U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

June 14, 2023

BY ECF
The Honorable Andrew L. Carter, Jr.
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2203
New York, NY 10007

Re: *Knight First Amendment Institute v. U.S. Dep't of Homeland Security et al.*, No. 17 Civ. 7572 (ALC)

Dear Judge Carter:

I write respectfully on behalf of both parties in the above-referenced FOIA action to provide a status update pursuant to the Court's Order dated December 20, 2022. Dkt. No. 211.

Background

As the Court is aware, various defendant agencies and components agreed to conduct a search for documents responsive to Item Number 1 in plaintiff's FOIA Request, and the United States Department of State, Customs and Border Protection, Department of Justice, Homeland Security, and Citizenship and Immigration Services have completed searching, processing, and producing responsive, non-exempt documents, if any. *See* Dkt. No. 171. As the parties previously detailed, Immigration and Customs Enforcement ("ICE") and plaintiff agreed on specific search terms; ICE completed those searches and informed the Knight Institute of the initial results; ICE has been processing the documents since the summer of 2021; and on September 22, 2022, the Court ordered ICE to process the documents at a rate of 1,000 pages per month. *See* Dkt. Nos. 178 & 206. As of December 2022, ICE had processed more than 12,000 pages of potentially responsive documents, and approximately 38,000 pages of potentially responsive documents remained.

On December 20, 2022, the Court granted the parties' requests to stay the September 22, 2022, processing order until April 14, 2023, to allow ICE time to try to narrow the universe of potentially responsive documents. Dkt. Nos. 210 & 211. Specifically, the parties agreed, and the Court so-ordered, that: (1) ICE would pause processing records and dedicate those resources to conducting a responsiveness review of the remaining approximately 38,000 pages of potentially responsive pages; (2) ICE would complete that review, and inform plaintiff of the results, by March 31, 2023; and (3) the parties would file a status update by April 14, 2023. Dkt. Nos. 210 & 211.

On March 31, 2023, ICE informed plaintiff that, just prior to March 11, 2023, the agency had reviewed 22,822 pages of documents, and determined that 18,342 were non-responsive and 4,480 pages were responsive. At that point, there were 11,881 pages left to be reviewed for responsiveness, and ICE was on track to complete that review by March 31, 2023. However, as ICE informed plaintiff and the Court, ICE had begun the process of upgrading its FOIA request and processing software, and that transition unfortunately rendered unavailable the responsiveness reviews that were conducted after March 11.

Accordingly, the parties proposed, and the Court so-ordered, that: (1) as of April 14, 2023, ICE would resume processing 1,000 pages of documents per month, pursuant to the Court's September 22, 2022, Order; (2) ICE would start its processing with the 4,480 pages it has now determined are responsive; (3) when the new software system transition is complete, ICE would again pause processing and production and resume the responsiveness review of the remaining documents; and (4) ICE would complete the responsiveness review within 40 days of resumption.

Current Status

Since April 14, 2023, ICE has processed 1,000 pages per month of documents that it had previously determined were responsive during the responsiveness review. Unfortunately, however, the software transition process is still underway. Accordingly, in light of the software status and in order to move this matter forward, ICE has proposed, and plaintiff has agreed, to the following: (1) ICE will continue to process 1,000 pages per month of documents that it had previously determined were responsive; (2) at the same time, ICE will try to conduct a responsiveness review of the remaining pages using the previous FOIA software system, while the transition to the new software continues; and (3) once ICE has completed the remaining responsiveness review, it will process and produce the remaining responsive pages, if any, at a rate of 1,000 pages per month. The parties propose to file a status update regarding ICE's responsiveness review, processing, and production of the remaining documents by July 31, 2023.

I thank the Court for considering this matter.

Respectfully,

DAMIAN WILLIAMS
United States Attorney

By: */s/ Ellen Blain*
ELLEN BLAIN
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
Tel: (212) 637-2743
Email: ellen.blain@usdoj.gov

cc: Counsel for Plaintiff (by ECF)