

Exhibit D

From: Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>
Sent: Wednesday, March 5, 2025 11:53:40 AM
To: Hu, April <April.Hu@mto.com>; Hall, Emily (CIV) <Emily.Hall@usdoj.gov>
Cc: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>; Arnold, Ariana (USAMD) <Ariana.Arnold@usdoj.gov>; Schwab, John <John.Schwab@mto.com>; Larry Schwartztol <lschwartztol@law.harvard.edu>; Scott, Carson J. <Carson.Scott@mto.com>; Mark Hanna <mhanna@murphyllc.com>
Subject: RE: AFT v. Bessent, Case No. 8:25-cv-00430

Hello April,

I think disagreements about the adequacy of defendants' production are best left to the parties' briefing over the weekend, but wanted to get back to you with a few thoughts given your request for a response.

Rule 34 does not apply, because we are not in discovery, and we're not aware of any authority in the Fourth Circuit requiring the production of metadata along with an AR. Even in litigation in discovery (and this case is not), the parties would confer about metadata and take into account principles of proportionality as part of a meet and confer for an overall discovery plan. Metadata is not required to be produced in all circumstances. Moreover, the government generally files administrative records without metadata, and there is no order in this case that the AR should include it.

On the request for categories of documents, if we're in a position tomorrow to share that information, then we'll do that as a courtesy. Not trying to be intransigent or to jam you up, but there are a lot of moving parts.

Thanks,
Brad

From: Hu, April <April.Hu@mto.com>
Sent: Tuesday, March 04, 2025 7:12 PM
To: Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>; Hall, Emily (CIV) <Emily.Hall@usdoj.gov>
Cc: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>; Arnold, Ariana (USAMD) <Ariana.Arnold@usdoj.gov>; Schwab, John <John.Schwab@mto.com>; Larry Schwartztol <lschwartztol@law.harvard.edu>; Scott, Carson J. <Carson.Scott@mto.com>; Mark Hanna

<mhanna@murphyllc.com>

Subject: [EXTERNAL] RE: AFT v. Bessent, Case No. 8:25-cv-00430

Hi Brad:

Thank you for following up with this information. We appreciate it, and we will review the draft protective order once we have it. We have two follow-up questions to your email.

First, what is Defendants' authority and basis for withholding metadata? Federal Rule of Civil Procedure Rule 34(b)(2)(E) requires parties to produce "documents as they are kept in the unusual course of business," which would typically include basic metadata, such as when a document was created and the record's custodian. Courts have applied this rule when examining the production of records in APA cases before. *See, e.g. Nat'l Urban League v. Ross*, 2020 WL 7488068, at *2 (N.D. Cal. Dec. 13, 2020) (Defendants' "refus[al] to include basic metadata for the produced documents," including data, "violated [Rule 34]"). And agencies have provided metadata for administrative records as well. *See id.* (noting "Defendants previously included" "customary metadata" "when producing the administrative record in this case"). Given how quickly the decision was made to grant access and the uncertainty of the facts afterwards, including within each Defendant agency, the timing and sequence of events is central to the issues in this case and at least some of that information is likely contained only in metadata. If you have authority for your position to withhold metadata, please send it to us immediately.

Second, we were surprised, and disappointed, to hear that Defendants claim to be unable to describe what categories of information will be included in the production they have committed to make in just 72 hours. Defendants have now had more than a week since the TRO was entered to assemble an administrative record. That said, it should be beyond dispute that Defendants will know by Thursday—the day before their production deadline—what categories they intend to produce the following day. At a minimum, then, we ask that Defendants provide us a summary of the categories of information they have gathered for production as of Thursday at noon ET. If Defendants' position is they will not be able to provide those categories, even by Thursday at noon ET, please state that is the case.

Best,

April

Xiaonan April Hu | Munger, Tolles & Olson LLP
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Thank you.

From: Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>
Sent: Tuesday, March 4, 2025 4:48 PM
To: Hu, April <April.Hu@mto.com>; Hall, Emily (CIV) <Emily.Hall@usdoj.gov>
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April,

We understand your position about providing members names. We're still investigating whether segregation of the material is possible, and we'll let you know if it is.

The administrative records will include documents identifying specific people (among those covered by the injunction) who have had access to systems, although—as we've flagged—we will seek to redact their names in the public versions of the record. We appreciate your willingness to discuss a protective order so the names can be provided plaintiffs. We're working on a draft protective order and will send for your review tomorrow.

Otherwise, given the very short time available to Defendants to compile the administrative records for three separate agencies, we're not able to commit in advance what specific categories of information will be included. We're taking into account plaintiffs' views as to what they believe should be included, but we may take a different position in some cases. To the extent plaintiffs have any concerns about the completeness of the administrative records, the court has already built into the schedule an opportunity for plaintiffs to make those arguments in their March 8 filing.

As to format, we currently anticipate that all files will be produces as Bates-stamped PDFs without metadata, ad we can send via electronic file share. No special software will be required to access. Although we're still compiling the records, we don't anticipate the ARs will be particularly voluminous—compared to the size of ARs for agency rulemakings, for example.

