

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

JASON LEOPOLD,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

Civil Action No. 15-cv-123 (RC)

FIRST DECLARATION OF ERIC F. STEIN

Pursuant to 28 U.S.C. § 1746, I, Eric F. Stein, declare and state as follows:

1. I work directly for the Deputy Assistant Secretary (DAS) for Global Information Services (GIS) of the United States Department of State (“State”). In this capacity, I serve as a senior advisor and deputy to the DAS on all issues related to GIS offices and programs. I oversee all aspects of State’s effort to review, process, and produce the non-exempt portions of the emails provided to State by former Secretary Clinton, including the review and referral of documents to appropriate offices and agencies, and the posting of the documents on the Freedom of Information Act (“FOIA”) website every month. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties.

2. The purpose of this declaration is to respond to the Court’s February 9, 2016 minute order, issued following a status conference held earlier that day, in which the Court ordered State to “file a status report explaining, in the detail described at the hearing, its position that the pages of former Secretary Clinton’s e-mails that have already proceeded through final, internal State Department review cannot be publicly posted until February 18, 2016” in an

interim production. The Court further ordered State to “identify what, if any, alternative methods of production might permit production to, or access by, Plaintiff before February 18.”

3. Based on the Court’s comment at the conclusion of the hearing that State should expect to make an interim production on February 18, if not sooner, State has started the process for making an interim production and has expedited that process as much as possible without jeopardizing completing the production of the Clinton emails by February 29, 2016. Since the Department of Justice was last briefed before the hearing, the State Department team working on the Clinton email project has made significant progress on the documents that are available for an interim production. For example, members of the team worked on removing internal markings, as described in para. 6, *infra*, as well as administrative paperwork required for any classification upgrades as described in para. 10, *infra*. The hours estimates provided herein reflect the work remaining to be done as of the signing of this declaration. Moreover, additional resources added to an IT contract have also allowed State to increase the speed at which the work for the interim production can be done. The hour estimates that follow reflect these additional resources, of which I was unaware at the time that I prepared the Justice Department for the February 9 hearing. Based on these changed circumstances, State now anticipates making the interim production of the documents discussed during the hearing on Saturday, February 13, 2016, via a posting on its FOIA website. That production is expected to consist of approximately 550 documents (approximately 14% of the remaining pages to be posted), which are the documents that have already proceeded through final, internal State Department review.

4. This declaration describes the steps that these documents must go through in order to be posted on the FOIA website, and, roughly, how much time those steps take, as of the time of the signing of this declaration, in support of State’s proposal to make this interim production

on its website on February 13, as of the time of the signing of this declaration. The time estimates in this declaration depend on several variables, but most importantly on the need to continue devoting sufficient resources to completing the remaining 86% of the project by February 29.

5. Posting documents on State's FOIA website involves several steps, and State's ability to efficiently carry out these steps is sometimes limited by the available technology and by the availability of personnel who are sufficiently familiar with the technology. The FOIA system where the documents reside, named FREEDOMS, can be extremely rigid and slow, making the necessary steps in the process more time-consuming than one might otherwise expect. For example, as described herein, most steps must be applied document-by-document, as opposed to in an automated or batch fashion.

6. Where, as with the documents that are the subject of this declaration, feedback from the legal review has been provided to the FOIA office, and FOIA staff has modified redactions in FREEDOMS in accordance with that feedback, the final quality control process and posting begins. This process, which cannot be automated, starts with the manual, document-by-document process of removing internal markings that are used for tracking purposes during the review process. It could take anywhere from two to four hours¹ to complete this task for the documents that are the subject of this declaration, depending on the availability of staff to do this work.

7. Once this process of removing internal control markings is completed, copies of the documents must be prepared for production. This posting process is an involved one,

¹ This hours estimate, and those that follow, are total hours for completion of the relevant task, with an appropriate number of people assigned to complete the task in a timely fashion while not diverting so many resources as to jeopardize the final production.

particularly because the review software resides solely on State's classified network, and several steps are involved in transferring documents from that system to a public-facing website while still protecting sensitive national security information.

