IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*	)	
Plaintiffs,	)	Civil Action No. 18-1129 (EGS)
v.	)	
DEPARTMENT OF DEFENSE, *et al.*	)	
Defendants.	)	

JOINT STATUS REPORT

Plaintiffs Knight First Amendment Institute at Columbia University, American Civil Liberties Union, and American Civil Liberties Union Foundation (collectively, "Plaintiffs"), and Defendants Department of Defense ("DOD") and the Central Intelligence Agency ("CIA")[1] respectfully submit this Joint Status Report ("JSR"), pursuant to the Court's Order of January 22, 2020. *See* Minute Order (Jan. 22, 2020).

[1] As stated in greater detail in the parties' prior Joint Status Reports, of July 18, 2019, ECF No. 41; September 17, 2019, ECF No. 43; and January 17, 2020, ECF No. 44, the following agencies which are also named Defendants to this suit completed all processing and production of the relevant requests prior to the filing of the parties's last (January 17, 2020) Joint Status Report: Department of Justice ("DOJ"), Federal Bureau of Investigation ("FBI"), Department of State ("State"), Office of the Director of National Intelligence ("ODNI"), Department of the Air Force ("Air Force"), United States Coast Guard ("Coast Guard"), Drug Enforcement Administration ("DEA"), Department of Homeland Security ("DHS"), Defense Intelligence Agency ("DIA"), Department of Energy ("DOE"), Department of the Treasury ("Treasury"), Marine Corps ("Marines"), Department of the Navy ("Navy"), National Geospatial-Intelligence Agency ("NGIA"), National Reconnaissance Office ("NRO"), National Security Agency ("NSA"), and Department of the Army ("Army"). Accordingly, there are no updates to provide the Court with respect to any of these Defendant agencies at this time.

I. Plaintiffs' FOIA Requests

This lawsuit involves three separate FOIA requests, which together seek records from twenty (20) separate Executive Branch agencies related to their respective pre-publication review processes—the policies and procedures governing the review of written materials drafted or prepared by current or former federal government employees, which discuss or reference their federal government service, prior to public release. *See* Compl. ¶¶ 1, 14–123.

FOIA Request 1 was submitted to ten (10) separate Defendant agencies—DOD, Army, NSA, CIA, DOJ, DOJ-OLC, DOJ-NSD,[2] the FBI, DOS (State), and ODNI—on May 9, 2017. FOIA Request 1 contains three separate requests that broadly request all written communications, inter- and intra-agency correspondence, and records reflecting interim, final, or after appeal decisions related to the pre-publication review processes of each of the ten (10) Defendant agencies in connection with pre-publication requests submitted by twenty-two (22) separately identified individuals. *See id.* ¶¶ 14–18.

FOIA Request 2 was submitted to nineteen (19) of the Defendant agencies—CIA,[3] DOD, DIA, Army, Air Force, Navy, NGIA, NRO, NSA, the Marines, DOE, DHS, Coast Guard, DOJ, DEA, FBI, DOS, Treasury, and ODNI—on December 13, 2017. *See id.* ¶¶ 14, 43. FOIA Request 2 generally contains three separate requests, one of which has three separate subparts, seeking all records related to non-disclosure agreements or any other agreements, administrative appeals, and sanctions related to pre-publication

[2] In addition to DOJ, DOJ-OLC, and DOJ-NSD, Plaintiffs submitted FOIA Request 1 to DOJ Office of the Attorney General ("OAG").

[3] In addition to the CIA, Plaintiffs submitted FOIA Request 2 to the CIA Office of Inspector General.

review from each of the 19 Defendant agencies. *See id.* ¶¶ 43–44. In addition to these specific requests, FOIA Request 2, which was submitted to Defendants CIA, DHS, and ODNI, contained a fourth paragraph that requests additional records related to pre-publication review policies attributed to the CIA, DHS, and ODNI respectively. *See id.* ¶¶ 44–47.

Finally, FOIA Request 3 was submitted to three Defendant agencies—DOJ, NSD, and the FBI—on March 27, 2018. *See id.* ¶¶ 14, 114. FOIA Request 3 generally seeks all correspondence, inter- and intra-agency correspondence, and documents reflecting decisions related to the pre-publication review process undertaken by Mr. James Comey in relation to the publication of his memoir, *A Higher Loyalty*. *See id.* ¶¶ 114-15.

II. The Status of the Remaining FOIA Requests and the Anticipated Dates by Which Responsive Information Will Be Produced

In the parties' last JSR, filed on January 17, 2020, ECF No. 44, CIA and DoD each represented that they anticipated completing processing by June 2020. While those representations were accurate at the time they were made, in light of adverse circumstances engendered by the intervening, and ongoing, global COVID-19 pandemic, neither agency has yet completed its processing. However, CIA has continued to comply with the Court's order to process records responsive to Plaintiffs' requests at a rate of at least 400 pages per month, *see* Minute Order (Aug. 6, 2019), and has made an interim production to Plaintiffs in every month in the interim since the parties' last JSR.[4] During

[4] CIA's prior representation that it anticipated completed processing by June 2020 was premised on an expectation that it could exceed the mandatory processing rate of 400 pages per month. Although the COVID-19 pandemic has slowed CIA's processing, CIA has continued to meet the court-ordered minimum processing rate. The Court's August 6, 2019 Order did not apply to DoD.

this same period, DoD made interim productions in January, February, and May 2020. However, because the individuals responsible for processing Plaintiffs' FOIA requests were almost exclusively teleworking through much of this time—and the system DoD uses to house and process classified information is inaccessible from outside worksites—DoD was unable to make the further interim productions it anticipated in the parties' last JSR.

As of the date of this filing, both CIA and DoD are actively processing records responsive to Plaintiffs' FOIA requests, and both agencies presently estimate that they will complete processing by the end of October 2020. Both agencies commit to making interim productions once a month until their productions are complete. The parties have conferred, and in light of the circumstances engendered by the ongoing pandemic, Plaintiffs are amenable to this adjusted schedule for completion of processing.

IV. A Proposed Briefing Schedule for Dispositive Motions, If Applicable

Although most of the Defendant agencies have completed processing, two have not. Accordingly, the parties are not yet in a position to propose a dispositive briefing schedule. The parties respectfully request additional time to permit Defendants to complete processing of responsive records and to permit the parties to attempt to narrow or resolve any issues that remain. To that end, the parties jointly propose that they file a Joint Status Report on or before November 20, 2020, that informs the Court about the status of the efforts to resolve this matter without further litigation, or alternatively, proposes a briefing schedule to resolve Plaintiffs' remaining claims.

Dated: July 30, 2020 Respectfully submitted,

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