

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
ACCURACY IN MEDIA, INC. <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

MEMORANDUM IN SUPPORT OF PROPOSED BRIEFING SCHEDULE

Defendants, by and through their undersigned counsel, respectfully submit the following memorandum in support of their proposed briefing schedule, which was submitted to the Court on June 24, 2016. *See* ECF No. 51.

Plaintiffs initiated this Freedom of Information Act (“FOIA”) lawsuit on September 19, 2014, seeking disclosure of documents related to the September 11-12, 2012 attacks on U.S. facilities in Benghazi, Libya. ECF No. 1. After Defendants filed their answer, Plaintiffs filed a Supplemental Complaint on January 7, 2015, and a Second Amended Complaint on June 24, 2015. ECF Nos. 11 & 31. Plaintiffs’ operative complaint is 63 pages in length and contains more than 161 paragraphs, with multiple subparts. *See* ECF No. 31.

On June 24, 2016, the parties submitted proposed schedules for summary judgment briefing in this case. ECF No. 51. The parties explained that under their proposed production schedule, all Defendants will have completed their production of responsive, non-exempt

documents to Plaintiffs by July 8, 2016. The parties further explained that the Department of Defense has agreed to provide Plaintiffs with a draft *Vaughn* no later than July 15, 2016. *Id.*

As set forth in the parties' June 24th filing, Defendants propose that they will move for summary judgment no later than September 30, 2016; Plaintiffs' response and any cross-motion would be filed no later than October 31, 2016; Defendants' reply and any response to Plaintiffs' cross-motion would be filed no later than November 21, 2016; and Plaintiffs' reply in further support of their cross-motion would be filed no later than December 5, 2016. ECF No. 51. This proposal is reasonable in light of the other FOIA cases in active litigation and the limited resources that Defendants have to devote to those cases; the work that is involved in preparing search declarations and *Vaughns* for purposes of summary judgment briefing; and the limited resources available to be allocated to this specific case.

Plaintiffs propose that Defendants move for summary judgment on August 8, 2016 – one month after the final production in this case is made.¹ *See* ECF No. 51. Defendants cannot meet this proposed deadline while also meeting existing deadlines in their many other FOIA cases. Defendants' FOIA offices face enormous workloads and the process of preparing search declarations, *Vaughns*, and summary judgment briefs is quite involved and time-consuming. Indeed, the State Department alone has over 100 FOIA litigation cases and has limited resources available to prepare *Vaughns* for pending litigations. *See generally* Ex A (Decl. of Eric F. Stein,

¹ Moreover, Plaintiffs' proposed August 8th deadline is less than one month after the Department of Defense will provide Plaintiffs with a draft *Vaughn*, and so would provide the parties with insufficient time to consider narrowing the scope of withholdings that Plaintiffs are challenging and to incorporate any such narrowing into Defendants' motion for summary judgment. The remainder of Plaintiffs' proposed schedule is similarly unreasonable. They suggest that Plaintiffs file their response and any cross-motion no later than September 7, 2016; Defendants' reply and any response to Plaintiffs' cross-motion will be filed no later than September 19, 2016; and Plaintiffs' reply in further support of their cross-motion would be filed no later than September 28, 2016. *See* ECF No. 51.

Republican Nat'l Comm. v. Dep't of State, No. 16 Civ. 486 (JEB), ECF No. 13-1 (June 27, 2016)). Plaintiffs' assertion that the production of supporting declarations "will not tax [the Department of State's] resources" is simply wrong. ECF No. 52. Such declarations require substantial work by FOIA reviewers, administrative staff and managers within the FOIA office, and attorney-advisers within the State's Office of Legal Adviser. For example, explaining the legal basis for withholdings under the various FOIA exemptions requires reviewers and other staff to examine each withholding individually and fully articulate its rationale.

Plaintiffs do not base their proposed briefing schedule on the realities that face the Defendants' FOIA offices or even a realistic assessment of the time that it will take to prepare search declarations, *Vaughns*, and summary judgment briefs. Instead, Plaintiffs' proposal is based on their assertion that "[t]he events at issue are the subject of a currently unfolding story, and there is substantial interest on the part of the American public, and the media, in plaintiff's allegations, as the November Presidential election approaches." ECF No. 52 at 4. But the fact that the public may have interest in the records does not outweigh the harm to the public interest that could be caused by compelling summary judgment briefing on an impractical timeline. *Cf. Daily Caller v. U.S. Dep't of State*, 2015 WL 9907802, at *11 (D.D.C. Dec. 8, 2015) ("[T]he agency has a responsibility to balance the public's interest in disclosure with equally important public and private interests in safeguarding potentially sensitive information."). Moreover, a vast amount of information is already available to the public regarding the attacks on U.S. facilities in Benghazi, Libya on September 11-12, 2012.

Because of their heavy workload and many existing litigation obligations, Defendants require more time than proposed by Plaintiffs to draft the necessary declarations, *Vaughn* indices, and memoranda required for summary judgment. Accordingly, Defendants respectfully

request that the Court enter the briefing schedule proposed by Defendants in the parties' June 24th filing, under which Defendants will file their motion for summary judgment no later than September 30, 2016.

Dated: July 1, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director,
Federal Programs Branch

/s/ Megan A. Crowley
MEGAN A. CROWLEY
N.Y. Bar No. 4930376
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW, Room 7221
Washington, D.C. 20001
Email: megan.a.crowley@usdoj.gov
Telephone: (202) 305-0754
Fax: (202) 616-8470

Attorneys for Defendant