

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LOIS MOORE, *et al.*,

Plaintiffs,

v.

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION,

Defendant.

Civil Action No. 20-1735 (RCL)

JOINT STATUS REPORT

Pursuant to the Court's Order entered on December 21, 2020, Plaintiffs Lois Moore, Robert Moore, Jana Orear, Christianne O'Malley, Mark Sauter, John Zimmerlee, and the POW Investigative Project, Inc. ("Plaintiffs"), and Defendant the National Archives and Records Administration ("NARA") hereby provide the Court with the following Joint Status Report.

BACKGROUND AND PROCESSING OF REQUESTS

1. This matter arises out of a FOIA request Plaintiffs submitted to NARA, dated April 20, 2020, involving 47 separate subparts. *See* Compl. ¶¶ 10-12. Plaintiffs filed the Complaint on June 25, 2020, *see* ECF No. 1, and Defendant filed an Answer on September 14, 2020, *see* ECF No. 5.

2. The records sought in Plaintiffs request are serviced by three different locations or offices within NARA: (1) the Dwight D. Eisenhower Library; (2) the Textual Reference Branch of NARA's Research Services Division in College Park, Maryland; and (3) the National Declassification Center also located in College Park, Maryland. NARA represents that it is currently processing Plaintiffs' FOIA request, despite facing certain operational constraints due to

the response to the ongoing COVID-19 pandemic. *See* ECF No. 7 ¶ 4. Although NARA has completed its initial searches for records responsive to this request where possible, a portion of the records requested contain classified information requiring consultation with the respective equity holding agency or agencies.

3. With respect to the portion of Plaintiffs' FOIA request seeking records located at the Dwight D. Eisenhower Library, NARA informed Plaintiffs by letter dated September 30, 2020, that most records held by the Eisenhower Library are donated historical material and are not subject to the FOIA. For the small portion of the material held at the library that is subject to the FOIA, the Eisenhower Library has completed its searches and located no responsive records.

4. With respect to the portion of Plaintiffs' FOIA request seeking records serviced by the Textual Reference Branch at College Park, NARA informed Plaintiffs by letter emailed on November 5, 2020, that the request for records was overly broad and failed to provide sufficient information to permit them to retrieve the requested records. The letter explained that NARA maintains the files of each federal agency with a Record Group and keeps the files arranged in the filing schemes used by the transferring agency. The vast majority of the holdings are not described at the item/document level such that it is difficult to identify specific documents or specific information without extensive research within the holdings. In addition, many of the records requested are in series that are open and available for public research for which no FOIA request is necessary. NARA included with its letter information regarding the finding aids available to Plaintiffs to assist them in locating records within NARA's holdings related to the topic of their request.

5. The portion of Plaintiffs' FOIA request seeking records identified by specific withdrawal sheets for records containing potentially classified information is being serviced by NARA's National Declassification Center ("NDC"). The NDC informed Plaintiffs by letter dated November 3, 2020, that of the 21 documents described in the withdrawal sheets: (1) five of the documents, totaling 322 pages, had been previously declassified and are available for release; (2) ten of the documents, totaling 107 pages, had been declassified in part with the remaining portions on 49 pages withheld under section (b)(1) of the FOIA; and (3) the remaining six documents, totaling 73 pages, required consultation with the appropriate equity holding agencies for additional review. NARA sent the 16 documents that continue to have information withheld to the relevant agencies for consultation on September 30, 2020, and is awaiting responses from the agencies.

RECENT DEVELOPMENTS AND DISCUSSIONS

Undersigned counsel for Defendant recently joined the Office of the United States Attorney and substituted his appearance as counsel for Defendant on December 18, 2020.

The parties have continued to cooperate and discuss resolution of the FOIA request without the need for Court intervention. NARA has completed its searches, which encompassed the above three different NARA locations.

In a letter dated December 14, 2020 from Plaintiff's counsel to Defendant, Plaintiff submitted questions concerning NARA's letters dated September 16, September 30, November 3, and November 5, 2020. Defendant is in the process of providing responses to Plaintiff's counsel's inquiries and will do so by the end of this month.

In light of the above, the parties propose to continue their cooperation and discussions and file a further status report on or before February 22, 2021, to update the Court on the progress being made with respect to the questions raised in Plaintiff's letter of December 14, 2020.

Dated: January 21, 2021

Respectfully submitted,

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