

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

**DEFENDANT’S RESPONSE TO PLANITFF’S MOTION TO STRIKE**

The Department of Defense (DoD) files this Response to Plaintiff’s Opposed Motion to Strike Defendant’s Cross Motion for Summary Judgment and Response to Plaintiff’s Motion for Summary Judgment, Motion to Stay Case in the Alternative, and states and follows:

On June 1, 2017, DoD filed its cross-motion for summary judgment acknowledging in footnote two that its motion for an extension of time for that filing was still pending before the Court. [Doc. at 22, fn. 2]. The initial motion for an extension of time made a showing of good cause for the requested delay and, in accordance with the local rules, was filed prior to the deadline for summary judgment motions. [Doc. at 17]. A motion for leave to file was not included because a pending motion on the docket addressed the same issue.

Eakin asserts, without evidence or support, that the government is filing motions in this matter to delay and avoid his FOIA request. This is incorrect, and it is unreasonable for Eakin to make such allegations when the DoD has continued throughout this period to dedicate large amounts of time and money to working on his FOIA request. [Doc. at 22-2]. In fact, the

evidence obtained from searching and reviewing materials responsive to the FOIA was pertinent to the summary judgment motion and included therein.<sup>1</sup>

Eakin has not shown any harm caused by filing the cross-motion with a reference to the motion for an extension of time versus a motion for leave to file.

WHEREFORE, DoD respectfully requests that the Court DENY Plaintiff's Opposed Motion to Strike Defendant's Cross Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment, Motion to Stay Case in the Alternative.

DATED: June 14, 2017

Respectfully submitted,

RICHARD L. DURBIN, JR.,  
United States Attorney

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**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 14th day of June, 2017, and was served via U.S. Mail as follows:

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

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<sup>1</sup> DoD also addresses arguments concerning its request for an Open America Stay in its Reply in Support of Its Motion for Summary Judgment.