

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
NATIONAL ASSOCIATION OF CRIMINAL)	
DEFENSE LAWYERS,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 18-2399 (KBJ)
FEDERAL BUREAU OF PRISONS)	
)	
and)	
)	
DEPARTMENT OF JUSTICE,)	
)	
<i>Defendants.</i>)	
_____)	

**DEFENDANTS’ STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Local Civil Rule 7(h), Defendants, the Federal Bureau of Prisons (“BOP”) and the United States Department of Justice (the “Department”), submit this statement of material facts as to which there is no genuine issue.

PROCEDURAL HISTORY

1. On August 2, 2020, Plaintiff submitted a FOIA request seeking agency records to the BOP, the Executive Office for United States Attorneys (“EOUSA”), and three Department components, including the Criminal Division, Office of Information Policy, and Office of Legal Counsel. *See* ECF No. 42 (Plaintiff’s Second Amended Complaint); Declaration of Sarah Lilly for BOP (“Lilly Decl.”) ¶ 5; Declaration of John Cunningham for Criminal Division (“Cunningham Decl.”) ¶ 5; Declaration of Vinay Jolly for EOUSA (“Jolly Decl.”) ¶ 4.

2. The FOIA request to BOP sought nine categories of agency records, made on or after January 1, 2006, regarding the technical features of the inmate email system, as well as policies and guidance. ECF No. 1 ¶ 16.

3. The FOIA request to Departmental components sought six categories of agency records, made on or after January 1, 2006, from the Criminal Division, Office of Information Policy, and Office of Legal Counsel. *Id.* ¶ 28.

4. The FOIA request to Departmental components also sought the same records from 27 specific U.S. Attorneys' Offices, which are under the purview of EOUSA. *Id.*

5. On October 18, 2019, Plaintiff filed this lawsuit. ECF No. 1.

6. On November 15, 2019, Plaintiff filed an Amended Complaint. ECF No. 9.

7. On February 11, 2019, Defendants filed their Answer. ECF No. 18.

8. On August 7, 2020, Plaintiff filed its Second Amended Complaint in anticipation of briefing. ECF No. 42.

9. On August 21, 2020, Defendants filed their Amended Answer in anticipation to briefing. ECF No. 43.

BOP'S RESPONSE TO PLAINTIFF'S FOIA REQUEST

10. On August 6, 2018, the BOP acknowledged the FOIA request and assigned it tracking number 2018-6557. Lilly Decl. ¶ 5.

11. BOP began rolling interim productions of potentially responsive documents on March 20, 2019 and concluded productions on September 4, 2019. *Id.* ¶¶ 17-22.

12. BOP produced supplemental releases stemming from referrals and/or new searches between September 16, 2019 and September 30, 2020. *Id.* ¶¶ 23-28.

PLAINTIFFS' CHALLENGES TO BOP'S WITHHOLDINGS

13. Plaintiff challenges a specific list of withholdings made by BOP pursuant to certain information pursuant to 5 U.S.C. § 552 (b)(4), (b)(5), (b)(6), (b)(7)(c), (b)(7)(e), and (b)(7)(f). ECF No. 42 ¶ 38.

CRIMINAL DIVISION'S RESPONSE TO PLAINTIFF'S FOIA REQUEST

14. On August 24, 2018, the Criminal Division acknowledged the FOIA request and assigned it tracking number CRM-300677426. Cunningham Decl. ¶ 6.

15. In June 2019, the parties agreed to narrow the searches due to a large number of documents returned in initial searches. *Id.* ¶ 12.

16. The Criminal Division sent its first interim production of potentially responsive documents to Plaintiff on August 30, 2019. *Id.* ¶ 14.

17. The Criminal Division sent its second interim production of potentially responsive documents to Plaintiff on September 24, 2019. *Id.* ¶ 15.

18. The Criminal Division sent its third interim production of potentially responsive documents to Plaintiff on December 31, 2019. *Id.* ¶ 16.

