U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

July 20, 2018

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 Defendants the United States Department of State ("State") and United States Immigration and Customs Enforcement ("ICE"), two of the defendants in the above-captioned Freedom of Information Act ("FOIA") matter, in response to plaintiff's letter dated July 18, 2018. Dkt. No. 72. As explained below, while both agencies completed their review of the records responsive to plaintiff's provisionally narrowed FOIA request by the Court-imposed deadlines of June 28, 2018, and July 3, 3018, respectively, State and ICE determined that some of the records potentially implicated the equities of other agencies or components. Those records accordingly were referred to the relevant agencies or components for review. Contrary to Plaintiff's suggestion, State and ICE did not make these referrals in an effort to evade the Court's production deadline, but rather in accordance with those agencies' FOIA regulations. *See* 6 C.F.R. § 5.4(d); 22 C.F.R. § 171.22(f). State and ICE respectfully request that the deadline for the referred documents be extended to permit this further review by other agencies or components.

State's Referred Documents

On May 18, 2018, State informed the Court that it had located approximately 1,719 pages that were most likely responsive to Plaintiff's provisionally narrowed FOIA request, and the Court ordered State to produce those documents by June 28, 2018. *See* Dkt. No. 63. In response, State processed and produced documents on June 28, and referred 39 pages to other federal agencies and components. Since then, State has been in contact with those entities and now understands that 3 pages have been processed and the remaining 36 pages will be processed and produced by July 31, 2018. Accordingly, State respectfully requests an extension of the production deadline for those documents to July 31, 2018.

ICE's Referred Documents

ICE located approximately 14,000 pages of documents potentially responsive to Plaintiff's original (not narrowed) FOIA request. Dkt. No. 48 at ¶ C(g). ICE made two productions, on March 7, 2018, and April 30, 2018, processing a total of 1764 pages, releasing 888 pages, and referring 805 pages to other agencies. Dkt. No. 56 at ¶¶ 22-26. Thereafter, the parties agreed that ICE would re-review the remaining pages it had identified as responsive to the original request to determine which, if any, were responsive to the provisionally narrowed request. Dkt. No. 64 at ¶ B. On June 18, 2018, per the Court's order, ICE completed its re-review and informed Plaintiff that 99 pages were most likely responsive to the narrowed request. On June 28, 2018, ICE produced 50 pages and referred 49 pages to other agencies for review. Dkt. No. 72 at ¶ B. As a result, the vast majority of pages that ICE referred to other agencies (805 out of 854 pages) are documents that were identified as potentially responsive to plaintiff's original, non-narrowed FOIA request, and may not be responsive to the narrowed FOIA request.

ICE is working to determine which of the referred pages are responsive to the narrowed request (which should decrease the number of documents) and to obtain information from the agencies and components to which the documents were referred regarding when the review of those pages will be complete. ICE respectfully requests that it be permitted to make a further submission to the Court no later than Tuesday, July 24.

We thank the Court for considering this matter.

Respectfully,

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By: */s/ Ellen Blain*

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