

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC FRONTIER FOUNDATION,)
)
 Plaintiff,)
)
 v.) C.A. No. 07-656 (JDB)
)
DEPARTMENT OF JUSTICE,)
)
 Defendant.)
)
 _____)

**REPLY IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO PLAINTIFF’S PARTIAL MOTION FOR
SUMMARY JUDGMENT**

In response to defendant United States Department of Justice’s (“DOJ”) motion for summary judgment [dkt. # 40] (“Defendant’s Motion”), plaintiff Electronic Frontier Foundation (“EFF”) has conceded that all information withheld by DOJ in response to plaintiff’s request was properly withheld pursuant to the relevant exemptions under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as exemplified in the 415-page representative sample submitted with DOJ’s motion . *See* Pl. Memorandum in Partial Opposition To Defendant’s Motion for Summary Judgment and in Support of Partial Summary Judgment (“Pl. Mem.”) at 4 (“EFF opposes defendant DOJ’s motion only to the extent that the FBI implicitly asks the Court to sustain its continued withholding of IOB case numbers that are included on many of the responsive records at issue in this case.”) In addition, plaintiff “agrees that the material facts set forth in defendant’s statement are not in dispute.” Pl. Statement of Material Facts Not In Dispute and Response to Defendant’s Statement of Facts Not In Dispute [dkt. # 42-2]. EFF’s only basis for what it characterizes as a Cross-Motion for Partial Summary Judgment is its statement that “the FBI’s decision to ‘withdraw’ its invocation of Exemption 2 to withhold IOB case numbers cannot be limited to only those documents contained in the representative sample,

but rather must be applied to *all* representative records from which IOB case numbers have been redacted.” Pl. Mem. at 5 (emphasis in original).

DOJ agrees with EFF that IOB Case Numbers should now be disclosed throughout all responsive records at issue in this case, so that all of the voluminous responsive records will be consistent with the representative sample the FBI has submitted. The only disagreements among the parties on this points are, first, that DOJ does not deem this to be a basis for granting partial summary judgment to EFF; and, second, that FBI proposes a different time frame than that proposed by EFF. While EFF submitted a proposed order that would require the FBI to conduct this additional review and release within 20 days of the issuance of the order, the FBI instead requires 90 days in order to complete this task, given the large volume of records at issue in this case. Subsequent to the filing of EFF’s Cross-Motion for Summary Judgment, counsel have now conferred, and EFF has consented to FBI’s proposed schedule, which is being submitted to this Court simultaneously with this Memorandum via separate Consent Motion.

Accordingly, it is currently undisputed that all information withheld by DOJ has been withheld properly pursuant to the appropriate FOIA exemptions. Therefore, there is no basis for granting plaintiff’s Cross-Motion for Partial Summary Judgment. Instead, once the FBI has completed the release of additional IOB Case Numbers, defendant DOJ’s Motion for Summary Judgment should be granted.

CONCLUSION

For the foregoing reasons, and for the reasons articulated in defendants’ Memorandum In Support Of Defendants’ Motion For Summary Judgment, the detailed declarations and attachments submitted in support thereof, defendants respectfully request that this motion be

granted and that summary judgment be granted in their favor. In addition, for the reasons set forth above, plaintiff's Motion For Partial Summary Judgment should be denied.

Dated: February 17, 2010

Respectfully submitted,

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/s/ Elisabeth Layton

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