

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

<b>ROGER HALL, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No.: 04-0814 (HHK)</b>
	)	
<b>CENTRAL INTELLIGENCE AGENCY,</b>	)	<b>ECF</b>
	)	
<b>Defendant.</b>	)	
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**MOTION TO STAY PROCEEDINGS, OR IN THE ALTERNATIVE,  
TO DISMISS WITHOUT PREJUDICE, AND MEMORANDUM IN SUPPORT**

Defendant, the Central Intelligence Agency (CIA), respectfully requests this Court to stay these proceedings pending completion of administrative processing of Plaintiffs’ request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* In the alternative, Defendant respectfully requests that the Court dismiss this civil action without prejudice to its being re-filed following completion of administrative processing of Plaintiff’s request for records under the FOIA. Pursuant to LCvR 7(m), undersigned counsel conferred with counsel for Plaintiffs, who on behalf of their clients oppose this motion.

**BACKGROUND**

On February 7, 2003, Attorney James H. Lesar filed a FOIA request with the CIA on behalf of Roger Hall and SSRI,<sup>1</sup> and in that request represented that a Mr. Reed Irvine and AIM “joined in” the FOIA request.<sup>2</sup> Exhibit 1. Defendant acknowledged receipt of the FOIA request by letter dated March 13, 2003. Exhibit 2.

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<sup>1</sup> On information and belief, SSRI is an entity owned and operated or otherwise in privity with Plaintiff Hall.

<sup>2</sup> Mr. Irvine is not a party to this litigation. The February 7, 2003 FOIA request stated that he and AIM were “represented by Mr. Joe Jablonski,” whose name also appears below the signature and name of Attorney Lesar on the letter. Attorney Jablonski did not sign the request and Defendant does not waive its right to dispute AIM’s being a proper FOIA requester.

At the time of the February 7, 2003 FOIA request, Roger Hall and Defendant were involved in protracted litigation in this Court concerning a previous FOIA request that Roger Hall had filed on May 28, 1998. *See Hall v. CIA*, Civil Action No. 98-1319 (PLF). C.A.98-1319 involved requests for records that were similar to four of the seven categories of records sought in the instant request and involved as well a common issue as to fee waivers on the basis of public interest. *See C.A.98-1319 at Docket # 1*. On October 8, 2003, Plaintiff Hall filed a motion for leave to file an amended and supplemental complaint in C.A.98-1319, which raised the issue of media status<sup>3</sup> and included a new cause of action based on the same February 7, 2003 FOIA request that is the basis for the instant lawsuit. *See C.A.98-1319 at Docket # 93*. On November 13, 2003, the Court denied leave to amend the complaint and dismissed the case, citing Plaintiff's failure to commit to pay search costs. *See C.A.98-1319 at Docket # 95 and 97*. Plaintiff, however, filed a motion for reconsideration, which extended the litigation. *See C.A.98-1319 at Docket # 98*. The Court ultimately denied the motion for reconsideration on April 22, 2004. *See C.A.98-1319 at Docket # 103*.<sup>4</sup>

On May 19, 2004, Plaintiffs filed the instant action, seeking seven categories of records, including records coextensive with those requested and dismissed in C.A. 98-1319, status as representatives of the news media, and entitlement to a public interest fee waiver.<sup>5</sup> *See Compl. ¶¶ 6, 12 and 15*. Plaintiffs assert that they have exhausted administrative remedies (*Compl. ¶ 9*);

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<sup>3</sup> On July 22, 2003, the Court had denied Plaintiff's request for a public interest fee waiver. *See C.A.98-1319 at Docket # 85*.

<sup>4</sup> The Court did not squarely address Plaintiff's claim of media status, ruling that Plaintiff had failed to exhaust that request administratively. *See C.A.98-1319 at Docket # 103 at 9*.

<sup>5</sup> This motion encompasses as well the stay of Defendant's responsive pleading due June 18, 2004 pending completion of the administrative process.

and that they have received no determination on their February 7, 2003 request for records, media status and fee waiver (Compl. ¶¶ 8, 13 and 16).

Defendant delayed its response to Plaintiffs' request during the pendency of C.A. 98-1319 due to the overlapping records requests and common legal issues. Defendant now has responded to Plaintiffs' request, by letter dated June 15, 2004.<sup>6</sup> Exhibit 3. Defendant's response addresses the overlapping requests that were resolved by C.A. 98-1319, questions the scope of Plaintiffs' requests, disputes Plaintiffs' qualifications as representatives of the media, provides an initial estimate of over \$600,000 in search costs, and invites Plaintiffs to supplement their request for news media status, to narrow their requests and/or to make an advance deposit of \$50,000. Finally, the letter advises Plaintiffs that they may consider the response a denial and appeal to the Agency Release Panel.

### ARGUMENT

Because of the overlap both in scope and legal issues between the instant request and the request under litigation in C.A. 98-1319, the Defendant delayed its response and administrative processing of the instant request until it had final guidance from the Court.<sup>7</sup> Consequently, the administrative process was interrupted and has not been concluded and there is no administrative record on the issues that ultimately will be central to this litigation.

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<sup>6</sup> Because the Agency was unable to reach requesters' counsel at the telephone number (unanswered) and facsimile number (out of service) provided with the FOIA request, the letter was transmitted by FEDEX to the address on the request on June 16, 2004.

<sup>7</sup> Interlocutory decisions of the Court, such as its denial of the public interest fee waiver, and the denial of the amendment of the complaint to add the instant request and seek media status, continued to be contested by Plaintiff up until Final Judgment on April 22, 2004. Thereafter, Defendant required additional time to complete search estimates for the broad scope of the requests involved.

A stay to permit the Parties to conclude the administrative process is in the interests of judicial economy and will not prejudice Plaintiffs. Moreover, the records being requested are in many cases decades old, and to the extent they continue to exist, a delay to conclude the administrative process will not affect their relevance to whatever purpose Plaintiffs intend for them. Moreover, the Court is able to monitor the progress of that process by requiring joint status reports at regular intervals.

In the alternative, the Court could dismiss the action without prejudice to its refiling upon conclusion of the administrative process.

### **CONCLUSION**

Defendant has not had sufficient opportunity to process administratively the FOIA request underlying this civil action with the benefit of the Court's guidance in C.A. 98-1319. Nor have Plaintiffs had the opportunity to address in that process the issues and concerns raised in Defendant's June 15, 2004 response to their request.

Wherefore, Defendant respectfully requests that the Court stay this civil action pending conclusion of the administrative processing of Plaintiffs' request or further order of the Court, and require the Parties to file Joint Status Reports at 90-day intervals until the request is resolved administratively or the administrative process is completed, at which point a briefing schedule shall be proposed. In the alternative, if the Court is not inclined to stay this action and monitor the administrative process, Defendant would request the action be dismissed without prejudice to its re-filing following conclusion of the administrative process.

A proposed Order consistent with the foregoing is attached.

Respectfully submitted,

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/ s /

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