

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ELECTRONIC PRIVACY)	
INFORMATION CENTER)	
)	
	Plaintiff,)	
)	
v.)	Civil Action No. 18-2150 (ABJ)
)	
U.S. NATIONAL ARCHIVES)	
AND RECORDS ADMINISTRATION,)	
)	
	Defendant.)	
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ORDER

Plaintiff’s motion for preliminary injunction, [Dkt. # 6], has been terminated since it was withdrawn. *See* Joint Status Report [Dkt. # 10] ¶ 9. At the request of the parties, *see id.* ¶ 8, the Court hereby adopts the following schedule:

PHASE I: On or before October 3, 2018, NARA will conduct a series of searches within the set of records that have already been reviewed by NARA and noticed for potential release pursuant to 44 U.S.C. § 2208 in response to the Senate Judiciary Committee’s pending Special Access Request. In particular, NARA will search for the following email records among the set of records that has already been noticed for release:

1. Emails sent to/from/cc/bcc Brett M. Kavanaugh and to/from/cc/bcc John C. Yoo between September 1, 2001 and February 1, 2002.
2. Emails sent to/from/cc/bcc Brett M. Kavanaugh and to/from/cc/bcc Michael Hayden between September 1, 2001 and February 1, 2002.
3. Emails sent to/from/cc/bcc Brett M. Kavanaugh that include the terms “Michael Hayden” or “National Security Agency” between September 1, 2001 and February 1, 2002.
4. Emails sent to/from/cc/bcc Brett M. Kavanaugh that include the terms “Patriot Act” or “PATRIOT Act” or “surveillance.”

5. Emails sent to/from/cc/bcc Brett M. Kavanaugh that include the terms “CAPPS II” or “Privacy Act” or “Fusion Center.”
 - Once these searches are complete, counsel for NARA will promptly inform counsel for EPIC how many records were located in response to each search.
 - NARA will then promptly produce the responsive records to EPIC, once the agency is legally permitted to do so under 44 U.S.C. § 2208.
 - NARA will also promptly make available to EPIC the textual records (i.e., paper records) that have been processed in response to the Senate Judiciary Committee’s Special Access Request, once the agency is legally permitted to do so under 44 U.S.C. § 2208.
 - **The parties are directed to file a joint report on October 4, 2018 informing the Court of the status of the efforts included in Phase I.**

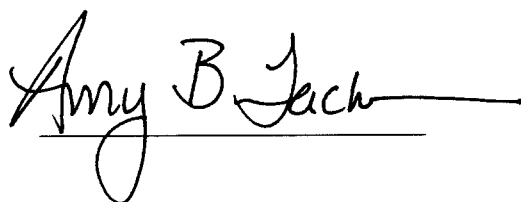
PHASE II: On or before October 10, 2018, NARA will conduct the same series of searches as above in PHASE I, but within the set of email records that (1) are currently being processed for potential public release pursuant to 44 U.S.C. § 2208, in response to the Senate Judiciary Committee’s pending Special Access Request; but (2) have not yet been noticed for potential release pursuant to 44 U.S.C. § 2208.

- Once these searches are complete, counsel for NARA will promptly inform counsel for EPIC how many records were located in response to each search.
- EPIC will then consult with NARA in a good-faith effort to further prioritize the processing of responsive records based on the results of the search.

PHASE III: NARA will conduct a series of searches for records created during Judge Kavanaugh’s tenure as White House Staff Secretary (which are not responsive to the Senate Judiciary Committee’s pending Special Access Request).

- On or before October 10, 2018, EPIC will propose to NARA a specific methodology for conducting searches of these records, reflecting EPIC’s priorities.
- The parties will work diligently and in good faith to reach agreement with respect to these searches, and NARA will aspire to complete these searches on or before October 24, 2018, to the extent reasonable under the circumstances.

- Thereafter, the parties will work diligently and in good faith to reach agreement with respect to the processing of these records.

A handwritten signature in black ink that reads "Amy B. Jackson". The signature is written in a cursive style and is positioned above a solid horizontal line.

AMY BERMAN JACKSON
United States District Judge

DATE: September 28, 2018