



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 26, 2022

MEMO ENDORSED

BY ECF

The Honorable Valerie E. Caproni
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

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Re: *The New York Times Co. et al. v. Federal Bureau of Investigation*,
21 Civ. 10534 (VEC)

Dear Judge Caproni:

Jointly with counsel for plaintiffs, I write respectfully on behalf of the Federal Bureau of Investigation (“FBI” or the “government”) to provide an overview of this Freedom of Information Act case and a status report; to respectfully request that we be relieved of the obligation to file a proposed case management plan; and to respectfully request that the initial pretrial conference currently set for February 11 be adjourned without date, and instead that the parties file a status report by March 4, 2022.

Summary of the case. As required by the Court’s December 13, 2021 Order, ECF No. 7, the parties here provide an overview of the case.

1. Brief description of the case: this is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiffs made a request to the FBI seeking certain records dating from 1968 to 1972 relating to the FBI’s Counterintelligence Program. *See* Complaint, Exhibit A, ECF No. 1-1 (letter making request). Both parties agree that the legal and factual issues most important to resolving the case will be (1) the adequacy of the government’s searches for responsive records, and (2) whether any withheld responsive information meets one or more FOIA exemptions.
2. Contemplated motions: Neither party proposes any motion practice at this time. If any disputes arise, the parties anticipate that those issues will be resolved either by agreement or, if necessary, on cross-motions for summary judgment.
3. Basis for subject matter jurisdiction: Plaintiffs assert that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). The government does not contest jurisdiction.
4. Prospect for settlement: The parties are working in an effort to resolve any issues that may arise without the Court’s intervention.

Status report. The parties have conferred by phone and email about the limitations on the FBI’s ability to search for potentially responsive records based on the current wording of

Honorable Valerie E. Caproni
January 26, 2022

Page 2

Plaintiffs' request. In particular, FBI records from the late 1960s and early 1970s—the time period of Plaintiffs' request—are generally maintained in paper, not electronic, form. They are therefore not generally text-searchable. The FBI has certain limited electronic indexes of these paper records. The parties are discussing potential searches that are feasible given the way in which any responsive records are stored—for example, searches that are tied to specific individuals.

Case management plan; request to cancel initial conference. The Court has ordered that the parties prepare a civil case management plan and scheduling order consistent with the Court's individual rules. We respectfully request that we be relieved of this obligation. Because this is a FOIA action, it is not generally subject to civil discovery. Instead, this case will be resolved either through the parties' agreement, or by the submission of cross-motions for summary judgment on the basis of agency declarations. *Carney v. DOJ*, 19 F.3d 807, 812 (2d Cir. 1994). Accordingly, most of the fields in the proposed case management plan are not relevant to this case.

Because the parties have worked productively to discuss the relevant issues, and because no discovery schedule is necessary, we respectfully request that the Court cancel the initial pretrial conference. Instead, we respectfully propose that the parties provide the Court with a joint status report in approximately one month—or by March 4, 2022.

We thank the Court for its attention to this matter.

Respectfully submitted,

DAMIAN WILLIAMS
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cc: counsel for Plaintiffs (via ECF)

Application GRANTED. The Initial Pre-Trial Conference currently scheduled for Friday, February 11, 2022, at 3:30 p.m. is hereby ADJOURNED *sine die*. The parties are relieved of the obligation to submit a Case Management Plan at this time. The parties must submit a joint status update of not longer than 5 pages not later than March 4, 2022.

SO ORDERED.



1/26/22

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE