

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-814 (RCL)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

PLAINTIFF ACCURACY IN MEDIA'S
RESPONSE TO DEFENDANT'S LOCAL RULE STATEMENT

Under Rule 56 of the Federal Rules of Civil Procedure, and Local Rule 7(h), plaintiff Accuracy in Media, Inc., respectfully submit Plaintiffs' Response to the CIA's Local Rule Statement.

CIA Statement:

- Part of the CIA's search for "Item 5" records consisted of a search of temporary records files in the Agency archives. Specifically, the Agency conducted conducted (sic) searches for the 1700 names of POW/MIAs provided by Plaintiffs. As a result of those searches, the Agency uncovered a number of "hits" which indicated that potentially responsive records may have been held in 114 files that had been destroyed. Those files were largely administrative in nature. Based on the nature of the records contained in the files, these documents were designated as "temporary" and only required to be kept for designated period of time (from one to 10 years, depending on file type). By the time the searches were conducted, the files had been properly destroyed in connection with the relevant record control schedule. Given the volume and commonness of the names requested, although the CIA encountered "hits" during its searches, there is no indication that these records were truly responsive to Plaintiffs' request. *See* Shiner Decl. at ¶ 7 (filed herewith).

Plaintiff's Response:

Deny that the records were properly destroyed. The Court "direct[ed] the CIA to provide further specificity as to the regulations and schedules applied to its decision to

destroy the files." *Mem Op.*, ECF 291 at 14. The CIA did not provide any further specificity regarding the regulations and schedules applied to its decision to destroy the records. *See* Docket entries. The government advised the Court that it would file a motion for the Court's *in camera* review of the destruction schedules that authorized the destruction of 114 documents. September 26, 2017 Status Hearing, ECF 293 p. 4. The CIA did not file a motion seeking the Court's *in camera* review of the destruction schedules. *See* Docket entries.

CIA Statement:

2. In addition to its thorough decennial review, CIA searched for and released to Plaintiffs any records that had been removed from operational files and therefore had lost that designation. Most of CIA's documents on POWs/MIAs have been permanently accessioned to NARA in association with mandated declassification, although CIA also has searched its records to ensure that Plaintiffs received all responsive, non-exempt material in its possession. *Id.* at ¶ 12.

Plaintiff's Response:

Deny that the CIA conducted a thorough decennial review. Plaintiffs have presented evidence in Interrogatories that previous decennial reviews are unreliable. ECF 297-1. And, "in addition to the CIA's failure to turn-up files on 1,700 of the names of reported missing persons that it searched for, plaintiffs present evidence of imagery of suspected prison camps, up to 1,400 live-sighting reports, and named reconnaissance and rescue operations alleged to have taken place." *Mem. Order*, ECF 291 at 15.

CIA Statement:

3. For all records shared with Congress that were not part of the NARA project, CIA has treated all responsive records in its possession and produced them to Plaintiffs throughout this litigation (with the exception of Operational files). *Id.* at ¶ 16.

Plaintiff's Response:

Deny. CIA has not produced, *inter alia*, live sighting reports, imagery, or reconnaissance and rescue operations, all shared with Congress. Moreover, CIA's Operational file designations are not in accordance with the law. *See* Docket entries.

CIA Statement:

4. With respect to the documents whose dates are at issue, CIA has determined as follows: CIA has ascertained approximate dates from the content, recipients, and dates noted within the text. Document 2, C05999027, is dated 2000; Document 3, C05999550, is dated 2003; and Document 15, C06002421, is dated 1991. *Id.* at ¶ 3.

Plaintiff's Response:

Deny. The CIA's withholding an entire packet of records based on the latest date of a record in the packet is improper. Defendant should have reviewed the earliest date in the packets of records, and assessed the applicable exemptions in the records individually. To do otherwise ignores its obligation to segregate. *See Statement of Material Fact to which there is no Genuine Issue*, ¶¶ 12-13: "Defendant disclosed the latest date it discerned for packets of records provided Congress, withheld-in-full under Exemptions (1) and (5);" "The CIA has a legal duty to disclose the earliest date of the records, or the earliest date of the information, in records referenced in the forgoing statement."

DATE: December 14, 2018.

Respectfully submitted,

_____/s/_____
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