

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

ELECTRONIC PRIVACY)	
INFORMATION CENTER)	
)	
Plaintiff,)	
v.)	Civil Action No. 1:12-cv-00667(CKK)
)	
FEDERAL BUREAU)	
OF INVESTIGATION)	
)	
Defendant.)	
_____)	

**REPLY BRIEF IN SUPPORT OF DEFENDANT’S MOTION
FOR AN OPEN AMERICA STAY**

Defendant Federal Bureau of Investigation (“FBI”) has demonstrated that the circumstances of this case warrant a stay of this litigation pursuant to 5 U.S.C. § 552(a)(6)(C) and *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976). While it is clear that Plaintiff would like the FBI to release responsive documents more quickly than in the timeline proposed by the FBI, this does not negate that the statutory conditions for such a stay are present. The large volume of requests that the FBI must process, as well as the size and complexity of those requests and the limited resources available to process them, present exceptional circumstances. In addition, the FBI has demonstrated reasonable progress in reducing its backlog and has exercised due diligence in responding to Plaintiff’s FOIA request. The FBI’s resources have practical limits and must be allocated to give fair treatment to persons and organizations who submitted their requests earlier and who also are awaiting responses. As a result, periodic status reports and the rolling release of documents – which the FBI proposes to begin in one month and to continue monthly thereafter – will ensure that Plaintiff receives

responsive documents promptly and will allow Plaintiff and the Court to monitor the FBI's progress in processing the request. Therefore, the Court should grant the requested stay.

ARGUMENT

I. The FBI Has Demonstrated Exceptional Circumstances Justifying a Stay

Despite Plaintiff's argument that the FBI is not operating under exceptional circumstances, the facts continue to support that the FBI faces an unanticipated increase in workload that its resources are inadequate to address. First, the facts demonstrate that the number of FBI FOIA requests has increased substantially over the past several years. Second, the size and complexity of FBI FOIA requests also has substantially increased. Third, the number of FBI employees dedicated to reviewing documents has not kept pace with increases in the volume, size, and complexity of FBI requests. Fourth, there is a substantial amount of classified material implicated in this case, and the FBI estimates that the processing of this information alone could take six months. Fifth, the FBI is undergoing a system upgrade that will impede its ability to respond to FOIA requests in the short-term. Finally, Plaintiff's rejection of reasonable attempts to narrow the scope of its request demonstrates exceptional circumstances.

A. The FBI Is Experiencing a Substantial Increase in Requests

Plaintiff contends that the FBI has not demonstrated an increase in the number of requests because: (1) the number of requests received by the FBI is similar to the number it received in 1988 (Pl's Opp'n, Dkt. No. 15, at pp. 4, 14-15), and (2) data from FY2003 and FY 2006 indicate a predictable increase in workload, (*id.* 15). Both arguments, however, do not withstand scrutiny. Plaintiff misapprehends how courts determine whether there has been an unpredictable increase in workload. In addition, the number of FBI FOIA requests has increased substantially over the past year and demonstrates exceptional circumstances.

First, this court has evaluated whether an agency is facing an increased and unanticipated volume of requests by looking at data from the immediately preceding year, rather than looking back at a single point in time more than two decades prior. In *Electronic Freedom Foundation v. Department of Justice*, 517 F. Supp. 2d 111 (D.D.C. 2007), this Court granted the FBI an *Open America* stay where the Court found that staffing shortages rendered the FBI unable to adequately respond to an increase of “roughly an additional 1/3 as many requests per month” as it had faced in the prior year. *Id.* at 119. In so doing, the Court examined the increase in the number of requests from one fiscal year to the next, from an average of 911 requests per month in FY2005 to 1,277 per month in FY2006. *Id.* at 118. The Court did not take into account the fact that the FBI had faced higher request rates in years past, despite the fact that this Court previously had noted an annual request total of 16,518 (approximately 1,377 per month) in 1988, *Summers v. DOJ*, 733 F. Supp 443, 444 (D.D.C. 1990), and a monthly request rate of 1,300 requests in 2002, *Edmonds v. FBI*, No. 02-1294, 2002 WL 32539613, at *2 (D.D.C. Dec. 3, 2002).

