

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

NATIONAL SECURITY COUNSELORS, \*

\*

Plaintiff, \*

\*

v. \*

Civil Action No. 1:11-cv-00444 (BAH)

CENTRAL INTELLIGENCE AGENCY, \*

\*

Defendant. \*

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\* \* \* \* \*

**PLAINTIFF’S REPLY IN SUPPORT OF ITS MOTION FOR A STAY OF BRIEFING OF  
PORTIONS OF DEFENDANT’S PARTIAL MOTION TO DISMISS PLAINTIFF’S  
FIRST AMENDED COMPLAINT**

Granting a stay of the briefing of the previously identified portions of Defendant’s Partial Motion to Dismiss Plaintiff’s First Amended Complaint (filed May 27, 2011) is in the interest of judicial economy and avoids the problem of asking the Court to rule on the respective reasonableness of certain patterns or practices without providing the Court any information *about* the practices themselves. Defendant argues that further information about these practices will not remedy alleged deficiencies in NSC’s pattern or practice claims, because “NSC has not pled and cannot show that the CIA has participated in this type [referring to *Payne*] of consistent, intentional violation of the text and spirit of the FOIA.” (Def.’s Opp’n Pl.’s Mot. Stay Briefing Portions Def.’s Part. Mot. Dismiss Pl.’s First Am. Compl. at 3 [hereinafter “Def.’s Opp’n].)

To the contrary, NSC clearly pled that Defendant consistently and intentionally violates the text and spirit of FOIA; the only difference is that all NSC can point to as evidence at this stage is the *results* of these patterns or practices, because Defendant is attempting to force the

Court's hand before providing the information (as part of its forthcoming Summary Judgment pleadings) that would allow the Court to intelligently review the underlying causes. However, all that *City of Los Angeles v. Lyons*, cited by Defendant, requires is that "a plaintiff must show a *threat of injury* that is 'both real and immediate, not conjectural or hypothetical.'" (Def.'s Opp'n at 4, quoting 461 U.S. 95, 102-03 (1983) (emphasis added).) NSC has demonstrated a real and immediate *threat of injury*; what it has not demonstrated is the specific agency patterns or practices that are *responsible* for the threat. However, in cases where the relevant information is in the exclusive control of the defendant, that is not the requirement. *See, e.g., Boykin v. KeyCorp*, 521 F.3d 202, 215 (2d Cir. 2008) (holding that pleading upon "information and belief" is appropriate when the information is in the opposing party's possession); *Johnson v. Johnson*, 385 F.3d 503, 531 n.19 (5th Cir. 2004) ("information and belief" pleadings are generally deemed permissible under the Federal Rules, especially in cases in which the information is more accessible to the defendant."). In most cases, discovery would be allowed to flesh out the information that was in exclusive control of the defendant, but in this case, NSC maintains that much if not all of the information would be provided by Defendant in its sworn declarations once the Summary Judgment motion is briefed.

For all the foregoing reasons, as well as those stated in NSC's Motion for this Stay, the Court should stay all briefing of the identified issues until after Defendant has filed an appropriate Motion for Summary Judgment that can be used to outline the particulars of patterns and practices at issue.

Date: June 24, 2011

Respectfully submitted,

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