

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL SECURITY COUNSELORS, \*

\*

Plaintiff, \*

\*

v. \*

Case: 1:11-cv-00443 (BAH)

\*

CENTRAL INTELLIGENCE AGENCY, \*

\*

Defendant. \*

\*

\* \* \* \* \*

**PLAINTIFF’S MOTION FOR STATUS CONFERENCE REGARDING COUNT 3**

NOW COMES Plaintiff National Security Counselors (“NSC”) to respectfully request a status conference regarding Defendant CIA’s refusal to provide electronic records in response to FOIA Request No. F-2010-01186, despite Plaintiff’s multiple requests that responsive records be provided in that format.

“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” 5 U.S.C. § 552(a)(3)(B). Plaintiff’s initial request stated:

We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .doc, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, NSC does not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, NSC will accept a paper copy of responsive records.

(Letter from McClanahan to Nelson of 5/12/10 at 3, attached as Ex. A.) In its initial response, Defendant waived all fees for the request as an act of administrative discretion. (Letter from Nelson to McClanahan of 6/25/10, attached as Ex. B.) Therefore, Defendant cannot argue that it

is providing paper copies because Plaintiff refused to pay an additional fee to receive records on a CD, since Defendant waived *all* fees.

When the undersigned asked Defendant's counsel to ensure that Defendant provided all responsive records in electronic form on a CD, Defendant's counsel stated that Defendant had a policy of not providing *any* records in electronic form in response to FOIA requests. Defendant's counsel clarified that Defendant would be providing paper copies of the responsive records, despite Plaintiff's repeated insistence of its right to electronic records.

The records responsive to this FOIA request are voluminous. Plaintiff is entitled to records in the format it requested. A blanket policy that no electronic records will be provided in response to *any* FOIA request<sup>1</sup> is in clear violation of FOIA, and Plaintiff requests a status conference to resolve the issue. Because the release has not yet been made, the records are so voluminous, and the issue is so easily separated from the other legal issues in this case, Plaintiff believes that a status conference, as opposed to a full motion for summary judgment, is the most appropriate vehicle for resolving this issue.

Defendant opposes this Motion. A proposed Order also accompanies this Motion.

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<sup>1</sup> To support the statement of Defendant's counsel, Plaintiff can attest to the fact that neither it nor any of the numerous requesters it knows who send requests to Defendant have *ever* received electronic records.

Date: December 1, 2011

Respectfully submitted,

/s/ Kelly B. McClanahan  
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