

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Roger Hall, et al.,)	
)	
Plaintiffs,)	Status Conference: December 19, 2012
)	
v.)	Civil Action 04-814 (RCL)
Central Intelligence Agency,)	ECF
)	
Defendant.)	
)	

**DEFENDANT'S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT
AND TO STRIKE PLAINTIFFS' MOTION FOR SCHEDULING ORDER**

Defendant, Central Intelligence Agency (CIA or Agency), by and through undersigned counsel, respectfully submits this renewed motion for summary judgment on Item 5 related records, and response to Plaintiffs' Motion for Scheduling Order (Dkt. No. 191). In support of its motion, CIA states as follows.

I. **Renewed Motion for Summary Judgment on Item 5 Related Records**

On August 3, 2012, this Court granted defendant's motion for summary judgment in part and denied it, *inter alia*, with respect to its search for the remaining 1677 names, ("remaining Item 5 records") contained in various CIA systems of records. Dkt. No. 187, pp. 6-8. The Court so held, explaining that CIA declarations did not adequately explain why it believed the searches to be unduly burdensome and that its reference to systems of records "most likely" to contain responsive records was insufficient. *Id.* Accordingly, the Agency's motion for judgment as a matter of law of Item-5 related requests was denied. *Id.* pp. 17-18.

In response to the Court's concerns, on August 23, 2012, the CIA submitted the supplemental Michelle L. Meek's declaration. Dkt. No. 188-1. Ms. Meeks explained that the

CIA anticipated that a search of its electronic database for the remaining Item 5 records would take 4.7 years. *Id.* ¶ 10. The CIA based this estimate on a preliminary query of its CADRE database, which indicated that 136,835 are potentially responsive to Item 5. *Id.* The CIA's search estimate assumes of a review time of 2 minutes per page for 137,000 two page documents at issue in order to ascertain a record's responsiveness. *Id.* ¶¶ 4, 10. Ms. Meek's further explained that the search of archived records, from various CIA directorates and the National Clandestine Service, consisting of 16,545 potentially responsive hard copy file folders would take approximately 5.7 years. *Id.* ¶ 11. This estimate includes the retrieval, unsealing, and manual review of all documents in each folder and is based on upon an estimate of 40 minute per box to determine a record's responsiveness. *Id.* ¶¶ 4, 11. Ms. Meeks also indicated that these estimates provided were based upon having one designated staff person conducting each search on a full time basis (8 hours per day, 240 working days per year). *Id.* ¶ 11. The estimates were only for search and responsiveness review, and do not include the time it will take to redact responsive documents per applicable exemptions. It is impossible to estimate how long the review and redaction phase will take without knowing the universe of documents that ultimately determined to be responsive. *Id.* ¶¶ 7-9.

In an effort to try to more narrowly focus the search for documents, and thereby reduce the search time, the Agency has repeatedly asked Plaintiffs to advise the CIA of some specific identifying information for the individuals. However, in the course of these discussions, the Agency advises that it has become evident that although the additional identifying details may help with respect to determining a document's responsiveness, due to the intensive nature of the

computerized and archival records searches. Accordingly, more information from the plaintiffs will not appreciably reduce the search time.

Although the Court ordered the Agency to search for additional records based on deficiencies in the declaration accompanying its motion for summary judgment, the CIA now renews its motion for summary judgment with respect to the burdensomeness issue with respect to Item 5 because the Agency has submitted a more detailed declaration regarding the searches. See generally, *id.* Specifically, the CIA maintains that the Item 5 search would be unduly burdensome for the Agency to conduct because of the inordinate time, staffing and other resources that would be devoted to this task. The CIA motion on this point is consistent with the controlling case law in this Circuit that agencies are not required under the FOIA to conduct “unreasonably burdensome” searches for records. *See Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 892 (D.C. Cir. 1995); *Schrecker v. Department of Justice*, 217 F. Supp. 2d 29, 35 (D.D.C. 2002) (Lamberth, J.), *aff’d*, 349 F.3d 657 (D.C. Cir. 2003). Hence, the Agency is entitled to summary judgment on this issue.

II. Plaintiffs’ Motion for a Scheduling Order is Unnecessary and Should be Stricken

On December 5, 2012, Plaintiffs filed a motion for an order scheduling searches, reviews and release of records remaining at issue. Dkt. No. 191 (Plts. Proposed Order). The parties had previously submitted their proposed case management plans (Dkt. Nos. 188 and 189)¹ to the Court, and a decision on those proposed plans is forthcoming. Thus, the Agency is at a loss why Plaintiffs’ would file such a motion.

¹ Should the Court grant the above renewed summary judgment motion, those portions of the Agencies previously filed proposed case management plan)and status Report with the Court on November 23, 2012 (Dkt. No. 190) would no longer be relevant.

Furthermore, Plaintiffs, via their proposed scheduling order, seek to have records processed and released to them by imposing unreasonable deadlines, at unknown costs to the public, and more importantly, without providing any explanation as to how they may have arrived at their proposed dates and figures. *See generally*, Plts. Proposed Order. Accordingly, the Plaintiff's Motion should be stricken.

Respectfully submitted,

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