

October 17, 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

BY: Breanna Coldewey
DEPUTY

JOHN EAKIN,
Plaintiff,
v.
**UNITED STATES DEPARTMENT
OF DEFENSE,**
Defendant.

Case No. 5:16-cv-972 (RCL)

ORDER DENYING PLAINTIFF’S MOTION TO COMPEL

Before the Court are plaintiff’s *pro se* Motion [124] to Compel Production and for Better Search, defendant’s Opposition [126], and plaintiff’s Reply [127]. For the reasons that follow, this Court **DENIES** plaintiff’s motion.

The motion filed by plaintiff, Mr. Eakin, concerns his long-standing Freedom of Information Act (“FOIA”) request seeking records related to missing and unidentified remains of U.S. servicemembers killed during World War II. *See Eakin v. U.S. Dep’t of Def.*, No. 5:16-cv-972 (RCL), 2022 WL 2657250, *1 (W.D. Tex. July 8, 2022). Defendant, the U.S. Department of Defense (“DoD”), previously provided Mr. Eakin with World War II-era Individual Deceased Personnel Files (“IDPFs”) for servicemembers with last names beginning with a letter between A and L. *See id.* DoD is currently submitting monthly IDPF productions for servicemembers with last names between M and Z. Mem. Op. & Order (July 8, 2022), ECF No. 120.

Mr. Eakin asks this Court to compel DoD to produce (1) withheld duplicates, which Mr. Eakin claims are within the scope of his FOIA request, and (2) Korean War-era IDPFs, which Mr.

Eakin claims were produced for both the A–L IDPF batch and in the first two monthly productions of the M–Z IDPF batch. *See* Pl.’s Mot. at 3–4. In the alternative, Mr. Eakin asks this Court to order DoD to provide a *Vaughn* Index of withheld M–Z files. *See id.* at 5. Mr. Eakin also seeks to compel DoD “to conduct a better search” to determine whether agencies to whom M–Z IDPFs were “charged out” prior to Mr. Eakin’s request ever scanned or digitized the files, and, if so, for the DoD to produce those files to Mr. Eakin. *See id.* at 5.

DoD opposes Mr. Eakin’s motion. DoD argues that Mr. Eakin’s objections to the M–Z production are premature because production is ongoing. *See* Def.’s Opp’n at 2–3. DoD also contends that Mr. Eakin’s objections are meritless.¹ In his reply, Mr. Eakin insists that his request is not premature in light of DoD’s history of past delays in producing the A–L IDPFs and responds to DoD’s merits arguments.² *See* Pl.’s Reply.

The Court is satisfied that DoD is complying with its production obligations and that an order to compel or for a better search is not warranted at this time. The DoD has improved its production process—now overseen by senior DoD officials—and dedicated more resources to addressing Mr. Eakin’s request. *See* Def.’s Opp’n at 5; *Eakin*, 2022 WL 2657250, at *3. According to the DoD’s most recent status report, the DoD has produced more than 48,600 IDPFs

¹ DoD argues that Mr. Eakin is not entitled to any Korean War-era IDPFs because DoD informed Mr. Eakin last year that the Korean War-era IDPFs were non-responsive to his request for World War II-era IDPFs and thus any Korean War-era IDPFs produced for the A–L batch were an overproduction by DoD. *See* Def.’s Opp’n at 3 n.1, 5. DoD notes that Mr. Eakin has not identified any Korean War-era IDPFs produced by the DoD with respect to the M–Z batch “despite repeated requests by the government to do so.” *See id.* at 6. Finally, DoD argues that it is under no obligation to produce duplicates of files already produced or to track down files in the possession of other agencies. *See id.* at 5–6.


² He argues that the Korean War-era IDPFs are responsive to his request, given his understanding of the DoD’s digitizing procedures, and even so, DoD cannot now determine that those records are non-responsive when they were produced for the A–L batch. *See* Pl.’s Reply at 2–3. Finally, Mr. Eakin argues that some of the “charged out” files were transferred to a DoD office in Honolulu, Hawaii, and thus would not require the DoD to reach outside the agency to locate them. *See id.* at 4.

since the Court's July 2022 order and is on track to meet its July 8, 2023 production deadline. *See* Status Rep. (Oct. 5, 2022), ECF No. 125. Therefore, there is little concern that "delaying judicial determination" on Mr. Eakin's objections to the M-Z production would "threaten[] to upend years of government man-hours and to prolong any wrongful nondisclosure," like the Court was concerned regarding the A-L production. *See Eakin v. U.S. Dep't of Def.*, No. 5:16-cv-972 (RCL), 2019 WL 2368683, *2 (W.D. Tex. June 5, 2019). Because the production landscape for the M-Z IDPFs differs significantly from the A-L production, the Court is inclined to weigh in on any objections only after "all documents have been processed—not halfway through a piecemeal production schedule leaving [this Court] unable to judge the government's production in toto." *Id.* Thus, a summary judgment schedule or subsequent motion remains the proper vehicle to resolve FOIA production disputes, including the issue of the *Vaughn* Index and the production of "charged out" files. *See id.*; *Moore v. CIA*, No. 1:20-cv-1027 (RCL), 2022 WL 2983419, *2 (D.D.C. July 28, 2022).

For the foregoing reasons, plaintiff's Motion [124] to Compel Production and for Better Search is hereby **DENIED**.

IT IS SO ORDERED.

SIGNED on this 17th day of October, 2022.



Royce C. Lamberth
United States District Judge