UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOUTHERN POVERTY LAW CENTER,

an FOIA request to the defendants related to the operations on January 7, 2016. At the time of filing this suit, August 9, 2016, the defendants had produced no records and provided no substantive response to the FOIA request. On September 12, 2016, the defendants filed an answer admitting that no records had been turned over and stating that the request was still in process.

On October 13, 2016, this court issued a scheduling order setting forth a timeline for the defendants to turn over responsive records and provide a Vaughn index (32 C.F.R. § 701.39) [Doc. No. 11]. The parties jointly requested two amendments to the scheduling order, both of which were granted by the court [Doc. Nos. 14 and 16].

Pursuant to the court's scheduling order, the parties provided a status report on March 22, 2017. The status report indicated that the following issues remain for resolution:

(1) whether the defendants performed an adequate search of their records in response to the plaintiff's FOIA request;

(2) whether the exemptions claimed by the defendants areed T-.0002 002 01nhmo2

[Doc. No. 18]. On April 7, 2017, the plaintiff filed an amended complaint in which it added three paragraphs to Count I: violation of the Freedom of Information Act. These three paragraphs seem to acknowledge that some documents were turned over to the plaintiff by the defendants [Doc. No. 19 at ¶¶ 31 – 33]. These contentions are directly at odds with repeated factual allegations in the amended complaint asserting that no records or response has been provided by th

as to any material fact" and the moving party "is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

An agency is entitled to summary judgment in a FOIA case if it demonstrates that no material facts are in dispute, it has conducted an adequate search for responsive records, and each responsive record, which is located, was either produced to the plaintiff or is exempt from disclosure. *Weisberg v. U.S. Dep't of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980). In the FOIA context, summary judgment is justified if the affidavits or other documents describe the documents and "the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Larson v. Dep't of State*, 565 F.3d 857, 862 (D.C. Cir. 2009); *see also Miscavige*, 2 F.3d at 368 ("[w]e hold that in certain cases, affidavits can be sufficient for summary judgment purposes in an FOIA case if they provide as accurate a basis for decision as would sanitized indexing, random or representative sampling, in camera review, or oral testimony"); *Miccosukee Tribe of Indians of Florida*, 516 F.3d at 1257–58 (noting that a trial court may utilize various methods depending on the circumstances of the case, including, agency affidavits to determine whether an adequate factual basis

exists for the agency's disclosure of information in response to a FOIA request).

In reviewing a motion for summary judgment under FOIA, the court must view the facts in the light most favorable to the requester. *Burka v. U.S. Dep't of Health and Human Servs.*, 87 F.3d 508, 514 (D.C. Cir. 1996); *Weisberg v. United States Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984);

This court finds that, at a minimum, the defendants must provide all search terms used by each component agency that conducted searches and link precisely what files or storage locations were searched using which search terms. *See Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999). Otherwise the court cannot evaluate the adequacy of the search.

2. Adequacy of the Search

Even had the defendants provided a sufficient declaration setting forth details of the searches conducted, the plaintiff may avoid summary judgment if it can demonstrate that relevant records have not been released. *Id.* at 325. Here, the plaintiff points out that the defendants produced no copies of judicial or administrative warrants despite the fact that all officers who conducted the raid were instructed to carry administrative warrants of removal and administrative warrants of arrest during the raids in question. More troubling is that the search terms did not include the word "warrant". oc-.0024dTw7

Another glaring omission from documents turned over to the plaintiff are Field Operations Worksheets and I-213 forms from targets arrested in Georgia and Texas. The defendants' search turned up a mere thirteen Field Operations Worksheets when 121 individuals were arrested. Notably, all thirteen worksheets pertained to individuals arrested in North Carolina only.

While the plaintiff identifies numerous additional deficiencies with searches conducted thus far, the two examples above require the defendants' motion for summary judgment be DENIED. The additional deficiencies need not be addressed here because the plaintiff did not move for summary judgment. Therefore, even if the court agrees with all arguments raised by the plaintiff as to the inadequacy of the searches conducted by the defendants, the end result would be the same—denial of the defendants' motion for summary judgment.

B. Applicability of the Defendants' Claimed Exemptions

In the motion for summary judgment, the defendants addressed each of the exemptions they invoked in order to withhold certain information that was responsive to the plaintiff's FOIA request. In its summary judgment response, the plaintiff does not contest the overarching applicability of the exemptions the defendants relied upon. Rather, the plaintiff argues that consent forms provided by it to the defendants waive

to the consenting individuals, making many of the exemptions inapplicable. Also, the plaintiff points to an Executive Order entered by the President on

The court disagrees with both parties. There is no need to exclude from this litigation the responsive documents which are no longer exempted from disclosure in light of the consent forms. However, the 30-day deadline proposed by the plaintiff is unreasonable. The defendants are ORDERED to turn over the documents which are no longer exempted no later Febraury 16, 2018.

2. Executive Order

The plaintiff argues that there are "significant questions as to whether the continued assertion of the privacy exemptions supporting the redaction of personal or identification information of non-citizens (or of non-lawful permanent residents) remains proper" due to the January 25, 2017 Executive Order issued by the President. The defendants did not address this argument in their reply brief. The defendants are ORDERED to file a supplemental reply brief on this issue no later than December 15, 2017. Alternatively, should the defendants agree that there are no longer privacy exemptions applicable to documents pertaining to non-citizens, they may turn over no later than February 16, 2018 all documents withheld on the basis of this privacy exemption as applied to non-citizens. Should the defendants chose the alternative, they shall file a notice on the docket of this

case no later than December 15, 2017 stating their intent to withdraw those asserted exemptions.

IV. The Plaintiff's Proposals

The plaintiff dedicates a great deal of its briefing to arguments about how the court should order the defendants to conduct its searches. However, as set forth above, the plaintiff has not moved for summary judgment. Therefore, the court will not address its affirmative claims for relief.

V. Conclusion

Based on the foregoing,

(1) the defendants' motion for summary judgment [Doc. No. 21] is DENIED;

(2) the defendant shall comply with the schedules set forth above with respect to the claimed exemptions; and

(3) the plaintiff shall have until January 16, 2018, to file a motion for summary judgment seeking affirmative relief in this matter.

SO ORDERED this 15th day of November, 2017.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge