

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

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| ACCURACY IN MEDIA, <i>et al.</i> |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 14-1589 (EGS) |
| |) | |
| UNITED STATES DEPARTMENT OF |) | |
| DEFENSE, <i>et al.</i> |) | |
| |) | |
| Defendants. |) | |
| |) | |

JOINT MOTION TO AMEND BRIEFING SCHEDULE

As this Court is aware, the parties to this Freedom of Information Act (“FOIA”) suit¹ have been actively engaged in discussions aimed at determining whether the issues in this action could be narrowed and in what manner. As the parties’ prior Joint Status Reports have explained, “[t]hose discussions have been productive and have greatly assisted the parties in narrowing the issues that are being challenged in this FOIA action, which seeks records related to the September 11, 2012 attack on the [State Department diplomatic and CIA facilities] in Benghazi, Libya from four [] different Defendant agencies and several of their respective components.” *See, e.g.*, Joint Status Report at 1, ECF No. 60 (May 12, 2017); *see also* Joint Status Report, ECF No. 63 (Sept. 5, 2017).

For example, as part of those discussions, Defendants agreed to provide, and in fact provided, draft *Vaughn* indices to Plaintiffs in an effort to explain the bases for the

¹ Plaintiffs brought this FOIA action against Defendants, the Central Intelligence Agency (“CIA”), the United States Department of Defense and several of its component departments, the Department of State, and the United States Department of Justice and its component, the Federal Bureau of Investigation (collectively, “Defendants”). *See generally* Compl., ECF No. 1 (Sept. 19, 2014).

agencies' decisions related to the withholding of many of the records. And after reviewing the draft *Vaughn* indices, Plaintiffs agreed to narrow further the issues that are being challenged in this FOIA litigation. The State Department also agreed to conduct a supplemental search that yielded documents responsive to one or more of Plaintiffs' FOIA requests.

In the parties' November 2017 Joint Motion to Amend, the parties explained that as a result of the parties' discussions and diligence, they had substantially narrowed the issues that remain to be litigated in this case to certain discrete issues, which primarily focus on the agencies' searches and decisions to withhold in full or part certain records responsive to Plaintiffs' FOIA requests. *See* Joint Mot. to Amend Briefing Schedule at 2-3, ECF No. 64 (Nov. 29, 2017). The parties then requested that the Court set a briefing schedule for the parties to file cross-motions for summary judgment the outstanding issues. The Court granted that joint motion in its December 1, 2017 Minute Order (Dec. 1, 2017).

Since the Court issued its December 1, 2017 Minute Order, Defendants and their agency counsel have been working diligently to respond to the specific issues set forth in the parties' November 2017 filing. However, during discussions between counsels for the parties that occurred this week, the parties discovered that they were not entirely in agreement on the issues to be litigated. Specifically, during these discussions, Plaintiffs, through their counsel, stated that they intend to challenge the searches conducted in response to three additional FOIA requests. Prior to these discussions, Defendants had been unaware that Plaintiffs disputed these particular searches.

Rather than litigate what was or was not within the scope of issues that the parties had previously agreed were to be litigated and in the interest of expeditiously resolving Plaintiffs' claims, Defendants have agreed to address the additional search issues in their summary judgment briefing. In order to allow Defendants sufficient time to address the three disputed searches about which Defendants became aware this week, the parties respectfully request that the Court enter the following extended briefing schedule:

- April 20, 2018: Defendants file their motion for summary judgment;
- May 18, 2018: Plaintiffs file their opposition to Defendants' motion for summary judgment and cross-motion for summary judgment;
- June 15, 2018: Defendants file their reply in support of their motion for summary judgment and in opposition to Plaintiffs' cross-motion for summary judgment; and
- July 13, 2018: Plaintiffs file their reply in support of their cross-motion for summary judgment.

Finally, the parties submit that the following issues are the *only* issues that remain for this Court to resolve upon the parties' cross-motions for summary judgment:

The United States Department of Defense

1. Whether DOD's search for documents responsive to Plaintiffs' request for initial reports and orders and communications referenced in Plaintiffs' FOIA directed at DOD as referenced in ¶¶ 18-29, among other paragraphs referencing initial reports, orders and communications, of the Second Amended Complaint, was reasonable;
2. Whether DoD's search for records of Gaddafi's March 2011 interest in truce and abdication made to Africa Command in response to

Plaintiffs' FOIA request as referenced in ¶ 35 of the Second Amended Complaint was reasonable; and

3. Whether DOD properly withheld in full documents reflecting DoD's maps depicting assets in response to Plaintiffs' FOIA request as referenced in ¶ 30 of the Second Amended Complaint. The parties believe that the Court's decision on whether DOD properly withheld the maps depicting assets will be dispositive on the issue of DoD's decision to withhold records regarding personnel and other available assets, which are the subject of Plaintiffs' other FOIA requests directed at DOD.

The State Department

1. Whether the search conducted by the State Department for records responsive to the portion of Plaintiffs' FOIA request referenced in ¶ 116(6) of the Second Amended Complaint; and
2. Whether the State Department properly withheld in full or part C05935290 (call log), C06052236 (ARB interview summary), C06052239 (ARB interview summary), C06052240 (ARB interview summary), and video footage bates labeled C05467904, C05467908, C05467912, C05467920, C05467921, C05467910, C05467913, C05467914, C05467915, C05467916, C05467917, and C05467919.

The Central Intelligence Agency

1. Whether the CIA's *Glomar* assertion in response to Plaintiffs' request for records of "all communications generated in March 2011 regarding

Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya" as referenced in ¶ 144(2) of the Second Amended Complaint is proper;

2. Whether the CIA's search for records in response to Plaintiffs' request for "[a]ll records of CIA Director David Patreaus's actions and communications for the 24-hour period beginning when first notified of the attack" and "[a]ll records of Deputy CIA Director Michael Morell[']s *sic* actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack" as referenced in ¶¶ 136(5)-(6) of the Second Amended Complaint was reasonable; and
3. Whether the agency properly withheld redacted information in the document bates labeled document C06354620 produced in response to Plaintiffs' request for records reflecting "allegations that the Executive Branch personnel deleted . . . records of CIA activities in Libya in the aftermath of the . . . attacks . . . including but not limited to records in possession of the CIA Office of the Inspector General" as referenced in ¶ 144(1) of the Second Amended Complaint.

The Federal Bureau of Investigation

1. Whether the FBI's *Glomar* assertion in response to Plaintiffs' request for records reflecting survivors' accounts, including September 15 or 16 FBI 302 interview reports as referenced in ¶ 126(8) of the Second Amended Complaint is proper.

The Defense Intelligence Agency

1. Whether the agency properly withheld in full records V-11 (an intelligence report dated September 12, 2012), V-19 (a situation report dated September 12, 2012), V-45 (an intelligence report dated September 12, 2012), and V-48 (an intelligence report dated September 12, 2012).

A proposed order is attached to this motion.

Dated: March 2, 2018

Respectfully submitted,

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