

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

Civil Action No. 04-0814 (RCL)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Defendant, the Central Intelligence Agency (“Agency”), by and through undersigned counsel, respectfully submits this memorandum of points and authorities in support of Defendant’s motion for summary judgment. Plaintiffs submitted a Freedom of Information Act (“FOIA”) request seeking information about prisoners of war or soldiers missing in action during the Vietnam War. The complaint was filed on May 19, 2004. After a long and involved litigation, this case is now limited to one final issue: Plaintiffs’ request for information with respect to “1,400 live sighting reports that were reportedly displayed at Congressional briefings attended by CIA employees, as well as records of imagery and reconnaissance and rescue operations.” *See* Order of 8/2/2019, ECF No. 340; Order of 3/31/2020, ECF No. 345 (requiring the Agency to search its operational files for the requested records).

As explained further below, the Agency conducted a thorough search of its operational files for the requested information but found no responsive records. Despite having located no responsive records, the Agency’s search was reasonably calculated to locate all responsive

documents. Therefore, the Agency has fully complied with its obligations under FOIA, and the Court should enter summary judgment in its favor and finally close this matter.

BACKGROUND AND PROCEDURAL HISTORY

As this Court noted in its recent Memorandum Opinion and Order dated November 23, 2021, ECF No. 375, this should be the last chapter in this 17-year FOIA saga. The Court granted Plaintiffs' motion to reconsider and re-open this case "for one singular, limited purpose—to consider the adequacy of the [Agency's] most recent search" of its operational files. *Id.* at 1.

Pursuant to the order of this Court dated March 31, 2020 (ECF No. 340), the Agency undertook the required search of its operational records. After a series of status reports to the Court, from May 4, 2020 through September 17, 2020 (ECF Nos. 347, 348, 350, 351), the Agency reported that it was performing the required search of its operational files. In a status report dated October 30, 2020, the Agency reported to the Court that it had "conducted a supplemental search of its operational files and located no responsive records with respect to '1400 live sighting reports that were reportedly displayed at Congressional briefings attended by CIA employees, as well as records of imagery and reconnaissance operations.'" ECF No. 352.

After receiving notice from the Agency that it had completed the search of the operational files and had located no responsive records, the Court granted the Agency's motion for summary judgment and ordered the case dismissed with prejudice on November 30, 2020. ECF No. 353. Plaintiffs thereafter filed motions for reconsideration. This Court denied the bulk of Plaintiffs' motions, save for one issue: that the Agency had not provided a declaration regarding its search of operational records. ECF No. 375 at 5. Thus, the Court reopened "this case for the limited purpose of considering the adequacy of the CIA's search of its operational files." *Id.*

Accompanying this memorandum is the Declaration of Vanna Blaine, the Information Review Officer for the Litigation Information Review Office at the Agency. She sets forth in detail the Agency's thorough and reasonable search for the requested information and that no responsive records were found.

LEGAL STANDARD

Summary judgment is appropriate when the pleadings and evidence “show[] that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). It is up to the party moving for summary judgment to demonstrate the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323. A genuine issue is one that “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. Once the moving party has met its burden, the nonmoving party “may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Id.*

“[T]he vast majority of FOIA cases can be resolved on summary judgment.” *Brayton v. Off. of U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011); *see also Media Rsch. Ctr. v. Dep’t of Just.*, 818 F. Supp. 2d 131, 136 (D.D.C. 2011) (“FOIA cases typically and appropriately are decided on motions for summary judgment.”) (quoting *Def. of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009)). A government agency may obtain summary judgment in a FOIA case by relying on “relatively detailed” and “nonconclusory” declarations. *McGehee v. CIA*, 697 F.2d 1095, 1102 (D.C. Cir. 1983). “[T]he Court may award summary judgment solely on the basis of information provided by the department or agency in declarations when the declarations describe ‘the documents and the justifications for nondisclosure with reasonably

specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Citizens for Resp. & Ethics in Wash. v. Dep’t of Labor*, 478 F. Supp. 2d 77, 80 (D.D.C. 2007) (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)). A plaintiff “cannot rebut the good faith presumption” afforded to an agency’s supporting affidavits “through purely speculative claims about the existence and discoverability of other documents.” *Brown v. Dep’t of Just.*, 742 F. Supp. 2d 126, 129 (D.D.C. 2010).

