

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KNIGHT FIRST AMENDMENT INSTITUTE
AT COLUMBIA UNIVERSITY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. CUSTOMS AND BORDER
PROTECTION, U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES, U.S. DEPARTMENT OF
JUSTICE, and U.S. DEPARTMENT OF
STATE,

Defendants.

No. 1:17-cv-07572-ALC

JOINT STATUS REPORT

1. As indicated in the parties' February 24, 2020 Joint Status Report ("Feb. 24 JSR"), ECF No. 154, the Knight First Amendment Institute at Columbia University (the "Knight Institute" or "Institute") and Defendants U.S. Department of Homeland Security ("DHS"), U.S. Customs and Border Protection ("CBP"), U.S. Immigration and Customs Enforcement ("ICE"), U.S. Citizenship and Immigration Services ("USCIS"), U.S. Department of Justice ("DOJ"), and U.S. Department of State ("State"), respectfully submit this Joint Status Report to update the Court regarding the progress of Defendants' searches and production of records responsive to Item 1 of the Institute's Freedom of Information Act ("FOIA") request (the "Request"). *See* Am. Compl. Ex. 2, at 3–4, ECF No. 42-2.

2. As mentioned in the parties' February 24 JSR, DHS completed production of responsive records—including those responsive to Item 1—on January 15, 2020. Feb. 24 JSR ¶¶ 1–2.

3. As further detailed in the February 24 JSR, the parties reached agreements regarding the terms and initial deadlines for the other agencies' searches for records responsive to Item 1 of the Request. *Id.* at ¶¶ 3–10. The agencies have since completed those searches and begun or completed their productions of responsive records.

CBP

4. On April 17, 2020, CBP informed the Knight Institute that it had completed its searches and found no responsive records.

ICE

5. ICE is currently processing potentially responsive records.

6. On March 6, 2020, ICE informed the Knight Institute that it had reviewed 665 pages of potentially responsive records, including 279 pages of duplicates and 8 pages that were referred to another agency. ICE released 390 pages in full or in part, applying FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

7. On April 7, 2020, ICE informed the Knight Institute that it had reviewed 586 pages of potentially responsive records, including 394 pages of duplicates and 87 pages that were referred to another agency. ICE produced 95 pages in full or in part, applying FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

8. Although the current COVID-19 crisis has resulted in delays in processing and production, ICE nevertheless still aims to complete its processing and production of responsive records by July 30, 2020.

USCIS

9. On April 7, 2020, USCIS informed the Knight Institute that it had completed its searches and located approximately 1,000 pages of records potentially responsive to Item 1 of the Request.

10. On April 17, 2020, the agency informed the Institute that it aimed to process and produce responsive records by July 30, 2020. The Knight Institute agreed to this timeline to account for possible processing delays during the COVID-19 pandemic.

DOJ-OIP

11. On April 6, 2020, OIP informed the Knight Institute that it had completed its responsiveness review of the records potentially responsive to Item 1 of the Request.

12. On May 8, 2020, OIP provided a letter explaining that, after processing, the agency had determined to withhold all 49 responsive pages in full under FOIA Exemption 5. The Institute has requested that the agency provide more details about the withheld records, suggesting a short, draft *Vaughn* index to facilitate the parties' attempts to narrow the scope of any disputes over the applicability of Exemption 5. OIP has agreed to provide a draft *Vaughn* index by June 15, 2020.

State

13. In the February 24 JSR, the agency stated that it was processing 450 pages of responsive records. Feb. 24 JSR ¶ 10.

14. In response to the COVID-19 pandemic, State has been implementing guidelines issued by the Office of Personnel Management (“OPM”) and Office of Management and Budget (“OMB”) to protect their employees and communities during this national emergency. The Department employs retired Foreign Service Officers (Reemployed Annuitants or “REAs”) to review and process documents in response to FOIA requests. Because FOIA processing is not a

mission-critical function and does not fit within the most recent OMB circular defining such functions, and because many REAs are within the age groups identified by the Centers for Disease Control as being at higher risk for serious illness from COVID-19, State paused the scheduling of all REAs working in the Department's offices effective March 19, 2020. As of the date of this filing, and pursuant to the latest Executive Branch guidance, that pause is still in effect. While State is currently training REAs on general telework processes and on processing documents remotely so that the Department can resume processing FOIA litigation cases remotely for certain cases in the coming weeks, the potentially responsive documents for this case reside in a document review platform that is operated exclusively on a Department classified network and so is only accessible if physically present at a Department worksite. Because all full-time employees responsible for processing documents in FOIA are teleworking in accordance with Executive Branch and Department guidance, the Department cannot currently resume processing of documents for this case. State will promptly notify Plaintiff when such processing can resume.

Proposed Next Step

15. The parties have agreed to submit a joint status report by August 13, 2020, providing the Court with further updates regarding the status of Defendants' productions of records responsive to Item 1 of the Request.

Dated: May 14, 2020

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