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 STIPULATION RE: BRIEFING SCHEDULE

The parties agree, subject to the Court's approval, to modify the current briefing schedule so that defendant will file a partial motion for summary judgment on Parts 2, 3 and 4 of plaintiffs' FOIA request, pursuant to the current briefing schedule (see Dkt. No. 20), on or before June 6, 2013, and will file a partial motion for summary judgment on Part 1 of that request on or before August 15, 2013. Part 1 and Parts 2-4 of the FOIA request involve completely different legal and factual issues. Accordingly, and as set forth in more detail below, bifurcating the summary judgment motion will allow the Court to resolve the remaining legal issues relating to Parts 2-4 of the FOIA request in an expeditious manner while allowing the parties to continue to negotiate in good faith regarding Part 1 of the FOIA request, and potentially reduce the issues in dispute:

1. 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. Specifically, Part 1 of plaintiffs' FOIA request seeks "[a]ll requests, subpoenas, and applications for court orders or warrants seeking location information since January 1, 2008." Parts 2, 3, and 4 of plaintiffs' FOIA request seeks various other categories of documents relating to efforts to obtain location information.

2. On January 3, 2013, the parties filed a Joint Case Management Statement. *See* Dkt. No. 17, 01/03/2013. In that JCMS, the parties indicated that they had entered into a Stipulation regarding Parts 2, 3, and 4 of the FOIA request; that Stipulation was attached to the JCMS. *See* Dkt. No. 17, 01/03/2013. As to Part 1 of plaintiffs' FOIA request, defendant indicated it had been working diligently to ascertain whether and, if so, how it could respond. Plaintiffs requested that the Court order defendant to propose a search protocol for Part 1 within 30 days of the JCMS. *See id.* By Order dated January 4, 2013, this Court instructed defendant to provide plaintiffs with a proposed search protocol, or alternatively provide a written explanation as to why it should not be required to process Part 1 of the FOIA request, by February 3. Order, Dkt. No. 18, 01/04/2013.

3. In early February, defendant proposed a search protocol involving an electronic search of its Legal Information Office Network System ("LIONS"). Specifically, defendant indicated that it can conduct a search of the "Caption" field within the LIONS database as a first step in identifying potentially responsive records. Plaintiffs raised several questions regarding that proposed search protocol including, among other things, whether a similar search could also be conducted in the "Comments" field of the LIONS database.

4. On February 21, the parties filed a JCMS. In that JCMS, the parties indicated that they had not yet reached a stipulation on the adequacy of defendants' proposed search protocol regarding Part I of the request, but were continuing to meet and confer in good faith. Dkt. No. 19, 02/21/2013. At that time, the parties proposed a schedule whereby defendant would produce non-exempt documents covered by the Stipulation as to Parts 2-4 of the FOIA request within 30 days. Moreover, the parties proposed the following schedule for summary judgment motions:

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.

Dkt. No. 19. Defendant also specifically noted that, should the Court order defendant to retrieve and process sealed matters following briefing on summary judgment, defendant reserved the right to claim any applicable exemptions regarding those matters. Dkt. No. 19. This Court adopted the parties' proposed schedule by Order dated February 22, and set a hearing in this matter for August 22, 2013. *See* Order, Dkt. No. 20.

5. Pursuant to the parties' agreed-upon schedule, defendant has produced non-exempt documents covered by the Stipulation as to Parts 2-4 of the FOIA request. Pursuant to the parties' Stipulation, the only issue for this Court to resolve regarding Parts 2-4 of plaintiffs' FOIA request is the adequacy of various exemptions that defendant has claimed; plaintiffs do not challenge the adequacy of defendant's searches pursuant to the Stipulation. Those issues regarding exemptions can be resolved by the Court on cross-motions for summary judgment pursuant to the current briefing schedule set by the Court.

6. The parties have continued to negotiate regarding Part 1 of the FOIA request. Specifically, and pursuant to plaintiffs' inquiries, defendant has determined that it can also conduct a search in the "Comments" field of the LIONS database. Unfortunately, the process of ascertaining whether such an additional search could be conducted took substantially longer than expected. In addition, and in mid-March, plaintiffs requested that the defendant utilize an additional search term; defendant has complied with that request. These changes to the search parameters that defendant had originally identified has not only increased the number of potentially responsive matters, but also has required the devotion of substantial time and resources.[1] Among other things, because a search had already been conducted of the "Caption" field, conducting the new search required the de-duplication of entries, as well as numerous other database-related tasks. Moreover, defendant has been attempting to confirm the current status of

[1] Defendant also expanded slightly the date range of its LIONS search.

the matters identified in its LIONS searches by checking this Court's docket via the Court's CM-ECF system; as the number of potentially-responsive matters identified through the LIONS searches has doubled, it has taken a longer amount of time than anticipated to conduct that analysis.

