

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORGANIZATION FOR COMPETITIVE)	
MARKETS,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 14-1902 (EGS)
)	
OFFICE OF INSPECTOR GENERAL)	
USDA, <i>et al.</i>)	
)	
Defendants.)	

ORDER

On November 12, 2014, the Organization for Competitive Markets ("OCM") filed suit against the Office of the Inspector General for the United States Department of Agriculture ("OIG") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 553, *et seq.* Over the almost four years that this case has been pending, OIG has been attempting to finalize document production, while coordinating review with intervening defendant National Cattlemen's Beef Association ("NCBA"). Unfortunately, its efforts have been unavailing and document production continues.

As early as April 1, 2015, OIG stated that it had "completed" its records search and was in the midst of processing responsive records. See Status Report, ECF No. 12 (April 1, 2015). Throughout 2015 and 2016, OIG continued to process responsive records and produce them on

a rolling basis to OCM.¹ See, e.g., Status Report, ECF No. 29 (July 1, 2016). By late 2016, however, OIG began reprocessing records that it had previously deemed non-responsive. See OIG Notice, ECF No. 46 (Nov. 10, 2016).

After more than two years of production, the Court ordered OIG to complete its processing and finalize an appropriate *Vaughn* index. See March 25, 2017 Minute Order. Once OIG had done so, the Court entered a summary judgment briefing schedule. See May 15, 2017 Minute Order. However, after OIG and NCBA filed their respective motions for summary judgment, OIG introduced a new series of redaction justifications covering over 13,000 pages of records. See OIG Notice, ECF No. 63 (Aug. 24, 2017). The Court vacated the pending motions for summary judgment and again ordered that OIG finalize production. See Oct. 24, 2017 Minute Order. A month later, OIG identified over 1,000 pages of further responsive records that had not been processed or produced. See OIG Notice, ECF No. 68 (Nov. 30, 2017). After OIG produced these documents and provided new justifications, the Court issued a second summary judgment briefing schedule. See Jan. 17, 2018 Minute Order.

Just five days before the summary judgment filing deadline, NCBA alerted the Court that OIG planned to release another new wave of

¹ Because the Court granted NCBA's motion to intervene, see Order, ECF No. 39 (Oct. 25, 2016), NCBA reviews OIG's records for confidential and proprietary business information.

documents. See NCBA Notice, ECF No. 72 (Feb. 16, 2018). For the second time, the Court vacated the summary judgment briefing schedule. Feb. 16, 2018 Minute Order. Days later, OIG confirmed that it planned to release another 10,000 pages. OIG Notice, ECF No. 73 (Feb. 23, 2018). It requested an unspecified amount of time to begin processing these new documents. *Id.*

As stated at the April 9, 2018 status conference, the Court has no reason to question that OIG is making a good faith effort to complete document production, and without a doubt the supplemental information release inures to the benefit of OCM. However, OIG was unable to explain why it has taken years to complete document production. Given the vacated summary judgment motions, the twice-vacated briefing schedules, and the Court's extensive involvement in moving this case along, the Court will neither tolerate nor excuse further delay. It is therefore

ORDERED that the defendants shall produce all non-exempt records by no later than **August 31, 2018**; it is further

ORDERED that the defendants shall produce a final *Vaughn* index accounting for any records withheld pursuant to a FOIA exemption by no later than **August 31, 2018**; it is further

ORDERED that NCBA's motion to compel, see ECF No. 72, is **GRANTED**. OIG is therefore **ORDERED** to comply with 7 C.F.R. § 1.12 and provide NCBA and other private entities, as appropriate, the opportunity to

review the responsive records for privileged or confidential business information; it is further

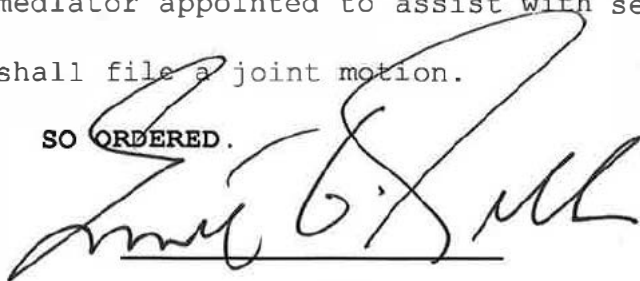
ORDERED that the defendants shall file a notice on the public docket by no later than **August 31, 2018**, indicating that they have complied with this Order in all respects. On September 4, 2018, the Court will enter a third and final summary judgment briefing schedule; it is further

ORDERED that, in the event that the defendants have not fully complied with this Order by August 31, 2018, **USDA Secretary Sonny Perdue, Acting Administrator of the Agricultural Marketing Service Bruce Summers, and USDA Inspector General Phyllis Fong**, preferably accompanied by their attorneys, shall appear in Court on **September 13, 2018 at 10:00 am** in Courtroom 24A to show cause why they should not be held in contempt of court. The parties are also directed to appear in Court at that time; it is further

ORDERED that the Court does not intend to modify the **August 31, 2018** final compliance date absent a catastrophe; it is further

ORDERED that if, at any point in time, the parties desire to have a mediator appointed to assist with settlement discussions, the parties shall file a joint motion.

SO **ORDERED**.

A handwritten signature in black ink, appearing to read "Emmet G. Sullivan", written over a horizontal line.

Emmet G. Sullivan
United States District Judge
April 11, 2018