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CIA Rapped for Vietnam Soldier Record Delays

By WILLIAM DOTING

(CN) - A federal judge has rejected a bid from the CIA to end a nine-year battle over secret records about soldiers in the Vietnam War who were labeled prisoners of war or missing in action.

Roger Hall, Studies Solutions Results Inc. and Accuracy in Media filed suit in 2004 after not getting a response from the government about their request for documents relating to the POWs and MIAs a year earlier.

Chief U.S. District Judge Royce Lamberth ordered the CIA in 2009 to divulge all nonexempt records, to search its database for 1,700 names, and to explain its reasons for nondisclosure.

But the CIA said it would look for just 31 of the files because it felt that searching for 1,700 names without additional identifying information would be unduly burdensome.

Chief U.S. District Judge Royce Lamberth found the argument unpersuasive on Friday.

"The only support the CIA can conjure for its burdensome argument is that 'CIA personnel would have to pull the relevant boxes, unseal the boxes, locate the correct file folders identified by the electronic index, then manually review all of the documents in each folder merely to determine whether each archived document would be responsive to plaintiffs' request,'" he wrote. "Or to put it another way, someone would have to grab a box, open it, grasp the identified file folder, and look at it. Despite the CIA's detailed tutorial on how to get a file out of a box, again it fails to provide the court with an estimate of how many man-hours are necessary to fulfill the search. The court will not find a search unduly burdensome simply because of the level of description shown and the number of steps used to describe looking into a box."

Lamberth also rejected the CIA's claims that it couldn't force other federal agencies to turn over coordinating files.

"For the CIA to then tell this court that '[i]f these agencies have failed to provide a timely response to plaintiff, it is up to plaintiffs to take whatever action they deem appropriate directly with those agencies,' may explain why this case has limped along for so many years," Lamberth wrote.

"It has been over 10 months since the CIA sent the referral letter, and the CIA has offered no evidence that it has followed up with the 'unnamed agencies' in regard to the referral documents," he added. "Because the CIA is responsible for responsive records, even when those records originated with other agencies, this court holds that the CIA must take immediate affirmative steps to be sure that each referral is being processed."

The CIA does not, however, have to perform new searches using different keywords because its original search satisfied the requirements of the Freedom of Information Act for many of the thousands of documents Hall and the other plaintiffs requested.

"Because this court finds that the original CIA search terms were 'reasonably calculated to uncover all relevant documents,' a further search with these new terms is not required under FOIA," the judge wrote.

Lamberth also found that the CIA met its burden of proof for withholding many documents as classified or for reasons of national security.

He rejected Hall's request for an in camera review of some documents, saying the plaintiffs "have provided no evidence of bad faith on the part of the CIA."