Applying this standard in which a Court looks to the immediately preceding years to determine whether there has been an unanticipated increase in requests, it is clear that the FBI is in such a circumstance. Indeed, while the FBI received a total of 17,927 FOIA and Privacy Act requests in FY2011, an average of 1,480 per month, the number of requests has risen to 19,599 thus far in FY2012, for an average of approximately 1,781 per month.¹ (Second Declaration of David M. Hardy, dated August 30, 2012 (“Second Hardy Decl.”) ¶ 5.) Thus, in a single year, the FBI has experienced a twenty-percent increase in the number of requests.

¹ Previously, the FBI presented FY2012 data that was current through July 2012. (Declaration of David M. Hardy, dated July 30, 2012 (“First Hardy Decl.”) ¶ 24.) Those figures have been updated to reflect the number of requests received by the FBI in the following month. (Second Hardy Decl. ¶ 5.)

B. The Size and Complexity of the FBI Requests Has Significantly Increased

In recent years, the FBI has experienced an increase in the complexity of requests, as the number of subparts to a request and the volume of responsive pages has increased. As this Court has noted, the fact that an agency “frequently processes large and complex FOIA requests . . . is indeed a relevant consideration in assessing whether the FDA has met its burden of establishing ‘exceptional circumstances.’” *Buc v. Food and Drug Admin.*, 762 F. Supp. 2d 62, 68 (D.D.C. 2011). Here, the evidence establishes that: (1) the number of pages responsive to an FBI FOIA request has more than doubled over the past three years; (2) FBI FOIA requests now include significantly more subparts than in years past; and (3) the number of “behemoth” cases involving more than 8,000 pages have more than tripled over the past five years. These events have all greatly increased the amount of time and resources that the FBI must dedicate to responding to a FOIA request, and they thereby support a finding of exceptional circumstances.

First, the FBI has put forth evidence that the size of its FOIA requests has significantly increased in just a few years. (Second Hardy Decl. ¶ 6.) In 2009, the average size of a FBI FOIA request was 500 pending pages. (*Id.*) As of August 30, 2012, the average size of a FBI FOIA request has increased to 1,128 pending pages, a more than 200% increase in just three years.² (*Id.*) This change is significant because the total number of pages responsive to a request proportionally impacts – and dramatically affects – the complexity of the FOIA processing required and the resources and time needed to respond to a particular request. (*Id.* ¶ 12.) The FBI’s experience is that as the number of pages in a request increases, the work and complexity associated with responding to a request proportionally increases as well, including the number of

² As of July 2012, the average size of a FBI FOIA request was 1,000 pages. (First Hardy Declaration ¶ 23.) The average number of pages received per month in FY2012 has increased to 1,128 in the intervening month. (Second Hardy Decl. ¶ 6.)

referrals (for either consultation or direct response) to other Department of Justice (“DOJ”) components and agencies, the need for internal reviews, declassification considerations, and the time associated with page-by-page, line-by-line, word-by-word review of all potentially responsive material to determine what can be released and/or withheld. (*Id.*)

Second, unlike in years past when most FBI FOIA requests were straightforward requests from individuals seeking investigative records about themselves (e.g., a request for a single bank robbery file), requests today have morphed into complicated requests with multiple subparts.³ (*Id.* ¶ 6.) While the FBI does not keep data on the number of parts to each FOIA request, as this would utilize already scarce agency resources, the FBI indicates that the number of requests with multiple parts has increased substantially in the past five years. (*Id.*) Plaintiff’s FOIA request is an example of this, as the request contains five subparts.⁴ (*Id.* ¶ 3 n.2.) Other examples of recent compound requests that the FBI currently is addressing include, but are not limited to:

- a request by the ACLU of Northern California for information on Muslim training and culture, currently the subject of litigation, that contains 33 separate subparts.
- a pending request, currently the subject of litigation, that contains 18 separate subparts.
- an ACLU request concerning Section 215 of the PATRIOT Act, currently the subject of litigation, that contains 18 separate subparts.

