



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

April 2, 2021

**BY ECF**

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

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. I write jointly with Plaintiffs to provide an update per the Court's March 16, 2021 Order, Dkt. No. 63.

As described in the most recent status letter, the parties have identified a gap in NSD's searches related to portions of Category 8 from Plaintiffs' FOIA request, which seeks records relating to proceedings involving amici curiae in the Foreign Intelligence Surveillance Court ("FISC") and the Foreign Intelligence Surveillance Court of Review ("FISCR"). The parties have agreed on a set of supplemental searches and additional processing that will address the gap and, once properly completed, will fulfill NSD's search obligations. We respectfully request that the Court so-order the below agreement to give it legal effect.

Specifically, the parties have agreed as follows: NSD will search its records to identify proceedings before the FISC and FISCR in which the FISC or FISCR appointed an amicus curiae. For each of those proceedings, NSD will gather for processing the following records (unless the parties mutually agree otherwise): (1) amicus filings, other than those addressing purely administrative matters; (2) government briefs or legal memoranda, including any attachments; (3) court transcripts; and (4) court orders or opinions, other than those addressing purely administrative matters. The parties have agreed that NSD will search for responsive records that are within the date range of June 1, 2015, to December 31, 2020.

By **May 28, 2021**, NSD will identify any responsive records described above and, at its discretion, will thereafter provide Plaintiffs with basic information about the quantity and nature of those responsive records to allow the parties to confer about processing.

By **June 11, 2021**, the parties will discuss whether there are any categories or particular records that do not need to be processed and, to the extent possible, will agree on any narrowing of the responsive records that need to be processed. Based on the final set of records to be processed, NSD will promptly share with Plaintiffs a tentative timeline for processing these records, so that the parties may confer.

By **June 24, 2021**, NSD will make any necessary referrals or requests for consultation or coordination. Because the volume of records gathered in the process described here is not yet known, the parties will confer to discuss a processing schedule and will provide their joint proposal (or respective proposals, if they cannot reach agreement) to the Court in another status update, also by June 24, 2021.

The government expressly reserves all of its rights to assert any appropriate exemptions over any portion of the records described above, including (if appropriate) its ability to provide a no number, no list or Glomar response to any subset of records described above. The parties agree that nothing in the description of the search above constitutes an official acknowledgment of the existence or contents of any particular record or category of records.

The parties are also continuing to discuss the other production issues described in their status report dated March 12, 2021, Dkt. 62. Neither party requests the Court's involvement at this time, but they will raise any issues with the Court should they reach an impasse.

I thank the Court for its consideration of this matter.

Respectfully,

AUDREY STRAUSS  
United States Attorney

By: /s/ Peter Aronoff  
PETER ARONOFF  
Assistant United States Attorney  
Telephone: (212) 637-2697  
Email: peter.aronoff@usdoj.gov

cc: Counsel for Plaintiffs (by ECF)