

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY )  
AND ETHICS IN WASHINGTON, )**

Plaintiff, )

v. )

Civil Action No. 18-cv-0007 (TSC)

**U.S. DEPARTMENT OF JUSTICE )**

Defendant. )

\_\_\_\_\_ )

**PLAINTIFF’S STATUS REPORT**

At 3:55 PM this afternoon, counsel for Defendant informed Plaintiff that Defendant intended to file a separate rather than joint filing. In accordance with the Court’s minute order of August 20, 2018, Plaintiff files the following status report:

1. This matter arises under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. On December 13, 2017, Plaintiff submitted FOIA requests to the U.S. Department of Justice’s (DOJ) Office of Information Policy (OIP) and Office of the Inspector General (OIG), seeking “all communications concerning the decision to invite reporters to DOJ on December 12, 2017, for the purpose of sharing private text messages sent during the 2016 presidential campaign by two former FBI investigators on Special Counsel Robert Mueller’s team.” ECF No. 1 ¶ 14; *see also id.* ¶ 20. OIP granted Plaintiff’s request for expedited processing. *Id.* ¶ 25. Plaintiff filed its complaint on January 3, 2018, and amended it on January 16, 2018. ECF Nos. 1, 4.
2. OIG’s production is complete.
3. On April 30, 2018 and June 1, 2018, OIP made interim productions to Plaintiff; and on July 2, 2018, OIP transmitted a “final response” to Plaintiff.

4. On July 17, 2018, the Court established a briefing schedule for the parties' motions for summary judgment based on filing dates the parties had proposed. Pursuant to that schedule, the deadline for Defendant to file its opening brief was August 13, 2018.

5. On August 10, 2018, Defendant filed a motion to stay the briefing schedule because OIP had discovered that the records searches it had performed in conjunction with Plaintiffs' FOIA requests were run on databases containing an "incomplete collection of some custodians' email records." ECF. No. 15 at 1. Defendant disclosed that in "early 2017" it began a "database migration" and that DOJ's Justice Management Division / Office of the Chief Information Officer ("JMD/OCIO") began conducting searches in the new database in October 2017. Brinkman Declaration, ECF No. 15-1 at ¶ 7. Defendant subsequently learned that not all custodians' email had been exported to the new database; however, Defendant did not say (and still has not said) when officials learned of this issue. *Id.* at ¶ 8.

6. At a status conference on August 20, 2018, Defendant was unable to provide the Court with an estimate of how much additional time it would need to reprocess Plaintiff's FOIA request to OIP. Accordingly, the Court ordered Defendant to file a status report on August 24, 2018 containing more details about the nature of the technical problems Defendant had encountered, as well as an estimate of when Defendant could complete additional processing. The Court also ordered the parties to confer and file a joint status report with a proposed briefing schedule by August 29, 2018.

7. On August 24, 2018, Defendant filed a two-page status report in which Defendant represented that it "continues to work on repairing the data by re-populating emails into the records repository." ECF No. 18 at ¶ 3. Defendant stated that it "estimates it can repair the data in this case, complete a new search for OIP, and identify any additional records from the search

by September 10, 2018.” *Id.* at ¶ 4. Defendant did not commit to producing additional responsive records by a particular date, nor did Defendant provide more details about the nature of the technical problems.

8. On August 24, 2018, Defendant also made a new production of two additional pages of records to Plaintiff consisting of a heavily redacted email exchange between a high-ranking individual in the Office of the Deputy Attorney General and a high-ranking official in the Office of the General Counsel to the Federal Bureau of Investigation. August 24, 2018 Production, attached as Exhibit A. In an email effectuating the production, Defendant informed Plaintiff that “in the course of its further review of the records in the case, OIP determined that [two additional] pages, which were previously withheld in full, could be released in part.” Email from Ms. Andrapalliyal to Ms. Weismann and Mr. Shaw, Aug. 24, 2018, attached as Exhibit B.

