

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	:	

PLAINTIFFS' RESPONSE TO CIA'S STATUS
REPORT AND PROPOSED REVISED BRIEFING SCHEDULE

Plaintiffs Roger Hall and Studies Solutions Results, Inc. ("Hall") and Accuracy in Media, Inc. ("AIM") respond to to the Central Intelligence Agency's Status Report and Proposed Revised Briefing Schedule ("Status Report") [Doc. 210] as follows:

1. Plaintiffs consented to the briefing schedule set forth by the CIA's status report. As the CIA notes in its Status Report, Hall and AIM initially proposed this briefing schedule on April 21, 2014 as part of Plaintiffs' Partially Consented to Motion to Retard Briefing Schedule and for Other Relief. See Status Report at 2, n.1. However, the CIA's Status Report

omits, the justification for retarding the briefing schedule put forth by Hall; namely, that:

Additional time is needed for plaintiff Hall to complete his selection of documents. His left arm and hand cannot be used to type or hold documents because a stroke left that arm and hand virtually unusable. More recently, he suffers pain in his right arm extending from the hand to the shoulder. He has just ended two months of physical therapy for this condition. But even with continued use of heating pads on these areas, he can only use the computer for five or so minutes at a time without suffering pain.

3. Beyond the scheduling issue, the motion plaintiffs planned to file dealt a disagreement between the parties over whether the CIA's inventory was to include just the total number of pages in a document or should also include the number of pages in each document that had been released. In the Joint Report which the parties filed on February 28, 2014, plaintiffs' position on this point was based on the fact that unless the number of released pages is provided, they are unable to determine whether the number pages in a document accurately matches the total number of pages claimed to be in the document. In that Joint Report, the CIA took the position that plaintiffs do not need this information because they can simply count the number of pages themselves. But the problem with this is that even if plaintiffs count the pages, they have no way of knowing whether that figure is accurate or

whether through inadvertence, scanning errors or otherwise the number of pages they receive matches the number of pages actually released by the CIA. The CIA further claimed in the Joint Report that “it is not required to provide such information under the FOIA, and Plaintiffs are unable to cite any legal authority as support for their burdensome requirement.” See Joint Report, n.1.

4. Contrary to this assertion, the CIA noted in its Joint Report, at plaintiffs’ insistence, that in this Court’s decision in Hall v. C.I.A., 668 F.Supp.2d 172, 194 (D.D.C.2009), held that the CIA must supplement its Vaughn showing by specifying in detail which portions of the document are disclosable and which are allegedly exempt, making specific findings for each document withheld and correlating claimed exemptions with particular passages. If the CIA cannot even inform plaintiffs and the Court of the number of pages it says it released in a particular document so plaintiffs can check that figure against what they actually received, plaintiffs fail to see how the CIA can meet its obligation to correlate its claimed exemptions with “particular passages” as required by the FOIA’s segregability provision and the 2009 decision of Judge Kennedy Hall cited above.

5. In responding informally to plaintiffs’ proposed April 21, 2014 motion to retard the briefing schedule, the CIA objected to merging the

proposed briefing schedule with the issue of providing one additional piece of information regarding partially-redacted documents. Although this is exactly what the parties had done in the February 28, 2014 Joint Report. Instead, it insisted on plaintiffs filing a separate motion. Plaintiffs saw no need for this.

6. In response to the CIA's claim that requiring the additional item of information regarding the actual number of pages released in its inventory of partially-released records would be too burdensome, plaintiffs asked the CIA to estimate the amount of time it would take to count the pages released and said they would add this time to the time for response under the proposed schedule. The CIA declined to do so.

6. Plaintiffs attach hereto a proposed Order which adopts the agreed upon briefing schedule and requires the CIA to amend its inventory to include the number of pages actually released in partially-released documents.

Respectfully submitted,

JAMES H. LESAR Bar #114413
930 Wayne Avenue, Unit 1111
Phone: (301) 328-5920
jhlesar@gmail.com

Counsel for Plaintiffs
Roger Hall and SSR, Inc.

/s/

John H. Clarke Bar #388599
1629 K Street, NW
Suite 300
Washington, DC 20006
Phone: (202) 344-0776
Fax: (202) 332-3030
JohnHClarke@earthlink.net

Counsel for plaintiff
Accuracy in Media, Inc.

Dated: May 15, 2014

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	:	

ORDER

Upon consideration of plaintiffs partially-consented to motion to retard the schedule and for other relief, and the entire record herein, it is by this Court this _____ day of _____, 2014 , ORDERED, that the schedule proposed by the parties is adopted as follows:

On or before

June 23, 2014, plaintiffs will provide a sample of partially-released CADRE documents that Hall has selected for the Vaughn index.

July 22, 2014, the Central Intelligence Agency (“CIA”) will produce its Vaughn index.

August 21, 2014, the CIA will move for summary judgment.

October 10, 2014, plaintiffs will respond to the CIA's motion for summary judgment.

November 10, 2014, CIA will file its opposition/reply.

November 30, 2014, plaintiffs will file their reply.

and it is hereby

FURTHER ORDERED, that with respect to the CIA's inventory of partially-released documents, it shall be amended to include for each such document both the total number of pages contained in the document and the number of pages which have been released.

UNITED STATES DISTRICT COURT