Hon. 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

THIRD 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 March 3, 2020 Amended Scheduling 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 ("Defendant") respectfully submit this Joint Status Report proposing a further schedule for the processing and production of records responsive to Plaintiffs' Freedom of Information Act request for all Office of Legal Counsel ("OLC") formal written opinions[1] issued prior to February 15, 1994. The parties met and conferred electronically multiple times since the parties' Second Joint Status Report, and telephonically on August 6, 2020, and propose the following plan for further proceedings in this case.

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

In the parties' February 21, 2020 Second Joint Status Report, ECF No. 17, they outlined a plan for the processing and production of a subset of OLC opinions from pre-agreed years prior to 1981, to potentially reduce the total processing time. Defendant has produced 217 records from 1974, 1981, and 1969 pursuant to that processing plan.[2] Plaintiffs also have a pending

[1] As defined in Plaintiffs' FOIA request.

[2] The first 100 responsive records were to be produced on April 27, 2020. *See* Amended Scheduling Order, ECF No. 19. Defendant had technical issues that delayed this production and the records were delivered to Plaintiffs on April 28, 2020. Plaintiffs only requested 99 records from 1974, so only 99 documents were produced. Further, Defendant inadvertently produced one non-responsive document instead of the requested record, and as a result, produced the last requested record for 1974 on July 27, 2020.

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request for production of 431 opinions from 1981, 1969, 1965, 1977, and 1954.[3]

The parties have agreed that Defendant will continue its ongoing processing effort and complete the processing of the next 100 responsive records from Plaintiffs' pending request. The parties have further agreed, due to the backlog of opinions in process, that Defendant will pause its effort at generating additional lists of opinions, and Plaintiffs will pause the selection of any additional opinions. During this time, Defendant will consider whether the processing plan described in the Second Joint Status Report can be utilized for processing opinions from a test year after 1981 and under what schedule these opinions could be processed. Defendant will also consider whether it will agree to prioritize providing the lists of titles for every year prior to 1981 to Plaintiffs before processing the opinions themselves, as Plaintiffs have requested.

Accordingly, the parties propose the following schedule:

Sept. 27, 2020:	By this date, Defendant will inform Plaintiffs of its position on developing a list of OLC opinions for a test year after 1981, and propose a schedule for processing these opinions. Defendant will also inform Plaintiffs its position on providing lists of titles for every year prior to 1981 before processing the records from those years.
Oct. 27, 2020:	By this date, Defendant will have completed the processing of at least 100 additional records and will provide Plaintiffs with the third production of non-exempt, responsive records. For any record withheld in full or in part, Defendant will inform Plaintiffs of the FOIA exemption(s) it invokes to withhold that information.

[3] Defendant provided Plaintiffs a list of all responsive records from 1945, but Plaintiffs have not yet requested production from that year, as described below.

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2. Parties' views on further proceedings

The parties are continuing to discuss whether it is in the interests of both parties to continue this method to narrow the request and only process a subset of the opinions; or if Defendant should revert to processing all responsive records and, if so, confer on the most efficient way to complete that process. The parties propose that they submit a fourth Joint Status Report to the Court on November 6, 2020 proposing a schedule for the continued production of records responsive to Plaintiffs' request.

DATED: August 10, 2020

Respectfully submitted,

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