



The New York Times  
Company

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December 2, 2021

**MEMO ENDORSED**

**VIA ECF**

The Honorable Katherine Polk Failla  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, New York 10007

Re: *The New York Times Company v. United States Department of State, No. 21-cv-06346*

Dear Judge Failla:

I am counsel for plaintiff The New York Times Company (“The Times”) in the above-captioned action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I submit this joint letter on behalf of all parties pursuant to the Court’s August 17, 2021 Order (Dkt. No. 7). For the reasons set forth below, the parties respectfully submit that the conference scheduled for December 10, 2021 be adjourned. The parties have not previously made any requests for adjournment or extension of time.

On July 26, 2021, The Times filed a complaint initiating this action against the United States Department of State (“State Department”). *See* Dkt. No. 1. Pursuant to FOIA, The Times seeks “a copy of all the ITAR licenses and other approvals by the State Department from 2012–2021 for a company called ‘Tier One Group,’ which is an Arkansas-based special operations training company.” *Id.* Venue and jurisdiction are proper because The Times’s principal place of business is in New York.

On September 3, 2021, the Government filed its answer to The Times’s complaint. *See* Dkt. No. 8. The Court scheduled an initial pretrial conference to be held at 3:30 PM on December 10, 2021. *See* Dkt. No. 7.

The parties have met and conferred concerning this matter. On December 1, 2021, the State Department informed The Times that it would be

withholding the requested documents in full pursuant to Exemptions 3 and 4. *See* 5 U.S.C. § 552(b)(3), (4). Specifically, the State Department’s position is that “ITAR licenses and other approvals by the State Department” all fall within section 12(c)(1) of the Export Administration Act of 1979, which is specifically incorporated by reference into the Arms Export Control Act, 22 U.S.C. § 2778(e). *See* 22 C.F.R. § 126.10(b).

In light of this information, The Times is currently considering whether to proceed with this case. The parties respectfully request that the conference be adjourned, and that the Court permit the parties to submit a further status report on December 10, 2021, advising the Court of The Times’s decision on whether to proceed with this case and proposing a summary judgment briefing schedule if needed.

As this is a FOIA action, the parties anticipate that any legal issues will be resolved through cross-motions for summary judgment without discovery. *See, e.g., Wood v. Fed. Bureau of Investigation*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. Dep’t of Just.*, 19 F.3d 807, 812–13 (2d Cir. 1994). Accordingly, the parties respectfully request that they not be required to submit the proposed case management plan and scheduling order called for in the Court’s August 17, 2021 Order (Dkt. No. 7).

We thank the Court for its consideration of this submission.

Respectfully submitted,

/s/ David McCraw

David McCraw

cc: All counsel of record (via ECF)

Application GRANTED. The conference scheduled for December 10, 2021, is hereby ADJOURNED *sine die*. The parties shall instead file a joint letter regarding the status of this matter on or before December 10, 2021. Furthermore, the Court relieves the parties of their obligation at this time to file a proposed case management plan and scheduling order.

The Clerk of Court is directed to terminate the pending motion at docket entry 9.

Date: December 3, 2021  
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Katherine Polk Failla". The signature is written in a cursive, flowing style.

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE