The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEGAN MING FRANCIS, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF JUSTICE, Defendant.	No. 2:19-cv-1317-RAJ **JOINT STATUS REPORT**

United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20530
202-514-0265

Pursuant to the Court's November 13, 2019 Minute Order, plaintiffs Megan Ming Francis, Matthew J. Connelly, Mary L. Dudziak, Matthew L. Jones, Hiroshi Motomura, Campaign for Accountability, and the Knight First Amendment Institute at Columbia University (collectively, "Plaintiffs") and defendant United States Department of Justice ("DOJ" or "Defendant") respectfully submit this Joint Status Report describing the nature and complexity of this case and proposing a schedule for further proceedings. The parties have met and conferred telephonically on September 27, October 29, November 5, November 22, and December 4, 2019 to discuss Plaintiffs' Freedom of Information Act ("FOIA") request and the proposed plan for further proceedings in this case.

1. Statement of the nature and complexity of the case

This case arises from Plaintiffs' Complaint pursuant to the FOIA, 5 U.S.C. § 552, in which Plaintiffs seek a response to their FOIA request for "all Office of Legal Counsel ('OLC') formal written opinions issued prior to February 15, 1994." *See* Complaint, Dkt. 1, Ex. A. OLC is a component of Defendant DOJ.

Under the FOIA, a federal agency that has identified records responsive to a proper FOIA request must disclose those records unless information within them falls within one of nine enumerated exceptions. *See* 5 U.S.C. § 552(b). Whether information responsive to a FOIA request is exempt is typically resolved through motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. *See Lane v. Dep't of Interior*, 523 F.3d 1128, 1134 (9th Cir. 2008) (citing *Miscavige v. IRS*, 2 F.3d 366, 369 (11th Cir. 1993)).

The parties are currently negotiating the scope of Plaintiffs' FOIA request and the timeline for DOJ's processing and production of non-exempt, responsive records. Until DOJ determines if it will withhold responsive documents pursuant to FOIA's exemptions, it would be premature to advance to dispositive briefing.

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2. Proposed schedule for processing and production of non-exempt responsive records

OLC has initiated its search and determined that there are almost 30,000 potentially responsive records, which would require multiple years of processing time before Defendant could complete a response to Plaintiffs' FOIA request.

In an effort to reduce the processing time, the parties have agreed that OLC will begin responding to Plaintiffs' FOIA request by searching for responsive records for a single test year — 1974. Defendant will provide Plaintiffs with a list of the titles of all the formal written OLC opinions for the test year, along with the date of the opinion and the recipient(s) of the opinion, subject to potential redactions. Plaintiffs will review the list of opinions and request that Defendant process a subset of the opinions from the test year. Defendant will produce non-exempt, responsive records based on that request, according to the schedule set out below.

Accordingly, the parties respectfully propose the following schedule:

January 6, 2020:	Defendant will provide Plaintiffs the date, title, and recipients of the formal written OLC opinions for the test year, subject to redaction.
January 27, 2020: [1]	Plaintiffs will provide Defendant with the list of opinions from the test year that Plaintiffs would like processed.
March 23, 2020:	Defendant will complete processing of approximately 25% of the requested opinions for the test year and make an interim production of the non-exempt, responsive records. For any opinion withheld in full or in part, Defendant will inform Plaintiffs of the FOIA exemption(s) it invokes to withhold that information.
April 20, 2020:	Defendant will complete processing and production of the non-exempt, responsive records for the test year (assuming Plaintiffs request no more than one hundred opinions from the list provided). For any opinion withheld in full or in part, Defendant

[1] The parties have also agreed that for certain opinions regarding some types of federal statutes, Plaintiffs may query Defendant what statutory subpart, if any, the opinion addresses. Plaintiffs will provide their questions by January 13, and Defendant will provide any responses by January 20. If Plaintiffs inquire about more than 20 opinions, it will delay Defendant processing in one week intervals for each set of 20 inquiries.

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will inform Plaintiffs of the FOIA exemption(s) it invokes to withhold that information.

3. Parties' views on further proceedings

Generally, at this procedural phase, the parties and the Court consider both settlement and upcoming discovery, pursuant to Rule 26. However, Defendant's position is that discovery is rare in a FOIA case, and that it is premature to consider settlement. Plaintiffs' position is that, at this stage of the litigation, they do not know whether discovery will be required. The parties agree that the FRCP 26(f) conference, initial disclosures under FRCP 26(a)(1), and a Discovery Plan under FRCP 26(f) and Local Civil Rule 26(f) are unnecessary at this time.

After Defendant begins processing the requested opinions for the test year, the parties will meet and confer to determine if it is feasible to use this process to narrow the scope of the remainder of Plaintiffs' FOIA request and agree to a production schedule. Accordingly, the parties propose that they submit a Joint Status Report to the Court on February 21, 2020 regarding a proposed schedule for the remainder of the production.

DATED: December 5, 2019

Respectfully submitted,

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