

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC RECORD MEDIA, LLC,)
)
 Plaintiff,)
)
 v.)
) Case No. 1:18-cv-01052-DLF
 UNITED STATES DEPARTMENT OF JUSTICE,)
)
 Defendant.)
)

JOINT STATUS REPORT

The parties, by undersigned counsel, and pursuant to the Court's order dated March 28, 2019, provide the following status report.

1. On May 25, 2017, Plaintiff submitted a FOIA request to Defendant that contained four parts and sought the following information for certain specified periods of time, as set forth more fully in the request, which is attached as Exhibit 2 to the Complaint:

(a) Any and all DOJ policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. Time frame: July 12, 2013 – January 23, 2017.

(b) Any and all correspondence and/or memoranda (in written or electronic form) relating to modifications or proposed modifications to DOJ policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. Time frame: January 23, 2017 – May 25, 2017.

(c) Any and all correspondence (in written or electronic form) between staff members of the White House, including, but not limited to, staff of the Executive Office of the President and/or the President of the United States, and staff members of your agency related to the prosecution and/or potential prosecution of journalists under the provisions of the Espionage Act (18 U.S.C. § 793). Time frame: January 23, 2017 – May 25, 2017.

(d) Any and all memoranda and/or legal opinions (including legal opinions constituting final determination of policy and/or final opinions that are post-decisional in nature) related to the prosecution and/or potential prosecution of journalists under the provisions of the Espionage Act (18 U.S.C. § 793). Time frame: January 23, 2017 – May 25, 2017.

2. The FOIA request was submitted to the FOIA/PA Mail Referral Unit, which routed the request to the Office of Information Policy (OIP). Based on communications with the requester, OIP routed the request to the National Security Division (NSD) and Office of Legal Counsel (OLC), and initiated processing on behalf of the Offices of the Attorney General (OAG), Deputy Attorney General (ODAG), Associate Attorney General (OASG), and Office of Legal Policy (OLP).

3. NSD provided its final response to the FOIA request by letter dated November 30, 2018. In that letter, NSD stated that it had located two documents responsive to the request and referred those documents to OIP. OIP states that those two referenced documents were among the documents produced to Plaintiff by OIP on November 9, 2018, in satisfaction of Part 1 of Plaintiff's request.

4. With respect to OLC and OIP, OIP issued, on January 31, 2019, its final response stating that it conducted its search as agreed to by the parties, and located no records responsive to Parts 2 through 4 of Plaintiff's request. Consistent with its response, OIP confirms that it is not withholding any responsive documents in full pursuant to a FOIA exemption; however, certain information was redacted on behalf of other components from the documents provided to PRM on November 9, 2018. OLC issued its final response by letter dated February 13, 2019, stating that it located no responsive documents. OLC likewise is not withholding any responsive records and found no responsive records in connection with the search that it conducted.

5. Subsequently, PRM questioned the no records responses from OIP and OLC and, in response, OIP and OLC advised PRM that they would be willing to provide an informal description of their search. OLC provided an informal description of its search to Plaintiff on March 15, 2019, and OIP provided an informal description of its search on March 22, 2019. PRM has reviewed those informal descriptions and has advised that it considers the production related to Item 1 of its request to be complete, and also that it accepts the results of OLC's records search pertinent to Item 4 of its request. PRM, however, raised one issue with respect to OIP's search description, to which OIP provided a response, and a second issue with respect to conducting a narrow supplemental search regarding Items 2 and 3 of its FOIA request for consideration by OIP and NSD.

6. PRM has proposed to DOJ specific parameters for this supplemental search regarding Items 2 and 3 of its FOIA request to be conducted by OIP and NSD, and this proposal is currently under consideration by the DOJ.

7. Should the parties agree on specific parameters for this supplemental search, DOJ will provide an estimate of the amount of time it will require to conduct this search, and once any search is returned with potentially responsive documents, will provide an estimate of the amount of time it will require to produce any non-exempt responsive documents located by the additional search.

8. Accordingly, the parties jointly request that the Court defer setting a briefing schedule at this time and that the parties file another status report on or before May 31, 2019, at which time the parties can advise the Court whether they have reached agreement on the parameters of this supplemental search and the amount of time such search will require.

Dated this 15th day of May, 2019.

Respectfully Submitted,

/s/ Eric L. Yaffe

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