



U.S. Department of Justice

United States Attorney  
Southern District of New York

January 19, 2021

The application is GRANTED. By **February 12, 2021**, Defendants shall produce the report. By **March 12, 2021**, the parties shall submit a joint status letter regarding the need for further litigation in this matter.

**BY ECF**

Hon. Lorna G. Schofield  
United States District Judge  
United States Courthouse  
40 Foley Square  
New York, New York 10007

SO ORDERED

Dated: January 20, 2021  
New York, New York

LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE

Re: *American Civil Liberties Union et al. v. Office of the Director of National Intelligence, et al.*, 18 Civ. 12131 (LGS)

Dear Judge Schofield:

This Office represents the defendant government agencies in this FOIA case.<sup>1</sup> I write respectfully to request a further extension of the deadline for the Department of Justice’s National Security Division (“NSD”) to complete processing one remaining document responsive to plaintiffs’ FOIA request. The Court has previously extended the time for NSD to complete production on three prior occasions. *See* Dkt. Nos. 42, 56, 59. The current deadline is January 29, 2021, and the Court’s December 14 order, Dkt. No. 59, stated that “[n]o further extensions will be granted absent truly extraordinary circumstances.” As described further below, the extension is necessary due to the attack on the Capitol and the increased security now in place in Washington, which has severely restricted NSD staff’s ability to access their secure facilities and process the remaining record. These restrictions have compounded the difficulty NSD already faced due to the pandemic. Plaintiffs have advised they take no position on the government’s request. I also write to provide a status report.

**Background: pandemic-related limitations on in-person work necessary to process classified records.** As described in the government’s December 11, 2020 letter, Dkt. No. 57, the remaining document is a complete “Semiannual Report of the Attorney General on Electronic Surveillance and Physical Search Under the Foreign Intelligence Surveillance Act,” which is responsive to Category 2 of the FOIA request. This document contains classified information. It is stored—and must be processed for FOIA—on a secure computer network. That network can only be accessed from NSD’s physical office space; for security reasons, it is not possible to access it remotely.

As noted in the government’s December 11 letter, NSD and other agencies have imposed significant restrictions on in-person staffing to help limit the spread of COVID-19. These restrictions have the unfortunate side effect of slowing NSD’s processing of classified records, including the report. They have also limited NSD’s ability to coordinate with other agencies that

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<sup>1</sup> I have been assigned to this matter while Assistant United States Attorney Jean-David Barnea, who previously entered an appearance, is on parental leave.

may have equities in the report. Other agencies' FOIA staff has also been significantly constrained.

**The new limitations on processing due to increased security after attack on the Capitol.** NSD took into account its pandemic-related staffing restrictions when requesting the January 29, 2021 date—indeed, this was the reason for the prior request. However, the events of January 6 have imposed unforeseeable and extraordinary additional limits on NSD's ability to process the report. Specifically, after the attack on the Capitol, and in preparation for tomorrow's inauguration, security in Washington has been greatly increased. The increased security includes the vicinity of NSD's physical office space where processing of classified information must occur. The few employees who would otherwise be working in person have faced great difficulty and delays when trying to travel to their offices because of the increased security. When combined with the COVID-related restrictions, these additional security restrictions have made it impossible for NSD staff to complete processing and coordination work necessary to meet the existing January 29, 2021 deadline to process the report.

**Request.** The government respectfully submits that these limits constitute "truly extraordinary circumstances," Dkt. No. 59, warranting a further two-week extension to and including **February 12, 2021**. The government has conferred with plaintiffs' counsel, who takes no position on the request.

**Status report on other matters.** In addition to NSD's processing of the report, the parties wish to report that plaintiffs have conveyed a number of questions to the defendant agencies about the scope of their searches and productions to date. The government expects to be able to provide responses to many of these questions this week. The parties hope that this process will allow them to narrow the areas of dispute and avoid unnecessary motion practice.

The Court previously directed the parties to file a status report by February 26, 2021. Dkt. No. 59. Should the Court grant the requested two-week extension, the parties respectfully propose that they provide this status report by **March 12, 2021**.

I thank the Court for its consideration of this matter.

Respectfully,

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United States Attorney

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