

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

ROGER HALL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-814 (RCL)
)	ECF
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

**PARTIAL CONSENT MOTION FOR EXTENSION
OF TIME TO COMPLY WITH THE COURT’S ORDER**

Defendant, Central Intelligence Agency (“CIA” or “the Agency”), by and through the United States Attorney for the District of Columbia, hereby respectfully submits this motion for extension of time to comply with the Court’s September 30, 2013 Order, pursuant to Fed. R. Civ. P. 6(b)(1) and 7. Good cause exists to grant this motion, in this Freedom of Information Act (“FOIA”) matter. In support of this motion, the government states as follows.

1. During the afternoon of September 30, 2013, the Court issued an Order setting “a deadline of December 15, 2013, for the defendant to complete processing of these records. Within 30 days thereafter, Defendant’s Vaughn index shall be filed, along with defendant’s dispositive motion. Plaintiff’s opposition shall be due 30 days thereafter, with any cross-motion. Defendant’s reply and opposition to plaintiff’s cross-motion shall be due 15 days thereafter, and plaintiff’s reply 15 days after that.” D.I. 205, at p. 1. The Court further instructed that “[t]he documents produced to plaintiff since May 20, 2013, shall be made available by defendant’s counsel to plaintiff in the requested electronic format.” *Id.* at p. 2.

2. At the end of the day on September 30, 2013, the appropriations act that had been funding the Department of Justice (“DOJ”) expired, thus appropriations to the DOJ lapsed. The same was true for most Executive agencies.
3. Accordingly, during the partial government shutdown, undersigned counsel was prohibited from working, except in very limited circumstances, on her assigned cases. Agency counsel was affected by the shutdown and also advises that that the CIA’s FOIA office, too, was closed. In the late hours of October 16, 2013, Congress restored appropriations to the DOJ and other Executive branch agencies.
4. Because of (1) all of the work-hours lost during the shutdown, (2) the backlog created as a result, (3) and the upcoming holidays, *inter alia*, the Agency will require 30 additional days, up to and including January 14, 2014, to complete processing the records in question, forward them to the United States Attorney’s Office for the District of Columbia (“USAO”), and for the USAO to convert those paper records into electronic format and send them to all of the Plaintiffs.
5. In this FOIA matter, over 1,000 documents remain at issue. Due to this high volume, the interest of judicial economy, and to expedite resolution of the matter, CIA proposes submitting a representative sample *Vaughn* index. In other words, with a sample, the Court will be better positioned to judge the propriety of all of the Agency’s exemption claims, thus potentially alleviating unnecessary and additional burdens on the Court’s and the Agency’s limited resources. When voluminous records are at issue, courts have approved the use of *Vaughn* indexes based upon representative samplings of the withheld documents. *See, e.g., Schoenman v. FBI*, 604 F. Supp. 2d 174, 196 (D.D.C. 2009) (“As is particularly relevant here, [r]epresentative sampling is an appropriate procedure to test an agency’s FOIA

exemption claims when a large number of documents are involved.” (quoting *Bonner v. Dep’t of State*, 928 F.2d 1148, 1151 (D.C. Cir. 1991))). Of course, CIA will apply all rulings that the Court has with regard to exemptions claimed for the representative sample to the entire universe of documents.

6. The sample index would include all documents that the CIA Denied in Full (“DIF”) and 10% of documents that the CIA Released in Part (“RIP”). The majority of documents remaining at issue in the case will be RIP and will have substantially similar information withheld. To *Vaughn* each of these documents would be burdensome for the CIA, repetitive for the Plaintiffs, and inefficient for the Court. The sample will provide a detailed and accurate representation of the information withheld and will provide Plaintiffs with sufficient information to challenge any of the Agency’s withholdings if they so choose. There are a handful of documents that the CIA has sent out for coordination that remain outstanding.
7. The Agency will need to secure declarations from all other government agencies (“OGAs”) that have withheld information in the remaining documents at issue prior to moving for summary judgment.
8. Due to the Agency’s proposed plan to provide a detailed sample *Vaughn* index, outstanding coordination documents, and the need to secure declarations from OGAs to support Agency’s motion for summary judgment the Agency requests that two weeks be added to the due date for the submission of its *Vaughn* and dispositive motion. Accordingly, the proposed schedule would be:

- The Agency shall complete processing of documents and the United States Attorney's Office for the District of Columbia provide them to Plaintiffs in requested electronic format by no later than January 14, 2014.
 - The Agency shall file its dispositive motion along with its *Vaughn* index by no later than February 28, 2014.
 - Plaintiffs shall file their opposition and any cross motion by no later than March 28, 2014.¹
 - The Agency's opposition and reply shall be due on or before April 18, 2014.
 - Plaintiff's reply shall be filed on or before May 19, 2014.
9. The Agency requests that all of the current deadlines be adjusted, accordingly.
10. Pursuant to Local Civil Rule 7(m), undersigned counsel communicated with Plaintiffs' counsel, and both Mr. Lesar and Mr. Clarke stated that they do not oppose the extension of the deadline for production of the documents that are to be re-released on disk on December 5, 2013. However, Counsel for Plaintiffs Mr. Hall and SSRI have indicated that they would like a "full Vaughn." No response was received from counsel for AIM.

¹ Undersigned counsel attempted to confer with Plaintiffs' counsel, via electronic mail, regarding the proposed due dates. She had received no response as of the filing of this motion.

Wherefore, the Agency respectfully requests that this motion be granted and that the above proposed schedule be adopted. A minute order is requested.

Respectfully submitted,

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