

**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.

Civil Action No. 18-2399 (KBJ)

RESPONSE TO ORDER OF THE COURT

On July 8, 2019, the Court ordered the Department of Justice to file a memorandum that addresses the Criminal Division's Freedom of Information Act ("FOIA") processing capacity and the specific reasons underlying its proposed processing and production schedule of 300 pages per month. Joint Status Report (ECF No. 26) at 7.¹ As reflected in the accompanying

¹ At the time of the filing of the Joint Status Report, the Criminal Division proposed an interim response letter being sent to Plaintiff at the end of each 3-month period, and the first interim response letter being sent to Plaintiff on December 31, 2019. The Criminal Division, however, has significantly reduced the number of documents (and thus the time anticipated to complete processing), and now believes that it can complete the processing of both Search 1 and Search 3 documents by the end of September. Specifically, the Criminal Division has completed the deduplication process and a second responsiveness review for Search 3, reducing the number of pages down to approximately 350, from 2,389 (as had been reflected in the last Joint Status Report). Through de-duplication and a second responsiveness review, Search 1 has been reduced to approximately 250 pages, from the 650 earlier reported. Defendants anticipate that the records in Search 1 and Search 3 will require consultations with the same offices, thus Defendants propose to process them together for the sake of efficiency. Thus, Defendants would propose to issue a final response on the records from Search 1 and Search 3 by September 30, 2019. At that time, Defendants propose that the parties refine the terms for Search 2, with the idea of significantly reducing the volume of potentially responsive pages there as well.

Declaration of Amanda Marchand Jones (“Jones Decl.”), Defendants’ proposal is more equitable than Plaintiff’s proposal of processing 800 pages each month.

Ms. Jones’ declaration addresses each of the topics called for in the Court’s July 8, 2019 Order (Jones Declaration, ¶¶ 6-13) and reflects that as of July 15, 2019, the Criminal Division has 679 pending administrative requests, which includes all incoming FOIA and Privacy Act (“PA”) access requests, as well as consultations and referrals from other agencies pertaining to their FOIA/PA requests. Jones Decl., ¶ 7. Within the 679 pending administrative requests are 55 consultation requests and 60 referrals from other agencies. *Id.* There are six litigation matters in which Court-imposed processing numbers have been imposed, the production schedules that have been imposed have been mostly averaging 300 pages per month or less. *See* Jones Decl., ¶ 9.

The Criminal Division has many matters requiring its attention and has a FOIA/PA Unit that is relatively small. Jones Decl., ¶¶ 7-12. Yet, the office is currently interviewing for an additional attorney and has two Government Information Specialist vacancies for which it is anticipated the hiring process will commence soon and; a Contractor Government Information Specialist has been selected and is in the background clearance process. Jones Decl., ¶ 13.

In sum, requiring the Criminal Division to process 800 pages per month, as Plaintiff has requested, would further burden its already strained resources, may unnecessarily increase the backlog to the disadvantage of other members of the public seeking information through the FOIA process, and unfairly prioritize Plaintiff’s request over the requests that were received by others. Because the Criminal Division is taking steps to bring on new hires to assist in the

backlog, it asks that the Court not require it to process more than 300 pages of records per month in this action.

July 22, 2019

Respectfully submitted,

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DECLARATION OF AMANDA MARCHAND JONES

I, Amanda Marchand Jones, declare the following to be a true and correct statement of facts:

1. I am the Chief of the Freedom of Information Act (“FOIA”)/Privacy Act (“PA”) Unit in the Office of Enforcement Operations in the Criminal Division of the United States Department of Justice (“DOJ”). I have held this position since January 18, 2016. I served as the Deputy Chief of the FOIA/PA Unit from May 2015 to my current appointment. Prior to joining the Criminal Division, I was an Attorney Advisor with the Office of Information Policy at the United States Department of Justice (“OIP”) from May 2009 to May 2015. The mission of OIP is to encourage and oversee agency compliance with the FOIA. During my tenure at OIP, I reviewed and adjudicated over 1,000 administrative appeals, reviewed matters in litigation, and

conducted general and specialized training for executive branch agencies on the application of the FOIA exemptions. I am a member of the bar of the District of Columbia Bar.

2. The FOIA/PA Unit is responsible for processing FOIA requests seeking records from within the Criminal Division.¹ The FOIA/PA Unit determines whether the Criminal Division maintains records responsive to FOIA/PA requests, and if so, whether they can be released in accordance with the FOIA. In processing such requests, the FOIA/PA Unit consults with personnel in the Criminal Division Sections where potentially responsive records may be maintained and, when appropriate, with other components within the Department of Justice, as well as with other Executive Branch agencies.

3. In my official capacity, I supervise thirteen employees whose mission it is to effectively respond to requests for access to Criminal Division records. Furthermore, I am responsible for, among other things, supervising the handling of the FOIA and PA requests processed by the Criminal Division, FOIA/PA Unit. I am also responsible for supervising the litigation support and assistance provided to Assistant United States Attorneys and Civil Division Trial Attorneys who represent the Criminal Division in lawsuits filed in federal court under the FOIA and/or the PA stemming from requests for Criminal Division records.

