

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

WEISBROD MATTEIS & COPLEY PLLC,

Plaintiff,

v.

FEDERAL EMERGENCY MANAGEMENT
AGENCY,

Defendant.

Civil Action No. 17-365 (RBW)

JOINT STATUS REPORT

Plaintiff Weisbrod Matteis & Copley PLLC (“WMC”) and Defendant Federal Emergency Management Agency (“FEMA”) (together, the “Parties”), by and through counsel, and pursuant to the Parties’ April 19, 2017 joint status report [Dkt. 12] (the “First Status Report”), and the Court’s Minute Order, dated April 19, 2017, file this second joint status report to inform the Court of the steps that the parties are taking to move this Freedom of Information Act (“FOIA”) matter towards resolution.

I. FEMA Productions

In the First Status Report, FEMA agreed to provide an initial release of approximately 1,500 pages on or before May 1, 2017. FEMA stated it would make additional rolling releases on the first of each month, beginning June 1, 2017, consisting of between 1,000 to 1,500 pages.

On May 1, 2017, FEMA produced 1,436 pages to WMC. On June 1, 2017, FEMA provided a cover letter about the next batch of documents to be produced; that production arrived on June 7, 2017 and consisted of 1,047 pages. As of the June 1, 2017 release, FEMA has completed processing approximately 3,300 pages, which accounts for the records that were released to Plaintiff in the May 1 and June 1 releases, as well as those that were reviewed and

deemed to be non-responsive. FEMA plans to make its next release, as scheduled, on or before July 1, 2017.

II. FEMA's Search for Responsive Records

In the First Status Report, FEMA estimated that it could complete its searches for responsive records (excepting two categories in which the Parties were still negotiating acceptable search parameters) on or before May 1, 2017. With regard to the thirteen categories¹ of records that did not appear to present scope difficulties, as of April 19, 2017, FEMA had located approximately 4,439 pages of records and 41 Excel documents. FEMA was continuing to search for responsive records and anticipated completing its search on or before May 1, 2017.

Excepting the two items for which the parties were still negotiating search parameters, discussed below, FEMA completed its searches for the remaining items as of May 1. The searches located 7,328 pages of records and 56 Excel spreadsheets. These figures include the pages that FEMA reviewed in connection with the May 1 and June 1 releases. Based on the progress that FEMA has made to date, FEMA estimates that its review of the remainder of these documents (excepting Items 8 and 13, discussed below) will be completed with the September 1 release.

a. Item 8: Budgets²

FEMA asked WMC to narrow this request. WMC provided proposed narrowed parameters on May 23, 2017. On June 7, 2017, FEMA accepted WMC's proposed narrowing of

¹ In the First Status Report, FEMA organized Plaintiff's requests into fifteen (15) separate categories of records. *See* Dkt. 12 at 2-3. As detailed *supra*, at the time of the First Status Report, the Parties were still negotiating the parameters of Requests 8 and 13.

² FEMA grouped this request as follows: "Projected budgets and communications regarding projected payments on claims."

Item 8 and agreed to have that portion of the search completed by June 21, 2017 and tied in to later productions.

b. Item 13: McKinsey Communications³

In the First Status Report, FEMA stated it was preparing a proposed list of search terms and custodians with respect to the McKinsey communications and documents in Item 13. In addition, so that Plaintiff could better evaluate its options, FEMA agreed to provide, at Plaintiff's request, estimates of the number of records that would require further review if the results are not narrowed. FEMA provided the following information on June 12, 2017 to Plaintiff:

In early May, FEMA's Office of the Chief Information Officer pulled approximately 13 GB of .pst (email) files based on the search protocol outlined below. FEMA's FOIA processing and tracking system, FOIAXpress, lacked the capability to directly upload documents for file sizes of 1 GB or higher. Therefore, FEMA requested assistance from the Department of Homeland Security's Privacy Office to upload those records to their Advanced Document Review (ADR) server determine a document and page count. The DHS Privacy Office notified FEMA on Friday, June 9, that the 13 GB email pull contains 85,302 documents (i.e., number of emails, excluding any attachments). The document count is reduced to 22,525 documents after removing duplications (which, again, excludes any attachments to emails) and contains approximately 52,703 pages, excluding any attachments to the emails. FEMA is still in the process of trying to get an estimate of the number of *pages* that will need to be reviewed.

