

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

JAMES MADISON PROJECT
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

Defendant.

Civil Action No. 08- _____

* * * * *

COMPLAINT

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., as amended, for the disclosure of agency records improperly withheld from plaintiff James Madison Project by defendant Central Intelligence Agency.

JURISDICTION

1. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendant pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff James Madison Project (“JMP”) is a non-profit organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale. Stories concerning its activities have received prominent mention in many publications including, but not limited to, the *Washington Post*, *Washington Times*,

St. Petersburg Tribune, San Diego Union Tribune, European Stars & Stripes, Christian Science Monitor, U.S. News and World Report, Mother Jones and Salon Magazine.

4. Defendant Central Intelligence Agency (“CIA”) is an agency within the meaning of 5 U.S.C. § 552 (e), and is in possession and/or control of the records requested by JMP which are the subject of this action.

BACKGROUND

5. Information Management Services (“IMS”) is the initial reception point for all CIA FOIA requests. IMS analysts determine which CIA components might reasonably be expected to possess records responsive to a particular request and then transmit a copy of the request to each relevant component.

6. Which departments, sections, offices, or divisions of CIA are considered “components” by IMS is not readily apparent. Indeed, some components seem to be merely records repositories. Components mentioned by name in CIA declarations include: a) Office of General Counsel; b) Office of Public Affairs; c) CIA Director’s Action Center; d) Office of the Inspector General; e) Publication Review Board; and f) Historical Regulations Repository.

7. Because the CIA's records systems are decentralized and compartmented, each component must then devise its own search strategy, which includes identifying which of its records systems to search as well as what search tools, indices, and terms to employ.

8. Upon information and belief, the CIA limits its searches for records responsive to a FOIA request to records locatable using these indices (comprised of keywords). If a record is not indexed properly, or a particular component has an incomplete index, IMS will conclude the search without locating the record, no matter how specifically the document was identified by the requester.

9. On July 22, 2005, the CIA published its Privacy Act Systems of Records Notice (“SORN”) in the *Federal Register*. This SORN allows Privacy Act requesters to specify which components are likely to hold the records they seek. Upon information and belief,

the CIA has never published a document comparable to this SORN that would allow FOIA requesters to specify which components are likely to hold the records they seek (or, in fact, any document that would shed any light on how documents subject to FOIA are even stored in the CIA “component” structure).

10. On April 17, 2008, the CIA published a proposed amendment to 32 C.F.R. § 1900 in the *Federal Register* with the stated intention to “more clearly reflect the CIA’s organizational structure [and] record system configuration.” In contrast, the broad outlines of the CIA’s organization available to the public are not specific enough to be useful to most FOIA requesters. None of the proposed changes significantly addressed this problem, or that mentioned above regarding the record system configuration.

11. According to 32 C.F.R. § 1900.12, “requesters are encouraged to be as specific as possible in describing the records they are seeking.” Upon information and belief, lack of compliance with this rule is one of the primary reasons cited by CIA when rejecting a FOIA request for lack of specificity. Upon further information and belief, a FOIA requester’s success hinges upon his ability to specify both: a) the keywords by which the desired records may be found; and b) the probable location of the desired records (both in terms of the CIA organizational structure and within the IMS “component” structure).

12. On May 18, 2008, JMP submitted a comment on the CIA’s April 17, 2008, proposed amendment to the CIA.

13. The CIA has not published a final rule on this issue in the *Federal Register*.

COUNT ONE

14. JMP repeats and realleges the allegations contained in paragraphs 5 through 13 above, inclusive.

15. By letter dated September 3, 2008, JMP submitted to the CIA a FOIA request which sought copies of all internal CIA documents pertaining to: a) the indexing and organizational structure of all CIA Systems of Records subject to FOIA; b) all or part of the CIA’s current organizational structure (excluding the National Clandestine Service),

especially organizational charts, outlines, or other graphical representations; c) which CIA components are tasked with FOIA requests by IMS, especially with respect to which CIA offices are considered “components” by IMS for tasking purposes; d) the search tools and indices employed by each CIA component when processing FOIA requests; e) discussions of the first and second recommendations made by JMP on May 18, 2008; and f) any other records pertaining to the subject material of the first and second JMP recommendations of May 18, 2008. The request sought a waiver of all fees, noting that JMP is a non-profit organization with the ability to disseminate information on a wide scale, the information would contribute to the public’s understanding of government operations or activities and is in the public interest, and that JMP had been granted a fee waiver on most prior requests.

16. By letter dated September 25, 2008, the CIA acknowledged receipt of JMP’s request and assigned it Request No. F-2008-01806. The CIA also granted JMP’s request for a waiver of fees.

17. By telephone on October 22, 2008, JMP’s Director of FOIA Operations, Kel McClanahan, contacted CIA’s FOIA Requester Service Center for a status update on the request. The CIA stated that the request was still being processed and indicated that it could not provide a concrete date upon which the process would be completed.

18. As twenty working days have elapsed without a substantive determination by the CIA, JMP has constructively exhausted all required administrative remedies.

19. JMP has a legal right under the FOIA to obtain the information it seeks, and there is no legal basis for the denial by the CIA of said right.

WHEREFORE, plaintiff James Madison Project prays that this Court:

(1) Order the Central Intelligence Agency to disclose the requested records in their entirety and make copies promptly available to it;

(2) Award reasonable costs and attorney’s fees as provided in 5 U.S.C. § 552 (a)(4)(E) and/or 28 U.S.C. § 2412 (d);

(3) Expedite this action in every way pursuant to 28 U.S.C. § 1657 (a); and

(4) Grant such other relief as the Court may deem just and proper.

Date: December 22, 2008

Respectfully submitted,

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