

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'S STATEMENT OF GENUINE ISSUES

Under Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7(h), plaintiff Accuracy in Media, Inc., (AIM), respectfully submits this Statement of Genuine Issues.

CIA statement:

1. On February 7, 2003, Plaintiffs submitted a Freedom of Information Act ("FOIA") request to the Central Intelligence Agency ("CIA"). *See* 7 February 2003 Request, Exhibit 1 to Declaration of Scott A. Koch ("Koch Declaration").

AIM response: AIM admits that it made this FOIA Request on February 7, 2003.

CIA statement:

2. The request sought the following seven items of information:

Item 1: Records and information pertaining to 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.

Item 2: Records or information pertaining to POW/MIAs sent out of Southeast Asia (for example, to China, Cuban [sic], North Korea, Russia).

Item 3: Records or information prepared and/or assembled by the CIA between January 1, 1960 and December 31, 2002 relating to the status of any United States POW/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;

Item 4: Records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing;

Item 5: Records relating to 47 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, and persons on the Prisoner of War / Missing Personnel Office's list of persons whose primary next-of-kin have authorized the release of information concerning them.

Item 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, and April 23, 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.

Item 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.

AIM response: Plaintiff admits that the request sought these seven items of information.

CIA statement:

3. Plaintiffs Hall and SSRI previously requested the information in item 1 in a FOIA request dated January 5, 1994. January 5, 1994 Request, Koch Declaration, Exhibit 13.

AIM response: AIM admits this statement.

(As the Court's April 13, 2005 Order (at 10) ruled that issue and claim preclusion is limited to "certain records Hall sought in his May 28, 1998, FOIA request" this statement is irrelevant.)

CIA statement:

4. Plaintiffs Hall and SSRI previously requested the information in item 2 in a FOIA request dated January 5, 1994. *Id.*

AIM response: AIM admits this statement.

(As the Court's April 13, 2005 Order (at 10) ruled that issue and claim preclusion is limited to "certain records Hall sought in his May 28, 1998, FOIA request" this statement is irrelevant.)

CIA statement:

5. Plaintiffs Hall and SSRI previously requested the information in item 4 in FOIA requests dated April 23, 1998. April 23, 1998 Request, Koch Declaration, Exhibit 14.

AIM response: AIM denies this statement. Item 4 states: "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." These records are not requested in Hall's April 23, 1998 FOIA Request.

CIA statement:

6. Plaintiffs Hall and SSRI previously requested the information for a five-year span of item 3 (1971-1975) in a FOIA request dated April 23, 1998. *Id.*

AIM response: AIM admits this statement.

(As the Court's April 13, 2005 Order (at 10) ruled that issue and claim preclusion is limited to "certain records Hall sought in his May 28, 1998, FOIA request" this statement is irrelevant.)

CIA statement:

7. The 1994 and 1998 FOIA requests became the subject of litigation in *Roger Hall v. Central Intelligence Agency*, Civil Action No. 98-1319 (PLF) ("Hall I").

AIM response: AIM admits this statement.

(As the Court's April 13, 2005 Order (at 10) ruled that issue and claim preclusion is limited to "certain records Hall sought in his May 28, 1998, FOIA request" this statement is largely irrelevant.)

CIA statement:

8. In Hall I, CIA produced certain responsive documents, and withheld other documents on the basis of various FOIA exemptions. In its August 10, 2000 opinion, the Court specifically held that CIA properly invoked certain exemptions under FOIA. Opinion dated August 10, 2000, Koch Declaration, Exhibit 4.

AIM response: AIM admits this statement.

(As the Court's April 13, 2005 Order (at 10) ruled that issue and claim preclusion is limited to "certain records Hall sought in his May 28, 1998, FOIA request" this statement is irrelevant.)

CIA statement:

9. In Hall I, the Court granted CIA's Motion for Summary Judgment with respect to the "Senate Documents" specifically holding that those documents were not "agency records" subject to the FOIA and found that CIA properly invoked certain exemptions. *Id.* at 16 (agency records) and 17 through 21 (exemptions).

