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 July 31, 2020. *See* Minute Order (Jul. 31, 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 seek 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 review from each of the 19 Defendant agencies. *See id.* ¶¶ 43–44. In addition to these specific requests,

[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.

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 and internal investigations into those policies, which were 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 July 30, 2020, ECF No. 47, DOD and CIA each represented that they anticipated completing processing by the end of October 2020. DOD has now completed its processing, and CIA has continued to process records at the court-ordered rate of at least 400 pages per month and to make monthly interim productions, including most recently a production of approximately 700 pages on November 16, 2020. However, while CIA continues to actively process records, it communicated to Plaintiffs in early October 2020 that the last several hundred documents in its processing queue turned out to contain a large number of highly complex documents, many of which would require coordination both inside and outside the agency. Due to that unforeseen circumstance, as well and ongoing COVID-19-related staffing limitations at the agency, CIA presently anticipates that it will complete processing the results of its original searches by mid-December 2020.

Additionally, in the course of processing its near-final set of documents for production, CIA identified the possibility that information responsive to Plaintiffs' request

for "any document, including final report, relating to the investigation begun by the CIA or CIA OIG in or about May 2012 into the composition and practices of the Prepublication Review Board" may exist within holdings related to an internal agency office that was restructured several years ago. Accordingly, although CIA's representations in the June 2019 Shiner declaration, ECF No. 38-1, that it believed it had completed its searches in this case, was accurate at the time it was made, CIA has determined that it will need to conduct certain limited supplemental searches in order to ensure that a sufficient search for documents responsive to Plaintiffs' requests has been made. To be clear, however, the contemplated additional searches are not broad-scale searches akin to those conducted initially in this matter, but rather targeted searches designed to ensure that potentially responsive records from the internal office in question are retrieved and processed appropriately. While CIA is presently in the course of conducting these supplemental searches—and is not in a position to yet propose a concrete schedule for the processing of any search results—it does not anticipate that the conduct of such searches and the processing of any search results will add more than a few months to the administrative proceedings in this case.

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

In light of the above-described developments, the parties have conferred and jointly propose that they file a further JSR on or before January 8, 2020, in which they will update the Court on the progress of CIA's ongoing processing of its initial search results (anticipated to conclude in December 2020), and propose a schedule for the processing of the results (if any) of the supplemental searches that CIA is presently in the process of conducting.

Dated: November 20, 2020 Respectfully submitted,

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