

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

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| JAMES LUTCHER NEGLEY, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 15-1004 (GK) |
| v. |) | |
| U.S. DEPARTMENT OF JUSTICE, |) | |
| |) | |
| Defendant. |) | |
| |) | |

JOINT STATUS REPORT

Plaintiff James Lutcher Negley (“Mr. Negley”), by counsel, and Defendant, U.S. Department of Justice (“DOJ,” referred to collectively herein with Mr. Negley as the “Parties”), by counsel, respectfully submit this Joint Status Report regarding the above-styled Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 lawsuit following this Court’s Order to Stay this action in order to allow the DOJ to produce documents to Mr. Negley. *See* Dkt. 22. Pursuant to this Court’s Order, the Parties provide a statement of their current status and proposals for further resolution.

I. BACKGROUND

A. PLAINTIFF’S COMPLAINT

Mr. Negley filed this FOIA action (the “Lawsuit”) on June 25, 2015 seeking an Order of the Court requiring the DOJ to (i) conduct a reasonable search for agency records responsive to Mr. Negley’s April 7, 2014 FOIA Request; and (ii) fully and properly respond to Mr. Negley’s April 7, 2014 FOIA Request and produce responsive documents which Mr. Negley alleges have been withheld. On September 24, 2015 and October 27, 2015, the Parties moved for, and the Court granted, extensions of the deadlines in this litigation so that the Parties could

further discuss the issues raised in Mr. Negley’s Complaint. On December 10, 2015, after these issues were unable to be resolved by the Parties at that time, the DOJ filed its Answer.

B. PLAINTIFF’S FOIA REQUEST OF APRIL 2014

Plaintiff’s FOIA request that is the subject of this lawsuit (“Lawsuit FOIA Request”) was submitted in April 2014, where Plaintiff asked the Department of Justice to produce documents related to an investigation of Mr. Negley in connection with an investigation to determine the identity of the Unabomber. See Plf’s FOIA Request of April 2014. Plaintiff’s belief that at least one U.S. Attorney’s Office (“USAO”) possesses records relevant to this subject is based on a handwritten note on a January 22, 2002 facsimile coversheet reflecting that a file related to the Unabomber contained approximately 500,000 pages. Plaintiff’s FOIA request was submitted to the DOJ’s general FOIA/PA Mail Referral Unit and the request ultimately assigned to the Executive Office of United States Attorneys (“EOUSA”).¹ Conversations between Plaintiff’s counsel and Assistant United States Attorney April Dense Seabrook revealed that Plaintiff is requesting the Department of Justice (“DOJ”) search all 93 USAOs for documents responsive to the Lawsuit FOIA Request.

C. PLAINTIFF’S FOIA REQUEST OF JULY 2015

Outside of this litigation, on July 13, 2015, Plaintiff submitted a second FOIA request (the “July 2015 FOIA Request”) to DOJ’s general FOIA/PA Mail Referral Unit requesting that Defendant provide Plaintiff with

a copy of all records, files, and documents referencing, mentioning, or related to James Lutcher Negley, or any name that Mr. Negley may be referred by including, but not limited to, “James Negley,” “James L. Negley”, “and “Jim Negley.”

¹ EOUSA is a DOJ component that provides administrative support for the 93 United States Attorney’s Offices and service as a liaison between to U.S. Attorney’s Offices and the Department of Justice in Washington, D.C. For more information regarding EOUSA, please visit: <https://www.justice.gov/usao/eousa/mission-and-functions>.

A copy of this FOIA request, which had also been forwarded to EOUSA and had been assigned Request No. FOIA-2016-00039, was given to AUSA Seabrook by Plaintiff's counsel on September 28, 2015, in connection with the parties' discussions of the Lawsuit FOIA Request. During conversations between Plaintiff's counsel and AUSA Seabrook regarding the July 2015 FOIA Request, Plaintiff's counsel stated that Plaintiff expects the response to this request to encompass a search of the entire Department of Justice, including all 93 USAOs and all components of the Department of Justice.

