

X

1/31/03

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL,)
)
Plaintiff,)
)
v.) Civ. Act. No. 98-1319 (PLF)
)
CENTRAL INTELLIGENCE AGENCY,)
)
Defendant.)
)

THE PARTIES' JOINT REPORT IN RESPONSE TO
THE COURT'S ORDER OF JANUARY 16, 2003

On January 16, 2003 the Court issued an order requiring that the parties issue a joint report on or before January 31, 2003 detailing the progress of the case since August 23, 2002. The parties have consulted and provide the following report:

1. On August 10, 2000, the Court issued an order granting in part and denying in part the defendant's motion for summary judgment. In that Order, the Court described the agency's search for documents in response to plaintiff's FOIA requests as "well-conceived" and "extensive." However, the Court requested additional details concerning the adequacy of the agency's search. The Order required that the agency provide the information within a relatively short time-frame. As it turns out, obtaining the required additional information required that the agency conduct additional searches.

2. On September 18, 2000, defendant moved pursuant to 5 U.S.C. § 552(a)(4) for an order requiring that plaintiff commit

Civil Action No. 04-0814
(HHK)

to paying review and copying fees before the agency was required to conduct any additional searches for documents responsive to plaintiff's FOIA requests. This motion was based on the fact that the additional searches would require the expenditure of additional agency resources and the plaintiff's request for a fee waiver had been previously denied. On October 27, 2000, plaintiff opposed defendant's motion and cross-moved for an order requiring defendant to waive his search and copying fees.

3. Because the Court had given the agency a short time frame within which to provide the additional information, in an abundance of caution, in order to well position itself in case the agency lost the fee waiver issue, the agency voluntarily completed most of the searching and processing required by the Court's order of August 10, 2000. Prior to August 2000, the agency had conducted approximately \$4550 of searches without a commitment of fees from plaintiff. This amount was voluntarily waived by the agency. The searching and processing conducted after August 2000 amounts to at least \$29,000.

4. On July 22, 2002, the Court denied plaintiff's request for a fee waiver and required that he commit to pay search and copying fees.

5. In a Joint Status Report filed on August 23, 2002, the parties informed the Court that plaintiff had committed to paying search and copying fees up to only \$1,000. However, plaintiff

wished to specify on which of the remaining issues he wanted the CIA to focus its search. Accordingly, the plaintiff agreed to provide the defendant with that information within 30 days.

6. By letter dated October 15, 2002, plaintiff's counsel sent to the CIA a check for \$1000 and a description of the areas on which he wanted the CIA to focus its search.

7. As set forth above, by this point, the defendant had essentially completed its expensive search and processing. It is the agency's position that the plaintiff's \$1,000 commitment would have purchased so little search time that, at that point, no responsive documents would have been identified and ready for release.

8. By letter of December 3, 2002, undersigned counsel sent a letter to plaintiff's counsel suggesting a manner in which the case can be resolved. Plaintiff did not formally respond to this letter but his counsel informally indicated that there was little chance of its acceptance.

9. It is the agency's position that, unless plaintiff commits to paying more, he is not entitled to any records and this case should be dismissed. The plaintiff disagrees. Plaintiff contends that the CIA has waived its right to collect fees for any searches conducted voluntarily and that any records located as a result of such searches should be released to plaintiff without payment of fees.

10. It is also the plaintiff's position that the agency should provide him with an accounting of the nature of and time spent on the searches and justify the \$29,000 figure reflected above, including the dates of such searches and by whom they were made. The agency does not believe plaintiff is entitled to such an accounting unless he commits to pay more.

11. Plaintiff contends that this Court's Order of August 10, 2000 requires the CIA to provide a supplemental declaration regarding its efforts to search for its own copies of documents provided to the Senate committee. Opinion at 14. Plaintiff requests that the Court require the CIA to promptly provide such declaration. The CIA's position is that it has already searched for documents concerning the topic areas requested by plaintiff and it would be unduly burdensome and duplicative to look through every individual Senate committee document and find the same document in CIA files. Moreover, the CIA's position is that it need not conduct any additional searches until plaintiff commits to pay for it.

12. The plaintiff intends to file a new FOIA request in conjunction with requesters plaintiff contends are entitled to news media status. Plaintiff believes that once he exhausts his administrative remedies, he should be allowed to amend this complaint to add new plaintiffs and claims and to seek another fee waiver. Defendant believes that it is improper for plaintiff

to seek amendment of his Complaint so many years after it was filed and will oppose any motion seeking leave for such amendment.

Respectfully submitted,

R.C. Howard (by KC)

ROSCOE C. HOWARD, JR.
D.C. Bar #246470
United States Attorney

M.E. Nagle (by KC)

MARK E. NAGLE
D.C. Bar #416364
Asst. United States Attorney

Rudolph Contreras

RUDOLPH CONTRERAS
D.C. BAR #434122
Asst. United States Attorney

Counsel for Defendant

*J.H. Lesar (by KC)**

JAMES H. LESAR
D.C. BAR #114413

Counsel for Plaintiff

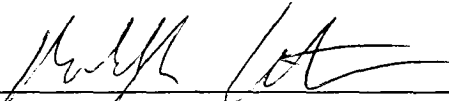
* Counsel for plaintiff has given defendant's counsel authority to sign this joint report on his behalf.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Joint Report has been made by first-class mail to:

James H. Lesar
1003 K Street, N.W.
Washington, DC 20001

on this 31st day of January 2003.



RUDOLPH CONTRERAS, D.C. BAR #434122
Assistant United States Attorney
555 4th Street, N.W.
Judiciary Center Building
Room 10-820
Washington, D.C. 20001
(202) 307-0258