

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

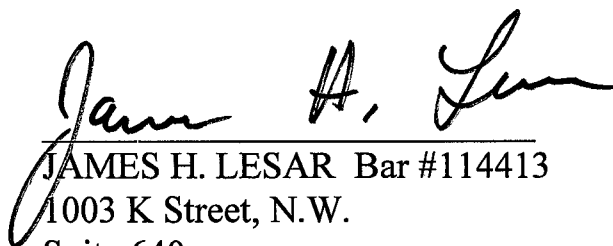
ROGER HALL, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 04-0814 (RCL)
	:	
CENTRAL INTELLIGENCE	:	
AGENCY	:	
	:	
Defendant	:	

MOTION OF PLAINTIFFS ROGER HALL AND STUDIES SOLUTIONS RESULTS, INC. FOR PARATIAL SUMMARY JUDGMENT AS DIGITIZATION OF RESPONSIVE RECORDS

Come now the plaintiffs, Roger Hall (“Hall”) and Studies Solutions Results, Inc (“SSR, Inc.”), and move for partial summary judgment on the issue of whether responsive records must be provided in word searchable pdf format. This motion is made pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Submitted in support of this motion are the Declaration of Roger Hall, a Memorandum of Points and Authorities in support of the motion, Plaintiffs’ Statement of Material Facts Not in Dispute, and a proposed Order.

Respectfully submitted,



JAMES H. LESAR Bar #114413
1003 K Street, N.W.

Suite 640

Washington, D.C. 20001

Phone: (202) 393-1921

(301) 328-5920

jhlesar@gmail.com

Counsel for Plaintiffs
Roger Hall and SSR, Inc.

Dated: July 12, 2013

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	:	

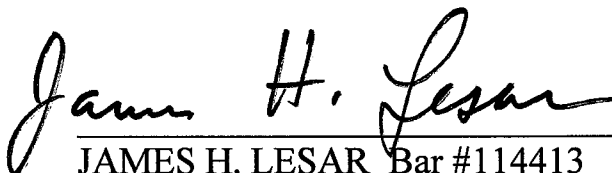
PLAINTIFFS' STATEMENT OF MATERIAL FACTS

In support of their motion for partial summary judgment as to the production of responsive records in searchable pdf format, plaintiffs submit, pursuant to Local Civil Rule 7(h)(1), the following of material facts not in dispute.

1. Plaintiffs Roger Hall (“Hall”) and Studies Solutions Results, Inc. (“SSR”) have requested that defendant Central Intelligence Agency (“CIA”) reproduce responsive documents in word searchable pdf format. Hall made this request before the records were produced in hard copy form on or about May 20, 2013. See 2013 Declaration of Roger Hall (“2013 Hall Decl.”), ¶ 5.

2. The CIA has not complied with Hall's request that responsive records be produced in word searchable pdf format.

Respectfully submitted,



JAMES H. LESAR Bar #114413

1003 K Street, N.W.

Suite 640

Washington, D.C. 20001

Phone: (202) 393-1921

(301) 328-5920

jhlesar@gmail.com

Counsel for Plaintiffs
Roger Hall and SSR, Inc.

Dated: July 12, 2013

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	:	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION OF PLAINTIFFS ROGER HALL AND STUDIES
RESULTS SOLUTIONS, INC. FOR PARTIAL SUMMARY
JUDGMENT AS TO PRODUCTION OF RECORDS IN PDF FORMAT

Preliminary Statement

Plaintiffs Roger Hall (“Hall”) and Studies Solutions Results, Inc. (“SSR”)(hereafter collectively referred to as “Hall”) submitted a Freedom of Information Act (“FOIA”) request for records on Prisoners of War and persons Missing in Action (“POW/MIAs”) in Southeast Asia. On May 19, 2004, they filed this lawsuit. The CIA has repeatedly engaged in delaying and obstructionist tactics in what appears to be a strategy of driving up the costs of litigation to deter requesters from obtaining prompt access to nonexempt government records.

Nevertheless, over the past nine years thousands of pages of records have been released in hard copy form. However, over the past couple of years, plaintiffs have requested that releases be made in word searchable pdf format. The CIA has at various times asserted (1) that it was not legally obligated to release the responsive information in this format, and (2) it could not release the information in this form.

On or about June 5, 2011, plaintiff Roger Hall suffered a stroke. This left a lasting disability to his left arm and leg. He cannot lift his left arm more than 12 inches. He cannot use his left hand to do anything other than to grip. He can use it to pull up his pants and to hold a can so he can pop open the lid with his right hand. July 12, 2013 Declaration of Roger Hall (“2013 Hall Decl.”), ¶ 2.

Hall has no ability to manipulate papers with his left hand or even to pass paper from one hand to the other. This makes reviewing documents difficult, even more so when pages are stuck together. Taking notes regarding these documents requires him to put the paper down to write the notes instead of holding the paper in his left hand while writing. This is completely foreign to his reading and writing ability. *Id.*, ¶ 3.

On or about May 20, 2013, the CIA provided Hall with seven folders with papers from the files of a Mr. Ritter. The weight of the Ritter files in

the box and the box itself made it extremely difficult for him to handle and maneuver while reviewing them. Id., ¶ 4.

At issue in this case is whether as a matter of right, the CIA must be required to produce the records Hall has requested in the format designated by him. The background facts sketched above do not affect this right, but they do serve to draw a stark contrast between the CIA's handling of this case and the national policy on the Freedom of Information Act announced by President Barak Obama on January 21, 2009.

ARGUMENT

Plaintiffs Roger Hall and Studies Solutions Results, Inc. (collectively referred to hereafter as "Hall") seek in this motion to have the records produced by defendant Central Intelligence Agency ("CIA") released to them in word searchable pdf format rather than in hard copy format. The CIA opposes this motion. Despite requests made by Hall prior to the production of responsive documents, the CIA has refused to comply with these requests.¹

¹ The AUSA representing the CIA has offered to produce the records in digital format herself but has not done so with respect to three CIA productions in May and June of this year, which total approximately 3,000 pages. Hall seeks reproduction in digital format as a matter of right, not of grace. Digital reproduction by an AUSA also adds another layer of complexity and delay that is unwarranted.

The FOIA, 5 U.S.C. § 552(a)(3), provides:

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format . Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

In connection with the CIA's "making any record available," Hall requested, prior to the production of such records, that they be made available to him in word searchable pdf format. Under the express language of the statute, the CIA was obligated to provide the records being made available by the CIA in the format requested by Hall if they were "readily reproducible by the agency in that form or format."

Without any question, the records requested by Hall are readily reproducible in pdf format. Indeed, although the CIA had in the past represented to plaintiffs both that it could not produce the records in digital form and that it was not legally obligated to do so, in its June 28, 2013 status report, the CIA stated to the Court that "[d]ue to their age, the documents are fragile and require special treatment in order to prepare them for scanning into the CIA's Automated Declassification and Release Environment ("CADRE") for processing." June 28, 2013 Status Report, at 2. That there

is no reason why the CIA cannot make the records available to Hall in the format he has requested is further driven home by the fact that the CIA's counsel has offered to herself digitize the requested records.

The Department of Justice's own guidebook makes it very clear that:

The FOIA requires agencies "to provide the [requested] record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format" and to also "make reasonable efforts to maintain its records in forms or formats that are reproducible for such purposes." These statutory provisions require agencies to not only honor a requester's choice among existing formats of a record (assuming there is no exceptional difficulty in its reproduction) but to also make "reasonable efforts" to disclose a record in a format not in existence, when so requested, if the record is "readily reproducible" in that new format.

Guide to the Freedom of Information Act, U.S. Department of Justice, Office of Information Policy (2009 edition) at 93 (footnotes omitted).

Both the plain wording of the statute and the case law construing it support this interpretation of the FOIA's requirements. In Sample v. BOP, 466 F.3d 1086 (D.C.Cir.2006), the Court of Appeals held that the FOIA "unambiguously requires" an agency to disclose records in the electronic format requested by him. Similarly, the Ninth Circuit has held that the FOIA "requires that the agency satisfy a FOIA request [for the production of records in a certain format] when it has the capability to

readily reproduce records in the requested format.” TPS, Inc. v. DOD, 330 F.3d 1191, 1195 (9th Cir.2003).

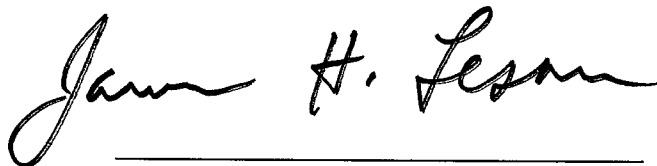
At the status hearing on July 2, 2013, the CIA cited CREW v. U.S. Dept. of Educ., 905 F.Supp.2d 1161 (D.D.C.2012). But CREW does not discuss or analyse the application of the Electronic Freedom of Information Act (“EFOIA”) provisions. Nor does it avert to the D.C. Circuit precedent set by Sample, supra. The facts at issue in CREW are very different from those involved here. CREW complained that records disclosed by producing photocopies of emails was deficient because it excluded the metadata and complete email addresses, including the recipients who were BCC’d. Id. at 171. Here, by contrast, Hall’s complaint is about how the records are being produced. This has no bearing whatsoever on what is being disclosed. Further, in CREW the Court found that the emails of defendant Department of Education were not “readily reproducible” in electronic format. Id. Here, as noted above, the CIA has acknowledged that the records at issue can readily be produced in digitized form by admitting that it has scanned them. In CREW, the Court also found that production in electronic format in that case “would require the creation of documentation rather than the production of what exists.” Id. at 172. Once again, that is not the case here. Lastly, in CREW the plaintiff complained of the absence of electronic versions of the

records after they were produced, whereas here Hall requested production in pdf format before production.

CONCLUSION

For the reasons set forth above, summary judgment should be awarded to plaintiffs and this Court should direct the CIA to promptly provide the responsive records to plaintiffs in word searchable pdf format.

Respectfully submitted,

A handwritten signature in black ink that reads "James H. Lesar". The signature is written in a cursive, flowing style.

JAMES H. LESAR Bar #114413
1003 K Street, N.W.
Suite 640
Washington, D.C. 20001
Phone: (202) 393-1921
(301) 328-5920
jhlesar@gmail.com

Counsel for Plaintiffs
Roger Hall and SSR, Inc.

Dated: July 12, 2013

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	:	

ORDER

Upon consideration of plaintiffs’ motion for partial summary judgment as to the production of documents in pdf format, defendant’s opposition thereto, and the entire record herein, it is by this Court this _____ day of _____ 2013, hereby

ORDERED, that plaintiffs’ motion be, and hereby is, GRANTED; and it is further

ORDERED, that the CIA shall provide its releases of documents in May and June of 2013 and all future releases to plaintiffs in word searchable pdf format. Such releases to plaintiffs shall be made within ten (10) days of the date of this order.

UNITED STATES DISTRICT COURT