9. Plaintiff appreciates the Court’s desire for the parties to negotiate and resolve scheduling matters without the Court’s involvement; however, Plaintiff submits that the Court’s involvement is regrettably necessary once again. Defendant’s failure to meet its Court-imposed obligation to come forward with basic details about the technical difficulties Defendant has faced in processing Plaintiff’s FOIA request and Defendant’s separate acknowledgement last week that it wrongfully withheld other records leave Plaintiff with no alternative.

10. Plaintiff respectfully submits that Defendant’s August 24, 2018 status report resolved few, if any, of the questions that went unanswered by Defendant at last week’s status conference. In its status report, Defendant provided few details about the scope of the technical difficulties that impacted Defendant’s search for responsive records, did not disclose when Defendant learned about them, and did not identify the number of accounts that need to be re-searched or the number records that need to be reprocessed. For these reasons, Defendant’s

August 24, 2018 status report utterly failed to achieve the purposes the Court envisioned—it neither justified the delay that Defendant has sought in this case nor established when briefing on motions for summary judgment might reasonably be scheduled.

11. Plaintiff's understanding of and confidence in the procedures employed by Defendant in this matter regressed even further on Friday when Plaintiff received via email two pages of records that Defendant had initially withheld in full in their July 2, 2018 production. Defendant offered Plaintiff no explanation as to why Defendant did not previously produce these records. It is alarming that an email between two high-ranking officials that should have been produced nearly two months ago was only produced last week for reasons that appear to have nothing to do with the technical difficulties Defendant has separately acknowledged. It is even more alarming that Defendant has apparently acknowledged two independent errors in its processing of a narrowly-worded FOIA request about a single, albeit politically sensitive, decision.

12. Since Defendant has to date failed to offer more than a cursory explanation of the problems OIP has had processing Plaintiff's FOIA request and stymied attempts to plot a mutually agreeable path forward in this litigation, Plaintiff respectfully submits that the Court should schedule an evidentiary hearing to establish the basic parameters of the problems that OIP has encountered processing Plaintiff's FOIA request. In scheduling the hearing, the Court should order Defendant to make specific representations about the number of accounts it is searching again and the number of records it needs to reprocess so the Court and the parties have a mutual rather than asymmetrical understanding of the issues preventing speedy resolution of this matter.

13. In light of the substantial delays that have already occurred in this matter, Defendant's failure to be forthcoming about the scope of the technical difficulties that impacted

processing of Plaintiff's FOIA request, and Defendant's continued failure to come forward with facts needed to set new, meaningful deadlines in this matter, Plaintiff respectfully requests that the Court:

- a. Schedule an evidentiary hearing for no later than September 7, 2018 regarding the scope and timing of the technical difficulties encountered by Defendant in searching for responsive records in this case;
- b. Order Defendant to produce all additional responsive, non-exempt records to Plaintiffs by September 14, 2018; and
- c. Establish the following briefing deadlines:
  - i. On or before September 21, 2018, Defendant will file its motion for summary judgment;
  - ii. On or before October 12, 2018, Plaintiff will file its opposition to Defendants' motion and cross-motion for summary judgment;
  - iii. On or before November 2, 2018, Defendant will file its reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion; and
  - iv. On or before November 16, 2018, Plaintiff will file its reply in support of its cross-motion.

14. Because Defendant has kept Plaintiff and the Court in the dark about the scope of the problems it has encountered processing Plaintiff's FOIA request, Defendant has not met the burden it carries in justifying the delay it seeks. Plaintiff therefore opposes the proposed schedule that Defendant has informed Plaintiff it will file separately in this action.

15. As explained above, Defendant has rebuffed multiple approaches by Plaintiff to ascertain the number of accounts that need to be re-searched or the number of newly discovered records that need to be processed. For this reason, neither Plaintiff nor the Court is in any position to discern whether the stay that Defendant requested and the schedule it now proposes are reasonable. If only a small number of accounts need to be re-searched and a small number of records reprocessed, then Defendant's proposed production deadline of October 5, 2018 is far too late given the public interest in these records and Plaintiff's interest in speedy resolution of this matter.

Dated: August 29, 2018

Respectfully submitted,

/s/ Conor M. Shaw

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