

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 PROPOSED SCHEDULING AND DOCKET CONTROL ORDER

The disposition of this case will be controlled by the following order. If a deadline set forth in this Order falls on a weekend or holiday, the effective day will be the next business day.

DISCLOSURE STATEMENT

Any nongovernmental corporate party must file its Fed. R. Civ. P. 7.1 Disclosure Statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. If any required information changes, any nongovernmental corporate party must promptly file a supplemental statement.

RULE 26 ATTORNEY CONFERENCE

The parties conferred by email on November 8, November 30, and December 1, 2016.

INITIAL DISCLOSURES

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 any purpose would be served by the parties doing so in a FOIA case.

INITIAL PRETRIAL CONFERENCE

An initial pretrial conference pursuant to Fed. R. Civ. P. 16 will not be scheduled at this time. However, if a party believes that a conference with the Court would be of assistance in resolving discovery or case management issues, the party should file a motion with the Court requesting a pretrial conference. The parties shall confer on the substance of any disputes prior to the filing of any motion for a pretrial conference.

DISCOVERY OF ELECTRONICALLY STORED INFORMATION (ESI)

Defendant maintains that no discovery is needed or authorized in this FOIA case. *See, e.g., Lane v. Dep't of Interior*, 523 F.3d 1128, 1134 (9th Cir. 2008) (“While ordinarily the discovery process grants each party access to evidence, in FOIA and Privacy Act cases, discovery is limited because the underlying case revolves around the propriety of revealing certain documents.”). After the federal agency defendant has produced documents, or set forth exemptions to production, most FOIA cases are resolved on cross-motions for summary judgment without discovery, and the Court determines whether additional documents need to be produced. *See Cooper Cameron Corp. v. U.S. Dep't of Labor Occupational Serv. & Health Admin.*, 280 F.3d 539, 543 (5th Cir. 2002). Plaintiff agrees that it does not appear that any discovery will be necessary in this case.

STIPULATED ORDER REGARDING INADVERTENT PRODUCTION

If the parties deem necessary, they will attempt to reach an agreement and submit a proposed agreed order, pursuant to Fed. R. Civ. P. 26(c), that a party does not waive the FOIA exemption protecting the disclosure of private information, the attorney-client privilege, or the attorney work-product privilege by inadvertently producing privileged or work-product documents.

RULE 12 MOTIONS

Twombly motions (motions to dismiss for failure to state a claim) and motions for more definite statement generally lack merit and should be filed sparingly. Upon the filing of a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or a motion for judgment on the pleadings under Rule 12(c), discovery will not be stayed and will not otherwise delay progress of the case pending a ruling on the motion, unless the party filing the motion obtains a court order otherwise.

MOTIONS FOR LEAVE TO AMEND PLEADINGS.

Parties filing motions after the deadlines in this section must show good cause.

The deadline for Plaintiff to file a motion seeking leave to amend pleadings; or to join parties is **December 31, 2016**.

The deadline for Defendant to file a motion seeking leave to amend pleadings is **January 20, 2017**.

EXPERTS

The parties do not believe it will be necessary in this FOIA case to designate any expert witnesses.

SUPPLEMENTATION

Defendant maintains that no discovery is needed or authorized in this FOIA case. Accordingly, no deadline for supplemental reports required under Fed. R. Civ. P. 26(e) is required.

WITNESS LIST, EXHIBIT LIST AND PRETRIAL DISCLOSURES

Since any disputed legal issues in this case should be resolved on motions for summary judgment, no such designations should be necessary.

COMPLETION OF DISCOVERY

Defendant maintains that no discovery is needed or authorized in this FOIA case. Accordingly, no discovery should be authorized by the Court and no discovery deadline need be set.

ALTERNATIVE DISPUTE RESOLUTION (ADR) REPORT

The deadline for filing an ADR Report as specified in TXWD Local Rule CV-88(b) is _____, **2017**. 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.

If a settlement is reached, the parties should immediately notify the Court so the case may be removed from the Court's trial docket.

PRETRIAL MOTIONS

No motion (other than a motion in limine) may be filed after this date except for good cause. The deadline to file motions (including dispositive motions) is **February 1, 2017**.

This deadline is also applicable to the filing of any summary judgment motion under Fed. R. Civ. P. 56 and any defense of qualified immunity. Leave of court is automatically given to file motions not to exceed 30 pages in length. With regard to motions for summary judgment, the response shall be due fourteen days after the motion is served and the reply shall be due seven days after the response is served. Rule 6(d) shall not apply for service via CM/ECF of motion for summary judgment and responses.

JOINT PRETRIAL ORDER AND MOTION IN LIMINE

Since there should be no need for a trial in this FOIA case, the parties request that no deadline be set by the Court for the filing of a Joint Pretrial Order and Motions in Limine.

FINAL PRETRIAL CONFERENCE

Likewise, since there should be no need for a trial in this case, the parties request that no

deadline be set by the Court for a Final Pretrial Conference.

TRIAL

The parties likewise request that no trial setting be made by the Court.

REDACTION OF CERTAIN MATERIAL

Counsel are reminded that, with regard to any paper that is filed, compliance with Fed. R. Civ. P. 5.2 is mandatory. Accordingly, counsel should ensure that appropriate redactions are made.

Signed on _____

HON. XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

DATED: December 1, 2016

Respectfully submitted,

RICHARD L. DURBIN, JR.,
United States Attorney

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ATTORNEYS FOR DEFEENDANT

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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