³ The FBI also increasingly responds to single requesters who file numerous requests with multiple parts. (*Id.* ¶ 9.) For example, just one requester has submitted over 500 separate requests under FOIA and the Privacy Act since 2005. (*Id.*)

⁴ For administrative purposes in the FBI’s document processing system that is used to electronically process requests, the FBI assigns an additional processing number to any request that reaches 10,000 pages, and this additional number is treated as a separate request for the FBI’s Annual FOIA Report to DOJ. (*Id.* ¶ 6.) But initially, until the 10,000 page threshold is reached, a request is counted as one request no matter how complex or multi-parted. (*Id.*) Thus, Plaintiff’s request with five parts is treated as three separate requests because of the page count of approximately 25,000 pages. (*Id.*)

- a pending EPIC administrative request, which contains 10 subparts, that seeks records on the National Domestic Communications Assistance Center.
- a pending administrative request for information on the InfraGuard Jacksonville Member's Alliance that contains 26 subparts.
- a pending administrative request with 17 subparts that seeks information on Gulen Academies.

(*Id.* ¶ 7.) This data, offered on just six cases that alone contain 122 subparts, is illustrative of the increased complexity the FBI faces in responding to FOIA requests today. (*Id.* ¶ 8.) For each and every one of the subparts, the FBI must analyze the subpart; conduct a targeted search for records designed to uncover records potentially responsive to each subpart of each request; identify and collect all potentially responsive records; scope and determine actual responsiveness; conduct a classification review as necessary; process all identified documents by conducting a page-by-page, line-by-line, word-by-word review; and finalize its releases. (*Id.*)

In light of the statistics demonstrating the increasing size and complexity of FBI requests, it is not surprising that the FBI has experienced a significant increase in the number of requests exceeding 8,000 pages, which represent “behemoth” cases. (*Id.* ¶ 6.) These “behemoths” have steadily increased from 26 ending in September 2007, to 44 ending in September 2008, to 56 ending in September 2009, to 55 ending in September 2010, to 85 ending in September 2011, and to the current number of 93 behemoth cases as of today. (*Id.*)

C. FBI Has Insufficient Resources to Respond to the Increases in the Volume, Size, and Complexity of Requests

The number of FBI staff assigned to reviewing documents has not kept pace with the FBI's increased workload. While the Record/Information Dissemination Section (“RIDS”) of FBI Headquarters presently has 270 employees, only approximately 150 employees are devoted

to full-time work as line analysts who review and process potentially responsive documents. (Second Hardy Decl. ¶ 11.) This same 150-person staff handles processing of both administrative requests, as well as those requests that become the subject of litigation.⁵ (*Id.*) Thus, it is clear that FBI resources are limited, as there are only 150 people responsible for reviewing documents responsive to FBI FOIA requests, which now have increased such that they not only come in at a rate of 1,781 per month but also consist of an average of 1,128 pages of responsive documents. (*Id.* ¶¶ 5, 6, 11.) Furthermore, the number of FBI employees dedicated to reviewing documents has remained relatively stagnant over the past several years – the number of RIDS employees devoted to full-time work as line analysts reviewing and processing documents was 145 in FY2010, 159 in FY2011, and approximately 150 thus far in FY2012. (*Id.* ¶ 11 n.5.) In the face of increases in the volume, size, and complexity of requests to the FBI, it becomes clear that FBI staffing has not kept pace with those increases in FBI workload.

In light of the FBI's limited staff resources to review responsive documents, the FBI has taken steps to treat all requesters fairly and equitable, giving none an undue advantage over others. The FBI follows the rule of "first-in, first-out" using a multi-track queue system.⁶ (*Id.* ¶ 13.) Another policy designed to ensure fairness among requesters involves the "behemoths" requests – because RIDS has determined that no requester should have to wait more than three years for a complete response, the FBI will dedicate the resources necessary to ensure completion of behemoth requests in less than three years. (*Id.*)

⁵ The remaining 120 employees, including contractors, are assigned to the Work Processing Unit and the three Classification Units. (*See* First Hardy Declaration, ¶¶ 13-16; Second Hardy Decl. ¶ 11.) They are assigned as administrative staff, supervisors, and senior managers. (Second Hardy Decl. ¶ 11.)

⁶ Exceptions to the "first-in, first-out" rule are made by RIDS in rare circumstances: for those requesters who are granted expedited processing by either the FBI or DOJ in accordance with DOJ FOIA regulations for expedited processing. (Second Hardy Decl. ¶ 13.)

That said, while the FBI's adherence to the "first-in, first-out" multi-track queue system is designed to ensure that all requesters are treated similarly and fairly, Plaintiff's request to this Court would disrupt that system. Plaintiff's efforts to require that the FBI process Plaintiff's FOIA request in sixty days would essentially grant Plaintiff preferential status in what is otherwise intended to be a fair and straightforward dedication of resources – Plaintiff is seeking to leverage its willingness to litigate to achieve advantageous and priority processing of its request over those requesters who have waited longer in the queue but have not pursued litigation. (*Id.* ¶ 15.)

