

**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

Defendant United States Department of Justice (“DOJ”) jointly with Plaintiff Electronic Privacy Information Center (“EPIC”), by and through undersigned counsel, respectfully submit this joint status report and proposed schedule pursuant to the Court’s November 7, 2018, 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. 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’s First FOIA Request”). 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. The DOJ has also not identified any records responsive to either of EPIC’s requests.

3. The agency previously sent EPIC a letter dated October 10, 2018, that purports to be a “final action” on EPIC’s First FOIA Request. The agency stated in the letter that: “Our Data

Analysis Staff has searched its database and determined that EOUSA does not track the statute requested.”

4. EPIC does not agree that this response constitutes a final action under the FOIA to EPIC’s First FOIA Request, and conveyed this view to the DOJ.

5. The parties have conferred and have attempted to develop a search methodology that can identify the records responsive to EPIC’s FOIA requests. The parties have reviewed the status of EPIC’s FOIA requests and have held several teleconferences to discuss the agency’s records systems and search capabilities.

6. As of November 20, 2018, the DOJ has not been able to identify or otherwise estimate the number of documents responsive to EPIC’s requests. The DOJ has also not provided an anticipated date for release of documents responsive to EPIC’s FOIA requests.

7. The parties have agreed that the DOJ will conduct an initial search in the U.S. Attorney’s Office for the Southern District of New York, which maintains a clerk log that the agency believes is likely to assist in identifying records responsive to EPIC’s FOIA requests. The DOJ anticipates that this initial search will be completed by December 5, 2018.

8. The parties do not anticipate that an Open America stay is likely in this case.

9. The parties anticipate that a Vaughn Index might be necessary in this case, depending on the nature of the records identified and any exemption claims made.

10. The parties require additional time to determine the scope of issues in dispute and to agree upon a schedule for further proceedings (including dispositive motions, if necessary). Thus, the parties respectfully request that they be permitted to file a joint status report on or before January 7, 2019, to advise the Court of the proposed schedule for proceedings in this case.

Dated: November 20, 2018

Marc Rotenberg, DC Bar # 422825
EPIC President and Executive Director

/s/ Alan Butler

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Respectfully Submitted,

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