

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HERITAGE FOUNDATION,

MIKE HOWELL,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:24-cv-00645-DLF

DEFENDANT’S NOTICE REGARDING SEARCH

Defendant respectfully submits this notice to provide certain updates regarding the Department’s search in this Freedom of Information Act (“FOIA”) case, in advance of the telephonic conference scheduled for tomorrow morning.

In the status conference held on June 18, 2024, undersigned counsel represented to the Court that the Special Counsel’s Office (“SCO”) did not have a verbatim transcript made of the audio recordings of President Biden’s interviews with his biographer, Mark Zwonitzer. Transcript of June 18, 2024 Status Conference at 16-17, available at ECF No. 23-3 (“[U]nlike the case of the special counsel and his interviews with the president, we don’t have some transcript that’s been created by the [S]pecial [C]ounsel that we can attest to its accuracy.”). Undersigned counsel made this representation based on his understanding of the facts at the time. Later in the status conference, counsel for Plaintiffs questioned this representation, pointing to a notation in a footnote in the Hur Report to a transcript abbreviation, *id.* at 39, and subsequently asked undersigned counsel about the transcript reference.

In the past few days, in the course of processing the portions of the Biden-Zwonitzer audio recordings that the parties agreed to (*see* June 25, 2024 Joint Status Report at 2-3, ECF No. 20), the Department located six electronic files, consisting of a total of 117 pages, that appeared to be verbatim transcripts of a small subset of the Biden-Zwonitzer audio recordings created for the SCO by a court-reporting service. Having learned about the transcripts, the Department planned to contact an individual with knowledge of the SCO files with whom the Department had previously consulted. However, the individual was out of the office and unavailable. Accordingly, the Department contacted Robert Hur to ask about the nature of the transcripts. Mr. Hur confirmed that the identified files were in fact transcripts of a subset of the Biden-Zwonitzer audio recordings, created by a court-reporting service at the SCO's request. These transcripts were indeed the transcripts referred to in the Hur Report, though they were not cited in any of the Passages in Plaintiffs' FOIA request.

Having contacted Mr. Hur to gather information about the transcripts, the Department concluded that it was appropriate under the circumstances to ask him what records he relied upon for the highlighted statements in Plaintiffs' FOIA request. Mr. Hur identified two records that he relied upon in addition to those already identified by the Department: (1) the newly-located, verbatim transcripts of the Biden-Zwonitzer audio prepared by a court-reporting service at the SCO's request, and (2) with respect to the Afghanistan memo—a memo that the Department previously identified as responsive, and that Plaintiffs agreed to scope out of their request—a specific portion of Mr. Biden's handwritten notebook related to the memo. *See* June 16, 2024 Joint Status Report at 2, ECF No. 14. Mr. Hur also confirmed that, in making the statements

highlighted in Plaintiff's FOIA request that drew conclusions about the Biden-Zwonitzer audio recordings, he had relied on the Biden-Zwonitzer audio recordings generally.

The Department plans to confer with Plaintiffs about whether they would like the Department to process these additional records and the impact of these developments on Plaintiffs' challenge to the adequacy of Defendant's search.

Dated: July 22, 2024

Respectfully submitted,

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/s/ Cameron Silverberg
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