

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

ROGER HALL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 04-0814 (HHK)
)	
CENTRAL INTELLIGENCE AGENCY,)	ECF
)	
Defendant.)	
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**DEFENDANT’S OPPOSITION TO
MOTION OF ROGER HALL TO REQUIRE DEFENDANT
TO PRODUCE CERTAIN CATEGORIES OF RECORDS FORTHWITH**

Defendant, the Central Intelligence Agency (CIA), respectfully files this memorandum in Opposition to the Motion of Roger Hall to Require Defendant to Produce Certain Categories of Records Forthwith (Docket # 11).

Plaintiff Hall requests this Court to order the CIA to produce “(1) all records which the CIA located for which it sought payment from plaintiff Hall in the amount of \$10,906.33; and (2) all records responsive to Item 6 of Hall’s February 7, 2003 request which is at issue in this litigation.” Plaintiff’s motion should be denied on grounds of *res judicata* and / or collateral estoppel, failure to exhaust administrative remedies, and on the basis that interim relief on the ultimate issue is not warranted.

BACKGROUND

On February 7, 2003, Attorney James H. Lesar filed a FOIA request with the CIA on behalf of Roger Hall and SSRI.¹ See Exhibit 1 to Defendant’s Motion to Stay (hereafter “Def.

¹ In that request, counsel represented that a Mr. Reed Irvine and AIM “joined in” the FOIA request. Plaintiffs SSRI and AIM are not parties to this motion.

Exh. __ ”) (Docket # 5). Defendant acknowledged receipt of the FOIA request by letter dated March 13, 2003. Def. Exh. 2. At the time of the February 7, 2003 FOIA request, Roger Hall and Defendant were involved in protracted litigation in this Court concerning a previous FOIA request that Roger Hall had filed on May 28, 1998. See Hall v. CIA, Civil Action No. 98-1319 (PLF). C.A.98-1319 involved requests for records that were similar to four of the seven categories of records sought in the instant request and involved as well a common issue as to fee waivers on the basis of public interest. See C.A.98-1319 at Docket # 1. The common requests included the records in the first category Plaintiff now seeks (related to the \$10,906.33), but not the records in the second category (“Item 6”).

On November 13, 2003, the Court in C.A.98-1319 dismissed the case, citing Plaintiff's failure to commit to pay search costs. See C.A.98-1319 at Docket # 95 and 97. Plaintiff filed a motion for reconsideration (C.A.98-1319 at Docket # 98) and the Court ultimately denied the motion for reconsideration on April 22, 2004. See C.A.98-1319 at Docket # 103.

On May 19, 2004, Plaintiffs filed the instant action, seeking seven categories of records, including records coextensive with those requested and dismissed in C.A. 98-1319. See Compl. Defendant had delayed its response to Plaintiffs' request during the pendency of C.A. 98-1319 due to the overlapping records requests and common legal issues. Defendant now has responded to Plaintiffs' request, by letter dated June 15, 2004. Def. Exh. 3. Defendant's response, *inter alia*, addresses the overlapping requests that were resolved by C.A. 98-1319, questions the scope of Plaintiffs' requests, disputes Plaintiffs' qualifications as representatives of the media, and denies Plaintiffs' request for a public interest fee waiver. The June 15, 2004 CIA letter advises Plaintiffs that they may consider the response a denial and appeal to the Agency Release Panel.

Defendant, moved to stay these proceedings pending completion of administrative processing of Plaintiffs' request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq*, or in the alternative, for dismissal without prejudice to its being re-filed following completion of administrative processing of Plaintiff's request for records under the FOIA. *See* Docket # 5.²

ARGUMENT

I. PLAINTIFF HALL'S MOTION FOR "RECORDS WHICH THE CIA LOCATED FOR WHICH IT SOUGHT PAYMENT FROM PLAINTIFF HALL IN THE AMOUNT OF \$10,906.33" IS BARRED BY *RES JUDICATA* AND / OR COLLATERAL ESTOPPEL.

