

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LOIS MOORE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 20cv1027 (RCL)
)	
UNITED STATES CENTRAL)	
INTELLIGENCE AGENCY)	
)	
Defendant.)	
_____)	

**REPLY IN SUPPORT OF DEFENDANT’S MOTION TO VACATE
COURT’S SCHEDULING ORDER**

In its July 2, 2020 motion (“the Motion”), Defendant Central Intelligence Agency (“CIA”) requests this Court to vacate its Order entered on June 10, 2020, directing CIA to file a *Vaughn* index and a dispositive motion in this Freedom of Information Act (“FOIA”) case within 30 days, and instead order the parties to file a Joint Status Report on or before August 25, 2020. ECF No. 8. As explained in the Motion, CIA is processing Plaintiffs’ FOIA request but requires additional time to do so in light of reductions to CIA’s FOIA staffing and processing capabilities due to the COVID-19 pandemic. In further support of the Motion, CIA states as follows:

1. Plaintiffs concede that CIA has “good cause” to seek relief, and they do not oppose CIA’s request that the Court’s June 10, 2020 Order be vacated. ECF No. 9 (“Opp’n”) 1, 8. Their opposition is limited to CIA’s request for six weeks to assess Plaintiffs’ 21-item FOIA request and estimate an appropriate timeframe for processing it. Plaintiffs instead propose that the Court order CIA to respond to 11 items in Plaintiffs’ request on or before

August 25, 2020, and file a status report with the Court as to “any outstanding matters” at that time.

2. When CIA counsel contacted Plaintiffs’ counsel to seek Plaintiffs’ consent for the relief requested in the Motion, Plaintiffs’ counsel indicated that Plaintiffs would consent to the relief only if, among other things, CIA agreed to respond to certain items in Plaintiffs’ request by July 10, 2020. CIA’s counsel responded with CIA’s offer to prioritize the items identified by Plaintiffs but indicated that CIA could not complete its response to those items by July 10, or another date certain, for the same reasons motivating CIA’s Motion. Plaintiffs refused to consent to CIA’s requested relief and now ask the Court to impose an August 25, 2020, deadline for CIA’s response to 11 items in the request.

3. Plaintiffs do not challenge CIA’s assessment of its FOIA staffing and processing capabilities as set forth in the Motion or the constraints faced by CIA in processing and responding to FOIA requests with reduced resources. They nonetheless assert that CIA should be ordered to respond to the 11 items they identify because, they contend, these items “require no search.” Opp’n 2, 5.

4. Even assuming that CIA would not need to conduct additional searches to respond to the 11 items Plaintiffs identify, which CIA disputes, CIA must review and process any records it releases for, among other items, control, responsiveness, classification, and information belonging to other government agencies. Such review and processing require CIA FOIA resources that, as explained in the Motion and acknowledged by Plaintiffs, are not at normal levels. Accordingly, CIA requires additional time to process the items identified by Plaintiffs, whether or not further searches are necessary.

5. Plaintiffs devote several pages of their opposition brief to discussion of the possibility that CIA will make a *Glomar* response to part or all of their FOIA request. Opp'n 3-7. This discussion is both premature and unnecessary to deciding CIA's request for relief. CIA has not made a *Glomar* response to any portion of Plaintiffs' current request as of this date nor does CIA's Motion mention or implicate any such response. Whether a *Glomar* response to part or all of Plaintiffs' request is proper in this case, and whether Plaintiffs would be collaterally or judicially estopped from challenging such a response, are unripe issues that are not before the Court at this time, and the Court does not need to address them in deciding whether to grant CIA's request for relief. Accordingly, CIA, as with Plaintiffs, "do[es] not seek to litigate the Glomar issue at this juncture." Opp'n 5.

6. CIA remains willing to prioritize processing of and response to the items identified by Plaintiffs. However, for the reasons explained in the Motion and above, CIA continues to require additional time to assess Plaintiffs' requests and estimate an appropriate time frame for processing them. CIA therefore respectfully requests that the Court decline to impose Plaintiffs' proposed response deadline and instead grant the Motion and order the parties to update the Court as to the status of the case on or before August 25, 2020.

Dated: July 9, 2020

Respectfully submitted,

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