

plicable fees demanded by the agency. In this case Hall submitted a request by letter dated February 7, 2003 which included records which the Central Intelligence Agency ("CIA") had previously searched for. Hall has attempted to pay the exact amount of fees which the search for some of the records at issue in this case allegedly cost. If he is entitled to nothing else in this case, he is at least entitled to have the nonexempt records identified by those searches produced.

The CIA argues that "Plaintiff has no entitlement to documents based on his 1998 request or C.A. 98-1319...." Defendant's Opposition to Plaintiff's Motion for Partial Reconsideration ("Opp. Recon.") at 3. But Hall is not seeking entitlement to these records based on his 1998 request. He is seeking the records based on his February 7, 2003 request that is the subject of this action. It is true that the records at issue are coterminous with those sought in Civil Action No. 98-1319, but this Court has clearly ruled that "[t]he CIA . . . cannot exclude from plaintiffs' February 7, 2003 request any nonexempt documents on the grounds that they are coterminous with Hall's May 28, 1998 request." April 13, 2005 Memorandum Opinion and Order ("Mem. Op.") at 12. Thus, absent a claim that the records located by the searches costing \$10,906.33 are all entirely exempt, they must be produced. Since Hall has paid the entire sum for the searches that were conducted, he is entitled to obtain all nonexempt materials located as a result of those searches.

The CIA argues that the submission of two checks totaling \$10,906.33 in July 2004 does not constitute payment of fees for records at issue in this case. It claims that Mr. Mark Zaid's cover letter submitting these checks "makes no mention of the records at issue [in this case]," and it argues that Hall "admits that the amount and the items sought 'forthwith' relate to the 1998 request and action." Opp. to Recon. at 3-4. But the very content of Mr. Zaid's letter which the CIA quotes specifies that the payment "should be applied to the search and copying fees assessed by your Agency in the processing of the above referenced FOIA request." *Id.* at 3 (emphasis added). The reference number which Mr. Zaid gives "above" is the request number which the CIA assigned the 2003 request at issue in this action, not Hall's 1998 request.

Nor does Hall anywhere "admit" that the July 2004 payment is "relate[d] to the 1998 request and action." Rather, as the CIA itself quotes Hall as saying, it relates to "the request that is the subject of this action"; that is, the February 7, 2003 request.

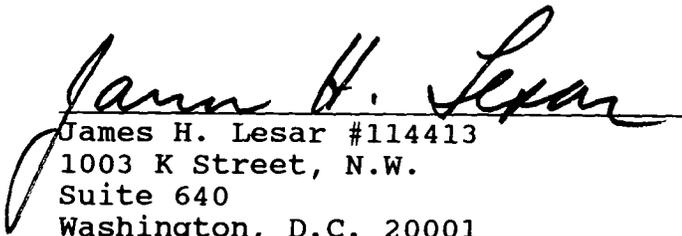
The CIA argues that "immediate production" of records sought by the February 7, 2003 request and the instant civil action "would be premature" because Hall has not "established entitlement on the merits in this action." *Id.* at 4. However, what Hall is seeking is not all of the records potentially at issue in this case but only those nonexempt materials which were located as a result of CIA searches allegedly costing \$10,906.33. Hall's right to obtain all nonexempt materials is clear and unassailable. There can be no issue of his entitlement "on the merits" to the nonexempt records,

that have been located as a result of prior searches. Contrary to the CIA's assertion, see id. at 7, there is no need for a judicial determination on the merits insofar as the production of records which are concededly nonexempt is concerned.

Despite multiple opportunities to have done so, the CIA has made no showing that the disclosure of nonexempt records located by its prior searches would be premature. This Court already has rejected the CIA motion to stay proceedings. Memorandum Opinion and Order at 9-10 and 17. Rather, it appears that such disclosure is long overdue.

The CIA spends the last four pages of its opposition going on at great length about the fee estimate it has made with respect to the items of the current request. But that is all irrelevant to Hall's motion for production of the nonexempt materials located as a result of the CIA's searches alleged to have cost \$10,906.33. The point at issue here is simply that the CIA has searched for and presumably identified some records which are responsive to his February 7, 2003 request. He has tendered payment for the fees allegedly incurred regarding those records, He therefore is entitled to get any of them which are nonexempt.

Respectfully submitted,


James H. Lesar #114413
1003 K Street, N.W.
Suite 640
Washington, D.C. 20001
Phone: (202) 393-1921

May 25, 2005