Thanks,
Brad

From: Hu, April <April.Hu@mto.com>
Sent: Tuesday, March 04, 2025 11:45 AM
To: Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>; Hall, Emily (CIV)

<Emily.Hall@usdoj.gov>

Cc: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>; Arnold, Ariana (USAMD) <Ariana.Arnold@usdoj.gov>; Schwab, John <John.Schwab@mto.com>; Larry Schwartztol <lschwartztol@law.harvard.edu>; Scott, Carson J. <Carson.Scott@mto.com>; Mark Hanna <mhanna@murphyllc.com>

Subject: [EXTERNAL] RE: AFT v. Bessent, Case No. 8:25-cv-00430

Hi Brad,

Thank you for the update. We will keep an eye out for an email from you later today.

Best,

April

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From: Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>

Sent: Tuesday, March 4, 2025 11:42 AM

To: Hu, April <April.Hu@mto.com>; Hall, Emily (CIV) <Emily.Hall@usdoj.gov>

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Subject: RE: AFT v. Bessent, Case No. 8:25-cv-00430

Hi April,

We're still in discussions with our clients, so we're not going to be able to get back to you on this by your noon deadline, but we'll follow up later today.

Best,

Brad

From: Hu, April <April.Hu@mto.com>

Sent: Monday, March 03, 2025 6:15 PM

To: Hall, Emily (CIV) <Emily.Hall@usdoj.gov>

Cc: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>; Arnold, Ariana (USAMD)

<Ariana.Arnold@usdoj.gov>; Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>; Schwab, John <John.Schwab@mto.com>; Larry Schwartztol <lschwartztol@law.harvard.edu>; Scott, Carson J. <Carson.Scott@mto.com>; Mark Hanna <mhanna@murphypllc.com>

Subject: [EXTERNAL] RE: AFT v. Bessent, Case No. 8:25-cv-00430

Counsel,

I write to follow-up on my email last Friday. Please confirm by noon tomorrow that Defendants will include in the administrative record documents identifying the DOGE affiliates who have (or have had) access to Defendants' systems of records. As I explained on the meet and confer we had last week, this information is highly relevant to the privacy and information security issues in this case. Plaintiffs reiterate that they are willing to stipulate to a protective order to protect these affiliates' identities from being publicly disclosed, to the extent such information is not public, and will review a draft protective order prepared by Defendants to that effect.

Please also confirm by noon the details about Defendants' anticipated production. Given the compressed briefing schedule, we need to know now (i) what categories of information we identified during the meet and confer will be included in the administrative record; (ii) what format these files will be produced and through what medium; and (iii) whether the documents will be produced with bates stamps and metadata, so we can make adequate preparations to process and review the production.

Best,

April

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From: Hu, April

Sent: Friday, February 28, 2025 5:47 PM

To: Hall, Emily (CIV) <Emily.Hall@usdoj.gov>

Cc: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>; Arnold, Ariana (USAMD) <Ariana.Arnold@usdoj.gov>; Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>; Schwab, John <John.Schwab@mto.com>; Larry Schwartztol <lschwartztol@law.harvard.edu>; Scott, Carson J. <Carson.Scott@mto.com>; Mark Hanna <mhanna@murphypllc.com>

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Counsel:

Please confirm that Defendants can in fact redact the PII for—or otherwise prohibit access to—the information for 2,458,209 individuals across all of their systems of record, which is the approximate headcount we have for members of Plaintiff Organizations and the individual Plaintiffs as well. When we last spoke, it was not clear to us that it was feasible for Defendants to do so. Given the sensitive nature of these member lists, we are not able to provide you with the individual names until (i) we receive confirmation that omitting access to more than 2.4 million individual records across each system is feasible and (ii) a protective order is in place.

During the meet and confer, you agreed to take back our requests for particular categories of records as well as our suggestion of a protective order. Can you provide us with your positions as to those issues? In particular, which categories of documents that we requested, if any, can we expect in the administrative record?

Finally, given the tight turnaround between Defendants' production and Plaintiffs' briefing deadlines, please provide us as soon as possible with additional information on the production Defendants are assembling. Will the production be through a secure download link, or through a physical hard drive or USB device? Will the files have .PDF, .docx, .msg, and other similar (standard) extensions, or will they be in a special format that will require advance preparation on our part to process? Will the documents be produced with bates stamps and metadata information, including time stamps and custodian names? Please confirm that the files will be produced individually rather than compiled into one lump PDF. These details will enable our team to process the production faster.

Best,

April

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From: Hall, Emily (CIV) <Emily.Hall@usdoj.gov>

Sent: Friday, February 28, 2025 4:59 PM

To: Hu, April <April.Hu@mto.com>

Cc: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>; Arnold, Ariana (USAMD) <Ariana.Arnold@usdoj.gov>; Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>; Schwab, John <John.Schwab@mto.com>; Larry Schwartztol <lschwartztol@law.harvard.edu>; Scott, Carson J.

<Carson.Scott@mto.com>; Mark Hanna <mhanna@murphyllc.com>

Subject: AFT v. Bessent, Case No. 8:25-cv-00430

Counsel:

I'm writing to follow up on our request during Tuesday's meet and confer that plaintiffs provide us with lists of their members, given the scope of the Court's TRO. Can you please provide those lists as soon as possible?

Thank you,
Emily

Emily Hall
Counsel to the Assistant Attorney General
Civil Division
Department of Justice
202-890-7914