UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, *et al.,*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil Action No.: 04-0814 (HHK)**
	)	
CENTRAL INTELLIGENCE AGENCY,	)	**ECF**
	)	
Defendant.	)	
	)	

DEFENDANT'S OPPOSITION TO
MOTION OF ROGER HALL AND STUDIES SOLUTIONS RESULTS, INC.
FOR A WAIVER OF FEES AND COPYING COSTS

Defendant, the Central Intelligence Agency (CIA), respectfully files this memorandum in Opposition to the Motion of Plaintiffs Roger Hall and Studies Solutions Results, Inc. ("SSRI") for a Waiver of Fees and Copying Costs (Docket # 12).

Plaintiffs Hall and SSRI request this Court to direct the CIA to waive all search and copying costs for records responsive to Plaintiffs' February 7, 2003 request under the Freedom of Information Act (FOIA). Plaintiffs' motion should be denied on grounds of *res judicata* and / or collateral estoppel, or in the alternative for Plaintiffs' failure to exhaust administrative remedies.

BACKGROUND

On February 7, 2003, Attorney James H. Lesar filed a FOIA request with the CIA on behalf of Roger Hall and SSRI.[1] *See* Exhibit 1 to Defendant's Motion to Stay (hereafter "Def. Exh. __ ") (Docket # 5). Defendant acknowledged receipt of the FOIA request by letter dated March 13, 2003. Def. Exh. 2. At the time of the February 7, 2003 FOIA request, Roger Hall and

[1] In that request, counsel represented that a Mr. Reed Irvine and AIM "joined in" the FOIA request. Plaintiff AIM is not a party to this motion.

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 July 22, 2003, the Court in C.A.98-1319 denied Plaintiff Hall's request for a public interest fee waiver. *See* C.A.98-1319 at Docket # 85. 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 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. 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.

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. *See* Compl. ¶¶ 6, 12 and 15. Plaintiffs assert that they have exhausted administrative remedies (Compl. ¶ 9); 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. Def. Exh. 3. Defendant's response, *inter alia,* 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, and denies Plaintiffs' request for a public interest fee waiver. The June 15, 2004 CIA letter advises Plaintiffs that they may consider the response a denial and appeal to the Agency Release Panel.

Defendant, moved 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*, or in the alternative, for dismissal without prejudice to its being re-filed following completion of administrative processing of Plaintiff's request for records under the FOIA. *See* Docket # 5.[2]

ARGUMENT

I. PLAINTIFFS' MOTION FOR FEE WAIVER IS BARRED BY *RES JUDICATA* AND / OR COLLATERAL ESTOPPEL.

Plaintiff Roger Hall previously filed suit against the United States to obtain 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. In his prior lawsuit, the Court specifically denied Plaintiff Hall's request for public interest fee waiver. *See* C.A.98-1319 at Docket # 85. The Court also denied Plaintiff Hall's request for records, dismissing the case citing Plaintiff's failure to commit to pay search costs.

[2] This motion encompassed as well the stay of Defendant's responsive pleading due June 18, 2004 pending completion of the administrative process.

See C.A.98-1319 at Docket # 95 and 97. SSRI is an entity owned and operated or otherwise in privity with Plaintiff Roger Hall.

"The doctrines of *res judicata* and collateral estoppel are designed to 'preclude parties from contesting matters that they have had a full and fair opportunity to litigate.'" Carter v. Rubin, 14 F. Supp.2d 22, 33 (D.D.C. 1998) (*citing* Montana v. United States, 440 U.S. 147, 153 - 54 (1979)). "These doctrines protect parties from the expense and burdens associated with multiple lawsuits, conserve judicial resources, and reduce the possibility of inconsistent decisions." *Id.* at 33-34 (*citing* United States v. Mendoza, 464 U.S. 154, 158-59 (1984)). The doctrine of *res judicata* acts to "conserve judicial resources, avoid inconsistent results, engender respect for judgments of predictable and certain effect, and to prevent serial forum-shopping and piecemeal litigation." Hardison v. Alexander, 655 F.2d 1281, 1288 (D.C. Cir. 1981)). Under the doctrine of *res judicata*, "the parties to a suit and their privies are bound by a final judgment and may not relitigate any ground for relief which they already have had an opportunity to litigate – even if they chose not to exploit that opportunity – whether the initial judgment was erroneous or not." Charles T. Sherwin v. Dept of the Air Force, 955 F. Supp. 140, 142 (D.D.C. 1997) (*quoting* Hardison, 655 F.2d at1288); Drake v. FAA, 291 F.3d 59, 66 (D.C. Cir. 2002) (*quoting* Allen v. McCurry, 449 U.S. 90, 94 (1980).

Res judicata bars a claim when there has been a final judgment on the merits in a prior suit involving the same parties or their privies and the same cause of action. *See* I.A.M. Nat'l Pension Fund v. Indus. Gear Mfg. Co., 723 F.2d 944, 946-47 (D.C. Cir. 1983). The four factors that must exist for *res judicata* to apply are (1) an identity of parties in both suits; (2) a judgment rendered by a court of competent jurisdiction; (3) a final judgment on the merits; and (4) the

same cause of action in both suits. *See* Brannock Assocs., Inc. v. Capitol 801 Corp., 807 F. Supp. 127, 134 (D. D.C. 1992) (*citing* U.S. Industries, Inc. v. Blake Constr. Co., 765 F.2d 195, 205 n. 21 (D.C. Cir.1985));Polsby v. Thompson, 201 F. Supp. 2d 45, 48 (D.D.C. 2002).

Under the related doctrines of *res judicata* and collateral estoppel, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been finally decided; and once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first action. Allen , 449 U.S. at 94; Mendoza, 464 U.S. at 158; Montana, 440 U.S. at 153; American Employers Insurance Company v. American Security Bank, 747 F.2d 1493, 1498 (D.C. Cir. 1984); I.A.M. Nat'l Pension Fund, 723 F.2d at 947; Jack Faucett Associates, Inc. v. American Telephone and Telegraph Company, 566 F. Supp. 296, 299 (D.D.C. 1983); *see also* Cutler v. Hayes, 549 F. Supp. 1341, 1343 (D.D.C. 1983), *aff'd in part, rev'd in part* 818 F.2d 879, 888 (D.C. Cir. 1987).

Application of the doctrine of collateral estoppel "represents a decision that the needs of judicial finality and efficiency outweigh the possible gains of fairness or accuracy from continued litigation of an issue that previously has been considered by a competent tribunal." Nasem v. Brown, 595 F.2d 801, 806 (D.C. Cir. 1979). Similarly, application of the doctrine thereby serves to relieve parties of the burdens attending multiple lawsuits; conserves judicial resources; minimizes the risk of forum-shopping, piecemeal litigation, and inconsistent decisions; and provides finality in the resolution of disputes. Mendoza, 464 U.S. at 158; Cutler, 549 F. Supp. at 1343; *see* Hardison, 655 F.2d at 1288.

All four of these factors are met in the instant action and therefore the doctrine of *res judicata* bars re-litigation of the issue of public interest in Plaintiffs' instant motion for media fee waiver. The parties to the instant motion include Roger Hall and the CIA, the same parties that were the subject of the prior litigation. *See* C.A.98-1319. The other Plaintiff in this motion is SSRI, a privy of Roger Hall. Accordingly, the first prong of the *res judicata* test is satisfied. The second and third factor for the doctrine of *res judicata* are satisfied because this Court, a court of competent jurisdiction, issued a final judgment on the merits. *See* C.A.98-1319 at Docket # 95, 97 and 103.

Finally, the fourth factor – requiring that the suit involve the same cause of action – also is satisfied. A final decision on the merits prohibits any future case arising from "the same 'nucleus of facts,' for 'it is the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which a litigant relies.'" Page v. United States, 729 F.2d 818, 820 (D.C. Cir. 1984) *(quoting* Expert Elec., Inc. v. Levine, 554 F.2d 1227,1234 (2d Cir. 1977)).

This Court already has determined that Plaintiff Hall, and hence his privies, are not entitled to the records at issue in C.A.98-1319, and denied Plaintiff Hall a public interest fee waiver. Plaintiff Hall now seeks a media fee waiver, which includes as a threshold requirement the public interest be satisfied, merely by adding a privy as a Plaintiff and attaching the request to a later FOIA request that seeks *inter alia* the same records at issue in C.A.98-1319. Both the prior lawsuit and this motion, however, require adjudication of the same issue: public interest. In the C.A.98-1319, Plaintiff sought a public interest fee waiver, which required that inquiry, and in the instant motion, Plaintiffs seek a media fee waiver, which requires that threshold inquiry.

Plaintiffs acknowledged in their motion that the public interest as a threshold criteria applies as well to a media waiver. Pl. Motion at 5-6. Plaintiff Hall had a "full and fair opportunity to litigate" his original claim to a public interest waiver and the District Court entertained his claim, as evidenced by the decisions issued in C.A.98-1319. Under the doctrine of *res judicata*, Plaintiffs should be precluded from raising the issue of public interest anew in this litigation.

The doctrine of *res judicata* bars claims that were litigated in the prior civil action. Plaintiffs' claim for a media fee waiver in the instant motion necessarily raises the issue of public interest determined against Plaintiff Hall in C.A.98-1319. Therefore, the four prongs to determine the applicability of *res judicata* are satisfied and this Court should conclude that Plaintiffs are simply attempting to re-litigate an issue that was fully and fairly litigated in C.A.98-1319. Accordingly, the District Court should deny Plaintiffs' motion for a media fee waiver based upon the doctrine of *res judicata*.

II. PLAINTIFFS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES FOR THEIR FEE WAIVER REQUEST.

Because of the overlap both in scope and legal issues between the instant request and the request under litigation in C.A. 98-1319, Defendant's response and administrative processing of the instant request was delayed pending final guidance from the Court. Consequently, the administrative process was interrupted and has not been concluded by the Plaintiffs' filing of this civil action.

Since then, Defendant has responded to Plaintiffs' request, including addressing Plaintiffs' requests for fee waivers, inviting Plaintiffs to supplement their justifications for fee

waivers and advising Plaintiffs of their administrative appeal avenue. Def. Exh. 3. Plaintiffs have not exhausted this administrative remedy.

CONCLUSION

Wherefore, Defendant respectfully requests that the Court deny Plaintiffs' motion on grounds of *res judicata* and / or collateral estoppel, or in the alternative for Plaintiffs' failure to exhaust administrative remedies.

Respectfully submitted,

/ s /

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