

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICHAEL DRIGGS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:23-cv-1124 (DJN)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
)	

**DEFENDANT’S CONSENT MOTION FOR A LIMITED ENLARGEMENT OF TIME
TO COMPLETE THE PROCESSING OF PLAINTIFFS’ FOIA REQUEST**

Defendant, by and through its undersigned counsel, and with the consent of Plaintiff, respectfully moves for a limited enlargement of time to complete processing the remaining potentially responsive records to Plaintiffs’ request. Defendant seeks until January 10, 2025 to complete processing. Good cause exists as follows:

1. This is a Freedom of Information Act (“FOIA”) action brought against the Central Intelligence Agency (“CIA”) in connection with a multi-part request for records seeking a large swath of sensitive and historical records pertaining to unrepatriated prisoners of war from the Korean and Vietnam Wars. *See generally* Dkt. 1.

2. In a previous order, this Court directed the parties to develop “a schedule for Defendant to make rolling productions that will bring production in this case to a close by Thanksgiving of this year, or as near to that date as possible.” Dkt. 18, at 2. Consistent with the Court’s directive, CIA and the Plaintiffs agreed to rolling releases of the non-exempt portions of records that were responsive to Plaintiffs requests, which called for such rolling productions to

occur on May 28, 2024; July 28, 2024; September 28, 2024; and November 28, 2024. As reflected in the parties' three joint status reports, the CIA has honored that schedule. Dkts. 27, 28, and 29.

3. Since the parties' October 15 Status Report, CIA has made another release of records, which were sent to Plaintiffs' counsel via FedEx on November 26, 2024. In this release, CIA completed review of 7 documents, comprising 107 pages, and released them in segregable form with redactions made pursuant to the FOIA's exemptions. With the May release, the CIA had finished processing all responsive materials that contained only its information. The release letters for July, September, and November indicated that the limited responsive material remaining was being reviewed by other Federal agencies. It is because of these limited outstanding records – *i.e.*, those being reviewed and coordinated with two other government agencies – that CIA seeks this enlargement of time.

4. As the CIA previously indicated, as part of the FOIA process, the CIA must determine whether the information at issue does, in fact, belong to CIA information or to another government agency. Dkt. 16, at 8-9. If the CIA identifies responsive records originated by other Federal agencies or CIA records containing other Federal agency information, the CIA must forward those records to those other departments or agencies for appropriate action; these coordinations may include a determination as to whether the information may be released to the requestor. *See* 32 C.F.R. § 1900.22(b); *see also* 5 U.S.C. § 552(a)(6)(B)(iii)(III). Once the CIA identifies the departments or agencies requesting review, the CIA must wait for those departments and/or agencies to respond. The CIA cannot predict or guarantee the timing of responses from other agencies. Timing is beyond the CIA's control once a record is sent to another agency or government component. *See also* Dkt. 16, at 7-9.

5. Despite CIA's efforts, records relating to Plaintiffs' request remaining outstanding from two additional government agencies. Nevertheless, the CIA has not simply sat on its hands and awaited these additional government agencies to process these records; to the contrary, the CIA has been in contact with pertinent representatives of these agencies to remind them that these records are a part of a federal civil action and to urge a speedier resolution. And to this end, the CIA received reassurances from these additional government agencies that they will complete their review, and transmit the results of that review to the CIA, shortly.

6. Indeed, on or about November 26, 2024, the CIA received the first of two batches of the remaining records from one of those two agencies. Consequently, CIA is planning to produce approximately 244 pages, subject to redactions where appropriate, to Plaintiffs on December 3, 2024.

7. The second government agency, due to a changeover in personnel, is attempting to complete the review of records it received from the CIA by on or about December 6, 2024. Once that second government agency completes its review, it will conduct an internal legal review, and after that, it will send the records to CIA for final processing.

8. Once CIA processes the records from the second government agency, the entirety of Plaintiffs' request will be complete, and the parties can proceed to arrange for a summary judgment briefing schedule – if necessary.¹ Considering the above, the CIA reasonably anticipates that the production in this case can be completed by January 10, 2025. As such, the CIA thus seeks a limited extension to this date in order to complete the processing of Plaintiffs' request.

¹Undersigned counsel recently asked counsel for the Plaintiffs whether – at this point – he believes that Plaintiffs will challenge any aspect of the CIA's search (other than the statutory issue that this Court already adjudicated, Dkt. 25) or withholdings. Counsel for the Plaintiffs indicated that he was unsure of whether he would seek to litigate any further issues in this Court, but promised to think further about it.

9. Consistent with the Court’s Order of May 23, 2024 (Dkt. 26) and as represented in the parties’ third joint status report (Dkt. 29), the parties will submit another joint status report on December 16, 2024.

10. Undersigned counsel has conferred with Plaintiffs’ counsel regarding this request and Plaintiffs consent to the requested relief.

11. A proposed order is attached for the convenience of the Court.

Dated: December 3, 2024

Respectfully submitted,

JESSICA D. ABER
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