

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

GOVERNMENT ACCOUNTABILITY PROJECT,)	
)	
Plaintiff,)	
v.)	Case No: 17-2518 (CRC)
)	
U.S. DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	

STATUS REPORT REGARDING SEARCH TERMS

The parties, by and through undersigned counsel, report to the Court as follows on the issue of search terms pursuant to the Court’s memorandum opinion dated October 12, 2018.

1. By order dated October 12, 2018, the Court directed the parties to meet and confer to arrive at a “reasonably limited set of additional search terms that rectify the under-inclusivity of the ‘ideological tests’ and ‘cellphone’ search terms without being too over-inclusive.” To the extent the parties cannot reach agreement, the Court directed the parties to file a joint submission setting forth their respective terms and their positions on all disputed terms. The Court extended the parties’ deadline to meet and confer and file the instant submission by order dated October 25, 2018.

2. The parties have conferred and, except as stated in paragraph 4 below, have agreed on search terms.

3. The parties have agreed that Defendant will conduct a search using the following search terms within email communications between eop.gov and dhs.gov email addresses:

Search One: “border” and (“vet*” or “screen*” or “evaluat*” or “inquir*” or “politic*” or “ideolog*” or “test*” or “cell*” or “phone” or “value*”)

Search Two: (“device” and “search” and “border”) or (“device” and “inspect*” and “border”) or (“electronic device” and “border”)

The results of these searches will then be reviewed by Defendant for actual responsiveness to Plaintiff’s FOIA request and records will then be processed under a processing schedule that the parties will propose to the Court once the search is run and the volume of potentially responsive records is identified. Defendant reserves the right to request a modification of these searches in the event the volume of potentially responsive records is excessive. The parties agree that Defendant will conduct this search after the Court resolves the parties’ dispute regarding the additional proposed search terms identified in paragraph 4 below.

4. In addition to the above search terms, Plaintiff has proposed a separate search using the term “extreme vetting”, and also adding the following terms within the parenthetical to Search One: (or “cold war” or “Facebook” or “Twitter” or “social media”) in order to capture records that contain the terms “border and cold war”, “border and Facebook,” “border and Twitter,” or “border and “social media.” Plaintiff also proposes that the cut-off date for the search be the date when the search is conducted, while Defendant believes that the cut-off date should be the same as the cut-off date of the original search.

Plaintiff’s Position on Additional Terms and Search Cut-Off Date

5. Plaintiff states that, as explained in its summary judgment briefs, the President himself has used the term “extreme vetting” to describe the kind of border test that is the subject of Plaintiff’s FOIA request, and that the Cold-War-era ideological tests were the model for such extreme vetting. Dkt # 903, ¶ 2 (“We should only admit into this country those who share our values and respect our people. In the Cold War, we had an ideological screening test. The time is overdue to develop a new screening test for the threats we face today. I call it extreme vetting. I call it extreme, extreme vetting.”). Plaintiff contends that it is quite plausible that government

officials have discussed ideological tests at the border without actually using the term “border,” and that due to the uniqueness of the term “extreme vetting,” that term (and it is the only one) should be included without the additional limitation of “border” to address this issue. Defendant has not identified any “extreme vetting” that has been discussed in any other contexts between DHS and the White House that is likely to generate false hits.

6. With regard to Facebook, Twitter, and social media, as Plaintiff previously noted, DHS has referred to the collection of “social media” information of all immigrants entering the United States. *Id.* at ¶ 10. Facebook and Twitter are two very commonly used social media tools, and people frequently use them on their phones. Defendant has not identified any specific types of false hits likely to result from these additional search terms.

7. With regard to the search cut-off date, Defendant has not provided any compelling, non-speculative justification for departing from the date of the search as the cut-off date, for which courts have expressed a preference, and the request did not limit the time period for the search. Dep’t of Justice Guide to the Freedom of Information Act, Procedural Requirements, at 53-54;¹ Dkt. # 1-2.

Defendant’s Position on Additional Terms and Search Cut-Off Date

8. It is Defendant’s position that these additional terms go beyond the scope of the FOIA request which, in relevant part, seeks: “Any and all nonexempt, unclassified correspondence between White House staff and the DHS concerning ideological tests at the U.S. border. Any and all correspondence concerning searches of cellphones, the protocols, information about who was searched (with identifying information redacted), search rates,

¹ Available at <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements.pdf>.

protocols of a search is [sic.] refused, etc, for citizens and non-citizens, at the U.S.

border.” (ECF No. 1-2) As to these proposed additional terms, Defendant states as follows.

9. To the extent the term “extreme vetting” may have been used in the context of “ideological tests at the U.S. border” as Plaintiff speculates, the existing Search One would capture any such information since it will capture emails in which the term “vet*” and “border” appear, and thus will capture the term “extreme vetting” to the extent it appears in an email that also contains the word “border.” However, Plaintiff is proposing a separate search using the term “extreme vetting” standing alone and unaccompanied by the term “border” that would capture records that use the term “extreme vetting” but do not also contain the word “border.” Because the request seeks records with respect to “ideological tests at the U.S. border”, the term “extreme vetting” standing alone is not reasonably calculated to locate responsive records to the FOIA request and would be over-inclusive because it would capture documents in which the term “extreme vetting” is used outside the context of a discussion of U.S. borders.

10. The term “border and cold war” goes beyond the scope of the FOIA request, which seeks information regarding “ideological tests at the U.S. border.” Notably, that is not a term that the Plaintiff argued should have been used in Defendant’s search in opposition to Defendant’s motion for summary judgment. (ECF No. 9-1 at 3)

11. As to the terms “border and social media,” “border and Facebook,” and “border and Twitter,” those terms also go beyond the scope of the FOIA request. The existing proposed searches set forth in paragraph 3 are sufficiently expansive to encompass documents that contain information about any search or inspection of cellphones or other electronic devices at the U.S. border. The addition of the terms “social media,” “Facebook” and “Twitter” would render the

search over-inclusive and thus add to the time and resources needed to review the potentially responsive records.

12. With respect to the search cut-off date, Defendant believes the date-range of the search should be the same as the date-range of the original search. Extending the cut-off date until the date of the search has the potential to increase the number of search results that will need to be reviewed on an already expansive search, and goes beyond the scope of records sought in the FOIA request, which was submitted in April 2017.

Respectfully submitted,

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