Plaintiff Roger Hall previously filed suit against the United States to obtain records that were similar to four of the seven categories of records sought in the instant request, including the "records which the CIA located for which it sought payment from plaintiff Hall in the amount of \$10,906.33." *See* C.A.98-1319 at Docket # 1. The Court denied Plaintiff Hall's request for records, dismissing the case citing Plaintiff's failure to commit to pay search costs. *See* C.A.98-1319 at Docket # 95 and 97.

"The doctrines of *res judicata* and collateral estoppel are designed to 'preclude parties from contesting matters that they have had a full and fair opportunity to litigate.'" Carter v. Rubin, 14 F. Supp.2d 22, 33 (D.D.C. 1998) (*citing* Montana v. United States, 440 U.S. 147, 153 - 54 (1979)). "These doctrines protect parties from the expense and burdens associated with multiple lawsuits, conserve judicial resources, and reduce the possibility of inconsistent decisions." *Id.* at 33-34 (*citing* United States v. Mendoza, 464 U.S. 154, 158-59 (1984)).

² This motion encompassed as well the stay of Defendant's responsive pleading due June 18, 2004 pending completion of the administrative process.

The doctrine of *res judicata* acts to “conserve judicial resources, avoid inconsistent results, engender respect for judgments of predictable and certain effect, and to prevent serial forum-shopping and piecemeal litigation.” Hardison v. Alexander, 655 F.2d 1281, 1288 (D.C. Cir. 1981)). Under the doctrine of *res judicata*, “the parties to a suit and their privies are bound by a final judgment and may not relitigate any ground for relief which they already have had an opportunity to litigate – even if they chose not to exploit that opportunity – whether the initial judgment was erroneous or not.” Charles T. Sherwin v. Dept of the Air Force, 955 F. Supp. 140, 142 (D.D.C. 1997) (*quoting* Hardison, 655 F.2d at 1288); Drake v. FAA, 291 F.3d 59, 66 (D.C. Cir. 2002) (*quoting* Allen v. McCurry, 449 U.S. 90, 94 (1980)).

Res judicata bars a claim when there has been a final judgment on the merits in a prior suit involving the same parties or their privies and the same cause of action. See I.A.M. Nat'l Pension Fund v. Indus. Gear Mfg. Co., 723 F.2d 944, 946-47 (D.C. Cir. 1983). The four factors that must exist for *res judicata* to apply are (1) an identity of parties in both suits; (2) a judgment rendered by a court of competent jurisdiction; (3) a final judgment on the merits; and (4) the same cause of action in both suits. See Brannock Assocs., Inc. v. Capitol 801 Corp., 807 F. Supp. 127, 134 (D. D.C. 1992) (*citing* U.S. Industries, Inc. v. Blake Constr. Co., 765 F.2d 195, 205 n. 21 (D.C. Cir.1985)); Polsby v. Thompson, 201 F. Supp. 2d 45, 48 (D.D.C. 2002).

Under the related doctrines of *res judicata* and collateral estoppel, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been finally decided; and once a court has decided on issue of fact or law necessary to its judgment, that decision may preclude relitigation on the issue in a suit on a different cause of action involving a party to the first action. Allen, 449 U.S. at 94; Mendoza, 464 U.S. at 158;

Montana, 440 U.S. at 153; American Employers Insurance Company v. American Security Bank, 747 F.2d 1493, 1498 (D.C. Cir. 1984); I.A.M. Nat'l Pension Fund, 723 F.2d at 947; Jack Faucett Associates, Inc. v. American Telephone and Telegraph Company, 566 F. Supp. 296, 299 (D.D.C. 1983); *see also* Cutler v. Hayes, 549 F. Supp. 1341, 1343 (D.D.C. 1983), *aff'd in part, rev'd in part* 818 F.2d 879, 888 (D.C. Cir. 1987).

Application of the doctrine of collateral estoppel “represents a decision that the needs of judicial finality and efficiency outweigh the possible gains of fairness or accuracy from continued litigation of an issue that previously has been considered by a competent tribunal.” Nasem v. Brown, 595 F.2d 801, 806 (D.C. Cir. 1979). Similarly, application of the doctrine thereby serves to relieve parties of the burdens attending multiple lawsuits; conserves judicial resources; minimizes the risk of forum-shopping, piecemeal litigation, and inconsistent decisions; and provides finality in the resolution of disputes. Mendoza, 464 U.S. at 158; Cutler, 549 F. Supp. at 1343; *see* Hardison, 655 F.2d at 1288.

