

Shaw-Meadow, Rob (USATXW)

From: johnjeakin@gmail.com on behalf of John Eakin <jeakin@airsafety.com>
Sent: Saturday, January 28, 2017 9:18 AM
To: Shaw-Meadow, Rob (USATXW)
Subject: Re: Eakin v DoD - FOIA - confer re request for extension of time

Good Morning, Mr. Shaw-Meadow,

I'm painfully aware that next week I may be the one asking for an extension of time and I will never oppose counsel's request for a personal accommodation. I don't care if you need it because your dog had puppies or your mother-in-law is coming to visit, I'll go along with it.

On the other hand, the Court's rules do not allow an extension of time for delay and that is exactly what you have told me this is for. In your November 2016 answer you alluded to an Open America stay and, while your client didn't qualify for one, if they had started work then they could have accomplished what you now say they need to do.

My position is that I will not oppose up to a fourteen day extension of time to respond to my MSJ and I will vigorously oppose any greater time if it appears to be for the purpose of delay.

Thank you for sharing the Ayuda decision. I'm encouraged that you haven't found anything that actually supports your client's position. Take a look at United America Financial, 531 F.Supp.2d 29. Like Ayuda, it makes the point that context is more important than content.

If you file your cross-motion/response now you can get out the door with no loose ends.

I'm fighting a terminal cold so I'll be around all weekend if we need to talk. (Actually, I can't talk much, but I listen well. <G>)

Best,

John

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On Fri, Jan 27, 2017 at 5:12 PM, Shaw-Meadow, Rob (USATXW) <Rob.Shaw-Meadow@usdoj.gov> wrote:

Mr. Eakin –

As DoD's counsel I am not asking or expecting you to consent to a four-year delay. We are requesting 120 days, and then a ruling by the Court.

I do not believe the PDF issue is relevant. As I indicated in my email this afternoon, approximately 9% of the files reviewed to date contain **current** PII – names, addresses, telephone numbers, and email addresses pertaining to other FOIA requestors. Several courts recognize that such information is a cognizable privacy interest, and that DoD is not merely being overly cautious about such release. Please see the attached Ayuda case, which determined two important points relevant to our dispute: first, that disclosure of names and addresses is a valid privacy concern; and, second that automated means did not exist in 2014 to screen out this information. These points are covered at pages 266 and 272 of the opinion. Therefore, I do not see any need for a representative sample.

From what I understand of DoD's position in earlier litigation, the explanation for any perceived change of position is very simple. The information being disclosed is not at all the same. The information released to you previously was over 60 years old, not current information, and therefore not covered by the applicable limitations period for disclosure.

Mr. Eakin, I need a response from you NLT 9:00 am Monday whether or not you will oppose an extension of time longer than a "few days." You also have not stated exactly how many days you believe is reasonable.

I hope you have a good weekend.

Thank you,

Rob Shaw-Meadow

From: John Eakin [mailto:jeakin@airsafety.com]
Sent: Friday, January 27, 2017 3:33 PM
To: Shaw-Meadow, Rob (USATXW) <RShaw-Meadow@usa.doj.gov>
Subject: RE: Eakin v DoD - FOIA - confer re request for extension of time

Hi, Mr. Shaw-Meadow,

I'm sure you'll understand that your client doesn't have much credibility or good will with me after the two previous rounds of litigation. Whether they repeatedly deliberately lied to me or were just misinformed is irrelevant.

With that said, I want to believe you are sincere in your handling of this so let's see what we can work out.

First, just to insure we're both on the same page - I am requesting ONLY .pdf files. My understanding from the contract documents is that the documents were scanned to image files and these were converted to .pdf. I only need .pdf files, not image files.

Can you tell me why these FOIA requests (the ones contained in the requested documents) are PII, now, but they were not considered to be PII when released to me in 2012, 2013 and 2015?

Can you provide a representative sample of these FOIA requests? Or, if they are so sensitive, perhaps I should send you some exemplars and you can tell me if something is different.

My position at this point, is that the projected delay is tantamount to denial so I have nothing to lose and I am willing to ask the Court to determine if these FOIA requests are really PII. I'm very confident that they will come down on my side.

Now it occurs to me that perhaps someone is just being overly cautious in determining what is PII - I don't see any way that your client could be harmed by release of the documents with the FOIA requests intact so presumably the only impact would be on those who submitted the FOIA requests. Assuming that your client isn't anxious to try to segregate the releasable material, perhaps we should both agree to give the hot potato to the judge and let him determine if the files are releasable with the FOIA requests intact. If the Court decides the FOIA requests are not PII then your client is off the hook, doesn't have to spend the next four years reviewing files, and I'll promptly receive the files.

