

11/13/03

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
ROGER HALL,)
)
Plaintiff,)
)
v.)
)
CENTRAL INTELLIGENCE AGENCY,)
)
Defendant.)
_____)

Civil Action No. 98-1319 (PLF)

MEMORANDUM OPINION

I. BACKGROUND

On August 10, 2000, the Court issued a lengthy opinion explaining why the declarations submitted by defendant were inadequate to enable the Court to evaluate the adequacy of its search and why the scope of the search was insufficiently broad. See Hall v. CIA, No. 98-1319, Opinion and Order at 8-13 (D.D.C. Aug. 10, 2000). Because in all other respects it agreed with defendant, the Court granted defendant's motion for summary judgment in part and denied it in part. See id. at 22. The Court directed defendant to provide "supplemental affidavits or declarations demonstrating the adequacy of its search for records responsive to plaintiff's FOIA request and justifying the nondisclosure of any additional records that were discovered." Hall v. CIA, No. 98-1319 (D.D.C. Aug. 10, 2000) (order granting defendant's motion for summary judgment in part and denying it in part).

Before complying with the Court's Order by submitting such supplemental affidavits or declarations, defendant filed a motion to require plaintiff to commit to the payment of search and copying fees. Plaintiff opposed this motion, claiming that he was entitled to a public interest fee waiver. After briefing, the Court rejected this argument on July 22, 2002. It concluded:

Because plaintiff is not entitled to a public interest fee waiver, defendant is not obligated to conduct further searches until plaintiff expresses his willingness to pay search and copying fees up to a specified amount. If plaintiff does not wish to commit to paying search and copying fees, the case effectively is over because defendant will not be obligated to provide plaintiff with additional documents beyond what it already has given to him.

Hall v. CIA, No. 98-1319, Memorandum Opinion and Order at 6 (D.D.C. July 22, 2002) ("July 22, 2002 Memorandum Opinion"). The Court ordered the parties to file a joint report on or before August 26, 2002 "indicating whether or not plaintiff has committed to paying search and copying fees up to a specified amount. If he has not, the case will be dismissed." Id. at 7.

By Joint Report of August 23, 2002, plaintiff agreed to pay search and copying fees up to \$1,000 and to inform defendant which remaining issues plaintiff would like defendant to focus on in its search. Joint Report of August 23, 2002 at 1. By Joint Report of January 31, 2003, plaintiff asserted that defendant had waived the costs of searching and processing plaintiff's prior FOIA request because defendant already had completed the search and any records previously located and collected as a result of such a search should be released to plaintiff without charge.¹ Joint Report of January 31, 2003 at 3. Defendant responded that the

¹ Plaintiff also asked the Court to require defendant to provide a declaration regarding its efforts to search for its own copies of documents provided to a Senate committee, which the Court previously required defendant to produce in its Order of August 10, 2000. See

case now should be dismissed because plaintiff's commitment to pay \$1,000 was inadequate to pay the search and copying fees. Upon consideration of plaintiff's claims and defendant's arguments contained in the second Joint Report, the Court denies plaintiff's requests.

II. DISCUSSION

Individuals requesting records under the FOIA who are not doing so for a commercial, educational, or scientific use and are not representatives of the news media are responsible for "reasonable standard charges for document search and duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(III); see also 32 C.F.R. § 1900.13(i)(3). A schedule of fees for the CIA is clearly stated in the applicable regulations. 32 C.F.R. § 1900.13(g). In this case, the fees amount to \$10,906.33, as stated in defendant's Notice of Corrected Calculation of Search Fees of April 2, 2003. Plaintiff asserts, however, that the completion of any searches and processing of his requests by the defendant prior to plaintiff's commitment to pay were voluntary and therefore that the defendant waived its right to require payment.

