

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

STATE OF CALIFORNIA,

Plaintiff,

v.

ENVIRONMENTAL PROTECTION
AGENCY,

Defendant.

Civil Action No.: 17-1626 (JEB)

JOINT STATUS REPORT

Pursuant to this Court's February 6, 2019 Minute Order, the Parties, Defendant, the Environmental Protection Agency ("EPA" or "Defendant"), jointly with Plaintiff, the State of California ("California" or "Plaintiff"), file this status report.

1. At issue is a Freedom of Information Act ("FOIA") request that Plaintiff submitted on April 7, 2017, that sought thirty-two categories of records related to "(a) the process EPA has undertaken to ensure that Administrator Pruitt is in compliance with federal ethics regulations and obligations; and (b) EPA's policies and procedures for determining who (if anyone) can assume the powers of the Administrator if he is recused or disqualified from participating in a matter." ECF No. 1 ¶ 15.

2. On August 11, 2017, Plaintiff filed its Complaint in the instant matter. ECF No. 1.

3. On October 6, 2017, the Parties filed a Joint Status Report regarding further proceedings in this matter. *See* ECF No. 11. In that Report, Defendant explained that Plaintiff's request can be divided into three categories—(1) those subparts of Plaintiff's request for which initial searches have been completed; (2) those subparts for which searches were underway; and (3) those subparts for which additional information was sought from Plaintiff. *See id.* ¶ 5.

4. For the first and second categories (subparts 1, 4, 5, 6, 7, 8, 10, 11, 13, 15, and 25–32 of Plaintiff’s FOIA request), Defendant issued its final response to Plaintiff on November 15, 2017. *See id.* ¶ 6.

5. For the third category (subparts 2, 3, 9, 12, 14, and 16–24 of Plaintiff’s FOIA request), the Parties stated in their November 29, 2017 Joint Status Report that Defendant had completed its search and had identified approximately 14,000 potentially responsive records. *See* ECF No. 12 ¶ 11.

6. As noted in the November 29, 2017 Joint Status Report, the Parties agreed to a schedule whereby Defendant would process those potentially responsive records on a rolling basis, releasing responsive, non-exempt records to Plaintiff on the fifth of every month.¹ *See id.* ¶ 12. The Parties further noted that Defendant agreed to complete its release of responsive, non-exempt records to Plaintiff no later than May 7, 2018. *See id.*

7. On January 5, 2018, Defendant issued an interim release of records to Plaintiff. For this release, Defendant processed approximately 2,000 records. Of those, Defendant identified 52 records that were responsive, 18 of which were released in full and 34 of which were released in part. For those portions released in part, Defendant withheld information pursuant to FOIA Exemptions 6 and 5 (deliberative process privilege and attorney work product privilege).

8. On February 6, 2018, Defendant issued its next interim release of records to Plaintiff. For this release, Defendant processed approximately 3,000 records. Of those, Defendant identified 41 records that were responsive, 17 of which were released in full and 20 of which were

¹ Plaintiff agreed to this schedule, while reserving “the right to request the Court to modify the above record release schedule if it appears that Defendant is not making reasonable efforts to produce records monthly on a rolling basis or to complete its response to Plaintiff’s FOIA request by the May 7, 2018, deadline.” *Id.* ¶ 14; *see also id.* (reserving the right to request the Court to set a briefing schedule).

released in part. For those portions released in part, Defendant withheld information pursuant to FOIA Exemptions 6 and 5 (deliberative process privilege). Four records were withheld in full pursuant to FOIA Exemption 5 (deliberative process privilege).

9. On March 5, 2018, Defendant issued its next interim release of records to Plaintiff. For this release, Defendant processed approximately 5,000 records. Of those, Defendant identified 58 records that were responsive, 13 of which were released in full, 26 of which were released in part, and 19 of which were withheld in full. For the records or portions of records withheld, Defendant withheld information pursuant to FOIA Exemptions 5 (deliberative process privilege), 6, 7(c), and 7(f).

10. On April 5, 2018, Defendant issued its next interim release of records to Plaintiff. For this release, Defendant processed approximately 3,000 records. Of those, Defendant identified 13 records that were responsive, 5 of which were released in full, 4 of which were released in part, and 4 of which were withheld in full. For the records or portions of records withheld, Defendant withheld information pursuant to FOIA Exemptions 5 (deliberative process privilege), 6, 7(c), and 7(f).

11. On May 7, 2018, Defendant issued what it deemed to be its final release of records to Plaintiff. For this release, Defendant processed approximately 1,000 records. Of those, Defendant identified 148 records that were responsive, 60 of which were released in full, 51 of which were released in part, and 37 of which were withheld in full. For the records or portions of records withheld, Defendant withheld information pursuant to FOIA Exemptions 5 (deliberative process privilege and attorney client privilege), 6, 7(c), and 7(f).

12. The Parties conferred about Defendant's response to Plaintiff's FOIA request and, during the conferral process, Defendant produced additional records. Plaintiff subsequently

indicated that it did not intend to challenge Defendant's response, but rather indicated that the only remaining issue is its demand for attorneys' fees and costs.

13. Plaintiff sent Defendant a demand for attorneys' fees and costs along with supporting documentation on September 21, 2018. Since then, the Parties have been discussing that fee demand. During the recent lapse in appropriations, the Parties were unable to confer about the fee demand as the undersigned Assistant United States Attorney was placed on furlough status during the pendency of the lapsed appropriations. Now that appropriations have been restored, the Parties have resumed negotiations and respectfully request that the Court enter the accompanying Proposed Order, which provides that they will file another status report by March 22, 2019.

February 20, 2019

Respectfully submitted,

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[PROPOSED] ORDER

Upon consideration of the Parties' Joint Status Report, and the entire record herein, it is hereby

ORDERED that the Parties shall file a joint status report by March 22, 2019.

SO ORDERED.

Date

United States District Judge