UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JASON LEOPOLD,   )
)
          Plaintiff,   )
)
          v.   ) Civil Action No. 16-2258-KBJ
)
NATIONAL SECURITY AGENCY,   )
)
          Defendant.   )
_____)

DEFENDANT'S MOTION TO STAY PROCEEDINGS

Defendant National Security Agency ("NSA"), through undersigned counsel, hereby moves for a stay of proceedings in order to gain the time needed to appropriately process plaintiff's Freedom of Information Act request, and further requests that the Court order the Agency to process no more than 400 pages of potentially responsive documents per month. In support of this motion, defendant respectfully submits the attached memorandum in support of defendant's motion, with a supporting declaration and exhibits, and a proposed Order. Plaintiff has been consulted as required by LCvR 7(m) and has indicated that he will oppose this motion.

                         Respectfully submitted,

                         CHANNING PHILLIPS,
                         D.C. Bar # 415793
                         United States Attorney
                         for the District of Columbia

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

/s/ Marina Utgoff Braswell
MARINA UTGOFF BRASWELL
D.C. BAR #416587
Assistant United States Attorney
U.S. Attorney's Office
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2561
marina.braswell@usdoj.gov

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MEMORANDUM IM SUPPORT OF DEFENDANT'S MOTION TO STAY PROCEEDINGS

PRELIMINARY STATEMENT

In this case brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, defendant National Security Agency ("NSA" or "Agency") moves for a stay of proceedings for six (6) months so that the NSA can appropriately process plaintiff's three (3) broad FOIA requests. The Agency further requests that it be ordered to process no more than 400 pages of potentially responsive documents per month. Although the NSA is exercising due diligence in responding to this request, exceptional circumstances prevent it from processing the request within the statutory time limit, or at the pace requested by plaintiff. Pursuant to 5 U.S.C. § 552(a)(6)(C), which provides for additional time to process FOIA requests under such circumstances, defendant requests that the Court stay the proceedings until the NSA is able to appropriately

process plaintiff's requests, one (1) of which has already begun.   In support of its motion, the NSA submits the sworn Declaration of David J. Sherman ("Sherman Decl." or "Sherman Declaration"), Chief of Strategy, Plans, and Policy for the Agency, which explains that the NSA requires a stay of approximately six (6) months, or until September of 2017, to continue processing one of plaintiff's FOIA requests, begin processing the other two (2) requests, and subsequently release any responsive records.   Further, the NSA requests the Court order it to process no more than 400 pages of potentially responsive materials per month.   See Sherman Declaration, attached.

A stay until September of 2017 is warranted by the facts of this case.   The NSA has begun processing one (1) of plaintiff's three (3) requests.   The NSA attempted to negotiate with plaintiff to narrow the scope of responsive records, and although plaintiff initially agreed to narrow the scope of one of his requests, he has since indicated through counsel that he desires to pursue the broad parameters of his initial request.

STATEMENT OF FACTS

A.   The NSA's FOIA Request Processing System

As Mr. Sherman explains, all FOIA requests submitted to the NSA come to the Freedom of Information Act/Privacy Act (FOIA/PA) Office, which is located organizationally in the Office of

Strategy, Plans and Policy. Sherman Decl., ¶¶ 1, 24. Each FOIA request submitted to NSA must go through a series of reviews, including: 1) initial receipt and perfection; 2) initial determination regarding which processing track is appropriate for the request; 3) searching for and collecting potentially responsive materials; 4) scoping the material for responsiveness; 5) consultation with other agencies, as appropriate; 6) two levels of classification/declassification review, including a line-by-line review of each page, as well as a final management level review; and, 7) final processing of responsive materials for release. These steps must be taken sequentially, as access to the information, which is often classified and involves matters of national security, must be strictly controlled to ensure its integrity. Id. at ¶ 23.

   The FOIA Office's ("FO") Initial Processing Team reviews and sorts all correspondence and requests for information from the public, Congress, other federal and state agencies, and foreign governments. They also perform various initial tasks required to "perfect" a FOIA/PA request, such as sending acknowledgment letters, requesting identifying information from requesters to ensure that a records search is properly performed, informing requesters when a notarized signature and/or Privacy Act ("PA") waiver is required, and notifying requesters when no responsive records are located, or the

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