

**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 OPPOSITION TO PLAINTIFFS’ MOTIONS TO STAY

Defendant, the Central Intelligence Agency (CIA), respectfully opposes plaintiffs’ motions to stay the case so that they may take discovery. *See* ECF Nos. 297, 298. Defendant filed its renewed motion for summary judgment on November 29, 2017. *See* ECF No. 295. Therein, it addressed the few remaining issues of dispute in the case, including: (i) with respect to Item 5, explanations of the schedules pursuant to which records were destroyed and why certain documents were considered to be operational and hence exempt from search; and (ii) with respect to Item 7, an explanation of why there might have been documents provided to Congress but not produced in this litigation. *Id.* This discussion included a thorough explanation of the CIA’s decennial review process and why even relatively old documents might be considered operational. CIA’s motion is ten pages long; responding should not be an arduous task.

Plaintiff’s oppositions initially were due on January 15, 2018. On the filing deadline, plaintiffs filed requests for extensions through January 31, 2018, to which CIA consented. *See* ECF No. 296. Now, however, plaintiffs seek entirely different relief: a stay of indefinite length, but of at least 90 days, during which CIA must respond to discovery requests. Plaintiffs’ motion should be denied.

In the Court's order accompanying its recent decision, it explicitly denied plaintiffs' requests for discovery and for *in camera* inspection. See ECF No. 90 at 3. Now, however, based on plaintiff's solicitation of defendant's consent to stay briefing, they appear to believe that the Court effectively ordered discovery because it required CIA to more fully explain certain grounds for withholdings. There is no ambiguity in the Court's "ORDER[] that on the issue of discovery, the plaintiffs' motion is DENIED." *Id.* Nothing has changed since then except that CIA has renewed its motion for summary judgment and has expanded its explanations on the points that concerned the Court; consequently, plaintiffs offer no grounds for discovery that have not been rejected previously.

Indeed, it is difficult to make sense of plaintiffs' motions. Accuracy in Media ("AIM") argues that "there is a genuine dispute of material fact as to whether the CIA is justified in continuing to classify [certain] records as operational" (ECF No. 297 at 4), but that is an argument it should make in its opposition, not in a motion to stay briefing. In fact, CIA's motion explained the process by which it conducted its decennial review. This FOIA case does not present a vehicle in which to collaterally attack the CIA's decennial review; instead, the critical facts are that the review was done on the required schedule and there are no grounds to suspect it was done in bad faith, issues that have been fully briefed and as to which there is no dispute whatever.

Plaintiffs gain no greater traction by criticizing CIA for not filing documents *in camera* to support their motion. In its recent order (and previous orders addressing this issue), the Court explicitly denied plaintiffs' request to compel CIA to provide documents for *in camera* review, and nothing has changed. CIA offered to provide such documents if the Court requested them, but it has not done so to date. This issue is a distraction.

Ultimately, plaintiffs' position seems to be that the Court should deny the CIA's motion without even requiring plaintiffs to oppose it, and they justify this remarkable request by arguing that Mr. Lesar will require at least another three months due to his technical difficulties and other cases. The Court should not indulge such tactics in a 14-year-old FOIA case in which plaintiffs have complained incessantly about the slow pace. CIA takes no position with respect to Hall's request for a 90-day extension on his opposition except to note that, if an extension is what he seeks, he should request it explicitly rather than in the guise of a motion to stay and to take discovery. With respect to AIM, the situation is different: it offers no reason it cannot file its opposition apart from the fact that Mr. Lesar – *Hall's* counsel – is experiencing technical difficulties. The Court should require AIM to move forward with briefing regardless of Hall's challenges. If AIM professes an inability to do so, then there is no cause for it eventually to file an opposition separate from Hall's, as has been its practice to date.

Respectfully submitted,

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