

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RALPH BEGLEITER,

Plaintiff,

v.

DEPARTMENT OF DEFENSE,

and

DEPARTMENT OF THE AIR FORCE,

Defendants.

Case No. 1:04-cv-01697 (EGS)

LOCAL CIVIL RULE 16.3 REPORT:
STIPULATION AND JOINT MOTION TO HOLD CASE IN ABEYANCE

Pursuant to LCvR 16.3 and this Court's November 15, 2004 Order for Initial Scheduling Conference, Plaintiff Ralph Begleiter and Defendants the Department of Defense ("DOD") and the Department of the Air Force ("Air Force"), by their respective attorneys, hereby submit this Report.¹ In this Report, Plaintiff and Defendants agree and stipulate that this action should be held in abeyance pending the resolution of the administrative appeal to be filed forthwith by Plaintiff. The parties further agree and stipulate as follows:

1. Plaintiff filed the instant action on October 4, 2004 for declaratory and injunctive relief against Defendants based on their failure to respond substantively within the statutory twenty-day period to Plaintiff's FOIA requests. *See* Compl. (Docket #1).

¹ Because this is a FOIA action, it is exempt from the requirements set forth in LCvR 16.3. *See* LCvR 16.3(b)(9).

2. In his Complaint, Plaintiff alleged that in FOIA requests dated April 23, May 3, June 10, July 22, August 4, and September 6, 2004, he had sought from Defendants certain images – photographs and videos – of caskets containing the remains of U.S. military personnel returning from overseas, and identifying information to those images. *See id.* ¶¶ 31, 32, 33, 36, 41, 43, and 47.
3. Plaintiff further alleged that Defendants’ failure to respond substantively to his FOIA requests within the statutory twenty-day period constituted a constructive denial thereof. *See id.* ¶¶ 39, 40, and 51.
4. Defendants filed their answer on November 10, 2004. The answer consisted of general and specific denials and admissions. *See Answer* (Docket # 2).
5. On November 24, 2004, Plaintiff received the following: a letter, dated November 22, 2004, from Col. Vincent F. D’Angelo of the United States Air Force (“the November 22 letter”); a compact disc containing digital files of 288 photographs (“the CD”); and a print-out of an e-mail, dated May 27, 2004, from the 436 CS FOIA Manager (“the May 27 e-mail”).
6. In the November 22 letter, Defendants indicated that the 288 photographs contained in the CD constituted the sole records responsive to Plaintiff’s FOIA request of April 23, 2004. Defendants further stated that “[a] thorough search of Air Mobility Command records has failed to locate any records responsive to [Plaintiff’s] requests dated 3 May, 10 June, 4 August, 22 July, 6 September, and 7 October 2004.” In the November 22 letter, Defendants also indicated that the May 27 e-mail constituted the sole record responsive to Plaintiff’s request for identifying information corresponding with the requested images.

7. On December 22, 2004, Plaintiffs' counsel received a letter from Defendants' counsel conveying that a clerical error had resulted in the mistaken omission of 73 additional photographs from the CD, and indicating Defendants' intention of providing Plaintiff with those 73 images.
8. Plaintiff has reason to believe, based on news reports and certain publicly available documents, that additional responsive records exist, beyond the 288 images on the original CD and the 73 images referenced in the December 22 letter. For this reason, Plaintiff intends to submit forthwith an administrative appeal seeking additional records and/or clarification regarding the nature and extent of Defendants' search for responsive records.
9. The resolution of such administrative appeal may obviate the need for additional litigation in this Court. Plaintiff therefore believes that the best course of action for this Court will be to hold the proceedings in abeyance pending the resolution of such administrative appeal.
10. Without conceding the merits of any administrative appeal to be filed by Plaintiff, Defendants agree that the best course of action at this time is for this Court to hold the instant case in abeyance.
11. The parties have conferred as required by LCvR 16.3(c) regarding, *inter alia*, the potential for resolution of this matter by dispositive motion, settlement, alternative dispute resolution.² In view of Plaintiff's intention to file an administrative appeal, the parties believe it would be their best course of action to defer a decision regarding

² The parties have not conferred regarding initial disclosures and other discovery matters, as "Freedom of Information Act actions ... are actions that typically do not require discovery or actions in which an initial disclosure requirement would not make sense." Comment to LCvR 16.3(b), Rules of the United States District Court for the District of Columbia (2004).

such modes of resolution until such time as Plaintiff's administrative appeal has been filed, considered, and disposed of. The parties also believe it would be their best course of action to defer recommendations to this Court regarding the utility of assignment of this case to a magistrate judge, and the benefits of the other pre-trial and trial options contemplated by LCvR 16.3(c).

12. The parties further request that the Initial Scheduling Conference set for January 7, 2005 at 10:30 AM, *see* Order for Initial Scheduling Conference, Nov. 15, 2004, be postponed until such time as the abeyance is lifted.

Accordingly, the parties request that this action be held in abeyance pending the resolution of Plaintiff's administrative appeal. Should the Court grant this motion, the parties propose to report back to this Court regarding the status of that administrative appeal sixty (60) days from the date of the Order granting this Motion.

Dated: December 28, 2004

Respectfully submitted,

/s/

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