

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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No. SA-16-CV-972-RCL

ADVISORY TO THE COURT

The United States Department of Defense (DoD), by and through its undersigned counsel, respectfully files this advisory.

1. On April 12, 2021, DoD informed Plaintiff and this Court that it had completed the digitization of the remaining M–Z files. *See* ECF No. 94-4. Later that day, Plaintiff submitted a Freedom of Information Act (FOIA) request to DoD for “the balance of the requested files” that were “not previously produced.” ECF No. 94-2.

2. On April 23, 2021, DoD provided a final response to Plaintiff’s FOIA request in which it informed Plaintiff that the request had been referred to the National Personnel Records Center (NPRC), a component of the National Archives and Records Administration (NARA), pursuant to a Memorandum of Agreement with NARA. *See* ECF No. 94-3.

3. On May 12, 2021, Plaintiff sought leave to file a second amended complaint to incorporate claims that DoD constructively denied his April 2021 FOIA request. *See* ECF No. 94. DoD opposed Plaintiff’s motion. *See* ECF No. 95.

4. On May 13, 2021, NARA withdrew from the Memorandum of Agreement. Not long thereafter, NPRC informed Plaintiff that it would not further process his April 2021 FOIA request. *See* ECF No. 96-2.

5. In response to these developments, DoD reopened Plaintiff's FOIA request "to ensure that [it] continues to process [the] request for a direct response." *See* ECF No. 97-1.

6. The Army Human Resources Command (AHRC), Defense POW/MIA Accounting Agency (DPAA), and U.S. Army Litigation Division recently learned that Plaintiff contacted the Washington Headquarters Services (WHS) FOIA Office to inquire about the status of his April 2021 FOIA request.

7. Although DoD had previously reopened Plaintiff's FOIA request in response to the actions of NPRC, DoD policy directs FOIA officers to "administratively close" a request once a complaint is filed in federal court. *See* [DoD Manual 5400.07](#), DoD Freedom of Information Act (FOIA) Program, at ¶¶ 6.3.b(9)(b) and 6.7.b. FOIA officers should also "confer with legal counsel or Department of Justice attorneys on whether administrative processing should continue and whether it is appropriate to communicate directly with the FOIA requester." *Id.* at ¶ 6.7.c.

8. Plaintiff has an active FOIA lawsuit relating to these records and has sought leave to file an amended complaint that specifically incorporates his April 2021 FOIA request. Accordingly, on February 25, 2022, DoD administratively closed the April 2021 request and directed Plaintiff to communicate with undersigned counsel regarding this matter. *See* Exhibit 1.

9. Consistent with its prior representations to this Court, DoD intends to continue processing Plaintiff's FOIA request notwithstanding the administrative closure. *See, e.g.*, ECF No. 102-2, Declaration of MG Thomas R. Drew ¶ 13 ("After accounting for A through L records not yet provided to Plaintiff, AHRC will begin to redact all scanned WWII IDPFs in the DoD's possession for letters M through Z upon delivery of those files to AHRC from DPAA."). Indeed, AHRC has received the M-Z files from DPAA and is currently processing them.

Dated: February 28, 2022

Respectfully submitted,

ASHLEY C. HOFF
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2022, I caused the foregoing to be electronically filed via the Court's CM/ECF system, which will send notification to Plaintiff.

/s/ Thomas A. Parnham, Jr.
THOMAS A. PARNHAM, JR.