

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 04-0814 (RCL)
	:	
CENTRAL INTELLIGENCE	:	
AGENCY	:	
	:	
Defendant	:	

PLAINTIFFS’ RESPONSE TO CIA’S
PROPOSED CASE MANAGEMENT PROPOSAL

The parties engaged in a conference call on the afternoon of August 21, 2012. Counsel for the Central Intelligence Agency (“CIA”) outlined a Case Management Plan which provided for very lengthy periods of time for the CIA to conduct most of the required searches. It made no provision for the review and redaction of the documents, indicating that this would occur after the lengthy searches had been completed years hence. No provision was made for rolling releases during the periods these lengthy searches were being conducted.

Counsel for plaintiffs' Roger Hall and Studies Solutions, Results, Ind., James H. Lesar, (1) sought additional information from the CIA, and (2) requested that the CIA submit its declaration to counsel in advance of the due date for the Joint Report which the parties intended to file so he could include his response in that report. When Lesar was unable to obtain additional information or an advance copy, counsel for the CIA said it would be filing a declaration with the Joint Report, the efforts to file a Joint Report fell apart on the late morning of August 23rd. The CIA having filed its Case Management Proposal and supporting declarations late this afternoon, plaintiffs now respond to it.¹

There are four major problems with the CIA's proposal: (1) it takes too long; (2) too few employees are assigned to do the searches; (3) it makes no provision for rolling releases, thus delaying the acquisition of the long-sought information still more years; and (4) no provision is made as regards the review, release and redaction process.

There is no doubt that the CIA is confronted with major tasks in searching for, reviewing, and releasing the responsive records at issue.

¹ Because Mr. Clarke was vacationing at Nag's Head, the parties had discussed the undersigned counsel read a draft of it over the phone to him for his approval. Events did not permit this, as he left today to return to Washington. He arrived back this evening in time to approve submission of this response to the CIA's Case Management Proposal on behalf of AIM.

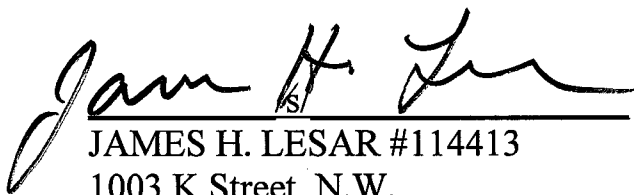
However, the CIA has brought this situation on itself through its obstructive behavior. The time periods sought by the CIA should be cut by at least two thirds, which may be accomplished by assigning three employees to work full time on each of the three major searches and the redaction of records.

The CIA has made no showing that this would present an inordinate burden. It has not provided information as to how many employees it has in its FOIA section, or the amount it budgets to FOIA each year, but a review of the CIA's annual reports to Congress from Fiscal Year 2002 through Fiscal Year 2011 indicates that CIA has received 28,525 requests during that period and processed 28,418. See Chart which is produced as Attachment A to Declaration of James H. Lesar. This means that more than 25,000 requests have been processed since Roger Hall submitted his request. Under traditional principals first enunciated in Open America v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C.Cir. 1976), which mandate that requests be processed o a first-in, first-out basis, plaintiffs' clearly deserve priority over subsequent requesters.

The CIA's failure to provide for rolling releases further obstructs the prompt delivery of information mandated by the FOIA. Requiring rolling releases will also serve as a mechanism for plaintiffs and the court to be able to exercise a degree of oversight over the performance of the search and

review tasks as they occur, rather than postponing such oversight until the end of the process. And, most importantly, it will allow the still-living friends and relatives of POWs and MIAs to obtain the information that is so important to them far earlier than if the CIA's Case Management proposal is adopted.

Respectfully submitted,



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/s/
JOHN H. CLARKE

Counsel for Accuracy In Media

Dated: August 23, 2012

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DECLARATION OF JAMES H. LESAR

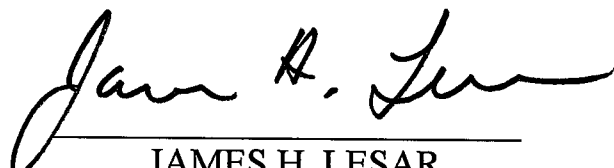
I, James H. Lesar, declare and say as follows:

1. Advised on the afternoon of August 21, 2012 that the CIA would be filing a declaration in support of its proposed case management plan which would establish an inordinately long periods of time to conduct searches which this Court has required it to make, I sought to obtain relevant information both from counsel for the CIA and the CIA's FOIA office on the number of employees in the CIA's FOIA section and its FOIA budget for Fiscal Year ("FY") 2002 through FY 2011. This efforts proved unavailing.

2. Subsequently, I compiled a chart which sets forth basic statistics regarding the number of requests received and processed by the CIA. See

Attachment A. This chart reveals that from FY 2002 through FY 2011, the CIA received 28,525 requests and processed 28,418 requests. The CIA very uniformly received between approximately 2,000 to 3,000 requests a year. This shows that the CIA received and processed well over 25,000 requests after Roger Hall made his FOIA request. It also indicates that more than 25,000 requests have been processed ahead of his request.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of August, 2012.



JAMES H. LESAR

CIA PROCESSING OF FOIA REQUESTS

<u>YEAR</u>	<u>Pending at Start</u>	<u>Received</u>	<u>Processed</u>	<u>Pending at End</u>
2002	1,866	2,727	3,046	1,547
2003	1,547	3,136	3,252	1,431
2004	1,431	3,055	3,336	1,150
2005	1,150	2,935	3,110	975
2006	975	2,500	2,579	896
2007	896	2,911	3,031	776
2008	703*	1,935	1,698	940
2009	1,024	2,863	3,112	775
2010	775	3,094	2,090	880
2011	880	3,269	3,164	985
TOTALS:		<u>28525</u>	<u>28418</u>	

*Excludes Privacy Act requests counted last year but no longer included in the annual report.

Attachment A