D. Plaintiff's Request Involves A Substantial Amount of Classified Material

Plaintiff argues that this Court should not take into consideration the amount of classified material implicated by Plaintiff's request because the amount "is uncertain" and because the "the FBI has not provided any information to establish that it is outside the range of the agency's predictable workload." (Pl's Opp'n 19.) Neither argument, however, withstands scrutiny.

First, the amount of classified material is not sufficiently uncertain that it cannot be taken into account. While counsel for the FBI indicated in June 2012 that the FBI believed a "majority" of documents potentially responsive to Plaintiff's request were classified, (Dkt. 15-1 ¶ 8), counsel provided a more definite estimate of twenty-five percent within two days, (*id.*). Furthermore, *after* reviewing the 25,000 pages the FBI had identified pursuant to Plaintiff's request and scoping those documents for responsiveness, (First Hardy Decl. ¶ 29), the FBI just last month provided a sworn declaration that approximately twenty-five percent of those materials were classified, (*id.* ¶ 4 n.3). In light of Plaintiff's seeming confusion over the certainty of these figures, the FBI once again reaffirms here that approximately twenty-five percent of records potentially responsive to Plaintiff's request are classified: "At this time, the

FBI estimates that there are over 6,000 pages containing classified information within the responsive page count.”⁷ (Second Hardy Decl. ¶ 12 n.9.)

Second, this Court also should reject Plaintiff’s statement that the FBI has not established that the number of classified materials exceeds its predictable workload. This Court has stated that “other circumstances, such as . . . the amount of classified material . . . are relevant to the court’s determination as to whether exceptional circumstances exist.” *Gov’t Accountability Project v. U.S. Dept. of Health and Human Servs.*, 568 F. Supp. 2d 55, 59 (D.D.C. 2008). Nothing in this decision indicates that the amount of classified material in one case must be weighed against or compared to the total amount of classified material the FBI reviews in a year. Indeed, it seems apparent that the amount of classified material factors into an exceptional circumstances analysis because requests with identical page counts may take vastly different lengths of time to process if one request implicates a significant amount of classified material while the other implicates none.

Furthermore, in this particular case, the FBI has provided information that Plaintiff’s request is outside of its predictable workload. Given that the average size of an FBI request is 1,128 pages, (Second Hardy Decl. ¶ 5), it is clear that a request involving 6,000 pages of classified material alone (taking six months to process) is beyond the scope of an ordinary FBI request. The FBI also has determined that the processing of classified materials here will be particularly difficult: “Because the classified information is spread throughout the responsive pages, it complicates the processing since an entire work folder in [its document processing system] must be assigned to a [Classified Unit] analyst for review.” (*Id.* ¶ 12 n.9.) The FBI’s

⁷ The FBI cannot provide a more definitive estimate because “the classified information is spread throughout the potentially responsive pages, thus making it difficult to give an accurate page count of classified material short of performing a hand-count.” (Second Hardy Decl. ¶ 12 n.7.)

processing system “only allows one analyst to review a folder at any given time,” and thus while a file is underdoing classification review, “the FOIPA analyst must work on another work folder until classification review is completed.” (*Id.*)

E. The FBI’s Processing Ability Will Be Hampered by a System Upgrade

In its opening brief, the FBI noted that it had planned and scheduled an upgrade to its FOIPA Document Processing System (“FDPS”). (Mot. for *Open America* Stay, Dkt. No. 14, (“Mot.”) at 23-24.) The upgrade will not only add important features to the FBI’s processing system, but it will also improve efficiency. (First Hardy Decl. ¶ 26.) Some preliminary work for the upgrade has commenced and will continue over the next several weeks, including additional programming, technical work, and testing, and the FBI anticipates that the implementation of the upgrade will begin in mid-September and conclude in mid-October. (Second Hardy Decl. ¶ 14.)

