

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

ROGER HALL, ET AL.,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No.: 04-814 (RCL)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant)	
)	

**DEFENDANT’S CONSENT MOTION FOR 90-DAY ENLARGEMENT TIME TO
FILE REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFFS’ CROSS-MOTIONS**

Defendant, the Central Intelligence Agency (CIA), respectfully moves the Court to enlarge defendant’s time to file its reply in support of its motion for summary judgment, and opposition to plaintiffs’ cross-motions, until January 30, 2016. In support of its consent request, defendant states as follows.

1. By order dated July 5, 2016, the Court instructed that “Defendant shall file its motion for summary judgment by July 13, 2016; plaintiffs shall file their opposition and cross-motion for summary judgment, if any, but August 18, 2016; defendant shall file its reply and opposition to plaintiffs’ cross-motion by September 6, 2016; and plaintiffs shall file their reply in support of their cross-motion by September 20, 2016.”

2. Defendant filed its motion for summary judgment on July 13, 2016. *See* ECF No. 248.

3. Since that time, plaintiffs have sought and received six extensions on their opposition and cross-motion. *See* ECF Nos. 249, 251, 252, 253, 256, 257. Plaintiffs ultimately filed on October 21, 2016. *See* ECF Nos. 258 (Accuracy in Media); 259 (Hall and Studies

Solutions Results, Inc.). Supporting documents continued to trickle in over the following days. *See* ECF No. 260 (Oct. 22, 2016) (Hall declaration); ECF No. 261 (Oct. 22, 2016) (Hrdlicka Affidavit); ECF No. 262 (Oct. 22, 2016) (Errata); ECF No. 263 (Oct. 24, 2016) (Errata).

4. Upon reviewing this stream of filings, defendant was surprised to see that plaintiffs had filed two entirely independent oppositions to its motion for summary judgment, as well as two entirely separate cross-motions for summary judgment. This case arises out of a single FOIA request. In their joint motion for a scheduling order (ECF No. 243), the parties agreed that “Plaintiffs will file their opposition and cross-motion” – both phrased in the singular – by the specified date. That was not an accident. In discussing the proposed schedule, in an email dated June 17, 2016, Mr. Lesar (counsel for Hall and SSRI) proposed: “Your motion for an extension has us filing an opposition for summary judgment on August 18. I think it would be best to clarify that we will be filing a cross-motion for summary judgment and opposition . . .”) (emphasis added). The Court’s order establishing the proposed briefing schedule also was phrased in the singular.

5. Plaintiff’s six extension requests – to which defendant consented – did not state that plaintiffs were preparing entirely independent filings. Indeed, they suggested the contrary. For example, their first extension request stated that “Plaintiffs’ response to defendants’ motion is currently due on August 18, 2016,” and requested an extension on their “response.” *See* ECF No. 249. Similarly, Mr. Lesar emailed undersigned counsel on October 7, 2016, to state that he needed additional time due to medical issues. No mention was made of a separate filing by AIM, nor would defendant have consented to such relief in light of the fact that AIM’s brief should not have been delayed due to Mr. Lesar’s difficulties.

6. Upon reviewing the two oppositions that plaintiffs have filed – each of which is nearly the maximum length permitted under the rules –it is apparent that they differ materially. For example, AIM’s opposition (ECF No. 258 at 10-12) argues that defendant must search its operational files for responsive materials. There is no obvious corresponding argument in Hall’s opposition. Conversely, Hall’s opposition (ECF No. 259 at 26-27) criticizes defendant’s reliance on the National Security Act of 1947; AIM’s does not. There are many other material differences.

7. In sum, Hall’s and AIM’s oppositions make different arguments based on different evidence while citing different law. Defendant thus has two oppositions and cross-motions to respond to instead of one. Indeed, it appears that this is an instance in which two plaintiffs, represented by two lawyers, are litigating the same case at the same time. Should plaintiffs prevail, each plaintiff likely will request full attorney’s fees for its counsel’s efforts.

8. Had defendant been aware of plaintiffs’ plans to file multiple and materially different oppositions, it would have objected both in the proposed scheduling order, which spoke in terms of a single opposition and cross-motion, and also to plaintiffs’ extension requests. There is no evident reason why defendant should face exposure to double attorney’s fees regarding the very same FOIA question. In the normal course, an agency would litigate a contested withholding once and then faithfully honor any adverse decision regarding it. Here, however, defendant is being deprived of its ability to learn from any mistakes – plaintiffs are insisting that it litigate the same matter twice, paying double fees to whatever extent the Court disagrees with its position. Had defendant understood plaintiffs’ plan while consenting to extension requests due to Mr. Lesar’s difficulties, its response would have been different – it would have proposed staying Hall’s case while AIM litigated the withholdings. That would have

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[PROPOSED] Order

Upon consideration of defendant’s consent motion for an extension of time to file its reply in support of its motion for summary judgment, and also to oppose plaintiffs’ cross-motions for summary judgment, it is hereby ORDERED that the motion is GRANTED. Defendant shall file its replies, as well as its oppositions to plaintiffs’ cross-motions, by January 30, 2017.

Date

United States District Judge