

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. SA-16-CV-0972-RCL
	§	
UNITED STATES DEPARTMENT	§	
OF DEFENSE,	§	
	§	
Defendant.	§	

**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO FILE SUR-REPLY TO
PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Western District of Texas Local Rule CV-7(f)(1), Defendant files this Motion for Leave to File a Sur-Reply to Plaintiff’s Reply to Defendant’s Response to Plaintiff’s Motion for Partial Summary Judgment. Plaintiff is unopposed to this Motion. In his Reply to Defendant’s Response to Plaintiff’s Motion for Summary Judgment, Plaintiff raises a new argument not raised in Plaintiff’s Motion for Summary Judgment and makes a misstatement. For these reasons, Defendant’s request leave of the court to file a sur-reply to address Plaintiff’s new argument and to correct the misstatement for the record.

Plaintiff specifically states in his Motion for Summary Judgment that “the single disputed issue remaining is Defendants’ [*sic*] refusal to release documents requested by Plaintiff’s Freedom of Information request due to the inclusion in a small number of these files of a request for the basic document.” Pl’s. Mot. Summ. J. 6, ECF No. 46. Plaintiff argues that Defendant cannot declare that certain documents are non-responsive because “non-responsive to the request is not an exemption from release.” *Id.* at 10. Although Plaintiff includes information unrelated to this

issue, this is the only issue Plaintiff argues in his Motion for Partial Summary Judgment.¹ In his Reply Plaintiff presents a new argument that PII is not exempt from disclosure under FOIA. This argument was not addressed in Plaintiff's Motion for Partial Summary Judgment. Therefore, the only issue properly before the Court for Partial Summary Judgment is whether or not FOIA requests for the IDPFs are responsive to Plaintiff's May 10, 2016 FOIA request.

In addition to the new argument, Plaintiff makes a misstatement in his response that Defendant seeks to correct for the record. Plaintiff states "Defendant claims to be unable to identify and produce previously released material as ordered by the Court." Pl's. Reply 6, ECF No. 49. Defendant makes no such assertion in its Response. Defendant intends to make every effort to comply with the Court's June 5, 2019 Order. Order, ECF No. 43.

DATED: July ___, 2019.

Respectfully submitted,

JOHN F. BASH
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¹ Plaintiff does include a request that the Court order release of the M-Z files that were scanned after Plaintiff's FOIA request at issue in this case, but provides no basis for the request and this issue was thoroughly briefed in Defendant's Response.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was electronically filed via the Court's CM/ECF system on this ___th day of July, 2019, and was served by Federal Express as follows:

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PRO SE

/s/ Jacquelyn M. Christilles
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ORDER

The Court having considered Defendant’s Unopposed Motion for Leave to File a Sur-Reply to Plaintiff’s Motion for Partial Summary Judgment hereby GRANTS this Motion. Defendant may file their attached Sur-Reply.

SIGNED this ____ day of _____, 2019.

Honorable Royce C. Lamberth
United States District Judge