While Plaintiff does not address whether the upgrade contributes to a finding of exceptional circumstances, it is clear that the FDPS upgrade process will hamper the FBI’s ability to process FOIA requests in the short-term. The FBI has estimated that the installation process will take approximately thirty days to complete and will require a complete shutdown of the system for at least five full days. (First Hardy Decl. ¶ 26.) During this time, all FBI FOIA work in RIDS (where Plaintiff’s request is being processed) will, of necessity, completely cease. (*Id.*) It is also quite possible that at other times during this continuous thirty-day period, FDPS access will be considerably degraded or virtually impossible, so productivity will be affected significantly. (*Id.*) While the upgraded system will ultimately improve the FBI’s productivity, there is no doubt that there will be short-term productivity losses during the pendency of the FDPS upgrade, and Plaintiff does not contest this fact. Thus, the FBI’s planned FDPS upgrade supports a finding of exceptional circumstances warranting at least one additional month beyond

what the Court would ordinarily find appropriate.

F. Plaintiff Rejected Reasonable Efforts to Narrow the Requests

FOIA provides that a “[r]efusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request . . . shall be considered as a factor in determining whether exceptional circumstances exist.” 5 U.S.C. § 552(a)(6)(C)(iii). In this case, Plaintiff has refused efforts by the FBI to narrow the scope of the request, instead making a nominal offer to exclude documents that would not ordinarily be encompassed within its request. Furthermore, Plaintiff has not identified any reason for rejecting the FBI’s reasonable request. As a result, this Court can consider Plaintiff’s refusal to narrow its request in the exceptional circumstances analysis.

As discussed in the FBI’s opening brief, the FBI reached out to Plaintiff to narrow the request so that it could be processed more quickly. (Mot. 21-22.) Specifically, the FBI proposed excluding classified materials and operating manuals, which could reduce the time required to process Plaintiff’s request by six months if only one category were excluded or twelve months if both categories were excluded. (*Id.*) Neither the FBI nor its counsel received a final response from Plaintiff regarding the proposal to limit the two categories of documents, leading the FBI to the conclusion that Plaintiff had rejected the request. (*Id.* at 22.)

While Plaintiff contends that its refusal to accept the FBI’s narrowing proposal is offset by its willingness to exclude materials from active investigations, (Pl.’s Opp’n 21), the Court should reject this argument. As Plaintiff acknowledges, it only offered to eliminate “documents related to active investigations.” (*Id.*) Such documents, however, are not likely to be encompassed in Plaintiff’s request, which on its face is limited to “technical specifications,” “procedural requirements or guidelines,” “contracts and statements of work,” “memoranda

regarding the legal basis” of the subject of Plaintiff’s request, and “Privacy Impact Statements or Reports.” (Compl. ¶ 20.) Indeed, the FBI has confirmed that while “Plaintiff was willing to narrow the scope of its request by excluding active investigations from the mix,” that offer “had only a minor impact on reducing the overall number of pages to be processed since the subject of the request is for policy and related material.” (Second Hardy Decl. ¶ 9.)

Plaintiff also argues that the FBI’s request was not a reasonable one because the FBI did not provide certain information to Plaintiffs. (Pl.’s Opp’n 21.) To the degree that Plaintiff sought additional information as to the nature of the FBI’s narrowing proposal (for instance, whether the exclusion of classified material would apply to segregable, non-classified material or whether duplicate operations manual material would be eliminated), Plaintiff never sought clarification on those issues from the FBI, instead rejecting the FBI’s offer out of hand. In addition, Plaintiff indicates that the FBI’s proposal to eliminate operations manuals was rejected, at least in part, because the “agency did not make clear why processing such manuals would take about six months.” (*Id.*) However, Plaintiff’s counsel notes in her declaration that this information, in fact, was requested and provided: “the FBI believed many of the manuals would be covered by FOIA Exemption (b)(4) due to ‘copyright issues.’” (Dkt 15-1 ¶ 11.) Thus, Plaintiff has not presented any tenable evidence as to why the FBI’s request was not a reasonable one and should not factor into the exceptional circumstances analysis.

II. The FBI Is Exercising Due Diligence in Processing Plaintiff’s FOIA Request

The FBI has demonstrated due diligence in processing all FOIA requests received, including Plaintiff’s request, on a first-in, first-out basis. Despite an increase in the volume of requests received, the FBI made substantial progress in reducing its backlog through FY2011. While the increasingly volume, size, and complexity of FBI FOIA requests has resulted in a

setback of that progress this year, the FBI nonetheless remains committed to efforts that will accelerate the processing of FOIA requests. Additionally, the FBI has made diligent efforts to respond to Plaintiff's request, and it has offered to complete its first review of documents and produce those that are responsive by September 30, 2012.

