



U.S. Department of Justice

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February 4, 2020

FILED VIA ECF

Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *CLEAR v. U.S. Customs & Border Prot.*, No. 19-CV-7079 (EK/RER)

Dear Judge Komitee:

Plaintiffs brought the above-referenced action under the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, against U.S. Customs and Border Protection (“CBP”). The action was filed on December 18, 2019, but the United States was not served until January 13, 2020. The suit relates to a FOIA request that Plaintiffs allegedly submitted to CBP on or about November 7, 2019, seeking “records pertaining to [CBP’s] [alleged] Tactical Terrorism Response Teams (‘TTRTs’), highly secretive units that [allegedly] operate at U.S. ports of entry and [allegedly] target, detain, search, question, and/or deny entry to people with valid travel documents who [allegedly] present no security risk.” Compl., ECF No. 1, ¶ 1. The Complaint alleges that as of December 18, 2019 (just 41 days after the request was allegedly submitted), “CBP has neither released responsive records nor explained its failure to do so.” *Id.* ¶ 34.

Under FOIA, the Government normally receives thirty days to answer or move in response to a complaint, as opposed to the sixty days afforded under Fed. R. Civ. P. 12(a)(2). *See* 5 U.S.C. § 552(a)(4)(C). Thus, the Government’s current response deadline is February 12, 2020.¹ By this letter, the Government respectfully moves to extend that deadline by 30 days, to March 13, 2020. This is the first extension being sought by the Government.

The extension is necessary because CBP’s thorough and comprehensive search for documents responsive to Plaintiffs’ FOIA request is still ongoing, as is its review of responsive documents for applicable exemptions under FOIA. Once documents are located and reviewed for responsiveness, exemption, and segregability, they can be formally processed for release, redaction, or withholding. The agency anticipates that significant progress will be made on all of these fronts over the next few weeks, although it is difficult to predict with precision when this process can be completed, given the complexity of the FOIA request and the number of agency

¹ Docket entry 6 erroneously states that the Government’s answer deadline is March 9. That date appears to be calculated as sixty days from the date when CBP was served with the complaint. But the operative period under FOIA is 30 rather than 60 days, and it begins when the U.S. Attorney is served (here, January 13) rather than when the agency was served. *See* Rule 12(a)(2).

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components involved. Regardless, the nature of this case is expected to change significantly in the coming weeks: as of now, the case is essentially in the nature of mandamus, seeking to compel CBP to “immediately conduct a thorough search for all responsive records” and “to immediately process and release all responsive records.” Compl., Prayer for Relief, ¶¶ 1-2. That claim will become moot once the agency substantially completes its search, processing, and release or withholding. We anticipate that Plaintiffs may then seek to amend their complaint to assert alternative challenges, such as to the applicability of the FOIA exemptions CBP asserts in support of redaction or withholding. Hence there is good cause for a short extension of 30 days to allow these developments to play out before the Government is required to answer.

We have discussed our request with counsel for Plaintiffs, who advised that Plaintiffs do not in principle object to a 30-day extension of the Government’s answer deadline. However, Plaintiffs offered their consent subject to certain conditions that the Government finds unacceptable, specifically that CBP commit to firm deadlines within the next 30 days for it to complete its search for, review of, and processing and release of responsive documents. Because we do not believe such deadlines are appropriate in the context of the current request, we are unable to submit a stipulated extension request and are constrained to proceed with this motion.

We appreciate the Court’s time and attention to this matter.

Respectfully submitted,

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By: /s/ {FILED ELECTRONICALLY}
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