

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

The Ohio State University Moritz College of Law Civil Clinic, et al.

Plaintiffs,

v.

United States Customs and Border Protection,

Defendant.

Case No. 3:15 CV 833

Judge Jack Zouhary

**ORDER ON PHASED
PRODUCTION PLAN**

NOW COME Plaintiffs, The Ohio State University Moritz College of Law Civil Clinic and Advocates for Basic Legal Equality, Inc., and the Defendant U.S. Customs and Border Protection FOIA Division, by Steven M. Dettelbach, United States Attorney for the Northern District of Ohio, and Guillermo J. Rojas, Assistant U.S. Attorney, to provide the Court a production schedule for the above-captioned matter, which the parties request the Court so order.

Proposed Phased Production Plan

1. On June 22, 2015, this Court ordered counsel to file a joint status report outlining an agreed plan and time frame for document production in response to Plaintiff's Freedom of Information Act Request of August 18, 2014, (Ex. A of Complaint (Doc. 1) (Original Request)) regarding the practices of U.S. Customs and Border Patrol Sandusky Bay Station (SBY).

2. The Parties have agreed to narrow the Original Request, and to a phased production plan, to allow for timely production and resolution of this matter.
3. Categories and Subcategories refer to the numbered provisions of the Original Request. The language of the Original Request remains binding except where outlined below.
4. Plaintiffs have agreed to remove the following Categories and Subcategories from the Original Request: Categories 4, 8, 12, 7a and 7e, and 15d.
5. At the end of each of the three phases of production, the Government shall file a status report with the Court, advising of its completion of document production on the applicable Categories, and its progress on the remaining Categories. The status report shall be filed with the court on the same day that the particular production is due.
6. With respect to Phase 1 and 2, the Government shall produce a *Vaughn* index describing what information has been withheld and redacted, and identifying the specific FOIA exemption(s) invoked to justify the withholdings and redactions, pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). With respect to Phase 3, the Government shall file a *Vaughn* index describing what information has been withheld and redacted, and identifying specific FOIA exemption(s) invoked to justify the withholdings and redactions, only for records generated by the agreed upon search methodology and requested to be produced by Plaintiffs.
7. Phase 1: No later than 75 days from the date of this plan, or October 6, 2015, whichever is later, the Government shall produce non-exempt and non-excludable documents responsive to Categories 6, 9, 10, 11, 13, 14, and 15abc, as outlined below:

- a. Categories 6, 10, 11, and 15abc are to be produced in accord with the language of the Original Request.
 - b. Category 9 is limited to Production of a blank and filled Forms I-1026 Unproductive Vehicle Stop.
 - c. Category 13 is limited to the evaluation form or forms used in evaluating the Patrol Agent in Charge of SBY (and all such stations), including blank and complete forms, as relevant to SBY.
 - d. Category 14 is limited to documents specific to SBY.
8. Phase 2: No later than 150 days from the date of this plan, or December 21, 2015, whichever is later, the Government shall produce documents responsive to Categories 1, 2, 3, and 5, as outlined below:
- a. Categories 1, 2, 3, and 5 are to be produced in accord with the language of the Original Request, with the exception that Category 2 now includes the Daily Apprehension Log for individuals apprehended by SBY, not limited to those individuals for whom I-213s were issued.
 - b. One in ten documents responsive to Category 1 will be sampled, in accord with a sampling method to which the parties agree.
9. Phase 3: The Government shall make an initial production of documents responsive to Categories 7b, 7c, 7d, and 7f, as outlined below:
- a. The search for responsive documents will encompass emails from 16 SBY employees, accounting for all supervisory employees employed at SBY from 2008 to August 18, 2015, generated during the time period each individual

worked at SBY. The names of the 16 supervisory employees will be provided to Plaintiffs by separate correspondence.

- b. The Parties have agreed to search the applicable email accounts using search terms to be chosen by the Parties. The parties will agree to search terms by August 10, 2015.
- c. No later than August 17, 2015, the Government will inform the Plaintiffs of the date by which it will complete its search of emails and retrieve the results. This date will be incorporated into this plan by reference herein.
- d. Within 30 days of retrieving the search results, the Parties will reach an agreement on the date by which Phase 3 documents will be produced and so notify the Court. This date will be incorporated into this plan by reference herein.
- e. The Parties will advise the Court of progress on Phase 3 on or before the November 23, 2015, Phone Status Conference scheduled by the Court per its July 22, 2015, Order.

10. In accordance with the Court's direction at a status conference on July 23, 2015, with respect to the determination of processing fees under 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11, the Parties agree that the issue of whether Plaintiffs bear the responsibility for paying processing fees, or whether they are entitled to a waiver or reduction in fees, will not be waived and remains a live issue in controversy. However, consistent with the Court's direction, the processing of Plaintiffs' request will not be delayed pending a determination by the Court or Parties on the issue of processing fees. In accordance with the Court's direction, any processing fees

incurred by the Government prior to such a determination are not waived for purposes of determining the amount of fees chargeable to Plaintiffs. Neither have Plaintiffs consented to, or waived their ability to contest, any processing fees by moving forward with this plan.

Respectfully submitted,

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SO ORDERED.

/s/ Jack Zouhary
Judge Jack Zouhary
U.S. DISTRICT JUDGE

July 24, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Guillermo J. Rojas

Guillermo J. Rojas
Assistant U.S. Attorney