

KNIGHT
FIRST AMENDMENT
INSTITUTE at
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September 17, 2021

By ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2202
New York, NY 10007

Re: ***Knight First Amendment Inst. at Columbia Univ. v. Fed. Bureau of Prisons*, No. 21 Civ. 6579 (JMF)**

Dear Judge Furman,

On behalf of the parties in the above-referenced case brought by the Knight First Amendment Institute at Columbia University ("the Knight Institute"), against the Federal Bureau of Prisons ("BOP") and the U.S. Department of Justice (collectively, "Defendants"), we write respectfully in response to the Court's order dated August 19, 2021, ECF No. 18. Since the Court's order, the parties have conferred to discuss the scope of the Knight Institute's Freedom of Information Act request ("Request") and a potential schedule for Defendants to search for, process, and produce nonexempt, responsive records. The parties conferred via email on August 25 and September 13, 15, and 17.

I. Background

On June 25, 2021, the Knight Institute submitted a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to the Federal Bureau of Prisons, seeking records concerning the digitization and retention of mail sent to individuals incarcerated in jails and prisons. The Knight Institute sought expedited processing on the ground that there is a "compelling need" for the documents sought because they will shed light on a federal program that may have subjected Americans to increased surveillance and chilled correspondence between incarcerated individuals and their communities. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II) (setting forth the requirements for expedited processing).

By letter dated June 29, 2021, the BOP granted the Knight Institute's request for expedited processing. It did not respond to the Knight Institute's request for a fee waiver. The Knight Institute initiated this action on August 4, 2021, alleging that the BOP's failure to timely process or produce records violated FOIA.

II. Case Management, Scheduling Order, and Initial Pretrial Conference

Because this is a FOIA case, the parties understand Local Civil Rule 16.1 to exempt them from the requirement of a mandatory scheduling order under Federal Rule of Civil Procedure 16(b). Further, because FOIA cases are generally resolved through settlement or on motions for summary judgment rather than through trial, *see Families for Freedom v. U.S. Customs & Border Prot.*, 797 F. Supp. 2d 375, 385 (S.D.N.Y. 2011), and because the Knight Institute is not yet in a position to determine whether to seek discovery, the parties agree that initial disclosures and a discovery plan would not be helpful at this time.

Thus far, the BOP has completed its searches at the Central Office's Information, Policy, and Public Affairs Division, the Correctional Programs Division, and the Administrative Division. Those searches located 603 pages of potentially responsive records, a portion of which appears to require consultation with a government contractor pursuant to 28 C.F.R. § 16.7. The BOP also identified four potentially responsive policies and two potentially responsive internal news articles, which are approximately 107 pages in total. The BOP also completed its search for records at USP Canaan and received approximately 151 pages of potentially responsive records. The BOP's search for records at FCI Beckley is ongoing.

In an effort to ensure the timely production of the most critical records, the Knight Institute has further prioritized the categories of records it believes should be produced first in this case, and asked the BOP on August 25, 2021 to prioritize searching and processing records responsive to Items 1 and 2(a)–(b) of the Request. It also clarified the scope of Item 8 of the Request on September 13.

However, the parties have been unable to agree on a definite processing schedule. They expect to conclude discussion on the schedule in the next week. The parties request that they submit an additional letter on September 24, 2021, either jointly proposing a processing schedule or providing separate proposals for the Court's consideration.

Respectfully submitted,

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