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 January 11, 2021. *See* Minute Order (Jan. 11, 2021).

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 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

[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.

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

As reported in various JSRs over the course of this litigation, all Defendants except for CIA have now completed processing and production.[3]

With respect to CIA, as explained in the parties' last JSR, filed on January 8, 2021, CIA made a close-to-final production of its initial search results on December 15, 2020. *See* ECF No. 50 at 3-4. However, this 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. *Id.* As of the date of this filing, these six documents remain outstanding.

Additionally, as also reported in the parties' last JSR, between November 2020 and January 2021, CIA conducted a supplemental search of an internal agency office that was restructured several years ago; this search yielded approximately 1,600 potentially responsive

[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; January 17, 2020, ECF No. 44; July 30, 2020, ECF No. 47; November 20, 2020, ECF No. 49; and January 8, 2021, ECF No. 50, 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"), Department of the Army ("Army"), and Department of Defense ("DoD"). Accordingly, there are no updates to provide the Court with respect to any of these Defendant agencies at this time.

pages. *See id.* CIA has now completed processing and production of these supplemental search results, with the exception of one document that originated with, or contained the equities of, another agency—and that CIA, accordingly, referred to the other agency for consultation. As of the date of this filing, this document also remains outstanding; thus, CIA has now completed all processing and production, save for seven documents in total, all of which require review by other agencies.

Although CIA does not have control over the timing of the other agencies' review of the seven outstanding documents, it is making its best efforts to bring thse respective consultation processes to a close, and hopes to complete all processing within approximately the next 30 to 45 days.

In the meantime, because all other processing and production from all other Defendants is now complete, the parties agree that the time is now ripe to meet and confer regarding any challenges Plaintiffs may have regarding Defendants' productions. The parties have agreed to begin this process in an effort to narrow or resolve any issues that may otherwise require judicial resolution.

III. Proposal for Further Proceedings

In light of the above-described developments, the parties are not yet in a position to propose a dispositive briefing schedule. Accordingly, the parties respectfully request additional time to permit CIA to complete processing of the seven outstanding documents and, concurrently, to allow the parties to meet and confer regarding any challenges Plaintiffs may have. To that end, the parties jointly propose that they file a further Joint Status Report on or before July 30, 2021, that will inform the Court about the status of the seven outstanding documents, as well as the parties' efforts to resolve this matter without further litigation, and propose a briefing schedule, if necessary.

Dated: June 11, 2021

Respectfully submitted,

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