

From: "[REDACTED] (USAFLS)" <[REDACTED]>
To: "[REDACTED]. (RMD) (FBI)" <[REDACTED]>
Cc: "[REDACTED] (MM) (FBI)" <[REDACTED]>, "[REDACTED] (MM) (FBI)" <[REDACTED]>, "[REDACTED] (USAFLS)" <[REDACTED]>, "[REDACTED]. (USAFLS)" <[REDACTED]>

Subject: RE: Language for proposed settlement agreement

Date: Wed, 08 Jun 2016 18:51:42 +0000

Importance: Normal

Hi, [REDACTED].

It was nice talking to you this morning. As we discussed, as a result of developments during the mediation of our CVRA matter, we are hoping to add an additional sentence to the paragraph 4 language that you had previously drafted for us as a way to address victim FOIA and Privacy Act requests in our settlement agreement. Based on our conversation, the language we have prepared is the following:

If counsel for Jane Doe #1 file a FOIA request with the FBI seeking investigative recordings of Alfredo Rodriguez, the defendant named in Southern District of Florida Case No. 10-80015-Cr-Marra, counsel for Jane Doe #1 may represent within that FOIA request that the USAO-SDFL will not be asking the FBI to assert any objection pursuant to 5 U.S.C. § 552(b)(7)(A) on behalf of the USAO-SDFL.

With regard to your earlier questions about those recordings, as I understand it, the recordings were made by an undercover task force officer working with the FBI, and the recording are still in the FBI's possession.

As I mentioned, I am going to be out of the office for the remainder of this week, so could you please let [REDACTED] and [REDACTED] of my Office know if that FOIA language is acceptable to the FBI or if you have any suggestions for how we can modify it to make it acceptable?

Thanks,

[REDACTED]

From: [REDACTED]. (RMD) (FBI) [mailto:[REDACTED]]
Sent: Thursday, May 19, 2016 10:09 AM
To: [REDACTED] (USAFLS)
Cc: [REDACTED] (MM) (FBI); [REDACTED] (MM) (FBI); [REDACTED] (USAFLS)
Subject: RE: Language for proposed settlement agreement

Good Morning [REDACTED],

Given their independent right to make a FOIA/PA request per that well-established statutory scheme, there really isn't much to work with here beyond a mere restatement of that very right enjoyed by all requesters.

The DOJ/FBI FOIA process is a separate and distinct legal animal that really can't be a bargaining chip in your suit; I can appreciate that you may be trying to offer something to appease the plaintiffs, but It's key that we keep the legal lanes separate here. We only bid against ourselves with language that implies or could be construed by requesters counsel to accord any special right or benefit to a perspective requester. This could easily bite us-- either on your end as an

enforcement action for non-compliance with the settlement agreement or on this end if a requester counsel demands they are entitled to some form of specialized treatment via this agreement when we lack authority to provide such. Even the seemingly harmless phrase “promptly” respond could generate this problem as it could be misconstrued to imply that their request would be handled faster than the thousands of other requesters in line ahead of them.

We also have no idea of how these requesters will frame or proceed with their requests; this underpins the need to stick to the basic right all requesters are entitled to. For instance, if a requester submits a third-party request for the investigation of Epstein without a privacy waiver, such a request would likely be categorically denied or largely withheld in full as all living third parties (especially those we’ve investigated and did not charge or prosecute) enjoy a substantial right of privacy within FBI records.

It’s also significant for FBI RIDS to maintain the integrity of its program for the public at large within the settled confines of the DOJ FOIA/PA structure and process—from a policy perspective, the only way we can do that is allow the system to work. We are under constant scrutiny by the FOIA/PA requester community—if we vary from the norm by saying too much in this agreement—it will come back to FBI RIDS in the form of a complaint. Also, we have designated public liaisons that communicate with requesters once a request is filed; in essence, the machinery is already in place.

Below is the draft language we can live with—it’s pretty basic, but less is better. Note also that per standard protocol, we routinely call files from Field Offices as needed in response to FOIA requests. I’m not clear on how a private citizen would have authority to dictate the internal disposition of agency records, so I removed the “agree” aspect to the file transfer language.