D. PARTIES AGREEMENT TO STAY THIS CASE

Counsel for the Parties previously agreed to a temporary stay to permit production of documents responsive to the July 2015 FOIA Request because Defendant believes that completion of this production may resolve some of the issues in this litigation. As part of the stay, Defendant has filed two status reports with the Court. Those reports noted that, among other things;

- DOJ's first search for documents responsive to the July 2015 FOIA Request was conducted in the USAO in the W.D. of Texas, and that search revealed approximately 4,550 pages of potentially responsive materials. *See ECF No. 24 (Def's First Status Report, dated 2/4/2016.)*
- In response to Plaintiff's February 4, 2015 Letter, EOUSA tasked fourteen additional USAOs to search for materials responsive to the July 2015 FOIA Request. The offices tasked with the search were located in New York, California, Texas, Michigan, Colorado, and Washington, D.C.² *See ECF No. 25 (Def's Second Status Report, dated 3/1/2016.)*

² The searches were assigned the tracking numbers listed below and EOUSA has issued to Plaintiff an acknowledgement letter corresponding to each request number.

| | |
|----------------|----------------|
| 2016-01512/TXE | 2016-01519/DDC |
| 2016-01513/TXS | 2016-01520/MIE |
| 2016-01514/TXN | 2016-01521/MIW |
| 2016-01515/CAE | 2016-01522/NYE |
| 2016-01516/CAN | 2016-01523/NYS |
| 2016-01517/CAS | 2016-01524/NYW |
| 2016/01518/DCO | 2016-01525/CAC |

- “The results of the search are being actively reviewed and processed; however, in light of the large number of documents retrieved and the required two-step review process, Defendant anticipate[d] that it [would] be unable to produce all pages responsive to the FOIA request by March 15, 2016, as originally agreed to be the parties.” *See ECF No. 25* (Def’s Second Status Report, dated 3/1/2016.)
- Defendant intended to make “rolling” productions of materials until all documents were produced. *See ECF No. 25* (Def’s Second Status Report, dated 3/1/2016.)

E. STATUS OF DOCUMENT PRODUCTION

1. Production of Documents

On March 15, 2015, after a review of 392 pages, EOUSA made its first production of materials, which resulted in 189 pages released in full, 18 pages released in part, 183 pages withheld in full, and 2 pages that were duplicative of previously accounted for pages. See FOIA Release Letter, dated 3/15/2015. All of the pages were derived from the W.D. of Texas because the EOUSA must complete its review of those pages before it can move on to reviewing any other pages retrieved from the searches.

The next production of documents will take place on or before April 22, 2016. This second interim release involves EOUSA’s review of 915 pages of records from the Western District of Texas. EOUSA is currently reviewing 3,120 additional pages of records pursuant to the FOIA, which will be the subject of a subsequent interim release to the Plaintiff. EOUSA notified Plaintiff’s counsel of the status of the second interim release and of its review of these additional records on April 15, 2016.

EOUSA has recently been informed that the search tasking issued to the USAO in Washington, D.C. has retrieved potentially responsive materials; however, EOUSA is aware of the number of pages because those materials have not reached EOUSA as of the date of this filing. They are expected to arrive within the next 2-3 business days.

2. “No Records” Notifications

Between February 4, 2016 and April 12, 2016, thirteen of the fourteen additional offices tasked with conducting a search for records in connection with the July 15 FOIA Request notified Plaintiff’s counsel (and EOUSA) that they did not possess any responsive records. The offices reporting that no records were located are:

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| Eastern District of Texas | Eastern District of Michigan |
| Southern District of Texas | Western District of Michigan |
| Northern District of Texas | Eastern District of New York |
| Eastern District of California | Southern District of New York |
| Northern District of California | Western District of New York |
| Southern District of California | Northern District of New York |
| Central District of California | |
| District of Colorado | |

II. STATEMENT OF PLAINTIFF MR. NEGLEY

Plaintiff James L. Negley has been on a decade-long journey to gain lawful access to information possessed by the United States government relating to himself, with limited success. As this Court is well aware, Mr. Negley previously petitioned this Court for the right to obtain documents from the Federal Bureau of Investigations (“FBI”), beginning in 2003. *See Negley v. FBI*, Case No. 1:03-CV-02126-GK (the “FBI Lawsuit”). As a result of that case, and related FOIA requests, Mr. Negley received a facsimile cover sheet, which was attached to Mr. Negley’s original Complaint in this matter. *See Exhibit B*, Dkt. 1 (hereinafter the “Fax Cover Sheet”). The Fax Cover Sheet contains handwritten notes stating that “case is still pending” and “500,000 pp. in file” and “42,000 misc evidence.” *Id.* Mr. Negley believes and understands that certain governmental agencies – and in particular the FBI and DOJ –possess substantially more information than has been produced to him pursuant to his various FOIA requests.

When Mr. Negley filed a FOIA request with the DOJ to discern the contents of that file and evidence, he received a response from the DOJ that there were no responsive records. *See*

February 11, 2015 Letter from DOJ to Mr. Negley. Mr. Negley appealed and contested the adequacy of the DOJ's response. Mr. Negley never received a substantive response from DOJ and, as a result, filed his Complaint in this action.

In response to Mr. Negley's Complaint, DOJ provided a substantive response before filing its Answer. DOJ counsel provided Mr. Negley with the Declaration of Special Agent Brian Callihan of the FBI (the "Callihan Declaration") that was previously filed by the FBI in Mr. Negley's previous FOIA litigation. In his Declaration, Agent Callihan states that the file referenced in the Fax Cover Sheet contains "approximately 500,000 pages of material and approximately 42,000 pages of additional material including evidence... [T]he file is maintained by the San Francisco division and remains an open or pending file.... While there is some information referencing Mr. Negley in this file, the complete file does not pertain to him." Callihan Declaration at 2. Based on the Callihan Declaration, DOJ asked Mr. Negley to voluntarily dismiss his suit.

Through correspondence dated November 13, 2015, Mr. Negley declined to dismiss his suit and provided compelling reasons why dismissal would be inappropriate. *See* November 13, 2015 Letter from Thomas Hay to April Seabrook. After discussions with DOJ counsel, the Parties agreed that because some documents responsive to Mr. Negley's broader inquiry to the DOJ may also respond to the documents requested in this lawsuit, the Parties would stay the current litigation while awaiting production of DOJ's responsive documents. Mr. Negley asked the DOJ to search for any documents referencing all potential variations of Mr. Negley's name.

A. STATUS OF DOCUMENT PRODUCTION

On March 15, 2016 Mr. Negley received a production of documents from DOJ, numbering approximately 190+ pages. All of the documents from DOJ pertain to previous litigation in the Western District of Texas. In addition to these documents, DOJ has produced to

Mr. Negley, on a rolling basis, ten (10) other responses from ten separate Assistant United States Attorney's Offices ("USAO") asserting that no responsive documents exist. As of April 12, 2016, Mr. Negley has not received any additional documents or communications regarding the status of communications from DOJ.

B. ISSUES WITH DOCUMENT PRODUCTION

There are a number of issues with DOJ's production to date. The purpose of the Lawsuit was to grant Mr. Negley lawful access to information possessed by DOJ regarding him, following the thread of the Fax Cover Sheet. DOJ represented that certain documents responsive to Mr. Negley's broader FOIA request – for all DOJ-related information – would be responsive to his request based initially on the Fax Cover Sheet. Accordingly, Mr. Negley agreed to a temporary stay in order to allow the DOJ to produce responsive documents and for Mr. Negley to assess the DOJ's production. For the following reasons, Mr. Negley finds the DOJ's production lacking.

3. Lack of Documents Outside of One U.S. Attorney's Office

First, despite requesting information from the entirety of the DOJ, and then specifying certain districts in which information might/should be available, to date, Mr. Negley has only received documents from the Western District of Texas. This is particularly concerning because the origin of Mr. Negley's involvement with the government began in Chico, California and involved, at a minimum, the Central District of California and the Sacramento division. Nothing has been produced from any California USAO. It is difficult to believe that there are no documents referenced Mr. Negley in any USAO in the state of California, or, that such documents are not ascertainable over the course of several months. Mr. Negley has concerns about the thoroughness and accuracy of the searches being performed.

