

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

AMERICAN CIVIL LIBERTIES UNION)
OF MAINE FOUNDATION,)

Plaintiff,)

v.)

Case No. 2:18-cv-00176-JDL

U.S. DEPARTMENT OF HOMELAND)
SECURITY, and U.S. CUSTOMS AND)
BORDER PROTECTION,)

Defendants.)

**THIRD JOINT STATUS REPORT AND JOINT MOTION FOR PERMISSION TO FILE
A FOURTH JOINT STATUS REPORT**

Pursuant to the Court’s minute Order dated October 15, 2018 (the “Order,” ECF No. 17), the American Civil Liberties Union of Maine (“Plaintiff”), and the U.S. Department of Homeland Security and U.S. Customs and Border Protection (collectively, “Defendants”), hereby file this Third Joint Status Report and Joint Motion for Permission to File a Fourth Joint Status Report addressing the status of Defendants’ search for and production of records responsive to the FOIA request at issue herein, the status of any negotiation on the scope and timing of future productions, and the parties’ proposed schedule for future proceedings. In the period since the parties filed the Second Joint Status Report, ECF No. 15, Defendants have provided Plaintiff with further information regarding searches, productions, and redactions, and the parties have conferred about future proceedings. The Plaintiff has raised disputes regarding some of the redactions in Defendants’ production, and Defendant has reconsidered some (although not all) of those redactions, and will re-produce relevant documents. The parties believe they can narrow any issues for future summary judgment briefings through further negotiation. For the reasons stated herein, the parties jointly request that the Court grant

permission for the parties to file a Fourth Joint Status Report on or before December 17, 2018, addressing the parties' proposals for future proceedings—such as further record production, summary judgment briefing, or resolution of the case.

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, in which Plaintiff seeks to compel the release of records in Defendants' possession.

2. The FOIA request at issue in this case was filed on January 24, 2018 (the "Request"). The Complaint was filed on May 1, 2018 (ECF No. 1). Defendants' Answer was filed on June 18, 2018 (ECF No. 8).

3. Plaintiff claims that Defendants have in their possession documents that are responsive to the Request and that are not properly subject to withholding based on any exemption. Defendants claim that FOIA has not been violated and that there may be appropriate exemptions applicable to any responsive records in their possession. *See* ECF Nos. 1 & 8.

4. Following the Court's Order, Defendants collected documents responsive to the Request and reviewed such documents to determine whether any exemption(s) applied to the same.

5. On July 27, 2018, Defendants produced to Plaintiff four documents, totaling 34 pages, responsive to the Request (the "July 2018 Production"). The first three documents were partially redacted on the basis of Defendants' assertions of FOIA Exemptions 6, 7C, and 7E. The fourth document was released in full.

6. Thereafter, the parties agreed that additional responsiveness review of Houlton Station CBP personnel would be completed on or before September 14; to the extent additional responsive documents existed, a supplemental release of documents to Plaintiff would occur on or before September 28; and jointly requested that they be permitted to file a second Joint Status

Report with the Court on or before October 12, 2018. ECF Nos. 12-13, Aug. 16, 2018. The Court granted the parties' request. *See* Order.

7. Defendants performed additional searches for, and collected, responsive records across the personal email accounts and personal drives of nearly 20 Houlton Station CBP personnel potentially involved in the underlying activity at issue in the Request. On September 26, 2018, Defendants produced to Plaintiff eleven documents, totaling 43 pages, responsive to the Request (the "September 2018 Production"). The September 2018 Production was partially redacted on the basis of Defendants' assertions of FOIA Exemptions 6, 7C, and 7E.

8. After reviewing the document production, Plaintiff identified several areas of follow-up it believed might be necessary for Defendants' production to comply with the FOIA, such as: (i) additional information about the search terms and types of documents searched, to determine whether Defendants' search is complete; (ii) the time-frame of the search; and (iii) the bases for Defendants' assertion of certain FOIA Exemptions and Defendants' related redactions of documents.

9. Accordingly, in an attempt to streamline any issues before the Court, the Parties jointly requested permission to file a third Joint Status Report with the Court on or before November 2, 2018 (*see* ECF Nos. 15-16, Oct. 12, 2018) and were granted such relief (*see* Order). Since that time, the parties have had several meaningful meet and confers and made substantial progress in determining what, if any, issues remain in the case.

10. On October 22, 2018, counsel for Defendants provided counsel for Plaintiff with additional information regarding the searches performed of Government shared drives, email accounts, cell phones, and personal drives; custodians; search terms; and time frame. At this

point, Plaintiff does not anticipate moving for judicial relief with respect to these issues, however, expressly reserves and does not waive its rights to do so.

11. On October 30 and 31, 2018, the Parties also met and conferred regarding Defendants' redactions on the basis of FOIA Exemptions. Defendants have agreed to remove certain redactions and re-produce certain documents. Defendants expect that a re-production can occur within 30 days. Plaintiff seeks sufficient time to review the re-production and assess to what extent it may seek a briefing schedule on issues pertaining to the remaining redactions.

12. Accordingly, the Parties submit it would be helpful to allow for additional time, with another deadline set for a Fourth Joint Status Report to request any future proceedings that may be necessary regarding the redactions. Specifically, additional time would permit Defendants to re-produce documents with less redactions, provide Plaintiff time to review the re-production, and allow the Parties to meet and confer regarding a potential briefing schedule regarding the same.

WHEREFORE, the Parties jointly request that they be permitted to file a Fourth Joint Status Report with the Court on or before December 17, 2018, addressing the proposed schedule for future proceedings, if any.

Dated: November 2, 2018
Portland, Maine

Respectfully submitted,

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Dated: November 2, 2018
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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I electronically filed the foregoing using the CM/ECF system, which will send electronic notifications of such filing(s) to all counsel of record.

/s/ Emma E. Bond, Esq.

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