



U.S. Department of Justice

*United States Attorney
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April 15, 2020

By ECF

The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *The New York Times Co. v. Federal Bureau of Prisons*, 20 Civ. 833 (PAE)

Dear Judge Engelmayer:

This Office represents defendant the Federal Bureau of Prisons (“BOP”) in this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, action brought by plaintiff the New York Times Company (the “Times”). The parties respectfully submit this joint letter pursuant to the Court’s Orders of March 5 and 13, 2020. *See* Dkt. Nos. 8, 10. The initial pretrial conference in this matter is currently scheduled to be held at 11:00 AM on April 20, 2020. *See* Dkt. No. 10. The parties respectfully propose that the initial pretrial conference be adjourned if this letter sufficiently addresses the present issues in this case.

On January 30, 2020, the Times filed its complaint initiating this action. *See* Dkt. No. 1. The Times seeks, pursuant to FOIA, the release of certain documents related to Jeffrey Epstein, the deceased defendant in *United States v. Jeffrey Epstein*, No. 19-CRIM-00490 (S.D.N.Y.), and his BOP custody. On March 4, 2020, the Government filed its Answer to the Times’s complaint. *See* Dkt. No. 7. BOP has not produced any documents in response to the Times’s request. The Government’s position is that any documents potentially responsive to the Times’s request are exempt from disclosure under FOIA, including under FOIA Exemption 7(A), which protects from disclosure records or information compiled for law enforcement purposes “to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).

The parties anticipate filing cross-motions for summary judgment on whether BOP’s withholdings are appropriate under FOIA, but have failed to agree on a schedule for summary judgment briefing. The Government proposes to file its motion for summary judgment by July 15, 2020, with plaintiff’s opposition and cross-motion for summary judgment due by August 17, 2020, the Government’s reply and opposition due by September 7, 2020, and plaintiff’s reply due by September 28, 2020. The Government respectfully requests a longer period of time than usual to file its opening brief and declaration in this matter because of the national emergency arising from COVID-19, to which the Government and BOP have dedicated substantial resources and which has affected BOP’s operations and staffing, including BOP’s FOIA staffing.

The Times acknowledges the disruption caused by the COVID-19 pandemic and is of course willing to be flexible on the timing of summary judgment briefing. However, the time sought by the Government appears to the Times unnecessary for a case filed in January 2020 involving a

blanket assertion of exemptions. Accordingly, the Times proposes that the Government file its motion for summary judgment by May 25, 2020 and that The Times file its opposition and cross-motion for summary judgment by June 29, 2020, with the Government's reply and opposition due by July 20, 2020, and The Times's reply due by August 10, 2020.

The parties do not believe that settlement is possible at this time.

As this is a FOIA action, the parties anticipate that any legal issues will be resolved through cross-motions for summary judgment without discovery. *See, e.g., Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812-13 (2d Cir. 1994). Accordingly, the parties respectfully request that they not be required to submit the proposed case management plan and scheduling order called for in the Court's Orders of March 5 and 13, 2020, particularly in light of the proposed summary judgment briefing schedule proposed herein. *See* Dkt. Nos. 8, 10.

The parties thank the Court for its consideration of this submission.

Respectfully submitted,

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4/15/20

The Court appreciates this letter. The parties will not be required to submit a proposed case management plan and scheduling order. The initial pretrial conference will be held telephonically, as scheduled, at 11 a.m. on April 20, 2020.

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Access Code: 4684906

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge