

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.)	
_____)	

PLAINTIFFS' MEMORANDUM IN SUPPORT
OF THEIR PROPOSED BRIEFING SCHEDULE

COME NOW plaintiffs, by counsel, and respectfully submit this memorandum in support of their proposed briefing schedule, and in opposition to the schedule proposed by the government.

1. The parties' July 3, 2015 *Joint Status Report*, Docket 32, recites that "[t]he parties agree that State will make rolling productions... with the final production to occur on October 26, 2015." Since then, State has submitted, and the Court has granted, four *Unopposed Motion for Extension of Time to Make Final Production*. In February, State "estimate[d] that it can complete that search by May 12, 2016," and that it would make its final production prior to May 31, 2016.

2. On May 17, 2016, the government emailed to plaintiffs State's proposed production schedule. "State proposes that it make additional productions on June 30, July 29, August 31, and September 30" of 2016. Plaintiffs did not agree, as "it would seem to prolong the case beyond... the election." The next day, plaintiffs sought an explanation of which item caused State to seek such an extension, with a view toward narrowing any such problematic items.

3. By June 2, 2016, email, State fully responded: The problematic item was the request for records generated between "January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following [nine] individuals..." Compl. ¶ 116(11), Docket 31. Further, State advised, if it proceeded with the search quoting the names of the nine individuals, it could finish its production by September 8, but, if it ran the searches without the quotes, it would need until November 8 to complete its production. "Alternatively," State wrote, "if your clients drop this... request, then State can finish the production of any responsive, non-exempt documents by July 8."

4. In response, plaintiffs dismissed that item from this action. State is now committed to making its final production on July 8.

5. Three of the five items at issue with State concern the first hours of the attacks—(1) Secretary Clinton's communications, (2) video and radio communications, and (3) survivors' accounts. Compl. ¶¶ 116. State has presumably already produced this information in response to Congressional inquiries, or litigated the information in other FOIA lawsuits. The other two items sought from State seek records regarding Secretary Clinton's support for the ousters of Libya's Gaddafi, and Syria's al-Assad. Compl. ¶ 122. State has responded to these two items with open source, unredacted, records. Thus, State's dispositive motion on these five items will not tax its resources.

6. Only two items are at issue with regard to the CIA. Compl. ¶ 144. That agency completed its production on September 30, 2015. The CIA's briefs regarding these two items will be a simple matter.

7. Similarly, the FBI's briefing is limited to addressing two items sought from it—(1) survivors' accounts of the attacks, and (2) a video teleconference on the afternoon of the September 16th "between the FBI and other IC officials in Washington." Compl. ¶ 126. On June 23, 2015, the Court granted the FBI's *Unopposed Motion for a Preservation Order*, allowing it to argue its dispositive motion based on the applicability of Exemption 7(A) without waiving any claims to the applicability of other exemptions, which allowed it to review its records on a categorical, document-by-document basis, as opposed to a lengthier page-by-page review. The FBI responded to plaintiffs' FOIA requests on March 3, 2015, declining to disclose whether the "records do, or do not, exist," asserting that 5 U.S.C. § 552(b)(7)(A) permits that response.

8. The DOD, from whom the vast majority of records are sought, committed to completing its production by May 31, 2016. (Plaintiffs had sought an earlier date.) After two extensions (Docket 46 extending to June 30), and subsequently to July 6, that agency has agreed to provide plaintiffs with its *Vaughn* index by mid-July.

9. On June 20, the government advised plaintiffs "that the earliest that [State] will be able to brief this is Friday, September 30." On June 22, the government proposed that briefing begin on September 30, 2016, and conclude in December.

ARGUMENT

10. The parties' July 3, 2015 *Joint Status Report*, Docket 32, recites that "No later than 45 days after the DOD completes its last production of responsive documents, Defendants will move for summary judgment." But now, after over eight months of

extensions to complete its productions,¹ and even after plaintiffs dropped the ostensibly time-consuming item, the State Department seeks to almost double that 45-day time frame to submit its brief on the matter.

11. The 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. Should this matter go forward as proposed by the government, the Court would have no opportunity to rule on disclosure until after the election, and the particular value of the information would be lost.

12. Given State's history of extending its final production multiple times, totaling over eight months, the current posture of the case, and the public interest in timely disclosure, the Court should adopt plaintiffs' proposed briefing schedule.

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- ¹ • October 16, 2015, Docket 32, *Unopposed Motion for Extension of Time to Make Final Production*: "Due to the broad scope of Plaintiffs' requests, the agency respectfully requests an extension of time until December 4, 2015, to make its final production in this case."
- December 3, 2015, Docket 38, *Unopposed Motion for Extension of Time to Make Final Production*: "Due to the broad scope of Plaintiffs' requests and the need to obtain final clearance for the release of certain documents, the agency respectfully requests a brief extension of time until December 21, 2015, to make its final production in this case."
 - December 21, 2015, Docket 39, *Unopposed Motion for Extension of Time to Make Final Production*: State had discovered a new source of documents. It could not "accurately estimate the time required to process and produce any responsive documents from this new source," but did "not believe that it will require additional time beyond the Department of Defense's proposed production deadline of May 31."
 - February 5, 2016 Status Report, Docket 41, and March 25, 2016 Status Report, Docket 42, representing that State would make its final production by May 31, 2016.
 - May 5, 2016, Docket 43, *Unopposed Motion for Extension of Time to Make Final Production*: State "estimate[d] that it can complete that search by May 12, 2016," and proposed no revisions to its May 31, 2016 date to make its final production.

