

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

ELECTRONIC FRONTIER FOUNDATION)
)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF DEFENSE, et. al.)
)
)
Defendants.)

No. 07-CV00216 (EGS)

LCvR 16.3 REPORT

Pursuant to LCvR 16.3 and the Court’s March 14, 2007 order, counsel for Plaintiff and Defendants conferred via telephone. Below is a report of the results of that conference and the matters specified in Rule 16.3(c):

Statement of the Case:

On November 2, 2006, Plaintiff sought disclosure of Department of Defense (“DoD”) and Department of the Army (“DA” or “Army”) records under the Freedom of Information Act, 5 USC § 552 (“FOIA”), pertaining to an Army unit that monitors for national security purposes the internet publishing activities of Army personnel. Plaintiff also requested expedited processing of these FOIA requests. Plaintiff believes it is entitled to expedited processing and Defendant denies that Plaintiff is so entitled. Plaintiff filed suit on January 31, 2007, seeking release of aforementioned agency records and review of Defendants’ decision to deny Plaintiff expedited processing.

The Army responded to Plaintiff's FOIA request on April 13, 2007, by releasing to Plaintiff approximately 700 responsive pages of records. Plaintiff received the released documents on April 16, 2007, and is reviewing them. The DoD has identified approximately forty responsive pages of records, which were referred to DoD component agencies for processing. The DoD expects to respond to Plaintiff's FOIA request by approximately April 30, 2007.

Responses to Local Rule 16.3 (c) Matters

- (1) There are no pending dispositive motions. Defendants believe that the DA has properly responded to Plaintiff's FOIA request. Defendant believes that DoD will respond by April 30, 2007. Pending DoD's document release, Defendant believes that discovery is unnecessary and this case can be resolved via Motion for Summary Judgment.
- (2) Neither party currently expects additional parties or amended pleadings. The parties agreed that, should it become necessary, additional parties will be joined by May 1, 2007. The parties further agreed to confer following DoD's document release for the purpose of narrowing some or all of the factual and legal issues.
- (3) The parties agreed that this matter should not be referred to a Magistrate Judge for any purpose.
- (4) The parties agreed that there may be a realistic possibility of settlement, but not prior to DoD's FOIA release. Following DoD's release, the parties will confer to assess the likelihood of settlement.
- (5) The parties do not believe that ADR procedures are appropriate at this time.
- (6) If the parties do not reach a settlement, Plaintiff and Defendants believe this case can be

resolved by summary judgment. Should such briefing be necessary, the parties have agreed that Defendants will file a dispositive motion by June 1, 2007; that Plaintiff will file its opposition and a cross motion, if any, by July 2, 2007; that Defendants' reply and opposition, if any, shall be filed by August 1, 2007; and that Plaintiff's reply, if any, shall be filed by August 31, 2007.

- (7) This case is exempt from Rule 26(a)(1) initial disclosures.
- (8) The parties agree that discovery is not warranted in this case.
- (9) Neither party expects to call any expert witnesses.
- (10) This is not a class action, so Rule 23 will not apply.
- (11) Neither party sees the need to bifurcate any portion of this matter.
- (12) Because the parties anticipate that this case will be resolved through summary judgment, Plaintiff and Defendants do not expect that a pretrial conference or trial will be necessary in this case.
- (13) The parties see no other matters that require inclusion in the scheduling order.

Respectfully submitted,

_____/s_____
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_____/s_____
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