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

FIFTH 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 17, 2020 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.

To date, and pursuant to the parties' agreement, OLC has produced partial or complete lists of unclassified opinion titles for the years 1974, 1981, 1969, 1965, 1977, 1954, and 1945; Plaintiffs have requested the processing of 99 opinions from 1974, 89 opinions from 1981, 95 opinions from 1969, 90 opinions from 1965, 159 opinions from 1977, and 116 opinions from 1954; and OLC has produced 100 records from 1974, 87 records from 1981, 91 records from 1969, and 90 records from 1965. The parties agreed on August 7, 2020 to pause the processing of any records from 1977, 1954, or 1945. Since the parties' Fourth Joint Status Report, they have met and conferred electronically and telephonically multiple times in order to develop a plan to complete processing of Plaintiffs' FOIA request and resolve this mattter. The parties report the following:

1. Proposed schedule plan for completing the response to Plaintiffs' FOIA request

Plaintiffs have agreed to narrow their FOIA request, which will significantly reduce the

[1] As defined in Plaintiffs' FOIA request.

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total processing time. In order to facilitate this narrowed request, Defendant has agreed to continue creating lists of titles of OLC opinions. Accordingly, the parties have agreed that the following plan will complete Defendant's reponse to Plaintiffs' FOIA request:

A. OLC will create and disclose to Plaintiffs lists of the titles of all unclassified formal written opinions ("lists") issued by OLC for each year between 1945 and February 15, 1994, excluding the years for which the OLC has already produced a list to Plaintiffs. OLC will produce these forty-three lists to Plaintiffs at a rate of twelve lists every three months. The lists will be delivered on April 8, 2021, July 8, 2021, October 8, 2021, and January 10, 2022.

B. Within one month of OLC's final production of lists, by February 10, 2022, Plaintiffs will submit to OLC the titles of no more than 230 opinions for processing and production of any non-exempt responsive records, consisting of no more than five opinions from each of the lists OLC provides and no more than five opinions from the lists OLC previously provided for 1945, 1954, and 1977.

C. Within three months of receiving Plaintiffs' selections, by May 10, 2022, OLC will process at least 100 of the opinions requested by Plaintiffs and produce all non-exempt responsive records. OLC will also process six additional outstanding opinions by that date ("Withheld Warren Commission Documents," dated 1/9/1969; "Possible Conflict of Interest of Assistant United States Attorney [redacted]," dating 2/10/1969; "Suggestions for Prevention of College Disturbances," dated 2/17/1969; "Analysis of Constitutionality of Proposed Voting Rights Act," dated 7/10/1969; "Suing to Enjoin the Enforcement of a Senate Committee's Subpoena," dated 1/16/1981; and "The Merit Pay System and Conflict of Interest Principles," dated 10/6/1981).

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D. Within six months of receiving Plaintiffs' selections, by August 10, 2022, OLC will process the remaining opinions selected by Plaintiffs and will release all non-exempt responsive records. OLC will also process and produce to Plaintiffs its existing list of the titles of all classified formal written opinions prepared by OLC between 1974 and 1994, excluding codeword classified opinions, subject to FOIA's statutory exemptions.

E. The Department of Justice has currently implemented a maximum telework policy for its employees. Within thirty days of the rescission of this policy, OLC will produce to Plaintiffs a list of the titles of all unclassified formal written opinions issued by OLC in October 1969.

2. Parties' views on further proceedings

The only remaining issue is Plaintiffs' request for Attorneys' Fees. The parties propose that they submit either a settlement agreement and stipulation of dismissal or a sixth Joint Status Report advising the Court of any need for further proceedings by March 12, 2021.

DATED: January 8, 2021

Respectfully submitted,

/s/ Alex Abdo
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