Thx,

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Draft paragraph 4:

Respondent advises that any Victim may file a Freedom of Information Act (“FOIA”) and/or Privacy Act (PA) request with the FBI per 5 U.S.C. §§ 552, 552a and Department of Justice implementing regulations at 28 C.F.R. Part 16, Subparts A and D. Detailed information about making requests for FBI records under the FOIA and PA is located at www.fbi.gov/foia/. Petitioners acknowledge that, for purposes of responding to any FOIA or Privacy Act requests, FBI-Miami may transfer any files that it maintains pursuant to paragraph 3 to the applicable FBI section responsible for handling FOIA and Privacy Act requests.

From: ■ (USAFLS) [<mailto:■>]
Sent: Wednesday, May 18, 2016 7:14 PM
To: ■. (RMD) (FBI)
Cc: ■ (MM) (FBI); ■ (MM) (FBI); ■ (USAFLS)
Subject: RE: Language for proposed settlement agreement

Dear Mr. Seidel,

We received and have reviewed your email setting forth your concerns with the language that we had proposed for paragraph 4 of our proposed settlement agreement, and we have modified that paragraph in an attempt to address your concerns and to confine any undertaking to what is contemplated by the governing statutory and regulatory provisions. The revised draft of paragraph 4, in which we have highlighted the language that has been added or modified, currently provides:

4. If any Victim files a Freedom of Information Act ("FOIA") or Privacy Act request upon the FBI seeking access to information related to FBI-Miami's investigation of her particular victimization by Epstein, Respondent agrees that the FBI will respond promptly **in accordance with the provisions of 5 U.S.C. §§ 552 & 552a and 28 C.F.R. Part 16** and will **communicate** with the Victim's counsel **in accordance with 28 C.F.R. §§ 16.6 & 16.43** to address issues of privacy, privilege, and exemption from access or disclosure in an attempt to avoid unnecessary litigation. Petitioners acknowledge and agree that, for purposes of responding to FOIA or Privacy Act requests, FBI-Miami may transfer any files that it is maintaining pursuant to paragraph 3 to the applicable FBI section that is responsible for handling FOIA and Privacy Act requests.

Does this language adequately address your concerns? If the paragraph is still not something to which you feel you can agree, can we set up a time to discuss the language so that we can further address any remaining concerns? We are unfortunately under tight time constraints due to a court-ordered mediation scheduled for Monday.

Thank for your time and help.

Sincerely,

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██████████
██
United States Attorney's Office
██
██████████
Telephone: ██████████
E-mail: ██████████

From: ██████████ (MM) (FBI) [mailto:██████████]
Sent: Wednesday, May 18, 2016 3:36 PM
To: ██████████ (USAFLS)
Subject: FW: Language for proposed settlement agreement

Here is FBI RMD's response.

From: ██████████ (MM) (FBI)
Sent: Wednesday, May 18, 2016 10:13 AM
To: ██████████ (MM) (FBI)
Subject: FW: Language for proposed settlement agreement

From: [REDACTED]. (RMD) (FBI)
Sent: Tuesday, May 17, 2016 5:10 PM
To: [REDACTED] (MM) (FBI)
Cc: [REDACTED] (RMD) (FBI)
Subject: RE: Language for proposed settlement agreement

Hi [REDACTED],

Greetings from the FOIA Litigation Factory in Winchester; nice talking to you today. The bottom line up front is that any FOIA/PA requests for FBI investigative records here would be treated like any other request consistent with the FOIA and DOJ implementing regulations (28 CFR Part 16).

There's no authority for us to provide any special requestor or processing status--even for victims--outside the existing legal framework. Any requestor may certainly seek expedited processing of their request under the statute, and that turns on specific factors such as an urgency to inform the public at large about a federal activity or a matter of widespread and exceptional media interest connected to government integrity. (see 28 CFR 16.5). The decision to grant expedited processing is not made by the component, but by DOJ-OPA on a case by case basis.

