

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER FOUNDATION,)	
)	
Plaintiff,)	
)	
v.)	
)	Civ. A. No. 1:07-cv-00656 (JDB)
UNITED STATES DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	

**NOTICE OF FILING OF PROPOSED SCHEDULING ORDER AND SECOND
DECLARATION OF DAVID M. HARDY**

Pursuant to the Court’s Minute Order of May 21, 2007 (“May 21st Order”), defendant respectfully files the following: (1) Defendant’s Proposed Scheduling Order; and (2) the Second Declaration of David M. Hardy (“Second Hardy Declaration”).

Pursuant to the May 21st Order, government counsel met twice with plaintiff’s counsel in an effort to reach agreement on a schedule. On May 23rd, counsel met at the plaintiff’s counsel’s office and, on May 24th, counsel conferred telephonically. Counsel were ultimately able to agree only on one minor issue which has the potential of reducing the number of pages responsive to plaintiff’s request. Counsel agreed that plaintiff’s request would be interpreted to exclude any material available from public sources – e.g., newspaper articles or other publicly available materials.

Because the parties were not able to agree on a joint proposed schedule, defendant respectfully submits the attached Proposed Scheduling Order. Furthermore, pursuant to the May 21st Order, defendant submits the attached Second Hardy Declaration. In addition to setting forth the progress made in processing plaintiff’s FOIA request since Mr. Hardy’s first

declaration, Declaration of David M. Hardy, filed on April 24, 2007 (“First Hardy Declaration”), the Second Hardy Declaration details the significant measures taken by the Federal Bureau of Investigation (“FBI”) to accomplish expedited processing of this extraordinarily voluminous request. Notwithstanding that this request will likely involve the scoping and processing of the largest volume of documents of any request received by the FBI since September 11, 2001, the FBI has made very significant staffing decisions that it expects will enable it to process the records on a rolling basis, with the first response/release to be made within 45 days of the entry date of the Proposed Scheduling Order and subsequent responses/releases made at 30 day intervals thereafter. The FBI expects – based upon its current Freedom of Information Act (“FOIA”) caseload and the staffing arrangements outlined in the Second Hardy Declaration – that it will be able to process approximately 2,000 pages within each 30 day interval.¹

As outlined in the First Hardy Declaration, by August 24, 2007, the FBI expects to have completed its search, and therefore to be able to estimate the total number of pages of records that are potentially responsive to plaintiff’s FOIA request. In addition, by that date the FBI expects to have completed processing of approximately 4,000 pages over the course of two rolling responses/releases. Accordingly, defendant respectfully submits that on or after August 24, 2007, it expects to be able to provide the Court with more detailed information about how long the FBI will need to complete processing of plaintiff’s FOIA request. Defendant further submits that it would be premature to set deadlines for the filing of a Vaughn declaration and

¹ In the event that the FBI becomes unable to continue devoting the current level of resources to processing records responsive to plaintiff’s request, see Second Hardy Decl. ¶ 13, defendant will notify plaintiff and the Court of what effect such a loss of resources might have on this schedule.

dispositive motions until a later date, when the parties know more about the number of pages at issue and can reasonably agree to a practicable schedule.

The First and Second Hardy Declarations set forth the complexity of the task of gathering, scoping, processing, and reviewing for classification the particular documents that are potentially responsive to plaintiff's request. Accordingly, defendant believes that the schedule outlined above and in the attached Proposed Scheduling Order complies with the statutory requirement that expedited processing be completed "as soon as practicable."

WHEREFORE, defendant respectfully requests that the Court enter the Proposed Order attached hereto.

Respectfully submitted,

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