ascertain whether DHS is complying with its legal preservation obligations, we request that by COB Tuesday, August 29, you provide us with answers to the following questions:

- (1) Have you instituted a litigation hold in this case?
- (2) If yes, when was the litigation hold put in place?
- (3) If yes, what is the scope of the litigation hold?
- (4) If yes, please identify the custodians who received notice of the litigation hold.

We also request that you provide us with a copy of any communication implementing a litigation hold.

We look forward to your response.

Sincerely,



Anne L. Weismann

cc: Sarah Normand
Alex Abdo
Jameel Jaffer