As an initial matter, this Court has previously found that "DOJ employs a 'first-in, first-out' policy for handling FOIA requests, which has been 'adopted by the D.C. Circuit as [a] sufficient showing of due diligence.'" *Electronic Freedom Foundation*, 517 F. Supp. 2d at 119 (quoting *Edmond v. U.S. Attorney*, 959 F. Supp. 1, 3 (D.D.C. 1997)). Additionally, this Court has found that an agency has operated with due diligence where an agency employed a first-in, first-out system, used a multi-track system to process requests of different sizes, and had made "general efforts towards improving FOIA request processing," despite the fact the Court was unable to "conclude that Defendants have made 'reasonable progress' in reducing their backlog of FOIA requests." *Gov't Accountability Project*, 568 F. Supp. 2d at 63.

Applied to this case, as the FBI declaration sets forth, the FBI has established due diligence as a result of its handling system. It continues to maintain a "first-in, first-out policy" today. (Second Hardy Decl. ¶ 13.) Additionally, the FBI employs multiple queues, based on the number of responsive documents, when processing FOIA requests. (First Hardy Decl. ¶ 14(a)(II).) Indeed, it is Plaintiff, rather than the FBI, that seeks to deviate from this diligent system, as Plaintiff's efforts to require the FBI to process Plaintiff's FOIA request in sixty days would require that the FBI preferentially process Plaintiff's request over those already in the large-queue. (Second Hardy Decl. ¶ 15.)

This argument notwithstanding, the FBI made substantial progress in reducing its backlog through FY2011. At the end of FY1998, the FBI's backlog was 10,816 requests. (First Hardy

Decl. ¶ 22.) By the end of FY2005, the FBI had reduced the number of pending requests to 1,786 through efforts including increased on-line computer searches, the creation of teams to address specific backlog issues, and the implementation of a document processing system to electronically process requests. (*Id.*) The decrease in the backlog continued through FY2011, when the number of pending FOIA requests was only 1,179, (*id.* ¶ 24), an eighty-nine percent reduction from FY1998 and a thirty-four percent reduction from FY2005.

Admittedly, the FBI's backlog has increased in FY2012 and currently stands at 3,764. (Second Hardy Decl. ¶ 5.) As discussed above, this increase is due to a convergence of increasing volume, complexity, and size in pending FOIA requests. Indeed, the fact that there has been an increase in the backlog this year, after years of progress, further demonstrates that the FBI does, in fact, face exceptional circumstances in its current processing of FOIA requests.

Despite the setback in the backlog, however, the FBI remains committed to efforts that will improve efficiency and increase its processing time. As discussed more fully in the FBI's opening brief, the FBI has reorganized three Disclosure Units and empowered them to assume "cradle to grave" responsibility for responding to FOIA and Privacy Act requests. (First Hardy Decl. ¶ 25.) This change will allow the FBI to move FOIA and Privacy Act requests more efficiently through the various stages of processing. (*Id.*) Additionally, as discussed above, the FBI is preparing for an upgrade to its FOIPA Document Processing System. (*Id.* ¶ 26.) Preparatory efforts for the upgrade have already begun, and the full update is currently scheduled to commence next month. (Second Hardy Decl. ¶ 14.) This too will improve the FBI's efficiency and effectiveness in processing FOIA requests. (First Hardy Decl. ¶ 26.)

Finally, the FBI notes that it also has exercised due diligence in responding to the Plaintiff's FOIA request. While the FBI recognizes that it will take many months to process the

25,000 pages identified as being potentially responsive to Plaintiff's request, the FBI has already uploaded documents to its document processing system. (*Id.* ¶ 29.) It also has completed the scoping of all 25,000 pages for responsiveness. (*Id.*) Accordingly, the FBI now is in a position to begin the page-by-page, line-by-line review of the first 1,000 pages of documents, which will culminate in the release of responsive documents by September 30, 2012. (*Id.* ¶ 31.)

CONCLUSION

For the foregoing reasons, as well as those stated in Defendant's Motion for an *Open America* Stay, the FBI respectfully requests that the Court grant this motion and stay proceedings in this case with respect to Plaintiff's request until October 31, 2014.

Dated: August 30, 2012

Respectfully submitted,

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