

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MICHAEL DRIGGS, *et al.*,  
Plaintiffs,

v.

Civil No. 1:23cv1124 (DJN)

CENTRAL INTELLIGENCE AGENCY,  
Defendant.

**ORDER**  
**(Setting Case Deadlines and Granting Motion for Clarification)**

This matter comes before the Court following an on-the-record status conference held on March 13, 2024. For the reasons stated on the record during that hearing, the Court hereby ORDERS as follows:

1. On or before March 29, 2024, Plaintiffs shall provide to Defendant a list of all documents produced to Plaintiffs Robert Moore, Jana Orear, Christianne O'Malley, and Mark Sauter during the litigation of *Moore v. CIA*, No. 1:20-cv-1027 (D.D.C.) that are responsive to the FOIA requests at issue in this case (the "*Moore Document List*"). Because this Court lacks jurisdiction to order the CIA "to do something [that it has] already done," Plaintiffs' claims are moot to the extent that they seek production of documents already handed over in *Moore*. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 91 (D.C. Cir. 1986); *see Muckrock, LLC v. CIA*, 300 F. Supp. 3d 108, 120 (D.D.C. 2018) (Jackson, J.) ("the standard FOIA claim is typically deemed moot once the agency produces the requested records"); *Reg'l Mgmt. Corp., Inc. v. Legal Servs. Corp.*, 186 F.3d 457, 464 (4th Cir. 1999) (Luttig, J.) ("It is undisputed that a challenge to a particular denial of a FOIA request becomes moot if an agency produces the requested

documents.”). Thus, Defendant need not produce the items on the *Moore* Document List in this litigation.

2. The parties shall meet and confer on or before April 12, 2024, regarding the effect of the *Moore* Document List on Defendant’s rolling production of FOIA materials. The parties shall also discuss scheduling for future productions by Defendant, as well as any outstanding disagreements between the parties on matters of law that are suitable for resolution through motions for partial summary judgment.

3. The parties shall file a joint pleading on or before May 10, 2024, informing the Court of the status of this case. The joint pleading must set out a schedule for Defendant to make rolling productions that will bring document production in this case to a close by Thanksgiving of this year, or as near to that date as possible. Because “[o]nce a court has decided an issue, it is ‘forever settled as between the parties,’” the joint pleading must also address the parties’ respective positions on the issue-preclusive effect of the *Moore* case on this action. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 147 (2015).<sup>1</sup>

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<sup>1</sup> The voluntary dismissal of the *Moore* case does not prevent the application of issue preclusion. Issue preclusion can attach without litigation of a case to “final judgment in the strict sense” when “the decision to be carried over was adequately deliberated and firm, even if not final in the sense of forming a basis for a judgment.” Restatement (Second) of Judgments § 13 cmt. g (Am. L. Inst. 1982); *see B & B*, 575 U.S. at 148 (in federal-law cases, courts “regularly turn[] to the Restatement (Second) of Judgments”).

Finally, the Court hereby GRANTS Defendant's Motion for Clarification (ECF No. 15) and refers Defendant to the contents of this Order.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.

  
\_\_\_\_\_/s/\_\_\_\_\_  
David J. Novak  
United States District Judge

Alexandria, Virginia  
Date: March 14, 2024