



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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June 30, 2017

BY ECF

The Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *ACLU, et al. v. DOD, et al.*, No. 17 Civ. 3391 (PAE)

Dear Judge Engelmayer:

I write respectfully on behalf of the defendants (“the government”) in the above-referenced action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Attached is the government’s proposed scheduling order. As described more fully below, the parties have unfortunately been unable to reach agreement on all language in this order, and so we understand that Plaintiffs may be submitting a separate proposed order.

At the initial conference on June 28, 2017, the Court directed the parties to submit a proposed scheduling order by Friday, June 30, 2017. The parties have conferred and have agreed upon the dates reflected in the attached scheduling order – specifically, a July 31 deadline for searches and *Glomar* responses, and an August 9 deadline for a status report proposing a further schedule. The parties have also agreed on the kinds of proposed deadlines to be included the parties’ August 9, 2017, status report, which are listed in paragraphs 2.a-d in the attached proposed order, as well as on the plan for a pre-motion conference included in paragraph 3 of the attached proposed order.

The area of dispute appears to be a narrow one. Plaintiffs would like the scheduling order to reflect that the government has declined to provide a draft *Vaughn* index before summary judgment briefing, and that this is contrary to Plaintiffs’ preference. The government does not believe that language is appropriate for inclusion in the scheduling order, as it requires further explanation, which is provided below.

At the initial conference, Plaintiffs raised the issue of a *Vaughn* index being provided in advance of summary judgment briefing. That issue had not previously been discussed by the parties. After the conference, government counsel conferred with the

defendant agencies, who confirmed that they would not be prepared to provide draft *Vaughn* indexes prior to summary judgment briefing, given the substantial time and effort required to prepare detailed document-by-document indexes, the limited resources of the FOIA staff at the respective agencies, and the competing demands of processing other FOIA requests submitted by the ACLU and other requestors. But the agencies and this Office are fully prepared to confer in good faith with Plaintiffs so that these proceedings can proceed as efficiently as possible. During the meet and confer process, we will provide Plaintiffs with descriptions of the categories of documents and information withheld under applicable FOIA exemptions, to the extent feasible without revealing exempt information, in an effort to determine whether the issues in the case can be narrowed, as set forth in paragraph 2.b in the attached proposed order.

We thank the Court for its consideration of this matter.

Respectfully submitted,

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Encl.

cc: Counsel of record (by ECF)