

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

<b>ROGER HALL, et al.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>Civil Action No. 04-0814 (HHK)</b>
	:	
<b>CENTRAL INTELLIGENCE AGENCY</b>	:	
	:	
<b>Defendant</b>	:	

**PLAINTIFFS' JOINT MOTIONS FOR (1) A STAY OF ALL  
PROCEEDINGS EXCEPT WITH RESPECT TO REFERRALS,  
AND (2) AN ORDER REQUIRING THE CIA TO PROVIDE A  
LIST OF REFERRALS AND TO RELEASE NONEXEMPT  
REFERRALS OR PORTIONS THEREOF WITHIN 90 DAYS**

Come now the plaintiffs, Roger Hall, Studies Solutions Results, Inc. and Accuracy in Media, Inc., and move the Court for a stay of proceedings pending (1) issuance of new guidelines by the U.S. Attorney General on the Freedom of Information Act ("FOIA") in light of President Barack Obama's January 21, 2009 Executive Order, and/or (2) a re-evaluation of the FOIA claims currently pending in this case in light of President Obama's Order. The stay sought is limited to a period of 90 (ninety) days from the date this Court issues its order.

Plaintiffs further move the Court for an order requiring the CIA to provide within 90 days of the date of this Court's order (1) a list of documents at issue in this case referred to other agencies which provides the date each document was referred to another agency, the date of the document referred, and the number of pages contained in the

document; and (2) the disclosure to plaintiffs of all nonexempt materials referred to other agencies.

On January 21, 2009, President Barack Obama issued an Executive Order setting forth new standards for interpreting and implementing the Freedom of Information Act. The new Order, a copy of which is reproduced as Attachment 1 hereto, directs that the FOIA “shall be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosures, because errors or failures might be revealed, or because of speculative and abstract fears.”

President Obama also directed the Attorney General “to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and publish such guidelines in the Federal Register.” Id.

On January 28, 2007, Marissa Taylor of McClatchy Newspapers reported that the Office of Information and Privacy had instructed federal officials to process requests for records with a “clear presumption in favor of disclosure, to resolve doubts in favor of openness and to not withhold information based on speculative or abstract fears.” Plaintiffs contend that this new policy will require the CIA to reevaluate the pending claims in this case. In effect, President Obama’s Executive Order reverses the Freedom of Information Act policy set by Attorney General John Ashcroft in the so-called “Ashcroft memorandum,” which required government agencies to resist disclosure of information by government agencies whenever possible.

President Obama's order is a strong statement regarding the public policy concerns which under gird the FOIA. How these policy concerns will be construed and implemented remains to be seen.<sup>1</sup> Of particular interest to plaintiffs is President Obama's statement that the government should not keep information confidential "because of speculative or abstract fears." Particularly where information is of historical vintage and concerns events which have received great publicity, as is the case here, claims based on national security claims or privacy concerns may be largely speculative or reflective of abstract fears rather than grounded on personal knowledge of indisputable facts. Thus, President Obama's order offers up the possibility that the Attorney General's new guidelines or re-evaluations by other Justice Department and CIA officials may conclude that materials previously withheld in this litigation should no longer be kept confidential. This seems particularly likely where, as in this case, the CIA, in line with the Aschcroft memorandum, has resisted disclosure to the hilt.

Plaintiffs' response to defendant's opposition to their cross-motion for summary judgment is due March 6, 2009. The CIA has established no deadline by which referrals will have been accounted for and nonexempt referral materials released.

It would be wasteful of the resources of the court and the parties to continue litigating the pending issues before the new policy announced by President Obama has been implemented and evaluated. In consideration the policy favoring judicial efficiency

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<sup>1</sup> The Pentagon's just-announced reversal of the previous ban against photography caskets of American soldiers returned from abroad would seem to be an indication that the new Obama administration is serious about following through on the implications of his executive order concerning the FOIA.

and the conservation of the resources of the parties and the court, plaintiffs' motion for an extension of time should be granted.<sup>2</sup>

With respect to plaintiffs motion for issuance of an order requiring the CIA to list referrals and to release all nonexempt referrals or portions thereof within 90 days, the CIA acknowledges that it has "in fact, referred those documents to the appropriate agency with the caveat that this case was in litigation." Opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment at 2. It has not, however, identified the referrals, the agencies to which the documents were referred, the dates of the referrals, or the quantity of records referred. Clearly, as a part of Vaughn index requirements, this must be done. In the process, any nonexempt portions must also be released. This Court should set a schedule for this. It already has been five years since this lawsuit was filed, and the CIA has not yet accounted for these materials. Nor was there any accounting of them during the Hall I case, Civil Action No. 98-1319, which preceded this suit. Thus, the CIA has failed to account for these records over a period lasting more than decade.

Plaintiffs' proposed order suggests that a period of 90 days would be appropriate.

DATE: March 2, 2009.

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<sup>2</sup> Counsel for plaintiffs Hall and SSRI approached counsel for defendant about a stay of proceedings based on President Obama's order prior to the CIA's submission of its opposition to plaintiffs' cross-motion for summary judgment. The CIA indicated it would oppose the motion. Because the CIA's opposition acknowledge the existence of an unspecified number of referrals which have not been accounted for, plaintiffs decided to combine its motion for a stay with a motion to deal with the referrals. Counsel for plaintiffs also sought to ascertain the CIA's position on this motion, but so far has not heard back from counsel for defendant.

Respectfully submitted,

/s/

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/s/

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<b>Defendant</b>	:	

**ORDER**

Upon consideration of plaintiffs' motions for an extension of time within which to respond to defendant's motion for summary judgment, and the entire record herein, it is by this Court this \_\_\_\_\_ day of March, 2009, hereby

ORDERED, that, except to the extent set forth below, this cause is stayed for a period of 90 days from date of the entry of this Order; and it is

FURTHER ORDERED, that defendant CIA provide, within 90 days of the date of this Court's order a list of documents at issue in this case referred to other agencies which provides the date each document was referred to another agency, the date of the document referred, and the number of pages contained in the document; and it is

FURTHER ORDERED, that defendant CIA shall disclose to plaintiffs, within 90 days of the date of the entry of this order, all nonexempt materials referred to other agencies.

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UNITED STATES DISTRICT COURT