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 respectfully submit this Joint Status Report ("JSR"), pursuant to the Court's Order of July 31, 2020. *See* Minute Order (Jul. 31, 2020).

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,[1] 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,[2] 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

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

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

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 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 November 20, 2020, ECF No. 49, DOD informed the Court that it had completed its processing, and CIA represented that it anticipated that it would complete processing the results of its original searches by mid-December 2020.[3] CIA additionally explained that, in the course of processing its near-final set of documents for

[3] 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.

production, it had 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 representation 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 determined that it needed to conduct certain limited supplemental searches in order to ensure that a sufficient search for documents responsive to Plaintiffs' requests had been made.

As anticipated, CIA made a close-to-final production of its initial search results on December 15, 2020. However—and as CIA communicated to Plaintiffs contemporaneously—CIA's production did not include six documents that originated with, or contained the equities of, another agency—and that CIA, accordingly, referred to the other agency for consultation. These documents have not yet been returned to CIA, and the other agency has not yet provided an estimated timeline for completing its review; however, CIA will produce the documents promptly to Plaintiffs upon their receipt. All other processing and production of CIA's initial search results is now complete.

CIA has also completed its supplemental search of records from the restructured Agency office, which has yielded approximately 1,600 potentially responsive pages. CIA will imminently begin the processing of this last set of documents, and will do so in comportment with the court-ordered rate of at least 400 pages per month, with rolling interim productions to be made monthly, beginning in mid-February 2021. Proceeding at this rate, CIA anticipates that it will complete production of these supplemental search results in May 2021.

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

In light of the above-described developments the parties are not yet in a position to propose a dispositive briefing schedule. The parties respectfully request additional time to permit CIA to complete processing of responsive records and, following final production, 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 further Joint Status Report on or before June 11, 2021, that will inform 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: January 8, 2021

Respectfully submitted,

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