

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Steven Aftergood, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 02-1146 (RMU)  
 )  
 Central Intelligence Agency, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR RECONSIDERATION**

This is a FOIA case brought by plaintiff Steven Aftergood, pro se. In it, plaintiff seeks classified intelligence information: the Intelligence Community budget for Fiscal Year 2002. Plaintiff’s request for that classified information was denied by defendant; that denial was proper under settled law.

Despite the settled nature of the applicable law, this case was briefed extensively. The parties’ cross-motions for summary judgment were fully briefed. [Dkt. ## 19; 20; 22/23; 24; 28/29; 30; 31.] Plaintiff’s papers were both extensive and repetitive. Those papers focused principally upon plaintiff’s request that the Court substitute plaintiff’s judgment about harm to the national security for the judgment of the Director of Central Intelligence (the “DCI.”). By his reply brief [Dkt. # 31], plaintiff had the last word in the briefing.

After plaintiff had the last word, the Court rejected plaintiff’s attempt to substitute his judgment for that of the DCI. The Court issued a thoughtful, focused, seven-page memorandum opinion. [Dkt. # 33.] In that opinion, the Court correctly upheld defendant’s denial of plaintiff’s FOIA request. In accordance with that opinion, the Court granted defendant’s motion for

summary judgment, denied plaintiff's cross-motion for summary judgment, and entered judgment for defendant. [Dkt. # 34.]

Thereafter, plaintiff filed a motion for reconsideration. [Dkt. # 35.] Plaintiff's motion merely reasserts arguments that plaintiff repeatedly urged upon the Court in his summary judgment papers. In so doing, plaintiff's motion violates the Court's Standing Order.

The Court's Standing Order provides, in relevant part, that "[s]o-called 'Motions for Reconsideration' of a prior court ruling are strongly discouraged. Such motions shall be filed only when the requirements of Federal Rule of Civil Procedure 59(e) and/or 60(b) are met . . . . Moreover, the court will not entertain: (a) motions that simply reassert arguments previously raised and rejected by the court; and (b) arguments that should have been previously raised, but are being raised for the first time in the 'Motion for Reconsideration.'" [Dkt. #9 at ¶ 18.]

As demonstrated briefly below, none of the four contentions urged in plaintiff's motion constitutes a valid basis for seeking reconsideration.

**Contention 1: "The DCI improperly modified evidence."** Plaintiff first argues that "the DCI improperly modified evidence." [Dkt. # 35 at 2-3.] This precise argument was made throughout plaintiff's summary judgment papers. [E.g., Dkt. ## 22/23 at 6 (accusing the DCI of "tendentious presentation of evidence"); Dkt. # 24 at 4-5 (accusing the DCI of "misleading truncation of evidence").] It was refuted in our summary judgment reply and opposition to plaintiff's cross-motion. [Dkt. ## 28/29 at 12-13.]

**Contention 2: "Failure to declassify historical budget data demonstrates bad faith."** Plaintiff next argues that defendant's "failure to declassify historical budget data" demonstrates "bad faith." This precise argument was made throughout plaintiff's summary judgment papers. [E.g., Dkt. ## 22/23 at 5-6 ("continued classification of the 1947-1948 budget totals

demonstrates bad faith”); # 24 at 5 (“failure to declassify antiquated budget data”). It was refuted in our summary judgment reply and opposition to plaintiff’s cross-motion. [Dkt. ## 28/29 at 13-14.]

**Contention 3: “Prior official disclosures constitute contrary record evidence.”**

Plaintiff then argues that defendant’s prior disclosures of intelligence budget totals and a supplemental budget request constitute “contrary record evidence.” Dkt. # 35 at 4. The argument concerning the disclosures of budget totals was made throughout plaintiff’s summary judgment papers. [E.g., Dkt. ## 22/23 at 9-10 (“publication of previous intelligence budget totals”).] It was refuted in our papers. [E.g., Dkt. ## 28/29 at 8-10.]

Plaintiff’s newly-asserted contention concerning the supplemental budget request comes too late as plaintiff failed to include that in his papers, which in fact addressed that supplement, but did so in terms different from those plaintiff now advances. [Dkt. # 22 (Aftergood Decl.) at ¶¶ 25-28 (discussing disclosure of FY2003 intelligence budget supplement).]

**Contention 4: “The 2002 budget figure is different from the 1999 budget figure.”**

Plaintiff next asserts that “the 2002 [budget] figure is legally distinct from the 1999 figure.” [Dkt. # 35 at 4-5.] This assertion is intended to distinguish this case from the 1999 case in which the Court refused this plaintiff’s FOIA demand for the FY1999 Intelligence Community budget. Id. A copy of the 1999 case was attached to our opening brief. [Dkt. # 20.]

Once again, plaintiff is simply reasserting matters previously raised and already decided. Each of the bases upon which plaintiff tries to distinguish the 1999 case was repeatedly offered by plaintiff during the summary judgment briefing, and was refuted by us. For example, plaintiff argues that the 2002 figure would not have been a “third consecutive year’ of disclosure of the intelligence budget total.” [Dkt. # 35 at 4.] Plaintiff made precisely this argument previously:

“the denied 1999 figure would have been the third consecutive disclosure of the annual budget total. In contrast, the FY 2002 figure stands alone; neither the three preceding years’ totals nor the following years’ totals have been released.” [E.g., Dkt. ## 23/24 at 10; accord, e.g., Dkt. # 31 at 1 (“it is undisputed that defendant has previously declassified the aggregate intelligence budget in two consecutive years, whereas only one isolated year is at issue in this case.”).] This argument was refuted by us in our papers. [Dkt. ## 28/29 at 7-9.]

In short, plaintiff’s motion offers nothing but arguments that plaintiff previously urged upon the Court, and that the Court properly rejected. Plaintiff’s motion thus presents no valid basis for reconsideration.<sup>1</sup>

### CONCLUSION

For the foregoing reasons, plaintiff’s motion for reconsideration should be denied.

Dated: March 2, 2004.

Respectfully submitted,

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<sup>1</sup> Neither of the Rules cited by plaintiff [Dkt. # 35 at 1] are applicable here. Rule 52(b) pertains to findings of fact and conclusions of law in matters tried to the Court. No such findings were made and Rule 52 is inapplicable to summary judgment motions. Fed. R. Civ. P. 52(a) (“Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or Rule 56. . .”). Rule 60(b) lists six specific bases for relief from a judgment. Fed. R. Civ. P. 60(b). Plaintiff made no effort to identify any specific basis in Rule 60 for his motion, and none of those bases is applicable here.

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