PLAINTIFFS' CHALLENGES TO THE CRIMINAL DIVISION'S WITHHOLDINGS

19. Plaintiff challenges a specific list of withholdings made by the Criminal Division pursuant to certain information pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(c). ECF No. 42 ¶ 43.

EOUSA'S RESPONSE TO PLAINTIFF'S FOIA REQUEST

20. On August 13, 2018, EOUSA acknowledged the FOIA request and assigned it tracking number 2018-005641. Jolly Decl. ¶ 6.

21. Upon receipt of Plaintiff's FOIA, EOUSA tasked all 27 relevant U.S. Attorney's Offices¹ to search for documents. *Id.* ¶ 8.

22. Every U.S. Attorney's Office is organized differently and has unique recordkeeping systems, and therefore, every U.S. Attorney's Office conducted their search for relevant responsive documents differently. *Id.* ¶ 8.

23. Generally, the files of Criminal Chiefs, First Assistant U.S. Attorneys, and other Assistant U.S. Attorneys were searched, as well as any relevant places such as physical and digital files, emails, and internal U.S. Attorney's Office intranet sites. *Id.* ¶ 8.

24. EOUSA sent its first interim production of potentially responsive documents to Plaintiff on June 12, 2019. *Id.* ¶ 5.

25. EOUSA also processed referrals from the Criminal Division in October 2019. *Id.* ¶ 6.

26. EOUSA made supplemental productions to Plaintiff in September and October 2020. *Id.* ¶ 7, n.4.

PLAINTIFFS' CHALLENGES TO EOUSA'S SEARCHES

27. Plaintiff has challenged the searches in ten specific U.S. Attorney's Offices: District of Massachusetts, Eastern District of Michigan, District of Colorado, Eastern District of Pennsylvania, Eastern District of Virginia, Northern District of Illinois, Southern District of New

¹ The 27 U.S. Attorney's Offices that searched are: Southern District of Alabama, District of Arizona, Central District of California, Northern District of California, Southern District of California, District of Colorado, Middle District of Florida, Southern District of Florida, District of Hawaii, Northern District of Illinois, District of Kansas, Eastern District of Kentucky, Eastern District of Louisiana, District of Massachusetts, Eastern District of Michigan, District of Minnesota, Eastern District of New York, Southern District of New York, Eastern District of Pennsylvania, Western District of Pennsylvania, District of Puerto Rico, Eastern District of Texas, Southern District of Texas, District of the Virgin Islands, Eastern District of Virginia, Eastern District of Washington, and Western District of Washington.

York, Southern District of Florida, Western District of Washington, and District of Arizona. *Id.* ¶ 8, n.5.

PLAINTIFFS' CHALLENGES TO EOUSA'S WITHHOLDINGS

28. Plaintiff challenges a specific list of withholdings made by the Criminal Division pursuant to certain information pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(c). ECF No. 42 ¶ 49.

SEGREGATION OF NONEXEMPT INFORMATION

29. While applying withholdings to the records, Defendants evaluated all withheld documents and segregated non-exempt information from exempt information. Lilly Decl. ¶¶ 29, 35; Cunningham Decl. ¶¶ 22, 41; Jolly Decl. ¶¶ 11, 18.

30. Defendants conducted a foreseeable harm analysis on the withheld information while reviewing redactions. Lilly Decl. ¶¶ 35-36; Cunningham Decl. ¶¶ 28-30; Jolly Decl. ¶¶ 11.

31. The Criminal Division Office considered whether any information could be segregated and released without causing a foreseeable harm to the agency's operations and its operations, and determined that no further segregation of meaningful information in the withheld documents described herein would be possible without disclosing information that warrants protection under the law. Cunningham Decl. ¶ 30.

32. BOP conducted a foreseeable harm analysis on the withheld information pursuant to FOIA Exemption 5 and considered whether any information could be segregated and released without causing a foreseeable harm to the agency and its operations, and determined that no further segregation of meaningful information in the withheld documents described herein would be possible without disclosing information that warrants protection under the law. Lilly Decl. ¶ 36.

Date: November 2, 2020

Respectfully submitted,

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