

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,

Plaintiff,

vs.

UNITED STATES DEPARTMENT
OF DEFENSE,

Defendant.

§
§
§
§
§
§
§
§
§
§

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

**DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION FOR EXTENSION OF TIME
TO SUBMIT CROSS-MOTION FOR SUMMARY JUDGMENT AND TO RESPOND TO
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

The Defendant, United States Department of Defense (DoD), by and through the United States Attorney for the Western District of Texas, respectfully submits this Reply to Plaintiff’s Response to Defendant’s Motion for Extension of Time to Submit Cross-Motion for Summary Judgment and to Respond to Plaintiff’s Motion for Summary Judgment. Defendant states the following:

1. Plaintiff asserts in his Response that the government is seeking an extension of time only for the purpose of delay and avoiding consideration of the content and context of the FOIA requests. (Doc. at 18, p. 3). The government is not attempting to unduly delay this case and the Plaintiff’s arguments ignore the valid reasons for an extension of time that were raised in the government’s motion. (Doc. at 17, pp. 2-5). The Plaintiff is attempting to ensnare this court into the merits of the underlying FOIA requests, instead of focusing on the limited inquiry required at this time – namely if an extension of time is reasonable and warranted.

2. As stated in the initial motion, counsel for the government underestimated the complexity and time required to complete the dispositive motions in this case. (Doc. at 17, p.3). By way of explanation, one of the FOIA requests at issue in this case will involve approximately 280,000 Individual Deceased Personnel Files. (Doc. at 17, p.3). This is not the only work that needs to be done by the Department of Defense, which was working on over 1,600 records requests received before those of Plaintiff. (Doc. at 17, p. 2). Further, despite aspects of this case taking longer than anticipated, this case has not been ignored by attorneys from the government. In fact, counsel is working to amicably resolve the other FOIA request at issue in the case.

3. The government's request for a 120-day extension was made, in part, because the attorney originally handling this matter has now retired from federal service. While Plaintiff asserts that multiple government attorneys are involved in this matter, this case was staffed by only one Assistant United States Attorney. Due to the volume of cases in this district and the resource demands at the Department of Justice, it is very rare to have a case staffed by more than one attorney at its onset. The government requests that it be afforded time to have undersigned counsel familiarize herself with the litigation, obtain the necessary materials from the Department of Defense, and properly respond on behalf of the government.

4. Plaintiff has been litigating over information he believes he is entitled to in a variety of forums since September 2010. *See Eakin I* – WDTX Case Number SA-10-CV-0784-FB. While Plaintiff may be *pro se*, he clearly is able to articulate his position and the same should be afforded to the government. Defendant is requesting four months for the filing of dispositive motions, and if that request is granted, it would still ensure that dispositive motions are filed within seven months of government's appearance in the case. In short, this case will still be on track for final resolution within a reasonable time and not unduly delayed.

WHEREFORE, Defendant respectfully requests that the Court GRANT Defendant's Motion, and extend the deadlines for Defendant to respond to Plaintiff's Motion for Summary Judgment, and to file its own Cross-Motion for Summary Judgment by 120 days, until June 1, 2017.

DATED: February 9, 2017

Respectfully submitted,

RICHARD L. DURBIN, JR.,
United States Attorney

AGENCY COUNSEL:
Mark Herrington
U.S. Department of Defense Office
1600 Defense Pentagon, Room 3B688
Washington, D.C. 20301-1600

By: /s/ MARY F. KRUGER
MARY F. KRUGER
Assistant United States Attorney
Georgia Bar No. 6282540
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
Tel: (210) 384-7100
Fax: (210) 384-7312
E-mail: Mary.Kruger@usdoj.gov

ATTORNEYS FOR DEFENDANT

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 9th day of February, 2017, and was served via Certified Mail as follows:

John J. Eakin
9865 Tower View
Helotes, Texas 78023
jeakin@airsafety.com
PRO SE

/s/ MARY F. KRUGER
MARY F. KRUGER
Assistant United States Attorney