4. Failure to Produce Documents from the Western District of New York

Mr. Negley is troubled by the DOJ's failure to produce documents from the Western District of New York. As this Court is aware, in the previous FBI Lawsuit, documents were produced to Mr. Negley by the FBI – a division of DOJ – that indicated that Mr. Negley's FBI file was labeled as "SUB S-1575." *See Negley-100* (produced by the FBI). That was confirmed by the deposition testimony of FBI Assistant Special Agent in Charge Clifford Holly taken in the FBI Lawsuit:

Q: But would you anticipate that that [sic] Sub S 1575 would relate to Mr. Negley or could that relate to someone else?

A: **No, I would – because it's on Exhibit Number 4 relative to the investigation conducted and the interview conducted with Mr. Negley, that that would be attributed to Mr. Negley, 1575. I didn't see that.**

...

A: **That's what – I had seen that and that's what was most confusing to me is I'm seeing an S with 7575 and then I've got Exhibit 3 1575 but now that you point out on what's Exhibit 4, now it makes sense. 1575 as a suspect sub file makes sense.**

Q: For Mr. Negley?

A: **For Mr. Negley.**

Deposition of Clifford Holly, P. 115-116 (bold in original).

On Negley-100, the FBI document previously produced, the file is clearly marked as "S-1575" meaning it is a file that pertains to Mr. Negley, as confirmed by Mr. Holly of the FBI. On the next page, Negley-101, under the DOJ seal, there is a Memorandum discussing referencing the "Buffalo teletype to San Francisco/UTF dated January 7, 1994" which presumes to mean the document directly following, Negley-102. Without re-stating the teletype in its entirety, it appears that the FBI investigated a *different suspect in the Buffalo, New York area* who was also

assigned the suspect number S-1575. As the original DOJ/FBI memorandum concludes, that “[redacted] has been fully identified, and the information provided does not meet the predication to initiate a specific suspect investigation. Unless new information is developed regarding [redacted] this will remain unassigned in a suspect dead file. Buffalo division will be advised separately by UTC regarding this.” Negley 102.

The FBI file never explained how a suspect in Buffalo to whom Mr. Negley had no connection of any kind ended up with the same suspect number – 1575 – as Mr. Negley.

While none of these documents explicitly reference DOJ files in the Western District of New York, it is reasonable to assume that Mr. Negley’s S-1575 FBI file had some analog or correspondence with the USAO in Buffalo. As with the failure to produce documents relating to the Fax Cover Sheet in more than one jurisdiction, it is difficult to believe that the USAOs of jurisdictions actively investigating Mr. Negley do not have any response documents. Mr. Negley has concerns about the adequacy of the searches done in this jurisdiction.

5. Failure to Produce Documents from the District of Colorado

Equally troubling is the failure of DOJ to produce *any* documents from the District of Colorado. On February 26, 2016, we received correspondence from the USAO for the District of Colorado, informing Mr. Negley that no documents were found.

This is troubling because Mr. Negley and his energy company, JLN Solar, were issued a subpoena that involved AUSA Chris Larson in the USAO in Colorado. Correspondence between the USAO in Colorado and Mr. Negley’s counsel evidences the fact that Mr. Negley and his company were trying to comply with a subpoena originated by the Department of Energy (“DOE”) and clearly involved the USAO in Colorado. Mr. Negley is the founder and CEO of JLN Solar and his name appears, at a minimum, in e-mails, various documents, and in the log that was produced by JLN Solar to the USAO in Colorado.

Thus, the failure to produce a single document – out of an office that clearly has been involved in prior investigation/litigation with Mr. Negley and his company – is concerning. Mr. Negley has appreciated DOJ counsel’s willingness to attempt to resolve his pending FOIA requests, but the failure to produce documents – both in California and Colorado – where Mr. Negley knows documents exist, calls into question (1) whether a good faith effort is being made by those conducting the searches; and (2) whether methods which can reasonably be expected to produce the requested information are being used. As such, Mr. Negley questions whether the searches being done in response to his FOIA requests are adequate.

6. Mr. Negley Has a Right to the Requested Information

Lastly, Mr. Negley simply wants to ascertain what information his government possesses regarding him stemming from the initial mistaken belief that Mr. Negley was the Unabomber. Mr. Negley has expended significant resources over more than a decade attempting to obtain access to this information, only to encounter roadblocks at every turn. The failure to produce documents, despite Mr. Negley’s cooperation, assistance, and agreement to stay the case, raises serious concerns for Mr. Negley.

C. PLAINTIFF’S PROPOSAL FOR FURTHER RESOLUTION

Mr. Negley proposes that the DOJ complete all outstanding document productions by April 30, 2016, which is 45 days past the date all documents were originally due. Following production of the documents, Mr. Negley proposes that the DOJ produce for deposition custodians of documents and those in charge of searches for USAOs in Texas, California, New York, and Colorado so as to inform Mr. Negley on the adequacy of the searches in those jurisdictions, with further guidance from this Court to follow such testimony.

III. STATEMENT OF DEFENDANT DOJ

A. GENERAL STATEMENT

The parties agreed to a stay in this matter because documents produced pursuant to the July 2015 FOIA Request will likely contain the documents responsive to the request that is the subject of this lawsuit, because the July 2015 FOIA Request is more expansive. As noted above, EOUSA has tasked multiple offices with the search for records and has received thousands of pages from the W.D. of Texas and expects to receive records from the District of Columbia. Presently, the number of pages of records that EOUSA expects to receive from the District of Columbia is unknown. Plaintiff's complaint that he has only received records from one USAO is result of the fact that the first search – conducted in the W.D. Texas – retrieved a large amount of documents; which EOUSA must review and process before it can process records it receives from another District. ³

Additionally, while Plaintiff asserts his belief that certain USAOs *should* have records, he has no factual basis for this and his assertions are likely based, in part, on a fundamental misunderstanding of the federal government's functioning. Simply because the Federal Bureau of Investigation within a federal district conducts an investigation, it does not indicate that the USAO within that district would receive materials related to the investigation, or even be informed that an investigation was conducted. Consequently, Plaintiff's complaint that the USAO in the W.D. of New York should have documents because the FBI conducted an investigation that relates to Plaintiff does not provide any basis for stating that the search was inadequate.

³ If Plaintiff is no longer interested in receiving materials from the W.D. Texas, then he must inform EOUSA and/or AUSA Seabrook in writing that he would prefer they *not* review and produce those pages from the W.D. Texas so that the EOUSA can review materials from another district when those materials are received.

Additionally, and quite significantly, with respect to Plaintiff's assertions that certain documents should have been located and produced by the USAO in the W.D. New York, District of Colorado, or other Districts, that assertion is irrelevant to Plaintiff's lawsuit because this lawsuit relates *only* to the April 2014 request for documents related to a Unabomber-related investigation. When the parties agreed to the Stay, the parties did not incorporate the July 2015 FOIA Request into this lawsuit nor did they agree to amend the Complaint to add the July 2015 FOIA Request to this lawsuit. Accordingly, because Plaintiff's grievances regarding what he believes to be inadequate searches for materials appears to solely relate to the subject of the July 2015 FOIA Request, those grievances still must be addressed through the FOIA administrative appeal process, not this Court.

B. PROPOSED NEXT STEPS

Defendant proposes that the Court extend the current stay until May 31, 2016. Defendant is working to produce documents on a rolling basis and will produce documents as quickly as possible; however, Defendant should not be forced to use its limited resources to conduct the review and processing of two FOIA requests for this Plaintiff when those requests substantially overlap and doing so would require using a disproportionate amount of resources to process Mr. Negley's requests to the detriment of other FOIA requests pending with EOUSA. Defendant requests until May 31, 2016, to review and produce the approximately 3100 pages of materials remaining from the W.D. Texas.

Defendant cannot predict how long it will take to produce the documents from the District of Columbia, because Defendant does not yet have position of those documents and does not know how many pages are contained in those documents.

Date: April 15, 2016

Respectfully Submitted,

/s/ Clarence Y. Lee

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