

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH J. DILLON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-1716-RC
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE,)	
)	
Defendant.)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S CONSENT MOTION FOR
EXTENSION OF TIME TO SUBMIT DOCUMENTS FOR *IN CAMERA* REVIEW**

On February 14, 2019, defendant, United States Department of Justice, filed a consent motion for an extension of time to submit documents for *in camera* review. Plaintiff, Kenneth Dillon, consents to the extension; however, defendant's motion fails to seek additional time to fulfill other portions of the Court's Order of January 17, 2019 (ECF No. 26) nor does it mention the conditions under which plaintiff consented to the extension.

The Court's Order of January 17, 2019 ordered both an *in camera* submission as well as "a notice with the Court that provides possible explanations for why the FBI did not release the three emails purportedly sent to Mara Linscott that Dillon identified in his February 2018 letter to government counsel." Neither a request to extend the time for defendant to comply with this part of the Order, nor plaintiff's position on it were included in defendant's motion for an extension of time. While plaintiff does not object to an extension of time for defendant to comply with this part of the order, plaintiff did ask that defendant allow plaintiff an opportunity to respond to its filing with the Court.

Plaintiff seeks the opportunity to respond to the FBI's Ordered Notice because, as he has stated previously in this litigation, he believes the emails may have been destroyed. The five emails

listed in the February 8, 2018 letter to the FBI from Mr. Dillon's counsel are just the Ivins emails during September and October, 2001 that are known to exist. Given that Ivins was a prolific email writer, and only a few of his emails in that period have been released, the FBI should have dozens of other Ivins emails from that period, unless someone destroyed them. The FBI has never answered Dillon's request in the February 8, 2018 letter for a description of the universe of Ivins emails in that period.

In regard to the question of whether it is reasonable to think that someone has destroyed evidence, Dillon notes his article "Was Abderraouf Jdey the Anthrax Mailer?" at <https://www.scientiapress.com/jdey-anthrax-mailings> contains reasons for suspecting that someone would have had a compelling motive to destroy evidence exculpatory of Bruce Ivins. Further, the FBI's failure in repeated searches to find records that FBI ordinarily would possess provides reasons to suspect destruction of evidence such as page 15 of David Hardy's declaration of June 15, 2018 in which he reported that there was no listing for the IMCS in the FBI's Central Records System nor was there a copy of it at the Washington Field Office. (See Hardy Declaration dated June 15, 2018 [ECF No. 14-2]). These anomalies are one more reason to suspect destruction of evidence which should be addressed by the FBI in its Ordered Notice.

Finally, plaintiff wishes to point out again that in regard to his April 18, 2015 request (FOIPA No. 1327397) for the records on Bruce Ivins for September and October, 2001, he noted in his Reply dated September 25, 2018 at page 2 (ECF No. 21) that he stated it was an attempt to test whether someone had destroyed evidence, not a narrowing of his original request. At no point did he abandon his original request.

While defendant's motion for an extension of time should be granted, plaintiff asks this Court to consider the above in directing the defendant's eventual notice Ordered by this Court.

Dated: February 19, 2019

Respectfully Submitted,

/s/

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