Plaintiff is mistaken in believing that the completion of a FOIA request by an agency prior to the requester's actual payment constitutes a waiver of the applicable fee. The FOIA states that no agency may require advance payment of any fee, except: (1) when the requester has previously failed to pay fees in a timely fashion; or (2) when the agency has determined that the fee will exceed \$250. See 5 U.S.C. § 552(a)(4)(A)(v); see also 32 C.F.R. § 1900.13(f) (allowing for requirement of 100 percent deposit of estimated fees only when both

Joint Report of January 31, 2003 at 4. In addition, plaintiff asked for an accounting of the defendant's time spent conducting the searches to justify the \$10,906.33 fee, including the dates of the searches and by whom they were made. See id.

of these exceptions apply). If plaintiff were correct that the completion of a FOIA request without prepayment constituted a voluntary and complimentary service, agencies would be permanently barred from collecting fees for any request that did not meet one of these two exceptions. While Congress did not envision the prepayment of fees prior to processing every FOIA request, it did permit an agency to require prepayment before releasing the documents. See, e.g., Strout v. United States Parole Comm'n, 40 F.3d 136, 139 (6th Cir. 1994); Trueblood v. INS, 943 F. Supp. 64, 68 (D.D.C. 1996); Putnam v. United States Dep't of Justice, 880 F. Supp. 40, 42 (D.D.C. 1995). As the district court noted in Strout, if agencies were required to provide records to FOIA requesters before receiving payment, "there would never be any assurance whatsoever that payment would ever be made once the requesters had the documents in their hands." Strout v. United States Parole Comm'n, 842 F. Supp. 948, 951 (E.D. Mich. 1994).

The only charge formally waived by defendant was a fee of \$4,550, incurred for searches conducted prior to August 2000. See July 22, 2002 Memorandum Opinion at 6. By continuing work on plaintiff's FOIA request without requesting prepayment, defendant did not waive the applicable fees. Under the statute, the regulations and the case law, defendant is not obligated to release any documents to plaintiff without prior payment. Because plaintiff has declined to pay the fees for search and copying done by defendant by offering only \$1,000, he has constructively abandoned his request and is not entitled to receive any additional documents. See id. at 6.

Plaintiff also asserts in the Joint Report of January 31, 2003 that the Court's Order of August 10, 2000 requires defendant to provide a supplemental declaration regarding defendant's efforts to search for its own copies of documents provided to the Senate Select

Committee on POW/MIA Affairs. See Joint Report of January 31, 2003 at 4. In its Opinion of July 22, 2002, however, the Court stated that the defendant would be obligated to file supplemental affidavits or declarations demonstrating the adequacy of its searches and/or justifying the non-disclosure of additional searches only when plaintiff provided defendant with a commitment to pay fees up to a specified amount. See July 22, 2002 Memorandum Opinion at 6. While plaintiff did commit to pay up to \$1,000, this sum is inadequate to cover the costs of the searches plaintiff requested, which already have cost \$10,906.33. Since plaintiff is not willing to commit to paying for the additional search, defendant has no obligation to provide the documents. It follows that it also does not have any obligation to file the supplemental declarations or affidavits, the purpose of which was to aid the Court in deciding the remaining issues in the case: whether the search was adequate and the withholdings, if any, were justified. Because plaintiff has constructively abandoned his request for documents by refusing to commit to pay for the searches he requested, defendant is not required to file any supplemental affidavits or declarations to assist the Court in evaluating the searches or withholdings. Nor is it required to conduct any further searches or make additional copies in response to plaintiff's requests. This matter therefore is closed. A separate Order consistent with this Memorandum Opinion shall issue this same day.

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE:

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ORDER

For the reasons stated in the Court's Opinion of August 10, 2000, its Opinion of July 22, 2002, and its two Memorandum Opinions issued this same day, it is hereby ORDERED that judgment is entered for defendant on all claims and this case is dismissed with prejudice from the docket of this Court. This is a final appealable order. See FED. R. APP. P. 4(a).

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE: