

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>ROGER HALL, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No.: 04-0814 (HHK)</b>
	)	
<b>CENTRAL INTELLIGENCE AGENCY,</b>	)	<b>ECF</b>
	)	
<b>Defendant.</b>	)	
	)	

**OPPOSITION TO PLAINTIFFS’ JOINT MOTION TO STAY  
PROCEEDINGS AND REQUEST FOR AN ORDER TO COMPEL**

Defendant, the Central Intelligence Agency (“CIA”), hereby respectfully submits this Opposition brief to Plaintiffs’ Joint Motion for (1) A Stay of All Proceedings Except with Respect to Referrals and (2) an Order Requiring the CIA to Provide a List of Referrals and to Release Nonexempt Referrals or Portions Thereof Within 90 Days, (Dkt. No. 122, “Pls’ Motion”). In support of this Opposition, Defendant states as follows.

1. Plaintiffs mistakenly represent to the Court that “On January 21, 2009 President Barack Obama issued an Executive Order setting forth new standards for interpreting and implementing the Freedom of Information Act.” Pls’ Motion, at 2. In support of this assertion Plaintiffs offer, as Attachment 1 to their Motion, a White House press release that reproduces a Memorandum on the issue of FOIA releases, issued to the heads of executive departments and agencies. In this context, “memorandum” and an “executive order” are in no way synonymous. As of the writing of this Opposition, no Executive Order has been issued. Indeed, the Memorandum has only directed the Attorney General to “review [certain] FOIA reports” and the Office of Management and Budget “to update guidance to the agencies to increase and improve information dissemination [] through the use of new technologies [].” Pls’ Attachment 1 at 1.

2. In this case the new regulations, when promulgated, would be wholly irrelevant because most of the exemptions the CIA has claimed were pursuant to (b)(1) and (b)(3) (statutory privileges for classified information). These are not discretionary withholdings where the Agency may voluntarily release the documents in question. In fact, the CIA is required, by law, to withhold these documents. Unless there are changes to the FOIA, the National Security Act or the CIA Act, the withholdings will not change.

3. As described more fully in the Agency's reply brief in support of its motion for summary judgment (Dkt. No. 121 at 6-7), the search and release in this case were done in accordance with the standards of the Executive Order on POW/MIAs. That search and release was a unique and exhaustive set of searches and the Plaintiffs, as a result, were the recipients of documents from a *broader and more thorough* search than they would have received under FOIA. *See* McNair Decl., attached to CIA's Motion for Summary Judgment of Oct. 15, 1998, in *Hall I*, Civil Action No. 98-1319. Accordingly, it would be counter-intuitive to stay this matter, especially based on a memorandum that has no impact on this case.

4. It is undisputed that documents have been referred to third agencies for processing and coordination in this case. Pls' Motion at 4. Plaintiffs now demand that the Agency provide a list of those documents and the names of the third agencies, along with the dates of referral. *Id.* The CIA cannot provide such a list because at this juncture it remains unclear which of the documents may be classified and whether the third agencies may ask for non-attribution. Furthermore, such a list would be irrelevant as the Agency is only asking for partial summary judgment, so Plaintiffs may still litigate any improper withholdings as to these documents when releases are made. Thus, an order for the production of such a list would be inappropriate, at this time.

Wherefore, Defendant respectfully requests that the Court not stay this civil action and deny the Plaintiffs' motion in its entirety.<sup>1</sup> A minute order is requested.

Respectfully submitted,

*/s/ Jeffrey A. Taylor*

Dated: March 16, 2009.

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<sup>1</sup> Insofar as Plaintiffs may be requesting a brief extension of the March 6, 2009 Reply filing deadline, Defendant does not object.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of March 2009, I caused the foregoing *Opposition to Plaintiffs' Motion to Stay* to be served on parties of record, via the Courts ECF system.

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