

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

APPROVED FOR RELEASE   
DATE: 18-Aug-2010

JAMES MADISON PROJECT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 08-0708 (JR)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
_____	)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY  
TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION  
TO DISMISS FIRST AMENDED COMPLAINT<sup>1</sup>**

**I. Plaintiff Has Filed A Supplemental Pleading Under Fed. R. Civ. P. 15(d)**

Plaintiff filed its initial complaint on April 22, 2008. The complaint concerned an October 2007, Freedom of Information Act (“FOIA”) request made by Plaintiff to Defendant. *See* Complaint ¶ 15. After briefing had closed, Plaintiff filed its First Amended Complaint adding two additional defendants and three additional FOIA requests. These requests had been made after the request on which its initial complaint was based, and, in fact, while this case was pending. *See* First Amended Complaint (“A. Compl.”) ¶ 22 (August 11, 2008 FOIA request to CIA<sup>2</sup>), ¶ 29 (May 26, 2008 FOIA and Fee Waiver requests to the DOJ Criminal Division), ¶ 38

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<sup>1</sup> Plaintiff has alternatively filed a “Notice of Intent To Seek Leave Of The Court To File An Amended Complaint” to which no response is required. Defendant will file its opposition to such motion after it is filed and within the time proscribed by the Rules of this Court.

<sup>2</sup> Notably, Plaintiff sought a fee waiver and amended its request to expand the time frame of the request on August 27, 2008, a date after it had filed its opposition in this case. *See* A. Compl. ¶¶ 22, 24; Docket No. 9.

(May 26, 2008 FOIA and Fee Waiver requests to the FBI).<sup>3</sup>

Plaintiff argues that its First Amended Complaint which adds these additional parties and new claims is not a supplemental pleading under Fed. R. Civ. P. 15(d). *See* Plaintiff's Opposition ("Plf. Opp.") at 3-5. Plaintiff's argument is without merit.

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Amended and supplemental pleadings differ in two respects. The former relate to matters that occurred prior to the filing of the original pleading and entirely replace the earlier pleading; the latter deal with events subsequent to the pleading to be altered and merely represent additions to or continuations of the earlier pleadings. *See Hall v. CIA*, 437 F.3d 94, 100 (D.C. Cir. 2006); *United States v. Hicks*, 283 F.3d 380, 385 (D.C. Cir. 2002). Additionally, leave of Court must be requested to file a supplemental pleading, whereas, a party may amend its complaint once as a matter of course. *Compare* Fed. R. Civ. P. 15(d) and 15(a). In this case, it is clear that Plaintiff's new claims, which accrued while this case was pending, deal with events subsequent to its initial complaint and, therefore, constitute supplemental pleadings under Fed. R. Civ. P. 15(d).

**II. Plaintiff's Supplemental Pleading Will Not Promote  
Judicial Economy Or The Speedy Disposition of the Case**

Plaintiff's argument that granting it leave to file its supplemental pleading will somehow promote judicial economy is equally without merit. The briefing in this matter closed on August 26, 2008, and the parties were merely awaiting the Court's decision concerning one FOIA request to the CIA. However, with the addition of new parties, who have to be served, and three new FOIA claims, the briefing on the old issue will become moot, additional pleadings and briefing from several defendants will be required, and the resolution of this case will be delayed

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<sup>3</sup> After the FBI's no records response, Plaintiff appealed to the Office of Information and Privacy on September 11, 2008. *See* A. Compl. ¶¶ 39-40.

well into the New Year. Moreover, it is questionable whether Plaintiff would indeed have filed a new suit with respect to its new FOIA requests in light of the fact that it received a no records response from one of the new parties and did not wait any substantial time beyond the 20-day constructive exhaustion period to obtain a response on the other two FOIA requests. Plaintiff's arguments are self-serving and its supplemental pleading will not promote any economy, except its own.

**Conclusion**

For the foregoing reasons, Plaintiff's First Amended Complaint should be dismissed.

Respectfully submitted,

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