

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFF ACCURACY IN MEDIA, INC.'S
FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act, 5 U.S.C. § 552, as amended)

Jurisdiction

1. Plaintiff Accuracy in Media, Inc., ("AIM") brings this action under the Freedom of Information Act ("the FOIA"), 5 U.S.C. § 552, as amended.

Parties

2. Plaintiff AIM is a District of Columbia non-profit corporation, operating as a section 501(c)(3) corporation under the Internal Revenue Code. AIM is an entity organized and operated to publish and broadcast news to the American public. AIM disseminates analysis of news media reporting in several ways, and has done so for more than 35 years.

3. Plaintiff Roger Hall is a free-lance researcher who has been working on his own and with families of

American Prisoners of War and Missing in Action ("POWs/MIAs") and other interested organizations to locate information concerning their whereabouts and status. He disseminates the information he obtains to a variety of media which disseminate the information he obtains, such as the National Vietnam Veterans Coalition Magazine, the Marine Corps League POW/MIA Affairs Newsletter and Information Report. He also sends out email newsletters on POW matters to various organizations such as Rolling Pride, Vietnow, and Pride of Illinois.

4. Plaintiff Studies Solutions Results, Inc. is a private company incorporated in Maryland which regularly disseminates information concerning POWs and MIAs to other organizations which further disseminate such information.

5. Defendant Central Intelligence Agency ("CIA") is an agency of the United States and has possession and control of records requested by AIM which are the subject of this action.

6. On May 24, 2005, Plaintiffs Roger Hall and Studies Solutions Results, Inc., also made a FOIA request to defendant CIA for the records enumerated below. This request is attached to Docket # 38, Notice of Filing.

COUNT I
April 26, 2005 Request for Records

7. By both first class mail, and by certified mail, on April 26, 2005, plaintiff AIM requested the following categories of records:

- (1) Southeast Asia POW/MIAs (civilian or military) and detainees, who have not returned, or whose remains have not been returned to the United States, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia.
- (2) POW/MIAs sent out of Southeast Asia (for example, to China, Cuba, North Korea, or Russia).
- (3) Prepared by and/or assembled by the CIA between January 1, 1960 and December 31, 2002, relating to the status of any United States POWs or MIAs in Laos, including but not limited to any reports, memoranda, letters, notes or other documents prepared by Mr. Horgan or any other officer, agent or employee of the CIA for the Joint Chiefs of Staff, the President, or any federal agency.
- (4) Records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing.

- (5) Records relating to 44 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, attachment 1, and records relating to those persons who are named on attachment 2, the Prisoner of War/Missing Personnel Office's list of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them.
- (6) All records on or pertaining to any search conducted for documents responsive to Roger Hall's requests dated January 5, 1994, February 7, 1994, April 23, 1998, and May 28, 1998, including but not limited to all instructions and descriptions of searches to be undertaken by any component of the CIA and all responses thereto, and all records pertaining to the assessment of fees in connection therewith, including but not limited to any itemizations or other records reflecting the time spent on each search, the rate charged for the search, the date and duration and kind of search performed, etc.
- (7) All records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs, including any search for such records conducted in response to any request by any congressional committee or executive branch agency.
- (8) All records of whatever nature pertaining to the estimates of fees made in response to the February 7, 2003 Freedom of Information Act request of Mr. Roger Hall and Studies Solutions Research, Inc., and how each estimate was made.

8. Attached to both copies AIM's April 26 FOIA request were copies of 44 next-of-kin releases to Roger Hall and a 30-page Defense Department FOIA division declassification Casualty List of primary of next-of-kin (PNOK) Authorizations.

9. The CIA received plaintiff's' April 26, 2005 FOIA request on April 27, upon information and belief.

10. May 24 was the twentieth working day after April 27. The CIA has not responded. AIM has constructively exhausted its administrative remedies by the CIA's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

11. Plaintiff has a statutory right to the records it seeks, and there is no legal basis for the CIA's refusal to disclose them.

COUNT II
News Media Status

12. Plaintiff realleges the allegations in paragraphs 1-11 above.

13. AIM's April 26, 2005 letter requested status as a representative of the news media, and its grounds for AIM's entitlement to a waiver of search fees under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

COUNT III
Public Interest Fee Waiver

14. Plaintiff realleges the allegations in paragraphs 1-13 above.

15. AIM's April 26, 2005 letter requested a public interest fee waiver, and provided the basis for AIM's

entitlement to a complete waiver of copying fees under 5 U.S.C. § 552(a)(4)(A)(iii).

WHEREFORE, plaintiff prays that this Court:

(1) Order defendant to make the requested information promptly available to plaintiff AIM;

(2) Order defendant to grant AIM status as representatives of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II);

(3) Order defendant to grant AIM a complete waiver of copying fees under 5 U.S.C. § 552(a)(4)(A)(iii);

(4) Order defendant to conduct a thorough search for all responsive records;

(5) Order defendant to provide a Vaughn index inventorying all responsive records and itemizing and justifying all withholdings from AIM;

(6) Order defendant to promptly provide all nonexempt documents or portions of documents which were referred to other government agencies;

(7) Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and

(8) Award plaintiffs reasonable costs and attorneys' fees as provided in 5 U.S.C. § 552 (a)(4)(E) and 28 U.S.C. § 2412(d).

DATE: May 27, 2005

Respectfully submitted,

/s/

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