While this might not be your client's first choice, the alternative is trying to convince the Court to grant what is essentially an Open America Stay that they don't qualify for.

I'm open to ideas, but when my alternative is waiting four years for the documents, I don't have much give in what I can agree to.

Best,

John

At 01:30 PM 1/27/2017, you wrote:

Good Afternoon, Mr. Eakin –

Thank you for your kind words regarding my retirement.

I too would very much like to tie-up loose ends before January 31. Unfortunately, you are mistaken regarding three very important facts: **first**, DoD is not delaying action on your request. In fact, DoD has taken numerous steps to coordinate the search of IDPF files, including constructing a special server to allow for the review of IDPF files by FOIA action officers, after performing security scans and obtaining security clearances. FOIA action officers have been working on the review of IDPFTMs contained in your request. Approximately 475 files have been reviewed. DoD has not halted all other work by the AHRC FOIA/PA Office, however, to respond to your request. **Second**, DoD is dealing with privacy information recognized by the courts and protected by the Privacy Act. This PII is from current FOIA requestors. **Third**, regardless of what the contractual provisions regarding scanning may say (and I have not reviewed them to verify your statement), based on the work conducted to date,

approximately 9% of IDPFs reviewed contain PII which requires redaction. As I stated yesterday, one of the reasons DoD is requesting the extension of time is to determine whether it is technologically and cost feasible to implement a software program which automatically screens out PII from these 280,000+ files. I have been advised by DoD IT that the existing software is not capable of finding and redacting all PII. Based on what you have told us, however, I have requested that this question be further investigated. If such software were readily available and usable by DoD, it is certainly in their best interest, as well as in the best interest of the taxpayers, to find a technological solution which will not tie-up limited manpower for potentially hundreds of hours (if not more).

Another reason for an extension of time which I did not mention yesterday is that I have asked DoD to provide a good faith estimate for how long the manual review of the 280,000+ files will take in the absence of a simple technological solution. Finally, the new AUSA assuming responsibility for the defense of this case will need more than a few days to determine the answers to the issues outlined above, respond to your motion for summary judgment, and prepare DoD's motion for summary judgment. And this attorney will have numerous other cases to work on in addition to this case.

When Mark Herrington, you and I spoke in December, we asked if you would be willing to limit your request to less than the 280,000+ digitized IDPF files, but you were emphatic that you needed all the files. Please confirm that this is still your position.

Given the amount of time it took to resolve Eakin I and Eakin II, I believe 120 days is a very reasonable request. Would you agree to an extension of time of more than a "few days"? How many days do you consider reasonable under these circumstances?

Thank you for your consideration.

Respectfully,

Rob Shaw-Meadow

From: johnjeakin@gmail.com [mailto:johnjeakin@gmail.com] **On Behalf Of** John Eakin
Sent: Thursday, January 26, 2017 4:23 PM
To: Shaw-Meadow, Rob (USATXW) <RShaw-Meadow@usa.doj.gov>
Subject: Re: Eakin v DoD - FOIA - confer re request for extension of time

Mr. Shaw-Meadow,

First, congratulations on surviving all these years. I hope you enjoy your well deserved retirement.

I'm certainly willing to agree to any reasonable professional accommodation. However, in this case I went ahead and filed my MSJ when it became obvious that your client is slow-rolling me. It takes about five minutes to determine that the existing software will do the job. In lieu of that, the contract documents specify that the privacy information was to be removed at the time of scanning. And on top of that all, we're not dealing with privacy information to begin with so a claim of redacting it is rather ridiculous.

Certainly a new AUSA can get up to at least my pro se level in less than 120 days so I will very vigorously oppose any delay of more than just a few days.

Why don't we get this sorted out so you can leave without any loose ends.

Best,

John

John Eakin

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On Thu, Jan 26, 2017 at 2:59 PM, Shaw-Meadow, Rob (USATXW) <Rob.Shaw-Meadow@usdoj.gov> wrote:

Good Afternoon, Mr. Eakin –

I hope you have been well.

After 21 years of federal service, I will be retiring, effective next Tuesday January 31.

Because of the need to assign a new Assistant United States Attorney on this case, and because DoD is still investigating whether there is any software solution which would eliminate the need to individually review IDPFs for PII, I will need to request a 120-day extension of time – until June 1 2007 -- for Defendant to respond to your Motion for Summary Judgment and for Defendant to submit its own Motion for Summary Judgment.

Please advise at your earliest convenience whether you are opposed or unopposed to this request.

Thank you,

Rob Shaw-Meadow

Assistant United States Attorney