

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,

Plaintiff,

vs.

UNITED STATES DEPARTMENT
OF DEFENSE,

Defendant.

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Civil Action No. SA-16-CV-0972-XR

JOINT RULE 26(f) REPORT
AND RESPONSE TO COURT ORDER OF NOVEMBER 1, 2016

TO THE HONORABLE XAVIER RODRIGUEZ, U.S. DISTRICT JUDGE:

Consistent with Rule 26(f) and the Court’s Order and Advisory of November 1, 2016, the parties met and conferred by email on November 8, November 30, and December 1, 2016, and by telephone on December 1, 2016, for the purposes of agreeing to this Joint Rule 26(f) Report. The parties would respectfully show the Court the following:

1. Outstanding Jurisdictional Issues:

The parties do not believe there are any outstanding jurisdictional issues to be addressed.

2. Unserved Parties:

All necessary parties have been served and have answered.

3. Causes of Actions, Defenses, and Counterclaims:

In his live Complaint, Plaintiff alleges: 1) The requested documents are agency documents subject to the Freedom of Information Act (“FOIA”); 2) The requested documents are not exempt from release under FOIA; 3) Defendant has improperly withheld release of the requested documents to Plaintiff; and 4) This Court has jurisdiction to order release of the requested documents.

Defendant has alleged the following affirmative defenses in its Answer: 1) “some documents requested to be disclosed by Plaintiff are exempt from disclosure by one of the enumerated FOIA exemptions.” More specifically, Plaintiff has requested that Defendant produce over **250,000 digitized files** of servicemen killed during the World War II era, which are known as Individual Deceased Personnel Files (“IDPFs”).¹ Some of these files contain personal identifying information (“PII”) pertaining to living relatives of veterans killed in action. Such information is exempt from disclosure pursuant to FOIA exemption No. 6 – Personal Privacy. 2) “DoD is entitled to a stay under the *Open America* doctrine ...”

In addition to the foregoing, Defendant believes that it will be able to show that Plaintiff’s FOIA request to produce “all World War II era IDPFs”² is unreasonably burdensome, and should not be required under FOIA.

Defendant has not advanced any counterclaims.

4. Factual and Legal Stipulations:

None at this time, other than those admissions already contained in Defendant’s Answer in response to certain factual allegations contained in Plaintiff’s Complaint. The parties have not made any legal stipulations.

5. Discovery Status:

No discovery has occurred. The parties agree that no discovery is needed in this FOIA case. The parties have not exchanged Rule 26(a) Disclosures, and do not believe that any purpose would be served by the parties doing so in a FOIA case.

¹ These approximately 250,000 files represent names from A-L. Files with names from M-Z have not yet been digitized.

² Plaintiff’s Complaint, ¶ 7.

6. Discovery Disputes:

There are no discovery disputes at this time.

7. FRE 502 Order:

Not applicable, since no discovery should be necessary in this case.

8. Mediation:

The parties have not discussed mediation. The parties do not believe that mediation would be helpful at this stage of the case. Should circumstances change, the parties will consider mediation and report to the Court regarding same.

DATED: December 1, 2016

Respectfully submitted,

RICHARD L. DURBIN, JR.,
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed via the Court's CM/ECF system on this 1st day of December, 2016, and that Plaintiff will receive a copy of same via the Court's CM/ECF system as follows:

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PRO SE

/s/ Robert Shaw-Meadow
ROBERT SHAW-MEADOW
Assistant United States Attorney