

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)

**OPPOSITION TO PLAINTIFF ACCURACY IN MEDIA’S CROSS-MOTION FOR
SUMMARY JUDGMENT AND REPLY IN FURTHER 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 opposition to Plaintiff Accuracy in Media’s cross-motion for summary judgment and in further support of Defendant’s motion for summary judgment.

The last remaining issue in this 18-year Freedom of Information Act (“FOIA”) case is the adequacy of the Agency’s most recent search of its operational records. After protracted litigation, this case has been narrowed to 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 in the Agency’s motion for summary judgment on the issue (ECF No. 376), the Agency conducted a thorough search of its operational files for the requested information but found no responsive records. The Agency hereby submits the Supplemental Declaration of Vanna

Blaine, which further demonstrates that the Agency's search was adequate and reasonably calculated to locate all responsive documents.

The Agency has fully complied with its obligations under FOIA, and the Plaintiff's cross-motion fails to demonstrate otherwise. The Agency is therefore entitled to summary judgment on the final issue remaining before this Court.

LEGAL STANDARD

Plaintiff does not fully recite the law with respect to the adequacy of the search. This Circuit "applies a reasonableness standard to determine whether an agency performed an adequate search." *Hardway v. CIA*, 384 F. Supp. 3d 67, 74 (D.D.C. 2019) (quoting *Mobley v. CIA*, 806 F.3d 568, 580 (D.C. Cir. 2015)). An agency is not required to search every record system, but need only search those systems in which it believes responsive records are likely to be located. *Oglesby v. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Moreover, a search "need only be reasonable; it does not have to be exhaustive." *Miller v. Dep't of State*, 779 F.2d 1378, 1383 (8th Cir. 1985) (citing *Nat'l Cable Television Ass'n v. FCC*, 479 F.2d 183, 186 (D.C. Cir. 1973)).

Importantly, the Court's inquiry turns on methods, not results. *Id.* (citing *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) ("[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.")). Summary judgment is not defeated by an unsuccessful search for documents so long as the search was diligent and reasonable. *See Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 895, 892 n.7 (D.C. Cir. 1995).

An agency is entitled to summary judgment on the adequacy of its search if it shows "that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68. An agency

may prove the adequacy of its search through a reasonably detailed declaration. *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982); *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978); *Miller*, 779 F.2d at 1383. This declaration must set forth the search performed and “aver[] that all records likely to contain responsive materials (if such records exist) were searched.” *Oglesby*, 920 F.2d at 57. While an agency has the burden of proof on the adequacy of its search, affidavits submitted by the agency are accorded a presumption of good faith “which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.” *Mobley*, 806 F.3d at 581 (internal quotation marks omitted) (quoting *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991)).

The initial Declaration and the Supplemental Declaration submitted by the Agency satisfy the above standards.

ARGUMENT

I. THE AGENCY PERFORMED A THOROUGH AND REASONABLE SEARCH FOR RESPONSIVE RECORDS.

Contrary to what Plaintiff claims in its cross-motion, the Agency has provided information demonstrating that it performed an adequate search for the requested records, using methods which were 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*, 71 F.3d at 890).

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. Following this Court’s March 31, 2020, order, the Agency began the process of searching its operational files. Supp. Blaine Decl. ¶ II.7. On October 30, 2020, the Agency reported to this Court that it had completed the search and no responsive records were located. *Id.* ¶ II.8.

The Agency provided Plaintiffs with a description of the search terms used by experienced CIA information management professionals during the search: “POWs,” “prisoners of war,” “MIA,” “missing in action,” “Vietnam,” “task force,” “House Special POW,” “image,” and different combinations and variations of those search terms. *Id.* ¶ III.2. The Agency deliberately employed broad search terms because “utilizing more specific search terms . . . may have inadvertently excluded otherwise responsive documents that failed to contain the more specific search terms.” *Id.* While Plaintiff takes issue with the terms employed by the Agency, they were intentionally crafted to return the largest pool of potentially responsive documents and were thus reasonably expected to produce the information requested by Plaintiff. *Id.*

Due to the CIA’s national security function, “specific information about Agency databases and exactly how these repositories are structured and searched cannot be described in great detail on the public record.” *Id.* ¶ III.1. Despite these national security restrictions, the Agency certifies that it has “searched centralized internal databases containing Agency-wide operational files, including cables, intelligence reports and other records.” *Id.* This search included “[a]ged operational files, originally maintained in hard copy form, [that were] digitized and made a part of these databases.” *Id.* Further, the Agency attests to the fact that all databases “where operational files related to Plaintiff’s request could reasonably have been located were searched in the course of this review.” *Id.* In averring that all the appropriate operational file databases were searched, the Agency has demonstrated the adequacy of its search.

None of the records reviewed 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[.]” ECF No. 376-3 ¶ 13. Because the Agency’s search was crafted to reasonably produce the information

Plaintiffs requested, the lack of results does not bear on the merits of the Agency's request for Summary Judgment.

As Ms. Blaine's Declarations establish, 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. Accordingly, this Court should deny Plaintiff's cross-motion and enter summary judgment in favor of the Agency on the last remaining issue because it performed a reasonable search and located no responsive records.

CONCLUSION

For the reasons set forth above and the accompanying supplemental Declaration, the Agency respectfully requests that the Court enter summary judgment in its favor on the final remaining issue in this FOIA suit and put this case to a close.

Dated: May 11, 2022

Respectfully submitted,

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