

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

NATIONAL ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS

and

DEPARTMENT OF JUSTICE,

Defendants.

No. 18-cv-2399-KBJ

JOINT STATUS REPORT

Plaintiff National Association of Criminal Defense Lawyers (“NACDL”) and Defendants Federal Bureau of Prisons (“BOP”) and Department of Justice (“DOJ”) respectfully submit this Joint Status Report as promised in their March 4, 2019 Joint Status Report. ECF No. 20.

Overview

1. At issue in this case are three Freedom of Information Act (“FOIA”) requests filed by NACDL with various of Defendants’ component offices.
2. On August 2, 2018, NACDL filed a FOIA request with the BOP (“the BOP Request”) seeking, among other things, information about technical features of the BOP’s inmate email system and related policies. *See* Ex. A to Am. Compl., ECF No. 9-2.
3. On August 2, 2018, NACDL filed a FOIA request with DOJ’s Office of Information Policy (“OIP”), Office of Legal Counsel (“OLC”), and Criminal Division (“the Main Justice Request”) seeking, among other things, policies and guidance regarding the circumstances under

which prosecutors may access emails between inmates and their attorneys. *See* Ex. B to Am. Compl., ECF No. 9-3.

4. On August 2, 2018, NACDL filed a FOIA request with the Executive Office for United States Attorneys (“the EOUSA Request”) seeking, among other things, records regarding the practices of different U.S. Attorney’s Offices for obtaining emails between inmates and their attorneys. *See* Ex. C to Am. Compl., ECF No. 9-4.

5. On October 18, 2018, NACDL sued to enforce the BOP Request and the Main Justice Request. *See* Compl., ECF No 1. On November 15, 2018, NACDL filed an Amended Complaint to enforce all three Requests. *See* Am. Compl., ECF No. 9. Defendants filed an Answer on February 11, 2019. *See* Ans., ECF No. 18.

Current Developments

6. **BOP:** On March 21, 2019, BOP sent its first production to NACDL. In the letter accompanying the production, BOP stated that its search had yielded 5,665 pages of responsive records. BOP indicated that it processed 207 of those pages as part of its first production. Of the pages processed for the first production, 140 pages were released in full, eighteen were released in part, and forty-nine were withheld in full.

7. **OIP:** Pursuant to the provisional agreement between OIP and NACDL set forth in the March 4, 2019 Joint Status Report, OIP has conducted (1) searches of the Departmental Executive Secretariat for responsive records of the Office of the Attorney General, Office of the Deputy Attorney General, and Office of the Associate Attorney General, and (2) a search of the Office of Legal Policy. OIP is now reviewing the results of both searches, and still anticipates that it will be able to complete processing and production of any non-exempt responsive records by May 24, 2019.

8. **The Criminal Division:** The supplemental search for one additional Criminal Division section is complete and returned approximately 2800 additional potentially responsive items. The search of two additional Criminal Division sections is nearly complete. The Criminal Division believes that a 30-day period will allow it time to complete its supplemental searches and assess potentially responsive documents and more accurately estimate how much time it will take to complete its review, so it can propose a reasonable processing timeline.

9. **OLC:** On March 22, 2019, OLC informed NACDL that it had completed its search and found no responsive records.

10. **EOUSA:** The EOUSA has now nearly completed its preliminary searches in the twenty-seven U.S. Attorneys' Offices named in the FOIA request and is processing and assessing the results to determine if any supplemental searches need to be completed before it enters into a production schedule. The EOUSA believes that a 30-day period will allow it time to assess potentially responsive documents and more accurately estimate how much time it will take to complete its review, so it can propose a reasonable processing timeline.

Issues That Have Not Been Resolved

11. The parties have not come to an agreement on a search or processing schedule for the Criminal Division or EOUSA. The disagreements are discussed in more depth in the parties' March 4, 2019 Joint Status Report. *See* ECF No. 20, ¶¶ 9, 11, 18–19.

DATED: April 3, 2019

/s/ Megan Graham

Megan Graham (*pro hac vice*)
Catherine Crump (*pro hac vice*)
Samuelson Law, Technology & Public Policy
Clinic
U.C. Berkeley School of Law
353 Boalt Hall
Berkeley, CA 94720-7200
(510) 664-4381
mgraham@clinical.law.berkeley.edu

Counsel for Plaintiff

Barry J. Pollack, DC Bar #434513
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber, LLP
1801 K Street, N.W.
Suite 411L
Washington, DC 20006
(202) 775-4514 phone
bpollack@robbinsrussell.com

Counsel for Plaintiff

Respectfully submitted,

JESSIE K. LIU, DC Bar #472845
United States Attorney

DANIEL F. VAN HORN, DC Bar #924092
Chief, Civil Division

By: _____/s/

W. MARK NEBEKER, DC Bar #396739
Assistant United States Attorney
555 4th Street, N.W.
Washington, DC 20530
(202) 252-2536
mark.nebeker@usdoj.gov

Counsel for Defendants