8. The first step of the posting process for the documents is to finalize the redactions on those documents. This is known as "burning" the document. Before any document can be produced, the proposed redactions, which appear in grayscale during the review process, need to be fully "burned" to the document so that the redacted information does not appear in the version produced to the public. It will take about an hour to burn this volume of documents.

9. After "burning" occurs, a system developer works to migrate a copy of the burned document out of FREEDOMS onto another review site on the classified network. It is on this classified review site that FOIA staff performs the final quality control checks. It would take approximately two hours to migrate this volume of documents.

10. Once this migration is complete, the documents must go through a final quality control check, during which State looks for several things. This check ensures that redactions to each document are consistent with redactions made in other documents. For example, many messages appear multiple times as part of longer email chains, and some emails that are not part of the same chain contain similar or identical information. The quality control check also helps ensure that redactions are marked with the proper exemptions. If there is information that is being redacted using the B1 exemption, further administrative steps are required to ensure that information requiring classification is properly marked as such. This includes the application of classification stamps which identify the level of classification of the information in the document; these stamps are checked to ensure that they show the appropriate level of classification. Based on my prior experience managing this process, I estimate that about four

hours of quality control check time would be needed for the documents that are the subject of this declaration. If any changes are needed to the documents, another hour or two may be needed since documents would need to be unburned so that they can be changed, and then they would need to be burned again. For any documents on which changes were made, State would need to spend anywhere from one to several minutes reviewing that document and ensuring that those changes were now properly reflected. Thus, the total potential time needed for this process could be upwards of six hours.

11. After the documents have completed this final quality control check, the FOIA office then begins the process of transferring them from the classified system to the unclassified system. This is a manual process, requiring a person to do the transferring, and cannot be automated. The specific details of how this is accomplished implicate systems security concerns, and are not appropriate for discussion in a public filing. This migration process is estimated to take approximately one hour.

12. Once the documents have been transferred to the unclassified system, they must be copied to servers where they will reside when they are posted on State's public-facing FOIA website. This will take another two hours to complete for these documents.

13. Prior to the website being made "live" and accessible to the public, a web developer works to test for and troubleshoot any problems that may have arisen during the transfer process as well as any issues that may occur when the documents become publicly available. This will require approximately an additional hour to complete.

14. Accordingly, the total amount of time required for the team to complete the posting of the interim production could be upwards of 16 hours, approximately two 8-hour days. State believes that its proposal of making the interim production on Saturday, February 13,

provides time to address any additional problems that may arise, as have occurred in the past at this final stage in the process.

15. As an alternative to making this interim production on its website, State could print out the documents and produce them to Plaintiff in paper one day earlier, by the night of Friday, February 12, 2016. This process would require all the steps described in paragraphs six through ten, as well as the time required to then print, quality check, and package hard copies of these documents. In order to print documents from FREEDOMS, an employee must open and print each document individually. State would mail the package to Plaintiff by overnight mail, such that Plaintiff would receive it on the same day as he would if the documents were posted on the FOIA website. For that reason, State proposes that it make the interim production via its website and not by printing out the documents and sending them to plaintiff. Although Plaintiff's counsel has offered to pick a package of printouts up at State on the day it is available, Pl.'s Notice of Feb. 10, 2016 (ECF No. 53), such a hard copy production and delivery would divert resources that are required for the final production, while not providing the public access that would be available the next day under State's plan for an interim posting on its website.

16. As a further update to State's motion seeking until February 29 to complete posting of the Clinton emails, State continues to receive responses from agencies on a daily basis. More than 1,000 pages of responses have been provided to State over the past two days. Work is being done to make sure that each document has been fully reviewed by each agency so that any necessary changes can be made in FREEDOMS. While we will be working to make an interim production for the roughly 14% of the collection being posted on February 13, State will continue the work that needs to be done to process the remaining documents by February 29.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this tenth day of February 2016, Washington, D.C.



Eric F. Stein