U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street, 3rd floor
New York, New York 10007

September 3, 2021

BY ECF

The Honorable John G. Koeltl
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

APPLICATION GRANTED
SO ORDERED

John G. Koeltl, U.S.D.J.

9/6/21

Knight First Amendment Inst. et al. v. Dep't of State et al.,
No. 20 Civ. 4911 (JGK)

Dear Judge Koeltl:

We write respectfully on behalf of the parties in the above-referenced Freedom of Information Act ("FOIA") case to provide the Court with a status report with regard to the remaining defendants' processing of plaintiffs' FOIA request.

Department of State: State has completed processing and production of responsive, non-exempt records from unclassified records systems, and is now processing an agreed-upon narrowed set of records residing on classified systems. To date, State has processed approximately 4400 pages and has approximately 3200 pages of records (all from classified record systems) left to process. State will continue to make rolling productions of responsive, non-exempt records, with the aim of completing processing by the end of the calendar year.

Central Intelligence Agency: CIA has completed its processing and production of non-exempt records responsive to the FOIA request to CIA, including records requiring inter-agency consultation. Pursuant to an agreement with plaintiffs, and to allow the parties to determine whether any issues remain to be litigated, CIA provided plaintiffs with a draft Vaughn index with regard to the records it withheld in full and a limited number of records identified by plaintiffs that were withheld in part. The parties are meeting and conferring regarding the draft Vaughn index.

Office of the Director of National Intelligence: The remaining approximately 70 responsive documents have been referred to other government agencies or entities for consultation. ODNI is awaiting responses to its consultation requests.

National Security Agency: NSA conducted a supplemental search and located one additional responsive record. NSA has referred that record to another agency for processing. In addition, NSA recently received responses to consultations, and expects to make a further production of a small number of records within a few weeks. That production will complete NSA's response to the FOIA request.

Federal Bureau of Investigation: FBI has been making rolling productions of responsive, non-exempt records on or about the 14th day of each month, as contemplated by the Stipulation and Order entered by the Court on September 28, 2020 (ECF No. 42). With the production on July 14, 2021, FBI completed its productions, with the exception of documents referred to other agencies for consultation for which FBI is awaiting responses.

Defendants note that their ability to process FOIA requests, including the request in this case, remains constrained by staffing restrictions necessitated by the ongoing COVID-19 public health emergency. The limitations are particularly pronounced with regard to review of records residing on classified record systems, which cannot be reviewed remotely. Defendants have nevertheless have made substantial progress in processing records responsive to the FOIA requests, and the parties continue to meet and confer as necessary to narrow the records at issue.

We thank the Court for its consideration of this letter, and propose to submit a further status report on or before November 5, 2021.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: */s/ Sarah S. Normand*
SARAH S. NORMAND
Tel.: (212) 637-2709
Sarah.Normand@usdoj.gov

Counsel for Defendants

WACHTELL, LIPTON, ROSEN & KATZ

By: */s/ Jonathan M. Moses*
JONATHAN M. MOSES
Tel: (212) 403-1000
JMMoses@wlrk.com

Counsel for Plaintiffs