

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.)	
_____)	

PLAINTIFF ACCURACY IN MEDIA'S MEMORANDUM IN
REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR STAY

COMES NOW plaintiff Accuracy in Media, Inc., by counsel, and respectfully submits this memorandum in reply to defendant CIA's Opposition to Motion for a Stay.

Relevant Procedural History

By August 3, 2017 memorandum order (ECF 291), the Court denied plaintiffs' motions to employ a Special Master to review the undisclosed, aged, operational records that still remain classified, even after the CIA's 2015 centennial review. Plaintiffs maintain that all responsive post-February 1974 records show culpability in the CIA's knowledge of the 600 men remaining after the CIA's Commander, President Nixon, announced to the country that "all our boys are on their way home." Further, in plaintiffs' view, they have demonstrated that CIA *policy*, for 43 years now, has been that "all our boys came home."

The Court ordered the CIA to, *inter alia*, explain why it still classifies aged records regarding (a) 1,400 live sighting reports, (b) suspected prison camps, and (c) named reconnaissance and rescue operations, as "operational" under the CIA Act.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant ignored the Court's order. It has provided no information whatsoever. Rather, it simply declared that "[i]n its most recent decennial review, the validation team determined which records, including those containing imagery, held in designated operational files should continue to have that designation." CIA Memorandum, ECF 295-1 at 6. That is as specific as the CIA has been. The CIA has identified no applicable regulations, nor described any procedure.

The record is also devoid of any description of the organization of the records said to have been reviewed in 2015 for possible declassification. The sum total of information provided is that these records are organized by category, which are neither named nor described, and that the categorized records are further divided into unnamed sub-categories, also with no description whatsoever of the sub-categories.

Decennial Review

The CIA Act itself requires the CIA to review the exempted files at least every ten years to determine whether they can be removed from categories of exempted files, on the basis of "historical value or other public interest in the subject matter of the particular category of files or portions thereof." 50 U.S.C. § 3141(g)(2). Subsection (g) authorizes a complainant to seek review in a United States District Court for (1) the CIA's failure to conduct the required review by October 15, 1994, and before the expiration of each ten-year period thereafter, and (2) review of whether the CIA considered the "public interest" criteria. *Id.* § 3141(g)(3).

The Court ordered the CIA to explain its consideration of the public interest in aged records regarding (a) 1,400 live sighting reports, (b) suspected prison camps, and (c)

named reconnaissance and rescue operations. The CIA did not comply. Rather, it posits that "[t]his FOIA case does not present a vehicle in which to collaterally attack the CIA's decennial review." CIA Opposition to Motion for Stay, ECF 300 at 3.

Here, the Court cannot be satisfied that the CIA has met its section 3141(g) obligations, and this issue is squarely before the Court.

Discovery

Plaintiffs discovery seeks information that the Court has ordered disclosed—the CIA's consideration of the public interest criteria in specific categories of aged records.

Destruction of Records, *In Camera* Inspection

CIA Opposition to Motion for Stay, ECF 300 at 4:

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.

Defendant is mistaken. Plaintiffs' motions for stay did not seek *in camera* review. Rather, the Court "direct[ed] the CIA to provide further specificity as to the regulations and schedules applied to its decision to destroy the files" (Mem. Op., ECF 291 at 14), the government responded that it would file a motion for the Court's *in camera* review of the destruction schedules it claims authorized the destruction of 114 files, and that action was not contingent on the Court's having "requested them."¹ No such motion followed, and the

¹ See Transcript September 26, 2017 Status Hearing, ECF 293 at 4: "[W]e have the destruction schedules and the regulations setting those forth. The trick is that although those schedules, as they exist today, are not classified, the ones that were in existence at the time in the '80s are and were and remain classified. So we'll need to file a motion to file those for the Court's *in camera* review.... But, regardless, the document destruction schedule and the explanation that we'll provide will explain what happened there."

CIA's dispositive motion does not mention the matter.

Plaintiffs have good reason to scrutinize the CIA's destruction of these records. *See, e.g., Hrdlicka Aff.*, ECF 261-1, ¶ 26: "Exhibit 50 is the 1992 DIA Memoranda re Destruction of POW Records by the CIA, written by Investigator John McCreary, at Bates 151-56."² *Cf.* CIA's claim in its opposition (ECF 295 at 2) that "there are no grounds to suspect it was done in bad faith."

CONCLUSION

Defendant's pleadings remain devoid of explanation of its nondisclosures of aged records of 1,400 live sighting reports, suspected prison camps, and named reconnaissance and rescue operations. Plaintiffs' discovery seeks some specificity. This case cannot be decided until defendant provides this information.

² *See also*, Plaintiffs' Statement of Material Fact, ECF 258-5, ¶¶ 23-25:

In February 1991, Colonel Millard Peck, Chief of the Special Office for Prisoners of War and Missing in Action, resigned. Colonel Millard Peck's resignation letter, Exhibit 42... explained the deliberate actions to make sure that no information on live POWs was disseminated, or followed up on. [Colonel Peck wrote] The entire issue is being manipulated by unscrupulous people in the Government, or associated with the Government... [The Director of the National League of Families]... interferes in or actively sabotages POW-MIA analyses or investigations... was brought from the "outside." One wonders who she really is and where she came from.... I feel strongly that this issue is being manipulated and controlled at a higher level... to obfuscate the question of live prisoners... *Hrdlicka Aff.* ¶ 51.

[Beginning] in September of 1994, [Mrs. Hrdlicka] sent 24 separate complaints to the Inspector General..." *Hrdlicka Aff.* ¶ 55.

Exhibit 8 is my then lawyer's list of Criminal Violations committed by DOD and CIA agency personnel, at Bates 21. *Id.*

