

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**JOINT MEET AND CONFER STATEMENT  
PURSUANT TO COURT'S ORDER DATED JANUARY 26, 2015**

Pursuant to the Court's Order dated January 26, 2015, Dkt. No. 14, ordering counsel for parties to address all subjects listed in Rule 16.3(c) in their Joint Meet and Confer Statement, the parties have conferred and prepared the following Report:

**1. Likelihood of Disposition by Dispositive Motion**

This case presents claims under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, challenging Department of Defense ("DOD"), State Department ("State"), Department of Justice ("FBI"), and Central Intelligence Agency ("CIA") withholdings of agency records, and alleged failure to comply with statutory deadlines. Plaintiffs seek disclosure of records associated with the September 11, 2012 attacks on U.S. facilities in Benghazi, Libya.

The parties anticipate that the case will be resolved by dispositive motions.

**2. Amendment of Pleadings, Joinder, Narrowing Issues**

**(a) Amendment of Pleadings**

Plaintiffs anticipate amendment of the Complaint, to reflect (a) supplements to the administrative record regarding two FOIA request to DOD, and (b) a narrowing the FOIA

requests at issue. Plaintiffs have withdrawn 11 FOIA requests to defendants FBI, State Department, and DOD, and the parties are working to narrow the requests to defendant CIA. Defendants note that in the course of conducting searches for potentially-responsive documents, they may determine that certain of plaintiffs' requests are overbroad. If that situation arises, defendants will make good faith efforts to work with plaintiffs to narrow the requests.

**(b) Joinder**

The parties do not seek joinder.

**(c) Narrowing Issues**

In addition to the narrowing the requests as set forth above under paragraph (a), on February 22, plaintiffs submitted their *Motion for Partial Stay of Case against CIA*. Defendant CIA has taken no position on this motion. Plaintiffs believe that the granting this motion would narrow the issues regarding the cause against defendant CIA.

Also, as set forth below, defendant FBI intends to file a motion for entry of an order permitting it to move for summary judgment based on the applicability of 5 U.S.C. § 552(b)(7)(A) to certain records without waiving any allegation that those records are exempt from release for other reasons. Plaintiffs do not intend to oppose this motion.

**3. Assignment to Magistrate Judge**

The parties do not consent to trial before a magistrate judge, and they further believe that no referral is necessary in this case.

**4. Possibility of Settlement**

The parties do not believe that there is a realistic possibility of settlement at this juncture.

**5. Benefit from Alternative Dispute Resolution Procedures**

The parties agree that this case would not benefit from alternative dispute resolutions procedures at this juncture.

**6. Resolution by Summary Judgment or Motion to Dismiss**

As discussed above, this case will likely be resolved by dispositive motions.

The parties will be in a position to propose a schedule for Defendants' *Vaughn* indices and Summary Judgment Motions, plaintiffs' Cross-Motions for Summary Judgment, and the parties' Oppositions and Replies, upon completion of the production of documents to plaintiffs.

The parties provide the proposed schedule for the completion of the production of non-exempt documents responsive to plaintiffs' requests:

**(a) Defendant Department of Defense ("DOD")**

Defendant DOD has allocated all appropriate resources towards responding to plaintiffs' request and anticipates that it will need 60 days, until May 4, 2015, to conclude the searches. Because the searches are ongoing, DOD is currently unable to estimate with certainty the number of productions required for it to produce responsive, non-exempt records to plaintiffs. Review and redaction of the potentially responsive documents, many of which—due to the subject matter of the FOIA requests—contain classified national security information or are otherwise especially sensitive, will require coordination with several components of the DOD and with other federal agencies. For these reasons, DOD has determined that production of documents to plaintiffs will require rolling productions at eight-week intervals, the first of which will occur on June 1, 2015. DOD proposes that it

file with the Court a Status Report on June 3, 2015, in which DOD will provide the Court with an update on the status of its searches for responsive documents.

Conclusion of searches: May 4, 2015

First production: June 1, 2015

Status Report: June 3, 2015

Second production: July 27, 2015

**(b) Defendant Department of State (“State”)**

Defendant State has allocated all appropriate resources towards responding to plaintiffs’ request and anticipates that it will need at least 60 days, until May 4, 2015, to conclude the searches. Because the searches are ongoing, State is currently unable to estimate with certainty the number of productions required for it to produce responsive, non-exempt records to plaintiffs. Review and redaction of the potentially responsive documents, many of which—due to the subject matter of the FOIA requests—contain classified national security information or are otherwise especially sensitive, will require coordination with several components of the Department of State and with other federal agencies. For these reasons, State has determined that production of documents to plaintiffs will require rolling productions at eight-week intervals, the first of which will occur on March 16, 2015. Defendant proposes that it file with the Court a Second Status Report on June 3, 2015, in which DOD will provide the Court with an update on the status of its searches for responsive documents.

Conclusion of searches: May 4, 2015

First production: March 16, 2015

Second production: May 11, 2015

Status Report:

June 3, 2015

**(c) Defendant Central Intelligence Agency ("CIA")**

Defendant CIA has allocated all appropriate resources towards responding to plaintiffs' request and anticipates that—depending on whether the Court denies plaintiffs' Motion for Partial Stay of Case against CIA—it will need at least 90 days, until June 3, 2015, to conclude the searches. The parties respectfully request an opportunity to submit to the Court a proposed production schedule after the Court decides plaintiffs' Motion for Partial Stay of Case.

**(d) Defendant Department of Justice ("FBI")**

Defendant FBI has allocated all appropriate resources towards responding to plaintiffs' request and has completed its searches in response to plaintiffs' requests. Defendant FBI intends to file a motion for entry of an order permitting it to move for summary judgment based on the applicability of 5 U.S.C. § 552(b)(7)(A) to certain records covered by that exemption without waiving any allegation that those records are exempt from release for other reasons. If the Court grants this motion, FBI anticipates that it can complete production of documents to plaintiffs six months from the date that the Court grants the motion. If the Court denies the motion, FBI anticipates that it can complete production of documents to plaintiffs sixteen months from the date that the Court denies the motion. Under either production schedule, FBI will provide the documents and/or status reports via rolling productions at eight-week intervals, the first of which will occur on April 30, 2015.

The parties propose the following production, and briefing, schedule for production and dispositive motions for Summary Judgment based on the applicability of 5 U.S.C. § 552(b)(7)(A):

<u>Conclusion of searches:</u>	March 3, 2015
<u>First production and/or Status Report:</u>	April 30, 2015
Plaintiffs' motion for Partial Summary Judgment regarding production of FBI 302 Reports of <u>John Tiegen, Kris Paronto, and Mark Geist:</u>	May 8, 2015
<u>FBI will file its Opposition, if any:</u>	May 29, 2015
<u>Plaintiffs will file their Reply, if any:</u>	June 12, 2015
<u>Second production and/or Status Report:</u>	June 30, 2015
<u>Status Report:</u>	July 3, 2015
<u>Defendant FBI will file its Motion for Summary Judgment:</u>	October 2, 2015
<u>Plaintiffs will file their Opposition, if any:</u>	October 23, 2015
<u>Defendant FBI will file its Reply, if any:</u>	November 6, 2015

**7. Stipulations Regarding Initial Disclosures**

The parties submit that no initial disclosures will be necessary or appropriate in this case.

**8. Discovery**

**(a) Plaintiffs**

Plaintiffs believe that Request for Admissions may be appropriate, depending on the particulars of the justifications for non-disclosures claimed by defendants in their *Vaughn* indices.

**(b) Defendants**

Defendants believe that no discovery will be necessary or appropriate in this case, and may move the Court for a Protective Order, if appropriate.

**9. Expert Witness**

The parties agree that no expert witness is necessary in this case.

**10. Class Actions**

This case is not a class action.

**11. Bifurcation of Trial or Discovery**

The parties agree that no bifurcation is appropriate or necessary here, except that defendant FBI intends to file a motion for entry of an order permitting it to move for summary judgment based on the applicability of 5 U.S.C. § 552(b)(7)(A) to certain records covered by that exemption, as set forth above.

**12. Pretrial Conference**

The parties agree that no pretrial conference date should be set because the case is likely to be resolved on the basis of dispositive motions.

**13. Firm Trial Date**

The parties agree that no firm trial date should be set because the case is likely to be resolved on the basis of dispositive motions.

**14. Other Matters**

The parties agree that no other matters need to be included in the initial scheduling order.

Accordingly, the parties will submit a proposed scheduling order in this case.

Date: March 3, 2015.

