

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

ELECTRONIC PRIVACY INFORMATION CENTER

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE

Defendant.

No. 18-1814 (TNM)

Joint Status Report

Plaintiff Electronic Privacy Information Center (“EPIC”) and Defendant United States Department of Justice (“DOJ”) submit this joint status report and proposed scheduling order pursuant to the Court’s June 29, 2019, Minute Order.

The parties report to the Court as follows:

1. This case concerns two Freedom of Information Act (“FOIA”) requests that EPIC sent to the DOJ in 2017. On June 14, 2017, EPIC sought disclosure of “The first page of all 2703(d) orders for production of cell site location information during January 1, 2017 through March 31, 2017.” (“EPIC First FOIA Request.”). On June 21, 2017, EPIC also sought disclosure of “The first page of all 2703(d) orders for production of cell site location information during 2016.” (“EPIC’s Second FOIA Request.”)

2. The DOJ has not produced any records in response to either of EPIC’s requests because the DOJ’s position is that no reasonable search for responsive records could be undertaken.

3. EPIC proposed several potential search methodologies for the agency to attempt to identify records responsive to EPIC’s FOIA requests, and notwithstanding the DOJ’s position

that no reasonable search was possible the DOJ conferred with EPIC about sending inquiries to four U.S. Attorneys' Offices regarding the existence of any records responsive to plaintiff's requests.

4. The DOJ conferred with the U.S. Attorney's Office for the Southern District of New York and determined that it is not possible for that office to identify responsive records. On February 7, 2019, the agency sent a message to EPIC detailing the issues that are preventing the SDNY from being able to process the request.

5. EPIC reviewed the agency's response and provided a revised search proposal on February 15, 2019. Under EPIC's revised proposal, the DOJ contacted three specific U.S. Attorney's Offices—the Eastern District of Oklahoma, the Eastern District of Pennsylvania, and the Southern District of California—to determine whether those offices can locate responsive records. On April 25, 2019, the defense counsel sent a message to EPIC stating that all three offices responded that they “do not track” the information EPIC requested and that the only way to search for responsive records would be to conduct a manual search of their case files.

6. EPIC intends to challenge the DOJ's unlawful withholding of responsive records in this case. EPIC also plans to file a motion for leave to amend its complaint to supplement its allegations and outline the agency's pattern and practice of refusing to search for and delaying the production of the type of records that EPIC has requested violates the Freedom of Information Act. The DOJ intends to oppose any motion to amend the Complaint to raise new claims as this late stage in the litigation, especially claims that could have been raised when the case was filed.

7. The parties respectfully request that they be permitted to file a joint status report 10 days after the Court rules on EPIC's motion, to advise the Court of the proposed schedule for

proceedings in this case.

Dated: July 25, 2019

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EPIC President and Executive Director

/s/ Alan Butler

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Respectfully Submitted,

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