
From: Zornberg, Lisa (USANYS) EOUSA RIP
Sent: Friday, October 06, 2017 10:38 AM
To: EOUSA b6, b7C; EOUSA b6, b7C
Cc: EOUSA b6, b7C; Richard Sullivan <EOUSA b6, b7C>
Subject: RE: TRULINCS Email Filter

Thanks, EOUSA b6, b7C. Just to be clear, my email earlier this morning was not a 'revision,' but more of a response to some of your comments during the call. It is consistent with what I had said in the email previously. As to your first question, we don't have a strong view on how you may want to communicate this to the CJA panel but an email from you with the substance of my emails seems fine. As to your second question re: process, you are correct.

Lisa

Fro EOUSA b6, b7C; EOUSA b6, b7C EOUSA RIP
Sent: Friday, October 06, 2017 8:10 AM
To: Zornberg, Lisa (USANYS) <EOUSA b6, b7C>
Cc: Adam Johnson <EOUSA b6, b7C>; Richard Sullivan <EOUSA b6, b7C>
Subject: Re: TRULINCS Email Filter

Thank you, Lisa. I appreciate the revision. I think this provides better guidance. Do you mind if I send out the substance of your email to the CJA Panel? Also, to clarify the process, absent an attorney requesting a different address that is acceptable to you, the AUSA will request that BOP screen out the attorney's ECF email address?

On Oct 6, 2017, at 7:23 AM, Zornberg, Lisa (USANYS) <EOUSA b6, b7C> wrote:

David, to follow up, and as you and I discussed yesterday, our Office has now instructed our criminal AUSAs, as a matter of practice, to request that the MCC and MDC filter out attorney-inmate emails in the TRULINCS system for counsel of record when we obtain an inmate's emails, so that those attorney-inmate emails will not be provided to us. There may be very rare exceptions to that general practice – for example, in a crime fraud situation; in acting upon safety concerns or threats; in case of an inmate's disappearance; or where our Office represents the Bureau of Prisons in litigation matters and our AUSAs (either in the Criminal or Civil Division) might need to review all TRULINCS content as part of that representation. Therefore, despite our implementation of this new general practice, we cannot provide you or the defense bar with absolute assurances that attorney-inmate communications sent through the TRULINCS system will never be reviewed. In that regard, the Bureau has been clear that its TRULINCS system is not a vehicle for confidential and privileged communications, and we have been clear that our new practice is not a waiver of

the legal argument that the communications are not privileged. What we have represented to you and have already implemented is a general practice of AUSAs asking the MDC and MCC to filter out communications between inmates and counsel of record, so that our AUSAs will not get or see those in the ordinary course.

Lisa

From: [REDACTED]
Sent: Monday, October 2, 2017 2:53 PM
To: Zornberg, Lisa (USANYS) [REDACTED]
Cc: [REDACTED]; Richard Sullivan
<[REDACTED]>
Subject: RE: TRULINCS Email Filter

Thanks, Lisa. I'm concerned that the policy set forth below doesn't really solve the problem we set out to solve. If the USAO can review attorney/client emails for any reason whatsoever, we're back at square one. When we all met, my understanding was that you were reserving the right to review attorney/client emails if you believed there was a basis under the crime/fraud exception to privilege. I understand your not wanting to concede that the emails are in fact privileged, but I don't think the guidance below will give attorneys much confidence in the confidentiality of the email system -- which was the point of developing a screening system.

Adam, is the screening system in place?

Thanks,
[REDACTED]

[REDACTED]
Executive Director
Federal Defenders of New York
52 Duane Street, 10th Fl.
New York, NY 10007
Tel: 212-417-[REDACTED]
Fax: 212-571-0392

<image001.gif>"Zornberg, Lisa (USANYS)" ---09/27/2017 10:18:13 AM---Gentlemen, this will confirm that, once MCC and MDC give the green light confirming that they are r

From: "Zornberg, [REDACTED]" [REDACTED]
To: [REDACTED]; Richard Sullivan [REDACTED]
Cc: [REDACTED]; [REDACTED]
Date: 09/27/2017 10:18 AM
Subject: RE: TRULINCS Email Filter

Gentlemen, this will confirm that, once MCC and MDC give the green light confirming that they are ready to implement their TRULINCS screening system, the U.S. Attorney for the Southern District of New York (SDNY) intends to direct our AUSAs to request that MDC and MCC filter out emails between an inmate and his/her attorney-of-record, as a general practice. Please note that SDNY, in adopting this practice, is not taking any position, or waiving any argument it could assert in litigation, that attorney-client emails in the TRULINCS system are not privileged. Further, our general practice of requesting filtering out of such emails

will not necessarily apply when, in our view, circumstances warrant obtaining emails between an inmate and attorney, such as, by way of non-exhaustive example, when we believe a crime fraud is occurring. It is also our understanding that emails sent by an inmate to multiple parties including both attorney and non-attorney contacts will not be filtered out, but rather will be produced to us in the normal course.

Lisa

Lisa Zornberg
Chief, Criminal Division
U.S. Attorney's Office, SDNY
1 Saint Andrew's Plaza
New York, NY 10007

EOUSA b5, b6, b7C

EOUSA b6, b7C