4. Due to the nature of my official duties, I am familiar with the procedures followed by the Criminal Division in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the PA, 5 U.S.C. § 552a. Specifically, I am familiar

¹ The Criminal Division is comprised of seventeen sections: the Office of the Assistant Attorney General, the Appellate Section, the Computer Crime and Intellectual Property Section, the Capital Case Section, the Child Exploitation and Obscenity Section, the Fraud Section, the Human Rights and Special Prosecutions Section, the International Criminal Investigative Training Assistance Program, the Money Laundering and Asset Recovery Section, the Narcotic and Dangerous Drug Section, the Organized Crime and Gang Section, the Office of Enforcement Operations, the Office of International Affairs, the Office of Overseas Prosecutorial Development, Assistance and Training, the Office of Policy and Legislation, Office of Administration, and the Public Integrity Section.

with the FOIA request submitted by the plaintiff to the Criminal Division, at issue in this litigation, as well as the information specifically requested by this Court in its July 8, 2019 Order.

5. I make the statements herein on the basis of personal knowledge, as well as on information provided to me by others within the Criminal Division with knowledge of the status of this request and litigation, and on information acquired by me in the course of performing my official duties in the FOIA/PA Unit.

6. The FOIA/PA Unit has an administrative request queue and a litigation queue. The FOIA/PA Unit assigns tracking numbers to all administrative requests (which includes FOIA/PA requests, consultations requests, and referrals directed to the Criminal Division) and requests that are subject to litigation. The tracking numbers allow the Office to determine where a request or litigation is in the respective queue. When a requester files a lawsuit, if the request is in the administrative queue, that administrative request tracking number is closed and a litigation request tracking number is opened.

7. As of July 15, 2019, the Criminal Division has 679 pending administrative requests, which includes all incoming FOIA and PA access requests, as well as consultations and referrals from other agencies pertaining to their FOIA/PA requests. Within the 679 pending administrative requests are 55 consultation requests and 60 referrals from other agencies. The Criminal Division has granted expedited processing to 6 requests. Plaintiff's request no longer has an administrative request tracking number because it is was closed once litigation commenced. Plaintiff's request was received on August 2, 2018, which, if still at the administrative stage, would place Plaintiff's request at number 391 in the current administrative queue.

8. The FOIA/PA Unit has 40 pending litigation matters, two of which are consultations requests received this week for litigations where the Criminal Division is not a defendant. Plaintiff's litigation is number 30 in the litigation queue.

9. Six of the Criminal Division's FOIA litigation matters have production schedules that have been ordered by the court. The processing schedules vary depending on the nature of the potentially responsive records and whether the FOIA/PA Unit Staff were able to deduplicate the records and make an initial responsiveness determination before entering into the schedule. In two of the litigation matters, where the beginning number of potentially responsive records exceeded 5,000 pages and 30,000 pages, the court has ordered the Criminal Division to process 200 and 300 pages a month, respectively. In the third litigation matter, the processing schedule is organized around specific categories of records and averages 500 pages, every two months. The fourth litigation matter has a processing schedule requiring the Criminal Division to process at least 1,000 pages per month. For this matter, the beginning page count of potentially responsive records exceeded 35,000, but over the course of a year the FOIA/PA Unit was able to deduplicate and make responsiveness determinations, reducing then number of pages to be processed in half. This review also allowed the FOIA/PA Staff to propose a production scheduled based on categories, which will allow staff to process the records in a more efficient manner. The fifth matter requires a production every two months, with an anticipated page count of 250 pages per production. The sixth matter requires the processing of a subset of the responsive records, approximately 50 pages, in the next 30 days. Additional processing benchmarks for the sixth matter will be established thereafter.

10. In addition to the Plaintiff's litigation, the FOIA/PA Unit is negotiating a processing schedule in a separate litigation matter, with approximately 14,000 pages of

potentially responsive material. The FOIA/PA Unit is processing records in five other litigation matters, but that processing is not being done under a court ordered schedule. The estimated monthly production for all five of those matters combined is approximately 750 pages.

Furthermore, there are five litigation matters with outstanding searches, four of which should conclude in the next 4 weeks. Upon completion of the searches, the FOIA/PA Unit will begin negotiating processing schedules for those four cases. The remaining 22 litigation matters are in the briefing stages, with FOIA/PA Unit Staff providing some level of support to government counsel by preparing declarations and drafting Vaughn Indices.

11. The Criminal Division FOIA/PA Unit is a relatively small office, as a result of vacancies and fiscal circumstances. The FOIA/PA Unit has four Government Information Specialists and one Trainee, primarily responsible for the initial processing of all records in both the administrative and litigation queues, with oversight from the Associate Chief, Deputy Chief, and Chief. The FOIA/PA Unit has three attorneys who are responsible for the management and review of the requests in both the administrative and litigation queues, with oversight from the Deputy Chief, Acting Deputy Chief (detailee for an upcoming extended absence of the Deputy Chief), and Chief. The FOIA/PA Unit also has two FOIA/PA Assistants who handle day-to-day administrative matters associated with incoming FOIA and PA requests.

12. There is one Government Information Specialist and one Criminal Division Attorney assigned to Plaintiff's matter. The Government Information Specialist is currently assigned 38 administrative request cases and five active litigation matters. The Criminal Division attorney is assigned 44 administrative request cases and 8 active litigation matters.

13. The FOIA/PA Unit is currently interviewing for an additional attorney. There are two Government Information Specialist vacancies and the hiring process for filling those

positions will commence soon. A Contractor Government Information Specialist will begin with the FOIA/PA Unit by the end of July. Another Contractor Government Information Specialist has been selected and is in the background clearance process.

Amanda Marchand Jones

Amanda Marchand Jones

Executed this 22nd day of July, 2019.