

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

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

MOTION TO DISMISS FIRST AMENDED COMPLAINT

Defendant, the Central Intelligence Agency, by and through undersigned counsel, hereby moves to dismiss Plaintiff's First Amended Complaint pursuant to Fed. R. Civ. P. 1, 15(d) and 21. In support of this motion, the Court is respectfully referred to the accompanying Memorandum of Points and Authorities in Support. A proposed Order is attached.

Respectfully submitted,

/s/  
JEFFREY A. TAYLOR, D.C. BAR # 498610  
United States Attorney

/s/  
RUDOLPH CONTRERAS, D.C. BAR # 434122  
Assistant United States Attorney

/s/  
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APPROVED FOR RELEASE   
DATE: 18-Aug-2010

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**MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF CENTRAL INTELLIGENCE AGENCY'S  
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

**I. INTRODUCTION**

On April 22, 2008, Plaintiff filed its complaint against Defendant Central Intelligence Agency ("CIA"), pursuant to the Freedom of Information Act ("FOIA"). Defendant moved for summary judgment on July 14, 2008, and Plaintiff filed its opposition on August 11, 2008. Briefing concluded on August 26, 2008, upon the filing of Defendant's Reply.

Now, more than two and one-half months later, after fully briefing the FOIA claim set forth in Plaintiff's original complaint, Plaintiff has filed an amended complaint, without leave of Court, seeking to add claims, based on recently made FOIA requests, and to add additional parties to this suit. For the reasons discussed below, Plaintiff's first amended complaint should be dismissed.

**ARGUMENT**

**II. PLAINTIFF FAILED TO SEEK LEAVE OF COURT  
TO SUPPLEMENT ITS PLEADING UNDER FED. R. CIV. P. 15(d)**

Fed. R. Civ. P. 15(d) authorizes the Court, “upon reasonable notice and upon such terms as are just” to permit a party to serve a supplemental pleading setting forth events which have happened since the date of the original complaint. Such supplements require leave of Court and the Court has broad discretion in determining whether to allow supplemental pleadings in the interests of judicial economy and convenience. *United States v. Hicks*, 283 F.3d 380, 385 (D.C. Cir. 2002); *Wright v. Herman*, 230 F.R.D. 1, 4 (D.D.C. 2005); *Miller v. Air Line Pilots Ass’n Int’l*, 2000 WL 362042, at \* 1 (D.D.C. Mar. 30, 2000); *accord Banks v. York*, 448 F.Supp.2d 213, 214 (D.D.C. 2006).

In *Hall v. CIA*, 437 F.3d 94 (D.C. Cir. 2006), the Court of Appeals affirmed the denial of leave to supplement a complaint to include a supplemental FOIA claim.<sup>1</sup> There the court noted:

Delay and prejudice are precisely the matters to be addressed in considering whether to grant motions for supplemental pleadings; such motions are to be ‘freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties, and will not prejudice the rights of any of the other parties to the action.’

*Hall v. CIA*, 437 F.3d at 100-101.

In this case, Plaintiff has added a new claim based on a FOIA request to the CIA made on

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<sup>1</sup> The Court stated that “the addition of the new FOIA request [by the plaintiff] is plainly a supplemental pleading as defined by Federal Rule of Civil Procedure 15(d), as it ‘sets forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.’” *Id.* (citing *United States v. Hicks*, 283 F.3d at 385)).

August 11, 2008.<sup>2</sup> Furthermore, Plaintiff now seeks to add new claims based on FOIA requests to the U.S. Department of Justice and the Federal Bureau of Investigation, two new parties to this action.

The addition of these new claims and new parties in this suit will unreasonably delay the resolution of this case and should, therefore, not be allowed by the Court. Moreover, this amendment will prejudice Defendant CIA's ability to reach a just and speedy resolution of the pending claims. *See* Fed. R. Civ. P. 1 (indicating that the rules of the Court should be "construed and administered to secure the just, speedy, and inexpensive determination of every action."). Therefore, Plaintiff's amended complaint should be dismissed.

### **III. PLAINTIFF FAILED TO SEEK LEAVE OF COURT TO ADD ADDITIONAL PARTIES**

The Federal Rules of Civil Procedure provide, in relevant part, that:

Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.

Fed. R. Civ. P. 21. Although Fed. R. Civ. P. 15(a) permits a plaintiff to amend a complaint without leave of Court prior to any responsive pleading being filed, Plaintiff has run afoul of Fed. R. Civ. P. 21, by filing its amended complaint and adding additional parties, without first seeking leave of Court. *See Age of Majority Educational Corp. v. Preller*, 512 F.2d 1241 (4<sup>th</sup> Cir. 1975) (plaintiff was required to seek leave of court before filing an amended complaint that dropped one plaintiff, added two new plaintiffs and added eight defendants); *Commodity Futures Trading Commission v. American Metal Exchange Corp.*, 693 F.Supp. 168, 189 (D. N.J. 1988) (even

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<sup>2</sup> On August 27, 2008, Plaintiff amended its new request. In addition, Plaintiff sought a fee waiver, which the CIA granted on August 28, 2008.

though plaintiff complied with Fed. R. Civ. P. 15 in amending to add new causes of action, a proposed amended complaint that adds parties not named in the original complaint can be amended only with leave of court); *Madery v. International Sound Technicians*, 79 F.R.D. 154 (D. C. Cal. 1978) (notwithstanding written consent of defendants, plaintiff was required to secure leave of court to add parties not named in the original complaint); *International Brotherhood of Teamsters v. AFL-CIO*, 32 F.R.D. 441, 442 (E.D. Mich. 1963) (an amendment to complaint to add or drop a party requires an order of court and limits Rule 15(a)). Accordingly, Plaintiff's first amended complaint should be dismissed.

**Conclusion**

For the foregoing reasons, Defendant's motion to dismiss Plaintiff's First Amended Complaint should be granted.

Respectfully submitted,

/s/  
\_\_\_\_\_  
JEFFREY A. TAYLOR, D.C. BAR # 498610  
United States Attorney

/s/  
\_\_\_\_\_  
RUDOLPH CONTRERAS, D.C. BAR # 434122  
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_____	)	

**ORDER**

UPON CONSIDERATION OF Defendant Central Intelligence Agency's motion to dismiss Plaintiff's first amended complaint, any opposition thereto, and the entire record, it is hereby,

ORDERED, that Defendant's motion to dismiss Plaintiff's First Amended Complaint is granted; and it is

FURTHER ORDERED, that Plaintiff's First Amended Complaint is dismissed.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE