

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LOIS MOORE, *et al.*,

Plaintiffs,

v.

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION,

Defendant.

Civil Action No. 20-1735 (RCL)

DEFENDANT’S UNOPPOSED MOTION TO VACATE SCHEDULING ORDER

Defendant the National Archives and Records Administration (“NARA”) respectfully moves this Court to vacate its Scheduling Order entered on September 15, 2020 (ECF No. 6), directing Defendant to file a *Vaughn* index and supporting dispositive motion in this Freedom of Information Act (“FOIA”) case within 30 days. As explained below, Defendant is currently processing Plaintiffs’ FOIA request, and facing certain operational constraints due to the response to the ongoing COVID-19 pandemic. Accordingly, Defendant requests that dispositive briefing be postponed indefinitely at this time, and that the parties submit regular joint status reports to the Court setting forth the progress in the processing of responsive records, and, when completed, a proposed schedule for filing a *Vaughn* index and dispositive motion, if necessary. As grounds for this motion, Defendant states as follows:

1. On June 25, 2020, Plaintiffs commenced this litigation against Defendant alleging that NARA failed to respond to their FOIA request for certain information regarding American prisoners of war. *See* ECF No. 1.

2. On September 14, 2020, Defendant filed an Answer responding to Plaintiffs’ Complaint. *See* ECF No. 5.

3. On September 15, 2020, this Court ordered that NARA file a *Vaughn* index and dispositive motion within thirty days. *See* ECF No. 6.

4. As part of the government-wide response to the COVID-19 pandemic, NARA is taking precautions to reduce the likelihood of transmission or community spread of the virus within its workplace and has maximized the use of telework. Plaintiffs' request seeks records that NARA believes are largely located at NARA's College Park, Maryland facility.¹ The College Park facility is currently in the first phase of a three-phased reopening process. During the first phase of reopening, onsite staff at the College Park facility is limited to 5-10% of normal occupancy, staff is limited to shifts of no more than six hours per day, and staff are only scheduled for onsite work on a voluntary basis. With this in mind, NARA is prioritizing mission-critical activities, and NARA's FOIA staffing and processing capabilities have been significantly reduced and have not yet returned to normal.

5. The breadth of Plaintiffs' request in this case and the historical nature of the records sought complicates NARA's processing in this matter as it requires FOIA staff to be onsite. Although NARA has completed its initial searches for records responsive to this request where possible, a portion of the records requested contain classified information that requires consultation with the respective equity holding agency or agencies. NARA is in the process of making those initial consultations.

¹ The request also seeks records located at the Dwight D. Eisenhower Library. As Plaintiff was informed by letter dated September 30, 2020, most records held by the Eisenhower Library are donated historical material and are not subject to the FOIA. For the small portion of the material held at the library that is subject to the FOIA, the Eisenhower Library has completed its searches and located no responsive records. Although the Eisenhower Library had entered Phase One of reopening, it had to close again this week due to local public health conditions.

6. In light of the above, NARA requests that the Court vacate its September 15, 2020 Scheduling Order, and that the parties submit joint status reports to the Court until processing is complete, with an initial joint status report due on or before December 7, 2020, so that NARA will have sufficient time to complete its initial consultation process and to provide Plaintiffs with additional details regarding its search results.

7. Pursuant to Local Civil Rule 7(m), Defendant's counsel contacted counsel for Plaintiffs to determine Plaintiffs' position on this motion, and counsel for Plaintiffs informed Defendant's counsel that Plaintiffs do not oppose the relief requested herein.

WHEREFORE, for the foregoing reasons, because NARA is still processing Plaintiffs' FOIA request and the matter is not yet ripe for a dispositive motion, Defendant respectfully requests that the Court vacate its September 15, 2020 Scheduling Order and order the filing of a joint status report on or before December 7, 2020.

Dated: October 8, 2020

Respectfully submitted,

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