

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

OPPOSED MOTION FOR ORDER SETTING SCHEDULE
FOR SEARCH, REVIEW, AND RELEASE OF RECORDS
REMAINING AT ISSUE AND PRESCRIBING THE
MANNER IN WHICH THIS WILL BE ACCOMPLISHED¹

Come now the plaintiffs, Roger Hall, Studies Solutions Results, Inc.
 (“Hall”) and Accuracy in Media, Inc. (“AIM”), and move this Court to issue
an order setting forth a schedule for the search, review, processing and
release of responsive records remaining at issue in this case as follows:

¹ Provided with a copy of the Proposed Order setting forth the relief plaintiffs seek, defendant’s counsel initially advised counsel for plaintiff Hall telephonically that defendant would not completely oppose plaintiffs’ motion, stating that the CIA would produce the best possible reproduction of photographs. A short time later, defendant’s counsel emailed plaintiffs’ counsel that: “[a]s discussed earlier, regarding the photographs, the Agency will provide copies with the best available resolution – they don’t have ‘actual photographs’ or ‘photographic reproductions’ to provide. We otherwise oppose the motion.” In view of this explanation, defendants treat this motion as one that is in effect being one that is fully opposed.

1. The CIA shall search for records responsive to Item 7 of Hall's request for records on or pertaining to any search conducted regarding congressional committee requests pertaining to the Vietnam War POW/MIAs and provide plaintiffs all nonexempt records, including photographs, on or before February 22, 2013. All photographs capable of being reproduced photographically rather than in xerox form shall be provided to plaintiffs as actual photographs.

2. Release names and photographs previously withheld pursuant to Exemption 6, 5 U.S.C. § 552(b)(6) no later than December 31, 2012. All photographs capable of being reproduced photographically rather than in xerox form shall be provided to plaintiffs as actual photographs.

3. Conduct a search for the remaining records responsive to Item 5 of Hall's request which are contained in the following systems, according to the schedule and manner prescribed:

A. The CIA shall produce for plaintiffs all nonexempt portions of the records of the CIA's Automatic Declassification and Release Environment (CADRE) in a series of rolling releases every six months, commencing July 1, 2013, and concluding on or before July 1, 2017.

B. The CIA shall produce for plaintiffs all nonexempt portions of its archived records ("Archived Records") from various directorates and

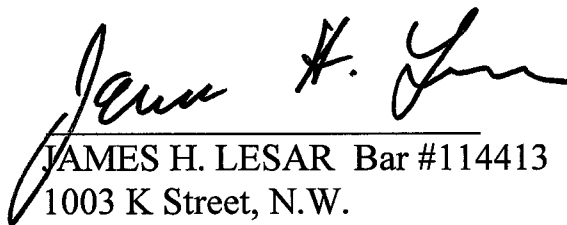
the National Clandestine Service (NSC) in a series of rolling releases every six months, commencing May 1, 2013 and concluding on or before May 1, 2017.

4. The records released to plaintiffs pursuant to this order shall be provided to each counsel for plaintiffs on CD ROMs or DVDs in word searchable pdf format.

5. The CIA shall provide actual photographs instead of Xerox copies of photographs contained in the November 20, 2012 release of records responsive to Item 4 of Hall's request..

A Memorandum of Points and Authorities and a Proposed Order are submitted in support of the motion.

Respectfully submitted,



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Counsel for plaintiff
Accuracy in Media, Inc.

Dated: December 5, 2012

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C. A. No. 04-0814 (RCL)
	:	
CENTRAL INTELLIGENCE	:	
AGENCY,	:	
	:	
Defendant	:	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS' MOTION FOR
AN ORDER SETTING A SCHEDULE FOR
SEARCH, REVIEW, AND RELEASE OF RESPONSIVE
RECORDS REMAINING AT ISSUE AND PRESCRIBING
THE MANNER IN WHICH THIS WILL BE ACCOMPLISHED

On August 3, 1012, this Court issued a Memorandum Opinion and Order which, inter alia, directed defendant Central Intelligence Agency (“CIA”) to conduct several searches for records responsive to several of the items of the Freedom of Information Act (“FOIA”) request of plaintiffs Roger Hall (“Hall”), Studies Solutions Results, Inc. (“SSR”), and Accuracy in Media (“AIM”). The Court further ordered the parties to submit a Proposed Case Management Plan (“Plan”), jointly if possible. As it proved

impossible for the parties to agree on the Plan, the CIA submitted its Plan on August 23, 2012, to which plaintiffs responded.

