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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Seth Rosenfeld, Plaintiff, vs. The Federal Bureau of Investigation, and United States Department of Justice, Defendants.	Case No. C 11-2131 MEJ **PLAINTIFF'S SUPLEMENTAL STATUS REPORT AND ~~[PROPOSED]~~ ORDER**

Pursuant to this Court's August 30, 2013 Order, Plaintiff herein provides a supplemental status report in this Freedom of Information Act ("FOIA") action. After the November 20, 2012, judicially assisted meet and confer, the parties have continued to confer and exchange information on a regular basis. However, the parties are not able to agree on the threshold question as to whether the Federal Bureau of Investigation's ("FBI") search for documents responsive to Plaintiff's FOIA request was adequate, as well as several other issues as set forth below. Without the identified search issues resolved, the parties are not able to engage in meaningful discussion about the produced documents and whether the FBI has complied with the FOIA.

Plaintiff's position:

1) Defendants have blatantly failed to conduct adequate searches, and as a result the FBI is withholding substantial public information.

2) Defendants have improperly redacted the released records, making baseless exemption claims, and as a result are withholding voluminous public information that should be released.

3) Defendants have refused to acknowledge that the FBI has officially confirmed that the late Richard Aoki was a paid FBI informant, despite the fact that the FBI has repeatedly released scores of records that explicitly confirm that he was a paid FBI informant.

Remaining Litigation:

Plaintiff and Defendants have agreed to bifurcate the issues, first addressing the threshold issue of the adequacy of the Defendants' search before addressing the remaining issues.

Once those identified search issues are resolved, and the Court has ruled on them, and any further searches are conducted as may be ordered by the Court and any additional non-exempt records are produced, the parties would then more efficiently address any disputed redactions and exemption claims in the entire body of documents in a second round of briefs, using a "Vaughn" sample that would produce representative rulings to be applied to all records, as directed by the Court.

Discovery:

Plaintiff believes that limited and particular discovery is necessary in order for the parties and the Court to reasonably and specifically address the dispute over the adequacy of the FBI's searches. This discovery would be intended to produce clear and complete descriptions of relevant FBI records and indexes that Plaintiff contends should have reasonably been searched. The requested discovery would be consistent with the kind of discovery that has been ordered in other FOIA cases, including those in the Northern District.

Defendants state that they are likely oppose any request for any discovery, but are willing to meet and confer.

Briefing Schedule:

Defendants have proposed the following schedule for summary judgment as to the search issues only:

Defendants' motion for summary judgment:	October 17, 2013
Plaintiff's opposition and cross-motion:	November 7, 2013
Defendants' opposition and reply:	November 21, 2013
Plaintiff's reply:	December 5, 2013
Hearing:	**December 19, 2013**

Plaintiff believes setting a briefing schedule for the adequacy of search issues is premature until the matter of potential discovery is resolved.

However, if the Court declines to order discovery without considering briefs or otherwise hearing from the parties, Plaintiff proposes the following schedule to accommodate the Thanksgiving holiday:

Defendants' motion for summary judgment:	October 10, 2013
Plaintiff's opposition and cross-motion:	October 31, 2013
Defendants' opposition and reply:	November 14, 2013
Plaintiff's reply:	December 5, 2013
Hearing:	**December 19, 2013**

Defendants' Use of Exclusions:

This Court previously declined Plaintiff's request for the release of Defendants' *in camera* filing without prejudice, stating Plaintiff may renew his request after the FBI has made a more complete production [Docket Num. 42]. Plaintiff anticipates submitting such a request in the future.

In addition, Plaintiff believes that subsequent to the Court's prior ruling on Defendants' possible use of an exclusion [Docket Num. 37], Defendants may be relying on one or more exclusions as a basis for not conducting certain searches and/or for withholding certain information from the subsequently produced records. If Defendants address this possible additional use of exclusions in public or in *in camera* filings, Plaintiff will respectfully request

leave to file a response addressing the applicability of such exclusions.

Further Meet and Confer:

The parties agree to continue to meet and confer to narrow the issues.

Dated: September 19, 2013

LAW OFFICE OF BENJAMIN STEIN

By: /s/ Benjamin W. Stein
BENJAMIN W. STEIN
Attorney for Plaintiff
SETH ROSENFELD

~~[PROPOSED]~~ ORDER

The Court has considered the parties' status report statements. In light of both parties' statements that they are continuing to meet and confer as to discovery, the Court declines to order a briefing schedule at this time. The parties shall file a status report on their meet and confer as to discovery, and any other issues as may be appropriate no later than October 10, 2013.

IT IS SO ORDERED,

Dated:
September 23, 2013

MARIA-ELENA JAMES
United States Magistrate Judge