

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, <i>et al.</i>	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 04-0814 (RCL)
	:	
CENTRAL INTELLIGENCE	:	
	:	
Defendant	:	

REPLY OF PLAINTIFFS ROGER HALL (“HALL”) AND STUDIES SOLUTIONS RESULTS, INC. (“SSRI, INC.”) TO DEFENDANT’S MOTION TO STAY

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Defendant Central Intelligence Agency (“CIA”) opposes the motion by Plaintiffs’ Roger Hall and Studies Solutions Results, Inc. (collectively referred to as “Hall”) to stay discovery pending the CIA’s response to, or the Court’s determination of, a few simple discovery requests. *See* Doc. 300, Opposition to Plaintiffs’ Motion to Stay (“CIA’s Opp. to Stay”). The CIA says that plaintiffs’ discovery is out of bounds because the District Court’s August, 3, 2017 Order, Doc. 290, denied plaintiffs’ requests for discovery and *in camera* inspection. Doc. 300, Opp. to Mot. To Stay at 1.

The CIA’s claims are without merit. The critical question is whether this Court may in its discretion permit Hall and Accuracy in Media (“AIM”) to take discovery before the Court rules on the CIA’s pending renewed motion for

summary judgment. The CIA cites no case law supporting its argument that plaintiffs' discovery cannot go forward until this Court rules on its pending renewed motion for summary judgment. The CIA fails to note that the D.C. Circuit disposed of this issue in *Neugent v. U.S. Dept. of Interior* ("*Neugent*"), 640 F.2d 386, 391 (D.C. Cir. 1981)(holding that discovery sought prior to summary judgment should be answered in the interests of clarifying the matter.

While the CIA's other claims are rendered irrelevant by *Neugent*, they are also baseless. The CIA says that this Court denied discovery and *in camera* inspection. The CIA is correct. This Court did deny plaintiffs' requests for discovery and *in camera* inspection. But a denial of a motion for summary judgment is not a judgment with prejudice unless it is expressly stated to be so. The Court entered no such judgment of these issues.

The CIA also argues that plaintiffs "appear to believe that the Court effectively ordered discovery because it required CIA to more fully explain certain grounds for withholdings." Doc. 300 at 2. The CIA then argues that nothing has changed since the Court's order "except 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." *Id.* at 2 (emphasis added).

While *Neugent* is dispositive, Hall notes that there are other problems with these additional CIA claims. First, the CIA's "expanded . . . explanations," if they exist, are inadequate to address the issues raised by plaintiffs and the Court at the September 26, 2017 hearing. At that time, CIA's counsel told the Court that he did not expect that the Solicitor General's Office would appeal the Exemption 6 materials the Court had ordered disclosed, but he would have to wait until he was advised of that decision. The time for appeal has long since passed. Neither Hall nor AIM has been informed of any appeal. Hall and AIM have not received any release of the withheld Exemption 6 materials.

What is new since the Court's August 3, 2017 Order and Opinion is the filing of the CIA's RMSJ. Contrary to the CIA's assertion that this means that "plaintiffs offer no grounds for discovery that have not been rejected previously[,]" is that now the CIA must establish these facts on the basis of personal knowledge, otherwise it does not meet the basic requirement of Rule 56 that genuinely undisputed issues of material fact must be set forth on the basis of personal knowledge in order to qualify for summary judgment. Moreover, Rule 56 is also the vehicle for authorizing discovery. By filing a motion for summary judgment that does not state what information in it is based on personal knowledge, the CIA has, by filing its motion, opened the door to discovery in ways not previously available.

Moreover, the Court of Appeals recently noted that decisions in this Circuit have long held that declarations in FOIA cases must describe in detail how searches were conducted, including search terms that were used, and results yielded in the search of each component of an agency. *Reporter's Committee for Freedom of the Press v. FBI*, 877 F.3d 399 (2017), WL 6390484 (D.C. Cir. Dec. 15, 2017).

In this case, CIA has still failed to meet these requirements with respect to the search of operational and decennial records sought by Hall and AIM.

The CIA spends much of its skimpy brief arguing that Hall's motions for extensions of time set up the CIA so it was caught off guard when Hall moved to stay proceedings pending the resolution of the discovery disputes and whether the Court of Appeals is going to hear another case of his by a different client *en banc*. But it had long been quite clear through the position taken at the September 28, 2017 hearing, exchange of emails between counsel for the parties, and the motions for extensions of time themselves, that Hall was going to challenge the CIA's efforts to avoid compliance with the requirements of Rule 56. It was also evident, that in addition to his health concerns, which the CIA alludes to, he had multiple other grounds apart from seeking to obtain discovery, for seeking a lengthy extension in order to be able to respond properly to the CIA's motion for summary judgment.



