

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

AMERICAN OVERSIGHT,)	
)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 19-cv-2563 (TJK)
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
)	
<i>Defendant.</i>)	

DEFENDANT’S UNOPPOSED MOTION TO VACATE BRIEFING SCHEDULE

Defendant U.S. Department of Justice (“DOJ”), by and through its undersigned counsel, respectfully moves the Court to (a) vacate the briefing schedule adopted in the Court’s March 20, 2023 minute order, and (b) direct the parties to file a joint status report within 30 days updating the Court on the parties’ progress. Good cause exists for such an order.

1. The FOIA requests that form the basis of this complaint seek, broadly speaking, records reflecting communications between (1) the Office of the Attorney General (OAG) or Office of the Deputy Attorney General (ODAG) and (2) U.S. Attorney John Durham (the “Main Justice Communications FOIA”), and records reflecting communications between (1) U.S. Attorney Durham, OAG, or ODAG and (2) the White House or Congress, regarding matters U.S. Attorney Durham was directed to review or investigate which are outside his ordinary remit, including matters related to the origins of investigations of President Trump and his campaign for the presidency (the “White House and Congressional Communications FOIA”). Compl. ¶¶ 8, 12. The FOIA requests were sent to DOJ’s Office of Information Policy (“OIP”) and the Executive Office for United States Attorneys (“EOUSA”).

2. DOJ searched for records responsive to these requests, reviewed them, and finished its initial production to Plaintiffs in May 2021. After further consultation with Plaintiff, DOJ made a supplemental production in May 2022. To date, across all requests at issue in this case, DOJ has produced 344 pages with partial withholdings pursuant to one or more FOIA exemptions, including Exemption 7(A). DOJ has also withheld in full 4,567 pages and one voicemail audio file based on an assertion of Exemption 7(A).¹

3. After meeting and conferring, the parties were unable to resolve their disputes regarding Defendant's assertion of Exemption 7(A) to withhold these documents in whole or in part. *See* ECF No. 34. The parties therefore requested—and the Court adopted—a partial summary judgment briefing schedule “regarding Exemption 7(A)” without “foreclos[ing] Defendant's raising of any other basis for withholding documents responsive to Plaintiff's request” or Plaintiff's ability to dispute any such assertion. ECF No. 34; Minute Order (Mar. 20, 2023).

4. Under this briefing schedule, Defendant's motion for partial summary judgment would be due today, May 12, 2023.

5. Upon further consideration, Defendant has decided to withdraw its assertion of Exemption 7(A) as a basis for withholding records (or portions of records) identified to date as responsive to Plaintiff's requests. Defendant will therefore reprocess the identified records and make supplemental responses to Plaintiff. Defendant will make the first such supplemental response to Plaintiff by June 1, 2023.

¹ DOJ also asserted Exemptions 1, 3, 5, 6, 7(C), 7(D), and 7(E). Additionally, DOJ informed Plaintiff that other exemptions may apply to documents withheld pursuant to Exemption 7(A).

6. Because Defendant has retracted its assertion of Exemption 7(A) as a basis for withholding the documents currently at issue, proceeding with the summary judgment briefing regarding that assertion would be an unnecessary waste of Court and party resources.

7. Prior to filing this motion, Defendant conferred with Plaintiff, and Plaintiff expressed that it does not oppose the motion.

8. Accordingly, the parties request that the Court:

- a. Vacate the March 20, 2023 briefing schedule; and
- b. Direct the parties to file a joint status report within thirty days of the Court's order, updating the Court on the parties' progress in resolving these matters.

9. A proposed order follows.

Dated: May 12, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MARCIA BERMAN
Assistant Director, Federal Programs Branch

/s/ Christopher A. Eiswerth
Christopher A. Eiswerth (DC Bar #1029490)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel.: (202) 305-0568
Email: christopher.a.eiswerth@usdoj.gov

Counsel for Defendant