

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

REPLY TO PLAINTIFF’S RESPONSE TO CIA’S STATUS  
REPORT AND PROPOSED REVISED BRIEFING SCHEDULE

On February 28, 2014, the parties filed a joint status report and proposed briefing schedule. ECF No. 209. The proposed schedule was an effort to facilitate the orderly and efficient resolution of this long-running case. The parties agreed upon the production and filing deadlines set forth in that proposal. However, Plaintiffs asserted that an inventory of all the documents remaining at issue in the case, which the CIA agreed to produce pursuant to the schedule, should “provide the number of pages being released for each document.”<sup>1</sup> ECF No. 209 at 1. The CIA indicated that this additional level of detail was not required by the Freedom of Information Act and noted that Plaintiffs were equally well-positioned to tally the records if they believed that they had a need for such information. *Id.*

Although the Court had not adopted or rejected this proposed schedule, the CIA acting in accordance with its terms, produced the inventory to Plaintiffs on March 28,

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<sup>1</sup> As discussed below, the CIA’s inventory included the total number of pages for every document at issue in the case – both those released in part, and those withheld in full.

2014. As described in the CIA's "Status Report and Proposed Revised Briefing Schedule" (ECF No. 210), the CIA's inventory contained the document (or "CO") number, date, subject, total number of pages in the document, FOIA exemptions asserted, and also indicated the location of each document on the CD-Roms provided to Plaintiffs by the U.S. Attorney's Office.

Under the terms of the proposed schedule, Plaintiffs agreed to select up to 100 of the partially withheld records by April 11, 2014 for inclusion in the Agency's *Vaughn* index. After this deadline had passed, they indicated that they needed additional time to choose these documents. The CIA responded that it had no objection to providing Plaintiffs with additional time to conduct their review, but needed to inform the Court as to the change in the proposed deadlines. Plaintiff again requested, in addition to the information already provided, an inventory that showed the number of "pages released" for each document. The CIA indicated that it would file the revised proposed briefing schedule that was jointly agreed upon by the parties and noted that, to the extent that Plaintiffs sought additional relief, they should request it separately. On May 15, 2014, Plaintiffs filed "Plaintiffs' Response to CIA's Status Report and Proposed Revised Briefing Schedule" that requested that the Court amend the revised briefing schedule to "require[] the CIA to amend its inventory to include the number of pages actually released in partially-released documents." ECF No. 211 at 4.

The inventory and the productions provided by the Agency already contain precisely the information that Plaintiffs request. The inventory lists the total number of pages for each of the released in part documents, and it is evident from the production itself which pages in those records were fully redacted. For example, if a responsive

record is ten pages long and two of its pages were completely redacted, the inventory lists the page count for that record as ten pages and all ten pages of the document appear on the CD-Rom, including the two blank pages (typically depicted as a white box covering the content of the page). Plaintiffs are in the same position – and arguably a better one – to make an assessment as to whether records, some of which have no content and some of which contain classification headings, bates stamps, or minimal notations, fall into their definition of a page that is “actually released.” Plaintiffs claim that if they count the pages, “they have no way of knowing whether that figure is accurate or whether through inadvertence, scanning errors or otherwise the number of pages they receive matches the number of pages actually released by the CIA.” ECF No. 211 at 2-3. However, the CIA submits that the productions made to Plaintiffs are complete, the page counts are accurate, and all pages (even those that were withheld in full) were produced. In short, there is no additional detail that the Agency could provide that is not currently available to Plaintiffs.

Further, Plaintiffs point to no provision of the statute or to case law that requires an agency to submit to such a tedious exercise. Although Plaintiffs cite an earlier ruling in this case for the proposition that the CIA has an obligation to ensure that exemptions are cited with particularity (ECF No. 211 at 3), that reasonably segregable requirement has no applicability to the task that Plaintiffs would have the CIA now undertake. Once they select the documents for inclusion in the *Vaughn* index, the CIA fully intends to demonstrate in its motion for summary judgment and attendant filings that all reasonably segregable, non-exempt material has been released. Plaintiffs will then have an opportunity to challenge the CIA’s claims of exemption, should they wish to do so. The

inventory was intended to serve as an instrument to narrow the issues and hasten the resolution of this case, not as a vehicle to create additional grounds for litigation.

For the foregoing reasons, the CIA submits that the Court should deny Plaintiffs' request to amend the recently revised briefing schedule to include this additional requirement, which is superfluous and will only delay the resolution of this case.

Respectfully submitted,

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