UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JENNIFER LIVINGSTON, *et al.*,	)	
	)	**No. 16 CV 10156**
Plaintiffs,	)	
	)	
v.	)	**Magistrate Judge Young B. Kim**
	)	
THE CITY OF CHICAGO,	)	
	)	**November 20, 2019**
Defendant.	)	

ORDER

Before the court is Plaintiffs' motion asking the court to adopt their protocol for collecting and producing the City's ESI. For the following reasons, the motion is granted in part and denied in part:

A. Collection

The parties' first dispute is over the method to be employed for collecting and searching for relevant email ESI. Plaintiffs propose that an outside vendor first export a universe of emails (defined by date ranges) from each identified custodian to a local hard drive and then perform keyword searches to identify the initial universe of emails. Plaintiffs are willing to run additional searches to reduce the number of emails depending on the size of the initial universe. On the other hand, the City proposes to collect the initial universe of emails by using the City's own Microsoft Tool to perform a simple search (using general search terms), host the resulting universe of emails on Relativity, and then use Relativity to perform keyword searches. The key difference between the proposals here is that the City's

proposal requires a basic search prior to exporting any data from the City's storage system, whereas Plaintiffs' proposal requires the data to be exported before any searches are performed.

Plaintiffs argue that this distinction is critical because the City's basic search will not screen and collect certain ESI—such as PDF documents that have not been OCR'd or Excel files that are over four megabytes—and therefore the universe of emails to be exported may miss critical documents even before any keyword searches are performed. The City counters that its collection tool is effective and would miss only a "negligible quantity" of email attachments. (R. 219, Def.'s Resp. at 2.) The City adds that "perfection is not the standard for ESI discovery." (Id. at 4.)

The court finds that the City must retain an outside vendor to export the universe of emails before keyword searches are performed because of Microsoft Tool's limitations. While the court agrees with the City that the parties need not accomplish perfection when it comes to ESI discovery, it cannot knowingly adopt a deficient collection process when a better process is available. As such, the court orders the City to retain its own e-discovery vendor (given its concerns about security) to have the applicable universe of emails either exported to a local hard drive or hosted on Relativity for keyword searches. The court anticipates that the parties may perform multiple keyword searches depending on the number of hits after the initial search.

B. Production

The parties' second dispute is over Plaintiffs' proposal that once the initial universe of emails has been identified through keyword searches, the City should produce the same without any further review for responsiveness and for privilege. The court agrees with the City that this proposal should be rejected. While the cost of reviewing each email should not be considered when deciding which protocol should be implemented—because, as Plaintiffs correctly point out, there are ways to address the responding party's cost concerns—to the extent that the City's objections are not cost-based, the court will not deprive the City of its right to review its own data before producing the same. The parties may be able to identify emails likely to reflect attorney-client communications by using attorney names as search terms. However, this methodology will not screen for emails which reflect the communications among non-attorneys discussing attorney-client communications or attorney advice. As such, the City must be permitted (if it wishes) to review the emails for responsiveness and for privilege before producing them in their native format. If emails are withheld for privilege, the City must serve Plaintiffs with a privilege log.

C. Custodians

The parties also disagree over whether emails authored or received by Assistant Deputy Fire Commissioner Brian Helmhold and Instructor John Chartrand should be collected and searched. Based on the information provided by Plaintiffs, the court is not convinced that emails contained in these two individuals'

in-boxes are relevant or that the search and review of their emails are proportional to the needs of this case. Neither individual had anything to do with the decision to use the disputed tests, nor were they involved with the 2014 and 2015 Academy. Accordingly, the City's objection is sustained and the email boxes of these two individuals will not be included in the ESI protocol.

D. Temporal Scope

As for the temporal scope to be applied to the ESI search, Plaintiffs propose that two different date ranges should be used for the Academy instructors: (1) dates of the instructors' employment with the City; and (2) July 1, 2014, to December 31, 2015. Plaintiffs demand that the first range apply to long-time instructors and the second range apply to the remaining instructors identified in their protocol. (See R. 226-1, Pls.' Reply at 6-7.) The City disagrees and argues that the temporal range should be from August 1, 2014, to August 3, 2015, the time period when Plaintiffs were physically present at the Academy.

The court finds that given the issues in this case, the relevant universe of emails would have been generated from July 1, 2014, to September 3, 2015. As there is no dispute that Plaintiffs were physically present at the Academy from August 1, 2014, to August 3, 2015, expanding the time period to one month before and one month after is appropriate to ensure that all relevant emails are collected. However, there is no reasonable basis to expand the temporal scope for some of the instructors merely because they were employed with the City for a longer period of time. Accordingly, for the Academy instructors, the temporal scope to be applied for

the initial collection of the universe of emails from the identified Academy instructors must be from July 1, 2014, to September 3, 2015.

E. Search Terms

The parties disagree on the use of certain terms for searching emails. While Plaintiffs propose Boolean searches to allow for flexibility, the City proposes finite terms to search for relevant emails. Given that both sides anticipate running multiple searches using different terms along the way to reduce the number of hits, there is no need to limit Plaintiffs' search terms at this time. Depending on the number of hits after the initial keyword search using Plaintiffs' proposal, the parties may use more finite terms to reduce the number of hits.

F. Non-email ESI

Plaintiffs propose that the City disclose its methodology for searching for non-email ESI and that the search for such ESI should be completed within 30 days. The City opposes Plaintiffs' proposal, which it sees as micro-management of its discovery obligations. The court agrees with the City that its only obligation is to perform a reasonable search for responsive non-email ESI and to produce the same within a reasonable period of time. As such, the court will not require the City to disclose its methodology at this time without good cause.

ENTER:

Young B. Kim
United States Magistrate Judge