

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

NATIONAL SECURITY COUNSELORS, *

*

Plaintiff, *

*

v. *

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

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CENTRAL INTELLIGENCE AGENCY, *

*

Defendant. *

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**PLAINTIFF’S REPLY IN SUPPORT OF ITS MOTION FOR
STATUS CONFERENCE REGARDING COUNT 3**

With the brevity of Defendant’s Opposition to Plaintiff’s Motion for a Status Conference (filed Dec. 2, 2011), this Motion has been reduced to two critical questions: (1) Is Defendant’s determination “that the documents responsive to NSC’s FOIA request are not readily reproducible in an electronic format” (Def.’s Opp’n Pl.’s Mot. Status Conf.) unreasonable; and (2) Is a status conference the appropriate mechanism to resolve this dispute? The answer to both of these questions is yes.

Defendant seeks to convince the Court that its decision not to release the particular documents at issue in this request in an electronic format is the product of a considered review of the documents in question, but this is simply not the case. Defendant’s counsel has unequivocally informed Plaintiff’s counsel that this decision is instead the result of a blanket practice not to release *any* records in an electronic format, regardless of their nature. This statement squares with Plaintiff’s experience; in fact, during this litigation, the undersigned surveyed a large number of FOIA requesters and lawyers who had experience with Defendant, including the National Security Archive, which has thousands of FOIA requests pending with

Defendant at any given time, and not one person surveyed had *ever* received a record in an electronic format from Defendant. Such a blanket policy does not meet the strictures of FOIA's electronic records provision.

With regard to the question of whether a status conference is appropriate, Plaintiff concedes that it *could* simply wait for the release in paper form, then wait for Defendant to file a Motion for Summary Judgment, then brief the issue along with all the other more significant disputes, then wait for this Court to reach its decision, all of which would likely be resolved approximately sixteen months from now, loosely based on the average speed with which FOIA cases proceed through the D.C. District Court. Plaintiff could also file a Motion for a Preliminary Injunction on this issue, which drastically upsets the Court's schedule and is, simply put, a major inconvenience and irritation to all parties, due to the strict rules of procedure governing such an action. However, Plaintiff sees no need to take the drastic step of asking for a Preliminary Injunction regarding such a comparatively minor dispute, but on the other hand, Plaintiff does not believe that it should be forced to wait more than a year to receive records in the format in which Defendant should have provided them in the first place. The fact that the release has not yet been made means that this Court has an opportunity to prevent Defendant from spending an inordinate amount of time and money (at the taxpayers' expense) sorting, stapling, and mailing a voluminous number of records that would easily fit on one CD. Given that Defendant's own published regulation allows for the production of a single CD for FOIA purposes at a cost of \$20 (32 C.F.R § 1900.13(g)(1)) (although Defendant never appears to have actually produced a CD in response to a FOIA request), Plaintiff believes that this dispute can and should be settled in a quick and efficient fashion, and that the best vehicle for doing so, given Defendant's intractability, is a status conference.

Date: December 2, 2011

Respectfully submitted,

/s/ Kelly B. McClanahan
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