FEMA utilized the following protocol in its searches for emails and documents exchanged between FEMA and McKinsey relating to the Sandy claim review process. First,

³ FEMA grouped this request as follows: "Any and all relevant, available, and non-exempt documents and communications between FEMA and McKinsey & Company related [to] the Claims Review Process."

FEMA identified fifteen (15) FEMA employees with the Sandy Task Force most likely to possess responsive communications and documents. FEMA is sending a separate communication to Plaintiff's counsel today identifying those custodians. Second, FEMA pulled any email for those custodians with the term "McKinsey" in it, which would include any emails with @mckinsey.com in the to/from/cc lines of the emails, and any attachments to those emails. Third, FEMA pulled emails for the period when the Sandy Task Force was established until the date of the email collection, i.e., from March 8, 2015 to April 24, 2017.

In light of the foregoing, FEMA requests that Plaintiff provide further guidance on how to limit the search, i.e., through narrowing search terms, limiting the custodians, and limiting the date range. As reported above, FEMA has been reviewing records at a rate of approximately 1,650 pages per month. Assuming that each document averaged only two pages in length, which we know the tally to be slightly more than 2-pages per document currently, a review of the McKinsey documents would not be completed until approximately January of 2020 without further narrowing. With this new information, the Parties intend to confer on the scope of this request, before determining whether the Court's involvement is needed. FEMA will continue to review records in response to the other requests while the parties attempt to negotiate acceptable search parameters for the McKinsey communications.

III. Potential Disputes & Next Steps

Plaintiff anticipates that the scope of FEMA's redactions and withholding of responsive documents may necessitate the Court's involvement. Plaintiff proposed negotiating redactions on a rolling basis. Plaintiff submits that, if the Parties cannot resolve these issues through negotiation, partial summary judgment briefing on redactions made to FEMA's initial document production(s) may be useful, particularly if a ruling on those issues helps to simplify FEMA's

redactions to its remaining productions or prevents the need for duplicative review and production of any documents that the Court finds were improperly redacted.

FEMA is not opposed to conferring with Plaintiff on the scope of its redactions as the releases proceed. As previously stated, however, FEMA would oppose a request for partial summary judgment briefing prior to the completion of its releases. *See* Def.'s Mot. for Extension of Time at 3 (Apr. 19, 2017) (ECF No. 11).

FEMA intends to file an answer to the complaint on or before June 19, 2017.

The Parties request that the Court order the Parties to file another joint status report on or before August 12, 2017, by which time the Parties expect FEMA to have answered the Complaint, to have made two additional releases on July 1 and August 1. The Parties also intend to confer on the search parameters pertaining to the McKinsey communications in Item 13 so that FEMA can revise the document counts and add that review to the queue prior to the next status report.

June 12, 2017

Respectfully submitted,

By: /s/ Kristin C. Davis
AUGUST J. MATTEIS, JR. (No.433068)
JOSHUA B. KATZ (No. 975872)
MATTHEW S. KRAUSS (No. 996106)
KRISTIN C. DAVIS (No. 992882)
Weisbrod Matteis & Copley PLLC
1200 New Hampshire Ave., NW, Ste. 600
Washington, DC 20009
Tel: (202) 499-7900
E-mail: amatteis@wmclaw.com
jkatz@wmclaw.com
mkrauss@wmclaw.com
kdavis@wmclaw.com

CHANNING D. PHILLIPS
D.C. Bar 415793
United States Attorney

DANIEL F. VAN HORN
D.C. Bar 924092
Chief, Civil Division

By: /s/ Daniel P. Schaefer
DANIEL P. SCHAEFER
D.C. Bar 996871
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
Tel: (202) 252-2531
E-mail: Daniel.Schaefer@usdoj.gov