

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No.
)	1:12-cv-00049-RC
)	
v.)	
)	
U.S. DEPARTMENT OF DEFENSE, and)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendants.)	
_____)	

DEFENDANT’S SECOND MOTION TO EXTEND BRIEFING SCHEDULE

Defendants United States Department of Defense (“DoD”) and Central Intelligence Agency (“CIA”) respectfully request an extension of the due date for their motion for summary judgment in this Freedom of Information Act case and a proportional resetting of the remaining deadlines. Plaintiff Judicial Watch opposes this motion. Defendants aver the following in support of their request:

1. Defendants recently moved for an 11-day extension of the due date for their motion for summary judgment, due to ongoing discussions between the parties about narrowing the issues to be briefed, and to other commitments of defense counsel. Dkt. No. 12. Defendants’ motion was their first for an extension of time in this case, it was unopposed by plaintiff, and the Court granted it. July 12, 2012 Minute Order.
2. Accordingly, the current schedule is as follows: defendants’ motion for summary judgment to be filed on or before July 27, 2012; plaintiff’s combined opposition and cross-motion for summary judgment to be filed on or before August 24, 2012;

defendants' combined opposition/reply to be filed on or before September 14, 2012; and plaintiff's reply to be filed on or before September 28, 2012. *Id.*

3. Defendants were preparing their motion for summary judgment, consistent with the above schedule, when the CIA discovered a 4 to 5 inch stack of records potentially responsive to plaintiff's FOIA request that had been inadvertently overlooked during the CIA's search. Agency counsel responsible for this case ("agency counsel") was notified of the existence of these potentially-responsive records on July 12, 2012, and was able to review these records for the first time on July 17, 2012. On that same day, agency counsel informed the undersigned DOJ counsel, Marcia Berman, of their existence. On July 19, 2012, agency counsel provided Ms. Berman with additional details about the volume of the newly-discovered documents, whether the documents contained any duplicates of already-produced records, and how much time it would take for the agency to process the new documents. Ms. Berman called opposing counsel that day to alert him to the newly-discovered documents and to discuss their impact on the current briefing schedule.
4. From its initial review of the documents, the CIA has determined that the newly-discovered documents are responsive to plaintiff's request but contain some duplicates of produced records. The CIA estimates that there are approximately 30 new documents (primarily emails), with many documents containing multiple pages.
5. The CIA previously produced to plaintiff 113 pages of released-in-part records

and withheld in full 24 documents. The CIA and DoD produced responsive records to plaintiff on May 18, 2012, pursuant to the Court-ordered schedule, and sought no extensions of that deadline.

6. The CIA has already begun reviewing the newly-discovered documents, on an expedited basis. The review and processing of the documents must be coordinated with defendant DoD, various officials at DOJ, and other senior officials within the Government. The CIA believes this expedited review and processing can be completed by August 24, 2011.¹
7. The CIA is continuing to look into the circumstances of the discovery of the new documents to ensure the adequacy of its search. The CIA does not anticipate these efforts resulting in further delays in this case.
8. Accordingly, defendants respectfully propose the following altered schedule: defendants to produce any additional responsive, non-exempt documents to plaintiff on or before August 24, 2012; plaintiff to notify defendants of any challenges to any withholdings from the newly-produced records on or before August 31, 2012; defendants' motion for summary judgment to be filed on or before September 14, 2012; plaintiff's combined opposition and cross-motion for summary judgment to be filed on or before October 12, 2012; defendants' combined opposition/reply to be filed on or before November 2, 2012; and plaintiff's reply to be filed on or before November 16, 2012.

¹ Ms. Berman notes that she has a pre-planned, pre-paid vacation scheduled for August 13 through 17.

9. It would be inefficient and impractical for defendants to essentially file two motions for summary judgment—one on July 27, for the already-produced documents, and a subsequent one covering any newly-produced documents. Such an approach wastes the resources of the parties and the Court and would not result in plaintiff receiving a ruling in this case any sooner than it will under defendants' proposed schedule.
10. On Friday, July 20, 2012, counsel for plaintiff informed Ms. Berman that plaintiff opposes defendants' request to alter the briefing schedule in light of the newly-discovered documents.

Date: July 24, 2012

Respectfully Submitted,

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