7. As a result of undertaking these additional tasks, defendant will not be in a position to file a summary judgment motion as to Part 1 of the FOIA request on the Court's current schedule. Moreover, the parties continue to negotiate in good faith regarding Part 1 of the FOIA request; as indicated above, those discussions have been fruitful for both sides. At the same time, the parties agree that this Court's resolution of the adequacy of defendant's exemptions regarding Parts 2-4 is ripe for the Court's review on the current briefing schedule. Finally, the legal and factual issues raised by Part 1 of the FOIA request are completely separate and distinct from the legal and factual issues raised by Parts 2-4 of the FOIA request. Accordingly, the parties respectfully request that the Court retain the current briefing schedule, but limit it to Parts 2-4 of the FOIA request. The parties also request that if plaintiffs file a cross-motion, the Court grant leave for the parties to file briefs up to 25 pages for all briefs, including reply briefs, in order to ensure that the parties have equal briefing space. The parties note that, even with 4 25-page briefs, briefing will still be substantially shorter than if plaintiffs filed, and the parties separately briefed, a cross-motion, which would entail a total of 6 briefs.

8. The parties further request that the Court set a separate partial summary judgment briefing schedule, limited to Part 1 of the FOIA request, as follows:

a. Defendant's opening brief shall be filed no later than August 15, 2013.

b. Plaintiffs' cross-motion (if any) and opposition shall be filed no later than September 5, 2013.

c. Defendant's reply and opposition (if any) shall be filed no later than September 26, 2013.

d. Plaintiffs' reply (if any) shall be filed no later than October 10, 2013.

e. The hearing on this matter shall be held on October 24, 2013, or as soon thereafter as the parties may be heard.

Should the Court order defendants to retrieve and process sealed matters following briefing on summary judgment, defendant reserves the right to claim any applicable exemptions regarding those matters. The parties also request that if plaintiffs file a cross-motion, the Court grant leave for the parties to file briefs up to 25 pages for all briefs, including reply briefs, in order to ensure that the parties have equal briefing space. The parties note that, even with 4 25-page briefs, briefing will still be substantially shorter than if plaintiffs filed, and the parties separately briefed, a cross-motion, which would entail a total of 6 briefs.

IT IS SO STIPULATED THIS 10TH DAY OF MAY, 2013:

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Attorneys for Defendant

IT IS SO ORDERED THAT THE FOLLOWING BRIEFING SCHEDULE IS ADOPTED:

1. For the parties' forthcoming partial motions for summary judgment regarding Parts 2-4 of plaintiffs' FOIA request, the briefing schedule shall remain as previously set by the Court, but limited to Parts 2-4 of the FOIA request, as follows:

   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. If plaintiffs file a cross-motion, defendant may file a reply and opposition not to exceed 25 pages.

d. Plaintiffs' reply (if any), not to exceed 25 pages, shall be filed no later than August 8, 2013.

e. The hearing in this matter shall be held on August 22, 2013.

2. For the parties' forthcoming partial motions for summary judgment regarding Part 1 of plaintiffs' FOIA request, the briefing schedule shall be re-set as follows:

a. Defendant's opening brief shall be filed no later than August 15, 2013.

b. Plaintiffs' cross-motion (if any) and opposition shall be filed no later than September 5, 2013.

c. Defendant's reply and opposition (if any) shall be filed no later than September 26, 2013. If plaintiffs file a cross-motion, defendant may file a reply and opposition not to exceed 25 pages.

d. Plaintiffs' reply (if any), not to exceed 25 pages, shall be filed no later than October 10, 2013.

e. The hearing on this matter shall be held on October 24, 2013.

Judge Maria-Elena James
United States Magistrate Judge

May 13, 2013
Date

DECLARATION PURSUANT TO LOCAL RULE 5-1(i)(3)

Pursuant to Local Rule 5-1(i)(3), the undersigned filer declares that concurrence in the filing of this document has been obtained from the other signatory to this document.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of May, 2013.

/s/ *Brad P. Rosenberg*

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