

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD,

*Plaintiff,*

v.

U.S. DEPARTMENT OF STATE,

*Defendant.*

Civil Action No. 15-cv-123 (RC)

**DEFENDANT’S MOTION FOR AN EXTENSION OF  
TIME TO COMPLETE PRODUCTION OF CLINTON EMAILS**

Defendant U.S. Department of State (“State”), respectfully moves for a one-month extension of time, until February 29, 2016, to complete production of the non-exempt portions of records subject to FOIA contained in approximately 55,000 pages of emails provided to State by former Secretary of State Clinton (“the Clinton emails”).

1. On May 27, 2015, the Court ordered State to post the Clinton emails to its FOIA web site by January 29, 2016, and set monthly goals for State to aspire to meet. Scheduling Order (ECF No. 17). The last interim production goal called for 82% of the pages to be produced by December 31, 2015. *Id.* at 2. State has, to date, posted 43,148<sup>1</sup> pages, or 82.2% of the total number of pages to be produced. Def.’s Status Report ¶ 5 (ECF No. 48). A total of 9,307 pages remain to be posted.<sup>2</sup>

2. As explained in the declaration of John F. Hackett (“Hackett Decl.”), Director of State’s Office of Information Programs and Services, filed with the Court on May 18, 2015 (ECF

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<sup>1</sup> In its last status report, State reported that it had posted a total of 43,144. Def.’s Status Report ¶ 5 (ECF No. 48). This number was low by four pages, because State actually posted 3,007 pages on January 8, not 3,003 as reported.

<sup>2</sup> There are 52,455 total pages to be reviewed and released, plus or minus four pages. *See* Def.’s Status Report ¶ 1, n.3 (ECF No. 48). This figure excludes those documents that State, in consultation with the National Archives and Records Administration, has identified as entirely personal correspondence, that is, documents that are not federal records and thus that are not subject to the FOIA. *Id.*

No. 12-1), State reviews records responsive to FOIA requests for U.S. Government interagency interests. Hackett Decl. at 7, n.3. In some instances, a document that originated with State may include information that originated with another U.S. Government agency. When this happens, in accordance with State FOIA regulations, State consults with the applicable agency by sending the document for the agency's review. The relevant agency then conveys its release recommendation or determination to State for response to the requester. *Id.* (citing 22 C.F.R. § 171.11(k)(3)).

3. After a document is received back from all the agencies to which it has been sent, there is still a significant amount of work to be done before it can be released. First, the FOIA office must consolidate and incorporate appropriate review recommendations. Hackett Decl. ¶ 19. Then the Office of the Legal Adviser must conduct a legal review, and the FOIA office must incorporate any appropriate review recommendations. *Id.* Any divergent recommendations must be resolved through discussions between the various reviewing entities. *Id.* Once all this is accomplished, a final version of the document, with exempt information redacted as needed, can be prepared. All documents that are ready for release must then be transferred to State's FOIA web site, and a final quality assurance check must be performed before the documents are released.

4. During the week of January 11, 2016, State's FOIA office discovered that a number of pages of the Clinton emails that had been identified during the period June through October 2015 as requiring interagency consultation had not in fact been sent to all the agencies for which consultation was required. State overlooked some necessary consultations at a time when the Clinton email team's efforts were focused on processing records that had already gone

through interagency consultation in order to meet the monthly interim goals set in the Scheduling Order. Thus, this oversight was not detected until the push to meet the final deadline.

5. After discovering this oversight, State immediately began processing these documents, which State ultimately determined to number 7,254 pages, so that they could be sent to the appropriate agencies for review. The processing of the documents for sending is finished and delivery to some of the agencies has been completed. Delivery of the remaining documents has been interrupted by the storm, *see* n. 3, *infra.*, and is anticipated to be completed next week. In addition, State has emphasized to each of these agencies the importance of a timely return of the documents and will continue to coordinate with those agencies regarding the consultations. State anticipates receiving the documents back in time to allow it to consolidate and incorporate interagency recommendations, perform a legal review, resolve any disparate recommendations, and produce final releasable versions of those documents by February 29, 2016.

6. The unexpected task of sending these documents for consultation has cut into the time available for the other processing tasks that must be completed before documents can be posted. Nonetheless, State expects, absent interruption from the snowstorm beyond the weekend, that on January 29, 2016, it will be able to complete processing and posting of almost all of the approximately 2,053 pages for which agency consultation has been completed, and will post any other pages that are returned and can be made ready for release by that date.<sup>3</sup>

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<sup>3</sup> As called for in the Scheduling Order, State will report the number actually produced on January 29 in its status report on February 5.

The National Weather Service has declared a blizzard warning to be in effect from 3:00 PM Friday, January 22 until 6:00 AM Sunday, January 24. The Office of Personnel Management closed federal offices at noon Friday. The Washington Metropolitan Area Transit Authority has announced that bus and rail service will be suspended over the weekend. Because the Clinton email team must perform its work onsite, *see* Third Declaration of John F. Hackett ¶ 9 (ECF No. 39-1) (noting that State's FOIA system is on a classified network), this storm will disrupt the Clinton email team's current plans to work a significant number of hours throughout the upcoming weekend and could affect the number of documents that can be produced on January 29, 2016.

7. For these reasons, State respectfully moves for an extension of time, until February 29, 2016, to complete production of the non-exempt portions of records subject to FOIA contained in the Clinton emails.

8. Undersigned counsel has consulted with counsel for Plaintiff, who opposes this motion.

Date: January 22, 2016

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

MARCIA BERMAN  
Assistant Branch Director

*/s/ Robert J. Prince*

ROBERT J. PRINCE (D.C. Bar No. 975545)  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave., N.W.  
Washington, DC 20530  
Tel: (202) 305-3654  
robert.prince@usdoj.gov

*Counsel for Defendant*

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**PROPOSED ORDER**

The Court having considered Defendant's motion for an extension of time to complete production of Clinton emails, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2016:

**ORDERED** that Defendant's motion is **GRANTED**. By no later than February 29, Defendant shall complete production of the non-exempt portions of the Clinton emails.

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Rudolph Contreras, United States District Judge