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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DIANE ROARK,

Case No.: 6:12-CV-01354-MC

Plaintiff,

JOINT STATUS REPORT

v.

UNITED STATES OF AMERICA,

Defendant.

Plaintiff, appearing pro se, and Defendant the United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and through James E. Cox, Jr., Assistant United States Attorney for the District of Oregon, submit this joint status report prior to the status conference set for August 15, 2016.

This is a return of property case under Federal Rule of Criminal Procedure 41(g) in which the Court has adopted the government's plan to return to Plaintiff the non-classified and non-protected electronically stored information contained on a computer hard drive that the government obtained during a 2007 search and seizure. (ECF No. 126.)

Defendant's Status Report

Since the filing of the government's last status report (ECF No. 132), the House Permanent Select Committee on Intelligence ("HPSCI") has completed the manual review of the 7,655 unique files from the seized hard drive that contained one or more HPSCI search terms. On July 18, 2016, the government returned to Plaintiff the 7,538 unique computer files that did not contain any protected and/or classified HPSCI information based on a manual review of the files.

The government earlier returned to Plaintiff the files from the hard drive that did not require a manual review (ECF No. 129) and the files that were cleared for return after manual review by NSA (ECF No. 132). Thus, this completes the government's review and return of non-privileged and non-protected information from the computer seized in the 2007 search of Plaintiff's residence. The government earlier returned the remaining property seized in the 2007 search that did not contain classified or protected information. (ECF Nos. 79-84.)

The government proposes that the Court now enter a judgment in this action. If Plaintiff would like the remaining property from the 2007 search still in the government's possession to be destroyed, then the government is willing to destroy

such property, provided that the Court's judgment is final and not subject to any further appeal. If Plaintiff is not certain at this point whether she will file an appeal, then the government would request that any requirement that the government destroy the remaining property in the government's possession be conditioned on the Plaintiff filing a notice stating that she will not file an appeal from the judgment.

Plaintiff's Status Report

HPSCI used broad key words that produced 7,655 files for review. Of these, **117, or 1.5%, were retained** and the remaining 98.5% (7,538) were returned to Plaintiff. NSA used more specific key words that retrieved 3,538 documents, of which **3,261, or 92%, were retained**. Of the remaining 277 (8%) that were cleared for return to the owner, only 132 (4%) were sent to Plaintiff. The other 145 were sent to HPSCI because they were also selected under HPSCI's key word list; therefore, it is assumed that they are included in HPSCI's statistics.

HPSCI had broadly stated that it could withhold any document containing unclassified discussion on any *topic* that had been considered in executive session during Plaintiff's 17 years of service, as opposed to protecting the *substance of Committee proceedings*. For instance, this allegedly would apply to any discussion of any budget issue at any time. The entire proposed budget chart and related documents are presented to members yearly, but only a relatively few items are discussed during these decision sessions or in pre-decision sessions attended by many representatives of intelligence agencies. The Committee rejected prior

guidance to Plaintiff that only classified or unclassified executive session discussion and proceedings were banned from discussion outside the Committee. Therefore, HPSCI identified a fairly large number of documents (117) that it refused to return, even if unclassified and even if not discussed during executive session.

NSA, in contrast, had during exchange of papers ultimately set forth to the Court a relatively narrow claim regarding allegedly unclassified but sensitive information. Plaintiff presented historical documentation that section 6a of the NSA Act of 1959 was intended solely to prevent public release of the names of NSA employees, not to serve as NSA power to withhold other unclassified information. The government responded that this documented interpretation was irrelevant, because unclassified documents would be withheld only if they contained NSA employee names. The Court's decision stated that only the Ninth Circuit formally could overturn NSA's prior expansive interpretation of the NSA Act of 1959. NSA then withheld an astonishing number and percentage of the documents that it had selected through key word search.

Plaintiff asked the government attorney, Mr. Cox, for a breakdown by HPSCI and NSA of the categories justifying their retention of many documents, with the number of times each category had been invoked. These categories would include: alleged classified status of documents, by classification level (Confidential, Secret, Top Secret or higher); those with the first initial or name plus surname of non-public NSA employees; and any additional information deemed Sensitive But Unclassified (SBU). NSA continues to withhold entire documents although it is

subject to the Freedom of Information Act, which mandates minimal redactions instead.

Mr. Cox said firmly that the government had met its obligations and would not provide the requested breakout. Plaintiff replied that when the government seizes private property it must say what it seized and why it refuses to return it. Plaintiff believes this information should be provided for each individual document, and that NSA, at least, readily could accomplish this under its automated record system. HPSCI previously supplied this and more information for paper documents it withheld, but did not do so for these electronic documents. Plaintiff sees no excuse for failing to provide even gross categories and the number of documents retained under each. This is particularly required when such an astoundingly large number are not being returned to their owner.

Plaintiff also asked Mr. Cox to confirm the small number of returned Word documents in the “no hit” NSA compact disk and ensure that others had not been overlooked. Because this computer had been used for 6-1/2 years, Plaintiff expected return of many mundane Word files that were personal and completely unrelated to national security issues. If these were overlooked, other types of files mistakenly also might not have been returned.

Plaintiff has made no decision whether to appeal. She will notify the government within 60 days after the case concludes whether it may destroy Plaintiff's hard drive, computer, and all copies of her seized documents that are held
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by any government agency.

DATED this 11th day of August 2016.

Respectfully submitted,

BILLY J. WILLIAMS
United States Attorney
District of Oregon

/s/ James E. Cox, Jr.
JAMES E. COX, JR.
Assistant United States Attorney
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Joint Status Report** was placed in a postage prepaid envelope and deposited in the United States Mail at Portland, Oregon on August 11, 2016, addressed to:


Diane Roark
2000 N. Scenic View Dr.
Stayton, OR 97383

And was sent via email to the following email address:

gardenofeden@wvi.com

/s/ Keith Ramsey
KEITH RAMSEY

6:12-cv-01354-MC Roark v. United States
Michael J. McShane, presiding
Date filed: 07/26/2012
Date of last filing: 08/12/2016

136	<i>Filed & Entered:</i> 08/12/2016	 Scheduling
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Full docket text for document 136:

Scheduling Order by Judge Michael J. McShane. Based upon the schedule of the Court, the Status Conference set for 8/15/2016 is reset for 9/9/2016 at 10:00AM in Eugene by telephone before Judge Michael J. McShane. Ordered by Judge Michael J. McShane. (Copy mailed to plaintiff and left phone message)
(cp)