AIM response: AIM denies this statement. *See* Hall I Order, n. 4 at 14: "In preparing its supplemental declarations in this matter, the CIA should confirm that it has independently reviewed all documents of its own creation that were included with the Senate Select Committee documents."

CIA statement:

10. The Court ultimately dismissed Hall I with prejudice on November 13, 2003, reasoning that Hall had "constructively abandoned" his requests for any more documents. Order dated November 13, 2003, Koch Declaration, Exhibit 8.

AIM response: AIM admits this statement.

(As the Court's April 13, 2005 Order (at 10) ruled that issue and claim preclusion is limited to "certain records Hall sought in his May 28, 1998, FOIA request" this statement is irrelevant.)

CIA statement:

11. Hall and AIM thereafter submitted the February 7, 2003 FOIA request at issue and ultimately filed the instant claim on May 19, 2004.

AIM response: AIM denies this statement. The "instant claim" includes plaintiffs' September 26, 2005 Amended Complaint, which includes a new administrative record upon which the Court will determine plaintiffs' entitlement to fee waivers, as well as an eighth FOIA request.

CIA statement:

12. By letter dated June 15, 2004, CIA responded to the February 2003 FOIA request, setting forth CIA's position regarding the seven items. June 15, 2004 letter, Koch Declaration, Exhibit 2.

AIM response: AIM admits this statement.

(The statement is irrelevant. The CIA's June 15, 2004 letter predates the FOIA request at issue – AIM's September 2005 Amended Complaint is based on its April 26, 2005, FOIA Request.)

CIA statement:

13. The June 15, 2004 letter indicated that CIA could not process item 5, and that, pursuant to agency policy, the request for this item would be closed if the requisite additional identifying information was not received within 45 days. *Id.*

AIM response: Plaintiff admits this statement.

(The "additional identifying information" was the POW/MIA's birthdays. The Primary Next of Kin (PNOK) releases provide the full name, the POW/MIA incident date, the individual's Social Security or Service Number, branch of service or whether a civilian.)

CIA statement:

14. CIA never received the additional identifying information. Koch Declaration at 26; May 11, 2005 letter, Koch Declaration, Exhibit 5.

AIM response: Plaintiff admits that he did not provide the birthdays of the POW/MIAs identified in the PNOK releases.

CIA statement:

15. The June 15, 2004 letter also notified Plaintiffs that item 7 would not be accepted as drafted, because such a search would impose an unreasonable burden on the agency. June 15, 2004 letter, Koch Declaration, Exhibit 2.

AIM response: AIM admits that the CIA claimed that Item 7 is unreasonably burdensome. AIM wrote the CIA offering to narrow this request.

CIA statement:

16. CIA has not received any correspondence from Plaintiffs narrowing the request in item 7. Koch Declaration at 35, 37; May 11, 2005 letter, Koch Declaration, Exhibit 5.

AIM response: AIM admits that it has not yet narrow Item 7. AIM wrote the CIA offering to narrow this request.

CIA statement:

17. In the June 15, 2004 letter, CIA estimated that searches for all of the documents requested in items 5, 6, and 7 would amount to \$606,595.00 and required an advance deposit of \$50,000.00 before processing the request for these items. *See* Koch Declaration, Exhibit 2.

AIM response: AIM admits that the CIA estimated search and copying costs to be over \$600,000, for three items, after plaintiffs filed suit.

CIA statement:

18. On April 13, 2005, the Court denied all Plaintiffs' various requests for fee limitations. *See* USDC Pacer Dkt. No. 30.

AIM response: AIM admits that the Court denied plaintiffs' requests for fee limitations.

(The new administrative record on this issue is before the Court.)

CIA statement:

19. On April 26, 2005, AIM submitted a new FOIA request to CIA. The April request sought eight items of information. The first seven items exactly duplicated those in the February 2003 request; the eighth item requested records pertaining to fee estimates made in connection with the 7 February 2003 request. April 26, 2005 letter, Koch Declaration, Exhibit 9.

AIM response: AIM admits that on April 26, 2005, it submitted a new FOIA request to CIA, that the first seven items exactly duplicated those in the February 2003 request, and that the eighth item requested records pertaining to fee estimates made in connection with the 7 February 2003 request.

