UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA; SAN FRANCISCO BAY GUARDIAN, Plaintiffs, v. DEPARTMENT OF JUSTICE Defendant.	No. 12-cv-4008-MEJ JOINT CASE MANAGEMENT STATEMENT AND ORDER THEREON

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT pursuant to this Court's January 4, 2013 Case Management Order. This is a lawsuit under the Freedom of Information Act by Plaintiffs American Civil Liberties Union of Northern California and San Francisco Bay Guardian seeking information about the government's effort to seek or obtain location information from electronic devices.

On October 25, 2012, the parties filed an Initial Case Management Statement addressing each of the items required in the Standing Order for All Judges of the Northern District of California. On January 3, 2013, the parties filed an updated Case Management Statement providing an update on scheduling issues. The parties have no further updates or changes with respect to the items previously addressed in their Initial Case Management State as to issues 1 (jurisdiction and service), 2 (facts), 3 (legal issues), 4 (motions), 5 (amendment of pleadings), 6 (evidence preservation), 7 (disclosures), 8 (discovery), 9 (class actions), 10 (related cases), 11 (relief), 12 (settlement and ADR), 13 (consent to magistrate judge for all purposes), 14 (other references), 15 (narrowing of issues), 16 (expedited trial procedure), 18 (trial), 19 (disclosure of non-party interested entities or persons), and 20 (other). The parties address item 17 (scheduling) below.

17. Scheduling

As set forth in the parties' prior Case Management Statements, Plaintiffs submitted a four-part FOIA request seeking records of the U.S. Attorney's Office for the Northern District of California pertaining to efforts to seek or obtain location information which helps ascertain the location of an individual or a particular device.

Items 2, 3, and 4 of plaintiffs' FOIA request: At the time the parties filed the Initial Case Management Statement, they were in the process of negotiating a Stipulation regarding the scope and procedures to be used by defendant in locating documents responsive to Items 2, 3 and 4 of plaintiffs' FOIA request. In conjunction with the filing of the January 3, 2013 Case Management Statement, the parties executed that Stipulation, a copy of which was appended to the January 3, 2013 CMS. Defendant stated in the January 3, 2013 Case Management statement that it "can and will now undertake a search consistent with that Stipulation," and "will … expedite the processing of Parts 2-4 of Plaintiffs' FOIA request."

Item 1 of plaintiffs' FOIA request: In addition to the 3 items addressed by the parties' Stipulation, Plaintiffs' FOIA request includes an additional item, for "[a]ll requests, subpoenas, and applications for court orders or warrants seeking location information since January 1, 2008." In their prior Case Management Statements, the parties explained their respective positions with respect to whether the request is or is not burdensome.

The Court's January 4, 2013 Case Management Order instructed Defendant to provide Plaintiffs with a proposed search protocol for Item 1 by February 3, 2013 and ordered the parties to meet and confer within 7 days thereafter. On February 1, 2013, Defendant proposed a search protocol, involving an electronic search of its Legal Information Office Network System (LIONS). On February 5, 2013, the parties held a telephonic meet and confer and discussed Defendant's proposed search protocol, Plaintiffs' factual questions about LIONS and the proposed search, and Defendant's concern that most of the documents potentially responsive to Plaintiffs' FOIA request are under seal. On February 6, 2013, Plaintiffs sent Defendant a letter setting forth in writing factual questions about the LIONS database in an effort to determine

whether Plaintiffs would be able to stipulate to the adequacy of Defendant's proposed search protocol, and asking Defendant to clarify its position with respect to the effect of sealing orders on its obligation to process this FOIA request.

As of the filing of this Case Management Statement, the parties have not reached a stipulation on the adequacy of Defendants' proposed search protocol but are continuing to meet and confer in good faith.

Proposed schedule: The parties propose the following schedule:

1) Within 30 days of the filing of this Case Management Statement, Defendant will produce non-exempt documents covered by the Stipulation reached by the parties as to Items 2, 3, and 4 of the FOIA request.
2) The parties will thereafter meet and confer in an effort to narrow the issues in dispute, but anticipate that at least some issues – such as the impact of sealing orders on Defendant's obligation to process Item 1 of the FOIA request – will require resolution by the Court.
3) The parties propose the following schedule for cross-motions for summary judgment:
    a. Defendant's opening brief shall be filed no later than June 6, 2013.
    b. Plaintiffs' cross-motion (if any) and opposition shall be filed no later than June 27, 2013.
    c. Defendant's reply and opposition (if any) shall be filed no later than July 18, 2013.
    d. Plaintiffs' reply (if any) shall be filed no later than August 8, 2013.
    e. The hearing in this matter shall be held on August 22, 2013, or as soon thereafter as the parties may be heard.

Should this Court order Defendant to retrieve and process these sealed matters following briefing on summary judgment, Defendant reserves the right to claim any applicable exemptions regarding those matters.

If the Court adopts the parties' proposed schedule, they see no need for the Court to hold a Case Management Conference.

DATED: February 21, 2013

Respectfully submitted,

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