U.S. Department of Justice

United States Attorney
Southern District of New York

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July 1, 2019

BY ECF
The Honorable Andrew L. Carter, Jr.
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2203
New York, NY 10007

> Re: *Knight First Amendment Institute v. U.S. Dep't of Homeland Security et al.*,
> No. 17 Civ. 7572 (ALC)

Dear Judge Carter:

I write respectfully on behalf of United States Department of Homeland Security ("DHS"), a defendant in the above-referenced FOIA action, in response to plaintiff's letter dated June 28, 2019 (Dkt. No. 123), to provide additional details regarding DHS's ongoing searches and negotiations with plaintiff.

As plaintiff correctly notes, DHS voluntarily agreed to conduct a new search for documents responsive to plaintiff's Narrowed FOIA Request.[1] Since that time, and as explained in more detail below, DHS has conducted searches suggested by plaintiff, which resulted in more than 1.6 terabytes data, gathering largely unresponsive documents; plaintiff and DHS have continued to try to refine the search terms such that the searches would more likely yield responsive documents; and DHS most recently conducted yet another search that similarly resulted in 431 gigabytes of data.[2]

Specifically, after extensive discussions between the parties, DHS, on March 5, 2019, agreed to conduct a search of seven program offices and one agency-wide database (the "IQ Database") with agreed-upon search terms and date ranges, seeking documents in PDF and Word format. On April 9, 2019, DHS informed plaintiff that: (1) the search of the IQ Database was complete and had resulted in no responsive documents; and (2) the program offices determined

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[1] As explained in the parties' prior submissions, plaintiff agreed to narrow the scope of the original FOIA request after commencing this action. *See, e.g.*, Dkt. No. 48 at ¶ 2.

[2] Separately, DHS apologizes to the Court for not providing a status update regarding "any proposed future briefing" regarding DHS, Dkt. No. 88 at 1. DHS has not provided such an update because the parties are not yet in a position to discuss future briefing, if any, while they negotiate the scope of DHS's search(es).

that they could not conduct a search limited to PDF or Word file formats, so each office had to search emails (which then must be manually reviewed to find any attached PDF and Word documents). Because that search was so cumbersome, the agency divided the search into emails dated pre- and post-2015. The search for documents created after 2015 resulted in the collection of more than 1.2 terabytes of data; many of those documents appeared to be non-responsive.

Through the month of April, the parties again discussed ways to potentially narrow the search, and plaintiff suggested various searches. In June, the agency ran one of plaintiff's proposed searches to determine whether that would result in fewer (and more likely-to-be responsive) documents; the search was initially limited to the years 2015 forward and searched more than 300 individual custodians. The search located over 240,000 unique documents and is 431 gigabytes in size. On June 28, 2019, the agency informed plaintiff of the results of that search, and again asked for suggestions as to how to narrow the search parameters.

Accordingly, DHS has conducted various searches proposed by plaintiff and those searches have resulted in an enormous amount of data, most of which appears to be non-responsive. DHS continues to attempt to negotiate search parameters with plaintiff in good faith, and hopes to reach agreement on a search or series of searches that are tailored to retrieve documents most likely to be responsive to the Narrowed FOIA Request.

I thank the Court for considering this matter.

Respectfully,

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