All four of these factors are met in the instant action and therefore the doctrine of *res judicata* bars re-litigation of Plaintiff's claim against Defendant CIA for a public interest fee waiver. The parties to the instant motion include Roger Hall and the CIA, the same parties that were the subject of the prior litigation. *See* C.A.98-1319. Accordingly, the first prong of the *res judicata* test is satisfied. The second and third factor for the doctrine of *res judicata* are satisfied because this Court, a court of competent jurisdiction, issued a final judgment on the merits. *See* C.A.98-1319 at Docket # 95, 97 and 103.

Finally, the fourth factor – requiring that the suit involve the same cause of action – also is satisfied. A final decision on the merits prohibits any future case arising from “the same

‘nucleus of facts,’ for ‘it is the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which a litigant relies.’” Page v. United States, 729 F.2d 818, 820 (D.C. Cir. 1984) (quoting Expert Elec., Inc. v. Levine, 554 F.2d 1227,1234 (2d Cir. 1977)).

Plaintiff Hall now seeks the same records that he was denied in C.A.98-1319 merely by attributing the request to a later FOIA request that seeks *inter alia* the same records at issue. This Court already has determined that Plaintiff Hall is not entitled to the records at issue in C.A.98-1319. Plaintiff Hall had a “full and fair opportunity to litigate” the original claim and the District Court entertained his claim, as evidenced by the decisions issued in C.A.98-1319 .

The doctrine of *res judicata* bars claims that were litigated in the prior civil action. Plaintiff’s claim in the instant motion is for the same records denied in C.A.98-1319. Therefore, the four prongs to determine the applicability of *res judicata* are satisfied and this Court should conclude that Plaintiff is simply attempting to re-litigate a claim that was fully and fairly litigated in C.A.98-1319. Accordingly, the District Court should deny Plaintiff’s motion for “records which the CIA located for which it sought payment from plaintiff Hall in the amount of \$10,906.33” based upon the doctrine of *res judicata*.

II. PLAINTIFF HALL FAILED TO EXHAUST ADMINISTRATIVE REMEDIES FOR HIS REQUEST FOR IMMEDIATE RECORDS RESPONSIVE TO “ITEM 6.”

Because of the overlap both in scope and legal issues between the instant request and the request under litigation in C.A. 98-1319, Defendant’s response and administrative processing of the instant request was delayed pending final guidance from the Court. Consequently, the administrative process was interrupted and has not been concluded by the Plaintiff’s filing of this civil action.

Since then, Defendant has responded to Plaintiff's request, including addressing Plaintiff's requests for fee waivers, and invited Plaintiff to supplement their justifications for fee waiver requests and advised of their administrative appeal avenue. Def. Exh. 3. By letter dated July 29, 2004, Plaintiff has submitted to Defendant two checks totaling \$10,906.33 and requested that amount be applied to search and copying fees without the specificity of the instant motion. *See* Plaintiff's Exhibit 6 to the instant motion. Defendant received the July 29, 2004 letter on August 6, 2004 and has not completed its analysis or had an opportunity to respond. Plaintiff filed the instant motion on August 3, 2004.

Accordingly, while Plaintiff has engaged the administrative process by submitting a partial payment, Plaintiff filed the instant motion before that process could be completed and hence has not exhausted administrative remedies.

III. PLAINTIFF HALL'S REQUEST FOR IMMEDIATE RELIEF IS AN INAPPROPRIATE REQUEST FOR THE ULTIMATE RELIEF SOUGHT IN THIS CIVIL ACTION PRIOR TO ADDRESSING ITS MERITS.

Plaintiff's motion seeks the Court's order for the production of records "forthwith." That relief, although only as to certain "categories" of the records sought in the civil action, is nevertheless the exact relief sought by the civil action, and is premature at best, there having been no determination of the Court as to the merits of the action.

CONCLUSION

Wherefore, Defendant respectfully requests that the Court deny Plaintiff's motion on grounds of *res judicata* and / or collateral estoppel, failure to exhaust administrative remedies and on the basis that interim relief on the ultimate issue is not warranted.

Respectfully submitted,

/ s /

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