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Sent: Friday, June 29, 2018 6:30 PM

To: DCD_ECFNotice@dcd.uscourts.gov

Subject: Activity in Case 1:17-cv-00652-BAH PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Order on Motion for Extension of Time to

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U.S. District Court

District of Columbia

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Case Name: PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Case Number: [1:17-cv-00652-BAH](#)

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Docket Text:

MINUTE ORDER (paperless) DENYING IN PART AND GRANTING IN PART, over the plaintiff's objection, the defendant U.S. Environmental Protection Agency's ("EPA") [26] Motion for Extension of Time ("EPA Mot."). On June 1, 2018, summary judgment was granted to plaintiff regarding EPA's refusal to conduct a search for responsive documents to plaintiff's two-part record request, pursuant to the Freedom of Information Act ("FOIA"), which request was submitted on March 10, 2017. The June 1, 2018, [24] Order directed EPA, *inter alia*, to conduct and complete its search for documents responsive to both parts of the FOIA request within 30 days. Contrary to this Order, in the last month, EPA advises that no search for records responsive to either part of the FOIA request submitted fifteen months ago has been initiated. EPA Mot. at 2 (noting EPA "will develop a search strategy").

With respect to the first part of the FOIA request, EPA now requests a 35-day extension, until August 6, 2018, to complete its search for responsive records. *Id.*

This extension is excessive in light of the fact that EPA previously advised the Court, on October 10, 2017, that it is "prepared to search for any briefing materials" responsive to this first part of the FOIA request. See parties' [12] Joint Status Report (Oct. 10, 2017) at 1. Given this "prepar[ation]" for over eight months, EPA's request for an extension of 35 days to comply with its search obligations under the FOIA and the June 1, 2018, [24] Order is denied in part, and EPA is granted an extension of ten days, until July 11, 2018, to complete the search for records responsive to the first part of the FOIA request, and to produce any non-exempt responsive records to the plaintiff, along with an explanation of any such records withheld by August 1, 2018.

With respect to the second part of the FOIA request, EPA requests a 14-day extension "to initiate the search...and then to file a status report by July 30, 2018, updating the Court on the status and results of EPA's search efforts to date and recommendations for next steps." EPA Mot. at 3. In making this request, EPA reiterates already-rejected arguments from its summary judgment motion that "Plaintiff's request appears to call for a subjective judgment as to what documents support the conclusion that 'human activity is not the largest factor driving global climate change.'" *Id.* To the contrary, the second part of the request "targets agency records that...specifically conclu[de] that humans are not the largest factor, with no need for the FOIA staff to conduct scientific research or make judgment calls." *PEER v. EPA*, 2018 WL 2464463 at *6 (D.D.C. June 1, 2018) (internal quotation marks omitted). In other words, EPA's request to delay the search for records responsive to the second part of the FOIA request is predicated on EPA's continuing mis-reading of the FOIA request.

Nonetheless, as EPA correctly points out, the second part of the FOIA request has no date range, but it adds that plaintiff has already "helpfully clarified" certain records that need not be searched. EPA Mot. at 3 n.1. Given that EPA continues to mis-read the second part of the FOIA request and has conferred successfully with plaintiff about some aspects regarding the scope of the request, the parties are directed to confer and submit, by noon on July 6, 2018, a joint report regarding the search criteria agreed-to and not agreed-to, if any, for this aspect of the FOIA request; and EPA is directed, by that same date, to begin execution of any agreed-to criteria, with a rolling production of responsive, non-exempt records to the plaintiff. Accordingly, EPA's request for a 14-day extension to begin to search as to the second part of the FOIA request is denied, except that the schedule imposed by the June 1, 2018, [24] Order is modified as contained herein. Signed by Chief Judge Beryl A. Howell on June 29, 2018. (lcbah3)

1:17-cv-00652-BAH Notice has been electronically mailed to:

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