

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANT’S MOTION FOR CLARIFICATION,
OR, IN THE ALTERNATIVE, FOR AMENDMENT OF JUNE 15, 2007 ORDER**

In its Order dated June 15, 2007, the Court set a schedule for the expedited processing of Plaintiff’s Freedom of Information Act (“FOIA”) request by the Federal Bureau of Investigation (“FBI”). The Order described this schedule as “more expedited than DOJ requests, but not quite as expedited as EFF’s latest proposal.” June 15, 2007 Order, ¶ 3. The FBI has worked diligently to comply with the Order as well as with the statutory and regulatory requirements that it process plaintiff’s expedited request “as soon as practicable,” pursuant to 5 U.S.C. § 552(a)(6)(E)(iii) and 28 C.F.R. § 16.5(d)(4), and is on track to meet the first response/release date of July 5, 2007, as set by the Order. For the reasons set forth below, however, Defendant respectfully requests that the Court either clarify or amend its June 15, 2007 order to specify that by July 5, 2007 Defendant shall process 1,500 pages of records.

1. The June 15, 2007 Order sets a deadline of July 5, 2007 for the “first response/release” of records. June 15, 2007 Order at ¶ 4(b). The Order further mandates that the “processing, and resulting responses and releases, shall be on a ‘rolling basis’ as agreed by EFF and DOJ.” *Id.* at ¶ 4(a). In addition, the Order specifies that “subsequent responses/releases shall

be provided every 30 days,” id. at ¶ 4(c), and that “the FBI shall process 2500 pages every 30 days.” Id. at ¶ 4(d). However, the Order does not specify how many pages the FBI is to process by the first response/release date of June 15, 2007. See id. at ¶4(b).

The FBI has worked diligently to process the records as soon as practicable, and anticipates that by July 5, 2007 it will have processed 1,500 pages. This number of pages is consistent with the FBI’s own projections as to how fast it would be able to process the records, taking into account the extraordinary staffing assigned to this matter in an effort to process the request as soon as practicable. See 2nd Hardy Decl. ¶ 11 (anticipating that the FBI would be able to process 2,000 pages every 30 days, with the first release occurring within 45 days of the entry of a scheduling order). Because the June 15, 2007 Order is ambiguous as to the number of pages it requires the FBI to process by July 5, 2007, Defendant respectfully requests that the Order be amended to make clear that the FBI is to process 1,500 pages by this first response/release date and 2,500 pages on each subsequent response/release date every 30 days thereafter.

2. Alternatively, in the event that the Order was intended to require the processing of 2,500 pages by July 5, 2007, Defendant respectfully requests that the Order be amended to specify that 1,500 pages must be processed by that date. This request is due to unanticipated start-up delays the FBI has encountered in processing the first set of records. See Third Declaration of David M. Hardy (“3rd Hardy Decl.”) (attached hereto as Exhibit A), ¶ 7. In particular, the FBI has had to spend more time than anticipated revisiting the classification of certain pages within this first set of records. Id. Because of certain information made public by the Office of Inspector General (“OIG”) Report released in March 2007, the FBI has had to re-review the classification of many of the pages within the first set of records being processed. Id.

This re-review is likely to result in the release of some pages and portions of pages that were previously considered entirely classified and would have been withheld. 3rd Hardy Decl., ¶ 7. In order to comply with the Court's July 5, 2007 deadline, the FBI assigned overtime work to ten employees in the Classification Unit and six employees in the Disclosure Unit, which will enable the FBI to process approximately 1,500 pages by the first response/release deadline on July 5, 2007. Id. However, notwithstanding the extraordinary staffing arrangements made by the FBI, the FBI will not be able to process more than 1,500 pages by this first deadline. Accordingly, in the event that the Court intended to require that 2,500 pages be processed by July 5, 2007, the FBI must respectfully request that the Order be amended in part to require that 1,500 pages be processed by July 5, 2007.

3. The FBI does not anticipate that the start-up delays that have affected its processing of the first set of records will affect its ongoing processing of plaintiff's FOIA request on a rolling basis. See 3rd Hardy Decl., ¶ 8. Defendant therefore does not foresee that the difficulties described above will affect its ability to process 2,500 pages by August 5, 2007, and 2,500 pages within each 30-day period thereafter, as specified by the June 15, 2007 Order. See id.; June 15, 2007 Order, ¶ 4(c) & (d).

Pursuant to Local Rule 7(m), government counsel has discussed the instant motion with Plaintiff's counsel, and has been informed that Plaintiff does not consent to the relief requested by Defendant in this motion but does not intend to file a written opposition to it.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that the June 15, 2007 Order be clarified or, in the alternative, amended to specify that Defendant is required to process no more than 1,500 pages by the first response/release deadline of July 5, 2007.

Dated: June 27, 2007

Respectfully submitted,

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