CIA statement:

20. With this "new" request, AIM renewed its requests for a fee waiver. *Id.*

AIM response: AIM admits this statement.

CIA statement:

21. CIA denied this request by letter dated June 1, 2005 on the grounds that the requested information was the subject of pending litigation. June 1, 2005 letter, Koch Declaration, Exhibit 10.

AIM response: AIM admits this statement.

CIA statement:

22. On May 26, 2005, Hall filed a Notice of Filing attaching letters to CIA dated May 23, 2005 and May 24, 2005. May 26, 2005 Notice of Filing, Koch Declaration, Exhibit 11.

AIM response: AIM admits this statement.

CIA statement:

23. The 23 May 2005 letter again requested a fee waiver. *Id.* CIA responded by letter dated July 1, 2005, rejecting Plaintiff's request, citing the Court's April 13, 2005 Order. July 1, 2005 Letter, Koch Declaration, Exhibit 12.

AIM response: AIM admits this statement.

CIA statement:

24. The May 24, 2005 letter was a "new" FOIA request identical to the February 2003 request but adding one additional item identical to the eighth item AIM had added to its request dated April 26, 2005. *See* Koch Declaration, Exhibit 11.

AIM response: AIM admits this statement.

CIA statement:

25. To date, CIA has never received the deposit necessary to process Items 5 and 7. Koch Declaration, ¶¶ 29, 39.

AIM response: AIM admits this statement. Fee waiver issues are before the Court.

CIA statement:

26. Despite the dismissal of the previous claim, CIA voluntarily provided Plaintiffs with documents responsive to the 1994 and 1998 requests on November 7, 2005. November 7, 2005 Letter, Koch Declaration, Exhibit 3.

AIM response: AIM admits this statement. The issue is whether the agency's searches were adequate.

CIA statement:

27. The November 7, 2005 response contained identified, non-exempt documents that would respond to item 1 of the instant request. Koch Declaration at ¶ 20.

AIM response: AIM admits this statement. The issue is whether the agency's searches were adequate.

CIA statement:

28. The November 7, 2005 response contained identified, non exempt documents that would respond to item 2 of the instant request. *Id.*

AIM response: AIM admits this statement. The issue is whether the agency's searches were adequate.

CIA statement:

29. The November 7, 2005 response contained identified, non exempt documents that would respond to the 1971-1975 portion of item 3 of the instant request. *Id.*

AIM response: AIM admits this statement. The issue is whether the agency's searches were adequate.

CIA statement:

30. CIA has agreed to perform a search for documents responsive to item 3 created during the years not covered by the prior request (1960-1971 and 1976-2002). Koch Declaration at ¶ 23.

AIM response: This offer to take action in the future is not appropriate to treat as a fact capable of admission or denial.

CIA statement:

31. The same search terms will be used as were used in the prior litigation, and the search was estimated to take at least 18 months. *Id.*

AIM response: This offer to take action in the future is not appropriate to treat as a fact capable of admission or denial.

CIA statement:

32. CIA's initial search in response to Item 6 identified two responsive documents, which were transmitted to Plaintiffs by letter dated August 15, 2006, with three redactions made on the basis of FOIA exemption (b)(3). August 15, 2006 letter, Koch Declaration, Exhibit 6.

AIM response: AIM admits this statement. The issue is whether the agency's searches were adequate.

CIA statement:

33. By letter dated October 17, 2006, CIA provided Plaintiffs with eighteen additional documents responsive to Item 6. Five of these documents were released in their entirety. Thirteen documents were released on the basis of FOIA exemptions (b)(2), (b)(3), (b)(5), and (b)(6) and additional material was withheld in its entirety on the basis of FOIA exemptions (b)(1), (b)(2), (b)(3), (b)(5), and (b)(6). October 17, 2006 letter, Koch Declaration, Exhibit 7.

AIM response: AIM admits this statement. The issue is whether the agency's searches were adequate.

DATE: May 10, 2007

Respectfully submitted,

/s/

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