

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FREEDOM WATCH, INC.,		)	
		)	
Plaintiff-Appellant,		)	
		)	
v.		)	Nos. 15-5048
		)	
U.S. Department of State, et al.,		)	
		)	
Defendants-Appellees.		)	
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**MOTION TO GOVERN FURTHER PROCEEDINGS**

Pursuant to this Court’s order of April 14, 2015, defendant-appellee the United States Department of State hereby files this motion to govern further proceedings in this action brought under the Freedom of Information Act (“FOIA”). As explained more fully below, the State Department respectfully requests that this Court continue to hold this case in abeyance pending completion of the State Department’s review of the emails provided by former Secretary Clinton and its determination as to whether any of those emails are responsive to plaintiff-appellant’s FOIA request.

**STATEMENT**

1. This appeal arises out of a Freedom of Information Act (“FOIA”) request to the U.S. State and Treasury Departments for:

Any and all documents that refer or relate in any way to the final decisions to grant waivers to all countries and other interests doing business with the Islamic Republic of Iran pursuant to the

Comprehensive Iran Sanctions, Accountability, and Divestment Act, 22 U.S.C. § 8501 et. [sic] seq. or Executive Order 13553.

The State Department searched eleven offices or records systems for responsive documents, including the Offices of the Secretary of State, but no responsive documents were found. Plaintiff brought suit against both State and Treasury. The district court dismissed Treasury from the case and State moved for summary judgment. The district court granted State's motion for summary judgment.

The district court noted that the State Department had submitted two declarations to establish the adequacy of its search. The first declaration detailed the steps that each of the eleven components within the State Department took to locate responsive records. The second declaration described how the State Department sought and obtained advice from subject matter experts to ensure that it used the appropriate search terms in its search of State's Central File. The district court concluded that these declarations established an adequate search.

Plaintiff appealed the district court's grant of summary judgment in favor of the State Department.

2. Plaintiff subsequently filed a motion for discovery and for an order to show cause as to why the Department of State and former Secretary of State Clinton should not be held in contempt, based on accounts regarding use of personal email for official business by the former Secretary. Plaintiff filed a virtually identical motion in another, unrelated FOIA action. *See Freedom Watch v. NSA* (D.C. Cir. No. 14-5174).

This Court deferred consideration of plaintiff's motion and ordered this case held in abeyance. This Court ordered the parties to file motions to govern further proceedings within 30 days of this Court's decision in *Freedom Watch v. NSA* (D.C. Cir. No. 14-5174). *See* Order of April 14, 2015.

On April 24, 2015, this Court issued a decision in *Freedom Watch v. NSA*. The Court affirmed the judgment below in all respects, but remanded to the district court to manage record development and oversee the State Department's search of the former Secretary's emails for documents responsive to the FOIA request in that case.

### **ARGUMENT**

This Court should continue to hold this appeal in abeyance.

The Department of State has indicated that it has received 55,000 pages of documents from former Secretary Clinton. Given the considerable public interest in the emails provided by former Secretary Clinton to the Department of State, the Department of State has stated that it plans to review the collection for public release, and to make the documents available to the public by posting them on a Department website. This will make the maximum number of records available in the shortest amount of time, and will be considerably more efficient than reviewing the documents piecemeal in response to subject-specific FOIA requests. Once the collection has been posted, the Department of State will search those records to determine whether

any of the records are responsive to plaintiff's FOIA request. This Court should continue to hold this appeal in abeyance until that process is completed.<sup>1</sup>

Once the State Department has processed the collection of emails and determined whether any are responsive to plaintiff's FOIA request, the State Department will notify the Court and plaintiff in this case, and the parties can file motions to govern future proceedings at that time. If, after that public release and subsequent search, responsive records are found, the Court can remand to afford plaintiff an opportunity to challenge any redactions in those records.

Remand, at this time, however, is unwarranted. Unlike the previous *Freedom Watch* case (D.C. Cir. No. 14-5174), here the State Department found *no* responsive documents. It is therefore unlikely that any of the emails provided by former Secretary Clinton to the State Department are responsive to plaintiff's FOIA request. If no responsive documents exist, a remand to the district court would be entirely unnecessary, and this Court could proceed with this appeal.

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<sup>1</sup> On Tuesday, May 19, 2015, in a separate litigation, Judge Contreras ordered the State Department to file, on or before May 26, 2015, a rolling production schedule for the emails that former Secretary Clinton provided to the Department of State in December 2014. *See Leopold v. Department of State*, No. 1:15-cv-000123-RC, Minute Order entered on May 19, 2015. The State Department will comply with that order. Once the State Department has publicly released the emails, the State Department will conduct an individualized review to determine if any of those records are responsive to plaintiff's FOIA request in this case. If the State Department were required to conduct individualized searches before it has completed production of the former Secretary's emails, that would divert resources and further delay the production of documents.

## CONCLUSION

For the forgoing reasons, this Court should continue to hold this appeal in abeyance.

Respectfully submitted,

/s/ Matthew M. Collette

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May 22, 2015

**CERTIFICATE OF SERVICE**

I certify that on May 22, 2015, I filed and served the foregoing Motion to Govern Further Proceedings by causing an electronic copy to be served on this Court via the ECF system and four paper copies by hand delivery, and by causing one copy to be served on the following counsel via the ECF system:

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