This Court has not adopted either defendant's or plaintiffs' Plan, nor any hybrid thereof. As this leaves in limbo important issues which need to be resolved, plaintiffs move the Court to issue an order setting a schedule for the search, review, and release of nonexempt records retrieved as a result of the ongoing searches for voluminous responsive records. The Proposed Order also prescribes the manner in which this process will be accomplished. It will, in effect, constitute an effective Case Management Plan which draws on elements of the Plans submitted by the different parties back in August.

Paragraph 1 of the Proposed Order states that:

The CIA shall search for records responsive to Item 7 of Hall's request for records on or pertaining to any search conducted regarding congressional committee requests pertaining to the Vietnam War POW/MIAs and provide plaintiffs all nonexempt records, including photographs, on or before February 22, 2013. All photographs capable of being reproduced photographically rather than in xerox form shall be provided to plaintiffs as actual photographs.

This incorporates the first numbered paragraph in the CIA's Proposed Case Management Plan ("Plan"), which provided that such materials would be provided to plaintiffs "within 6 months, *i.e.*, by February 2013. . . ."

Proposed Case Management Plan, citing Meeks Decl., ¶ 4. February 22, 2013 would be 6 months from the date CIA's Plan was filed.

Putting this into the form of a court order is obviously what this Court intended by issuance of its order instructing the parties to submit a Case Management Plan. This has the effect of protecting against unwarranted erosion in deadlines for accomplishing the specified tasks by the dates set. In the absence of an order from this Court setting deadlines, the dates which the CIA proposed back in August already have substantially eroded. For example, Paragraph 2 of the CIA's Plan stated that it would conduct a search and produce certain missing attachments, enclosures, photographs, and reports "on or before September 7, 2012." *Id.*, citing Meeks Decl., ¶ 5 . This did not occur on or before September 7, 2012, or even close to that date. It did not happen until November 20, 2012, or more than three times as long as originally stated.

Similarly, the Plan's Paragraph 3 stated that names and photographs withheld under Exemption 6 in three documents would be released by September 7, 2012, but for the need to await a decision from the Department of Justice to make a "no determination appeal." Plan, ¶ 3, n. 3, citing Meek Decl., ¶ 6. The date for the taking of an appeal of this Court's August 3, 2012 Order expired on or about October 3, 2012. In its November 23, 2012

Status Report, (“Status Report”) the CIA represented to this Court that these materials had been provided to plaintiffs by letter dated November 20, 2012.

Status Report, ¶ 2. To date, no such records have been received.

Numbered Paragraph 2 of Plaintiffs’ Proposed Order directs that the CIA shall:

2. Release names and photographs previously withheld pursuant to Exemption 6, 5 U.S.C. § 552(b)(6) no later than December 31, 2012. All photographs capable of being produced photographically rather than in Xerox form shall be provided to plaintiffs as actual photographs.

The CIA’s Status Report states that with respect to referrals responsive to Item 5 of Hall’s request, “the National Security Agency directly responded to Mr. Hall as to the status of its referrals on October 5, 2012.” Status Report, ¶ 3. But Hall has received no such response as of this date, much less the actual records.

The CIA’s Status Report then states, “the Department of Defense intends to complete its production no later than December 2012.” *Id.* To nail this promise down, Paragraph 2 of plaintiffs’ Proposed Order sets the date for the disclosure of these records as “no later than December 31, 2012.”

Paragraph 3 of the Proposed Order deals with the deadlines applicable to different categories of records which the CIA is searching for responsive records. It provides that the CIA shall:

3. Conduct a search for the remaining records responsive to Item 5 of Hall's request which are contained in the following systems, according to the schedule and manner prescribed:

A. The CIA shall produce for plaintiffs all nonexempt portions of the records of the CIA's Automatic Declassification and Release Environment (CADRE) in a series of rolling releases every six months, commencing July 1, 2013, and concluding on or before July 1, 2017.

B. The CIA shall produce for plaintiffs all non-exempt portions of its Archived records from various directorates and the National Clandestine Service (NCS) in a series of rolling releases.

Paragraph 3 of the Proposed Order changes what the CIA's Plan suggested with respect to these two categories. First, it provides that the CIA must accomplish not only the requisite searches but that the review and release of nonexempt records must also occur within the deadlines set. Second, it provides that the records in each of these two queues shall be provided to plaintiffs in a series of rolling releases made every six months. Third, it sets the date on which rolling releases commence as July 1, 2013 for the CADRE queue releases described in Paragraph 3(A) and May 1, 2013 for the Archived Records queue releases specified in Paragraph 3(B),

with the releases to be completed by July 1, 2017 and May 1, 2017, respectively.

