

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
NATIONAL SECURITY ARCHIVES,)	
)	
Plaintiff,)	
)	
v.)	
)	Civ. No. 19-cv-0529
)	
DEFENSE INTELLIGENCE AGENCY)	
)	
Defendant.)	
_____)	

DEFENDANT’S MOTION FOR A STAY IN LIGHT OF THE COVID-19 PANDEMIC’S EFFECT ON FEDERAL GOVERNMENT OPERATIONS

Defendant hereby moves for an order staying proceedings in this case due to the major adverse impact of COVID-19 on Freedom of Information Act (“FOIA”) processing functions of the U.S. Department of State (“State”). Pursuant to Local Rule 7(m), Defendant has sought Plaintiff’s position on this request and Plaintiff has indicated there is no objection to this request.

In support of this motion, Defendant submits the attached declaration of Michael Brobeck, Director of the Office of Facilities and Services at the Defense Intelligence Agency.

Consistent with guidance across the federal government, including from the Department of Defense and the Office of Personnel Management, the Director of DIA has directed all personnel who are not essential to DIA's core missions to remain at home..

Declaration of Michael Brobeck (“Brobeck Decl.”) ¶ 3. In accordance with this guidance DIA - FOJA officer have been directed to stay at home, rather than report to their work locations.

Likewise many officers from other components of the Agency with whom DIA's FOIA office works to identify and review potentially responsive records have been also sent home pursuant to this health guidance. *Id.*

The Agency has been encouraging officers to telework when possible. However, FOIA collection or processing cannot be done remotely by telework-as the systems responsible for searching for responsive material are classified systems, and all classified systems and materials must be maintained within a Secure Compartmented Information. *Id.* at ¶ 4.

Under these circumstances, DIA has had to defer FOIA production, including production relating to matters in litigation since approximately March 17, 2020. The Agency will resume processing activities as soon as practicable after normal government operations are restored. *Id.* ¶ 6.

WHEREFORE, in light of these unique and unprecedented circumstances, Defendant requests that this case be stayed and all current deadlines be adjourned until further notice. Defendant proposes to file a status report by May 5, 2020, and continuing every thirty (30) days thereafter, advising the Court whether the affected personnel have been cleared to resume work and, if so, proposing a revised schedule for productions to resume in this case. A proposed order accompanies this motion.

Dated: March 30, 2020

Respectfully Submitted,

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United States Attorney

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/s

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SPARACINO PLLC,

Plaintiff,

v.

DEFENSE INTELLIGENCE AGENCY (DIA),

Defendant.

Civil Action No. 20-cv-00497-KBJ¹

OMNIBUS DECLARATION OF MICHAEL BROBECK

I, Michael Brobeck, do hereby declare as follows:

1. I am a member of the Defense Intelligence Senior Executive Service, and presently serve as the Director of the Office of Facilities and Services at the Defense Intelligence Agency. I assumed this role in January 2020.

2. As Director of the Office of Facilities and Services, one of the branches that I am responsible for is the Records Management and Information Services Branch, which includes the Freedom of Information Act (FOIA) Services Section for DIA. The FOIA office receives, processes, and responds to requests for DIA records under the FOIA and the Privacy Act.

3. Consistent with guidance across the federal government, including from the Department of Defense and the Office of Personnel Management, the Director of DIA has directed all personnel who are not essential to DIA's core missions to remain at home. This

¹ This omnibus declaration is also applicable to New York Times, v. DoD & ODNI, Civil Action No. 19-cv-09821 (SDNY); Leopold, et al. v. DIA, Civil Action No. 19-cv-02798 (DDC); James Madison Project, et al v. CIA, et al., Civil Action No. 19-cv-00609 (DDC); National Security Archives v. DIA, Civil Action No. 19-00529 (DDC); University of Washington Center for Human Rights v. DoD, et al., Civil Action No. 17-1854 (WDWA); Shapiro v. CIA et al., Civil Action No. 14-cv-00019 (DDC) and Institute for Policy Studies v. CIA, Civil Action No. 06-cv-00960 (DDC).

directive protects the workforce by maximizing social distancing and protects the safety of personnel who are at high risk from COVID-19 under criteria provided by the Center for Disease Control. In accordance with this guidance, DIA's FOIA officers have been directed to stay at home, rather than report to their work locations. Likewise, many officers from other components of the Agency with whom our FOIA office works to identify and review potentially responsive records have also been sent home pursuant to this health guidance.

4. The Agency has been encouraging officers at home to telework when possible. However, FOIA collection or processing cannot be done remotely by telework as the systems searched for responsive material are classified systems, and all classified systems and materials must be maintained within a Secure Compartmented Information Facility.

5. Under these circumstances, DIA has had to defer all FOIA production, including production relating to matters in litigation, since approximately March 17. The Agency will resume processing activities as soon as practicable after normal government operations are restored.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

March 25, 2020



Michael Brobeck
Director
Office of Facilities and Service
Defense Intelligence Agency

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Defendant.)	
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[PROPOSED] ORDER

Upon consideration of Defendant’s Motions to Stay Proceedings, and for the reasons stated in support of the motions, it is this ____ day of _____, 2020,

ORDERED that the motions should be and are hereby GRANTED; and it is

FURTHER ORDERED that these proceedings shall be stayed until further order of this Court; and it is

FURTHER ORDERED that Defendant shall file a status report by May 5 2020, and continuing every thirty (30) days thereafter, advising the Court about the operation status of the agency’s FOIA Section and, if operations have resumed, proposing a revised schedule for further proceedings.

UNITED STATES DISTRICT JUDGE