ARGUMENT

The Agency Performed a Thorough and Reasonable Search for Responsive Records

The Agency fulfilled its obligation to search for operational records responsive to Plaintiff’s FOIA request and this Court’s order. Under FOIA, an agency must undertake a search that is “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Just.*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A FOIA search is sufficient “if the agency makes ‘a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’” *Baker & Hostetler LLP v. Dep’t of Com.*, 473 F.3d 312, 318 (D.C. Cir. 2006) (quoting *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995)). This standard of reasonableness “depends, not surprisingly, on the facts of each case.” *Weisberg v. Dep’t of Just.*, 745 F.2d 1476, 1485 (D.C. Cir. 1984); *see also Steinberg v. Dep’t of Just.*, 23 F.3d 548, 551 (D.C. Cir. 1994); *Mobley v. CIA*, 806 F.3d 568, 580 (D.C. Cir. 2015) (“This court applies a reasonableness standard to determine whether an agency performed an adequate search.”). A search is not inadequate merely because it failed to “uncover[] every document extant.” *SafeCard*

Servs., Inc. v. SEC, 926 F.2d 1197, 1201 (D.C. Cir. 1991); *see also Oglesby v. Dep't of Army*, 920 F.2d 57, 68 n.13 (D.C. Cir. 1990) (rejecting an argument that a search was inadequate because it did not uncover “documents that [plaintiff] claims must exist”); *Jud. Watch, Inc. v. Rossotti*, 285 F. Supp. 2d 17, 26 (D.D.C. 2003) (noting that “[p]erfection is not the standard by which the reasonableness of a FOIA search is measured”). Indeed, “[t]he question is not whether there might exist any other documents possibly responsive to the request, but rather whether the *search* for those documents was adequate.” *Steinberg*, 23 F.3d at 551 (emphasis in original) (quoting *Weisberg*, 745 F.2d at 1485); *see also Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) (explaining that the adequacy of a search “is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search”).

The agency bears the burden of showing that its search was reasonably calculated to uncover all relevant documents. An agency may establish the adequacy of its search by submitting reasonably detailed, nonconclusory affidavits describing its efforts. *Baker & Hostetler LLP*, 473 F.3d at 318. It is not obligated to “set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 126 (D.C. Cir. 1982). Agency affidavits are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents. *SafeCard Servs.*, 926 F.2d at 1200; *see also id.* at 1201 (“Mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them.”). Absent contrary evidence, the agency’s affidavits or declarations are sufficient to demonstrate the agency’s compliance with FOIA. *See Perry*, 684 F.2d at 127.

Here, the Court ordered the Agency to search its operational records relating to 1400 live sighting reports that were reportedly displayed at Congressional briefings attended by CIA

employees, as well as records of imagery and reconnaissance operations. The Agency has met its obligations under FOIA, as evident in the attached declaration of Vanna Blaine, which sets forth the details of the search. The CIA conducted thorough searches of relevant systems of operational records that were reasonably calculated to find documents with respect to “1,400 live sighting reports that were reportedly displayed at Congressional briefings attended by CIA employees, as well as records of imagery and reconnaissance and rescue operations.” Blaine Decl. ¶ 10.

In response to the Court’s 2020 order, CIA information management professionals searched Agency records in operational file systems. *Id.* ¶ 11. The search included an exhaustive electronic and hard copy search of Agency records. In the course of this search, CIA personnel included all relevant office databases likely to contain responsive records. Experienced CIA information management professionals cast a deliberately wide net for the requested records by employing broad search terms such as “POWs,” “prisoners of war,” “MIA,” “missing in action,” “Vietnam,” “task force,” “House Special POW,” “image,” and different combinations and variations of those search terms. The search was not limited to a particular date range and was thus conducted to include records through the date of the search. *Id.* ¶ 12.

The expansive search terms used generated a few records. Each of these records were retrieved from the database and Agency personnel reviewed them to determine whether the records were responsive to the Court-ordered search with respect to “1,400 live sighting reports that were reportedly displayed at Congressional briefings attended by CIA employees, as well as records of imagery and reconnaissance and rescue operations.” The Agency used a plain reading of the request to inform its responsiveness calls. *Id.* ¶ 13.

Following this second-level review, the Agency determined none of the potentially responsive documents retrieved using the electronic search protocols were responsive. In each

instance, the documents the search retrieved contained at most a mere mention of one or more of the terms but did not address the actual request. *Id.* ¶ 14. Agency personnel conducted a thorough search of all relevant records systems that were reasonably calculated to uncover responsive records. The Agency did not locate records responsive to the request, despite the Agency’s exhaustive search. *Id.* ¶ 15.

Accordingly, this Court should enter summary judgment in favor of the Agency on the last remaining issue because it performed a reasonable search and located no responsive records. The Agency has met its obligation under FOIA. *See SafeCard Servs.*, 926 F.2d at 1201 (observing that courts give agency declarations “a presumption of good faith” in FOIA cases).

CONCLUSION

For the reasons set forth in this memorandum and the accompanying statement of facts and Declaration, the Agency respectfully requests that the Court enter judgment in its favor on this final remaining issue in this FOIA litigation and dismiss the case.

Dated: December 21, 2021

Respectfully submitted,

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