Rolling releases made according to the timetable specified in the Proposed Order are absolutely necessary to avoid a hopeless quagmire some four to six years hence. The CIA's Plan provides only for a very lengthy search and retrieval process lasting 5-6 years before review and release even begin. The records sought have deep emotional significance for tens of thousands of relatives of POW/MIAs. The CIA has proffered no justification for not providing for review and rolling releases during the search and retrieval period. This denies the prompt access to information which the FOIA intended to confer on the beneficiaries of mandated disclosures. In addition, if rolling releases are not made, then in 2017 or 2018, or whenever releases are finally made, plaintiffs will be confronted by the possible release of tens of thousands, perhaps hundreds of thousands, of pages in one fell swoop. This will require further extensive delay before this mass of papers can be properly dealt with in accordance with legal procedures.

Accordingly, to foster the goal of the FOIA to ensure prompt disclosure of nonexempt government information, the Court should order the CIA to provide the nonexempt records in the CADRE and Archived Records

queues in a series of rolling releases according to the schedule specified in the Proposed Order.

Paragraph 4 of the Proposed Order states:

4. The records released to plaintiffs pursuant to this order shall be provided to each counsel for plaintiffs on CD ROMs or DVDs in word searchable pdf format.

This provision is intended to (1) produce the records to counsel for plaintiffs in the most economical and convenient manner; and (2) ensure that the two different counsel representing party plaintiffs in this case will each independently receive a copy of the records being released. Because of the volume of records involved, providing them in hard copy form would be extremely burdensome. This provision also makes clear that the two attorneys representing plaintiffs in this case represent different and independent plaintiffs, and that each counsel is entitled to have an independent copy of all records released. This is required because in the past the CIA has placed the attorney for one party in the position of being forced to make copies for the other party plaintiff.

Paragraph 5 of the Proposed Order states:

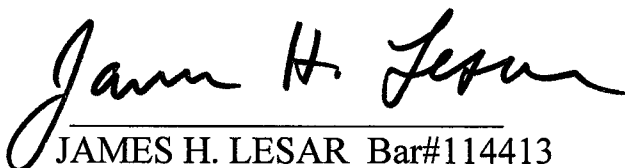
5. The CIA shall provide actual photographs instead of Xerox copies of the photographs contained in the CIA's November 20, 2012 release of records responsive to Item 4 of Hall's request.

In the released documents accompanying the referenced November 20, 2012 letter, the CIA has produced xeroxc copies of photographs. Such Xerox copies are useless for plaintiffs' purposes. Actual photographs are needed. The FOIA provides that an agency may be required to reproduce records in the format designated by the plaintiff. See 5 U.S.C. § 552(f)(2).

CONCLUSION

For the reasons set forth above, the Court should grant the relief set forth in the attached Proposed Order.

Respectfully submitted,



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Plaintiffs,	:	
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CENTRAL INTELLIGENCE	:	
AGENCY,	:	
	:	
Defendant	:	

PROPOSED ORDER

Upon consideration of plaintiffs’ motion for issuance of an order setting a schedule for search, review, and release of records remaining at issue and prescribing the manner in which this will be accomplished, defendant’s opposition thereto, and the entire record herein, it is by this Court this _____ day December, 2012, hereby

ORDERED, that

1. The CIA shall search for records responsive to Item 7 of Hall’s request for records on or pertaining to any search conducted regarding congressional committee requests pertaining to the Vietnam War POW/MIAs and provide plaintiffs all nonexempt records, including

photographs, on or before February 22, 2013. All photographs capable of being reproduced photographically rather than in xerox form shall be provided to plaintiffs as actual photographs.

2. Release names and photographs previously withheld pursuant to Exemption 6, 5 U.S.C. § 552(b)(6) no later than December 31, 2012. All photographs capable of being reproduced photographically rather than in xerox form shall be provided to plaintiffs as actual photographs.

3. Conduct a search for the remaining records responsive to Item 5 of Hall's request which **are** contained in the following systems, according to the following schedule and **in the prescribed** manner:

A. The CIA shall produce for plaintiffs all nonexempt portions of the records of the CIA's Automatic Declassification and Release Environment (CADRE) in a series of rolling releases every six months, commencing July 1, 2013, and concluding on or before July 1, 2017.

B. The CIA shall produce for plaintiffs all nonexempt portions of its archived records from various directorates and the National Clandestine Service (NCS) in a series of rolling releases every six months, commencing May 1, 2013 and concluding on or before May 1, 2017.

4. The records released to plaintiffs pursuant to this Order shall be provided to **each** counsel for plaintiffs on CD ROMs or DVDs in word searchable pdf format.

5. The CIA shall provide actual photographs instead of Xerox copies of the photographs contained in the CIA's November 20, 2012 release of records responsive to Item 4 of Hall's request.

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