

records for the purpose of scanning them and does not identify the current custodian of the digitized records. The government's FOIA response letter includes a Memorandum of Agreement (MoA) with an effective date prior to the date of Plaintiff's prior request that was the basis for the First Amended Complaint (ECF 64) in this case and a substantial volume of the requested digital records have been provided in response to that request. In light of Defendant's change of policy, one must ask, did they do it right then or are they doing it right, now?

Withdrawal of Plaintiff's motion to file a second amended complaint should not unduly delay this litigation and may eliminate the government's need for an *Open America* stay to allow review of the files. (ECF 76) Further, the government is continuing, slowly, to produce the balance of the files they were ordered to produce by February 1, 2021. (See ECF No. 29, Mem. Op. at 17; ECF No. 30, Order at 2 See Advisory to the Court ECF 87 and Status Reports ECF No. 88, 89.)

Respectfully submitted,

/s/ John Eakin

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**Certificate of Service**

I hereby certify that on this the 25th day of April 2021, I electronically submitted the foregoing document for filing using the Court's CM/ECF system. All counsel of record shall be served with a true and correct copy of the foregoing document by operation of the Court's CM/ECF system.

/s/ John Eakin

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EXHIBITS

Response to FOIA #21-F-0833

Proposed Order

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOHN EAKIN

*Plaintiff,*

v.

UNITED STATES  
DEPARTMENT OF DEFENSE

*Defendant*

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

**UNOPPOSED MOTION TO WITHDRAW PLAINTIFFS’ OPPOSED  
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Plaintiff John Eakin, *pro se*, files this Unopposed Motion to Withdraw his Opposed Motion for Leave to File Second Amended Complaint and to file a modified motion at a later date.

Plaintiff’s Opposed Motion for Leave to File Second Amended Complaint was correct at the time of filing. However, subsequent action by the FOIA division of the Office of the Secretary of Defense claims that their prior actions did not constitute a final denial of Plaintiff’s FOIA request and they have transferred the FOIA request to another agency for response.

Plaintiff and Counsel for the Government conferred via email and agree that action to file a second amended complaint should be withdrawn pending a final determination of Plaintiff’s FOIA request.

Attached as Exhibit One is the government’s response transferring responsibility for responding to Plaintiff’s FOIA request from the Department of Defense to the National Personnel Records Center (NPRC). However, this response appears to be non-responsive to Plaintiff’s request in that it addresses the original, hardcopy, records rather than the digital copies requested by Plaintiff. Further, this response specifies that the Defense POW/MIA Accounting Agency (DPAA) had custody of the original