All requests are addressed on a first in, first out (FIFO) basis and assigned to processing queues relative to the size of any identified records responsive to the request (we receive about 18,500 requests annually). Our withholding or release determinations are made on a case by case basis per the nature of the request in light of applicable FOIA or PA law and regulation. We certainly would not engage in any negotiations on the applicability of any exemption or privilege (b5 exemption in FOIA) with the requester—that's an agency decision. As part of the normal process, if the requester is dissatisfied with any adverse determination we make on their request, they can administratively appeal to DOJ OIP or file suit if they have exhausted their administrative remedies.

Simply put, we unfortunately can't agree to the proposed language below. Any person can file a request to include perpetrators, victims, witnesses, etc. and will undergo the standard FOIA/PA process relative to the issues raised by their request.

Thx,

[REDACTED]

[REDACTED]
Unit Chief, Litigation Support Unit
FBI Records Management Division/RIDS

[REDACTED] (desk)

[REDACTED] (cell)

NOTICE: This message is transmitted to you by the FBI Records Management Division, Litigation Support Unit. The message, along with any attachments, may be confidential, law enforcement sensitive, and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by calling [REDACTED].

From: [REDACTED] (MM) (FBI)
Sent: Tuesday, May 17, 2016 11:05 AM
To: [REDACTED] (RMD) (FBI)
Subject: FW: Language for proposed settlement agreement

[REDACTED], I am the CDC for the FBI Miami Division. I received the below request (#4) from the USAO that requires review and input from RMD. According to the RMD website you provide litigation support for RMD and would be the appropriate person to address the below issue or to point me in the direction of the appropriate OGC attorney. Please give me a call if you have any questions. Thank you.

[REDACTED] Ball
Chief Division Counsel
FBI Miami Division
[REDACTED] (desk)
[REDACTED] (BB)

From: [REDACTED] (USAFLS) [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: Thursday, May 12, 2016 4:52 PM
To: [REDACTED] (MM) (FBI)
Cc: [REDACTED] (MM) (FBI)
Subject: Language for proposed settlement agreement

Hi, [REDACTED].

The following is the language concerning FBI that we are contemplating for the proposed settlement agreement that we discussed:

3. Respondent agrees that the U.S. Attorney's Office for the Southern District of Florida ("the USAO-SDFL") and the Miami Field Office of the Federal Bureau of Investigation ("FBI-Miami"), will maintain, until December 31, 2018, the criminal investigative files and original evidence related to the investigation conducted by them in the Southern District of Florida of Jeffrey Epstein and his co-conspirators, notwithstanding any general rule or regulation allowing earlier destruction of evidence in closed matters. Should the USAO-SDFL or the FBI-Miami receive any properly served federal grand jury subpoena, other appropriate law enforcement request, or federal court order to provide such evidence to a law enforcement agency, that evidence will be transferred or otherwise made available in accordance with governing federal laws and regulations.

4. If any Victim files a Freedom of Information Act ("FOIA") or Privacy Act request upon the FBI seeking access to information related to FBI-Miami's investigation of her particular victimization by Epstein, Respondent agrees that the FBI will respond promptly and will work with the Victim's counsel to address issues of privacy and privilege in an attempt to avoid unnecessary litigation. Petitioners acknowledge and agree that, for purposes of responding to FOIA or Privacy Act requests, FBI-Miami may transfer any files that it is maintaining pursuant to paragraph 3 to the applicable FBI section that is responsible for handling FOIA and Privacy Act requests.

Can you confirm as soon as you can whether the above language is acceptable to FBI? (As you may remember, we are tight on time due to the upcoming court-scheduled mediation and the need to circulate the government's settlement offer.) We are also wondering whether it would be possible for FBI to agree to "prioritize and respond promptly" to the Victims' FOIA/PA requests rather than just "respond promptly." We believe that the additional agreement to prioritize the Victims' requests would aid in reaching a resolution of this matter.

And please feel free to call me if you have any questions or if you want to discuss anything.

Thanks,



United States Attorney's Office
99 N.E. 4th Street, Suite 800
Miami, FL 33132
Telephone: [REDACTED]
E-mail: [REDACTED]