

**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.	)	
_____	)	

**DEFENDANT’S MOTION FOR LEAVE TO FILE  
DOCUMENT FOR *EX PARTE*, *IN CAMERA* REVIEW**

Defendant, the Central Intelligence Agency (“CIA”), hereby respectfully moves this Court for an Order granting leave to file a document (*i.e.*, the CIA’s Record Control Schedules) for the Court’s *ex parte*, *in camera* review in support of Defendant’s motion for summary judgment, ECF No. 295, filed on November 29, 2017, and also in support of the Defendant’s response to the Court’s Memorandum and Order dated May 23, 2019, directing the CIA to “show cause” in this Freedom of Information Act (“FOIA”) case. Pursuant to Local Civil Rule 7(m), the undersigned counsel has conferred with counsel for Plaintiff regarding the relief requested in this motion and counsel for Plaintiff has advised that Plaintiff opposes the relief requested.

In support of this motion, Defendant refers the Court to the accompanying Memorandum of Points and Authorities. A proposed order is also submitted herewith.

Dated: June 7, 2019

Respectfully submitted,

JESSIE K. LIU, D.C. Bar. No. 472845  
United States Attorney

DANIEL F. VAN HORN, D.C. Bar No. 924092  
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9/26/17 Tr. at 4: 11-24, ECF No. 293. On November 29, 2017, the CIA filed its fifth motion for summary judgment in this proceeding defending, among other things, the CIA's destruction of the 114 folders. The CIA's motion did not seek permission from the Court to lodge a copy of the classified Records Control Schedules for the Court's review. Instead, the CIA submitted a supplemental declaration that explained that the 114 folders were destroyed pursuant to the Record Control Schedules' requirements for "temporary" files. Supp. Shiner Decl. ¶ 7, ECF No 248-2.

In a Memorandum and Order dated May 23, 2019, the Court directed Defendant to "show cause" and explain why it has not conceded or waived Plaintiff's cross-motions for summary judgement in light of the CIA's failure to adequately address certain information. See Mem. Op. at 7, ECF No. 333. As relevant here, the Court pointed out the CIA's failure to provide adequate information regarding the CIA's Records Control Schedules, which the CIA had previously indicated it could provide for the Court's review. *Id.* at 5 (noting that the CIA's declaration contained "[n]othing that meaningfully helps the Court substantiate the government's inability to recover the 114 folders").

In light of the Court's Order directing the CIA to "show cause," the CIA acknowledges that the general description of the agency's document destruction schedules filed in support of Defendant's pending summary judgment motion fell short of the Court's expectations, which were reasonably based on information provided by government counsel during prior status hearings. Further, the CIA acknowledges that copies of the actual document destruction schedules may be helpful to the Court in evaluating the actions taken by the CIA with respect to the 114 folders that were destroyed. Accordingly, the CIA respectfully requests that it be permitted to file the CIA's relevant Records Control Schedules for the Court's *ex parte, in*

*camera* review contemporaneously with CIA's response to the Court's Order to "show cause," which is due to be filed on June 12, 2019.

The Court has inherent authority to examine this information as part of Defendant's motion for summary judgment. *See Jifry v. Federal Aviation Admin.*, 370 F.3d 1174, 1182 (D.C. Cir. 2004) ("the court has inherent authority to review classified material *ex parte, in camera* as part of its judicial review function"), *cert. denied*, 543 U.S. 1146 (2005). Accordingly, Defendant seeks the Court's permission to lodge a copy of the relevant portions of the CIA's Records Control Schedules contemporaneously with Defendant's response to the Court's May 23, 2019 Order. Providing additional information in a public declaration regarding the CIA's Records Control Schedules risks the release of classified information. *See Arieff v. U.S. Dep't of Navy*, 712 F.2d 1462, 1470-71 (D.C. Cir. 1983) ("Necessity [to review information *in camera*] exists when (1) the validity of the government's assertion of exemption cannot be evaluated without information beyond that contained in the public affidavits and in the records themselves, and (2) public disclosure of that information would compromise the secrecy asserted."). Therefore, the CIA believes that the best way to provide more information to the Court regarding the agency's handling of the 114 folders, without risking the release of classified information, is to provide the Records Control Schedules to the Court. Indeed, the Court's ability to reference the relevant portions of the Records Control Schedules along with the CIA's response to the Court's May 23, 2019 Order would likely be useful in bringing this FOIA case toward resolution.

**CONCLUSION**

For the foregoing reasons, Defendant respectfully requests that the Court permit the CIA's Records Control Schedules to be filed *in camera* and *ex parte* for the Court's review.

Respectfully submitted,

JESSIE K. LIU, D.C. Bar. No. 472845  
United States Attorney

DANIEL F. VAN HORN, D.C. Bar No. 924092  
Chief, Civil Division

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**[PROPOSED] ORDER**

Upon Consideration of Defendant’s Motion for Leave to File Document For *Ex Parte, In Camera* Review, and the entire record herein, it is hereby:

**ORDERED** that Defendant’s motion is **GRANTED**, and

**FUTHER ORDERED** that the Clerk accept the Record Control Schedules for *ex parte* and *in camera* review by the Court.

It is **SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Royce C. Lamberth  
UNITED STATES DISTRICT JUDGE