

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORGANIZATION FOR)	
COMPETITIVE MARKETS,)	
)	
Plaintiff,)	
)	Civil Action No. 14-1902 (EGS)
v.)	
)	
OFFICE OF INSPECTOR)	
GENERAL, USDA,)	
)	
Defendant.)	
_____)	

**PLAINTIFF’S RESPONSE TO DEFENDANT OIG’S MOTION
TO MODIFY THE BRIEFING SCHEDULE**

This case has previously required the Court’s supervision to assure that it proceeds without unreasonable delays. In light of Defendant Office of Inspector General’s (“OIG”) latest motion to modify the current briefing schedule, Plaintiff again believes there is a need for the Court’s intervention.

At OIG’s request, Plaintiff agreed to an extended briefing schedule that would provide a full ten weeks for OIG to prepare its opening summary judgment motion—more than double the four weeks Plaintiff has to respond to both OIG’s and Intervenor’s opening briefs (a timeframe reflective of Plaintiff’s desire to move this unusually lengthy case, concerning a FOIA request filed with the agency over four years ago, to conclusion). On May 15, 2017, this Court issued a Minute Order granting the proposed briefing schedule. OIG now asks that another four weeks be

added to its briefing time. But in support, OIG has submitted only a short motion (without a supporting declaration) that doesn't demonstrate good cause or the diligence that would be necessary to enlarge OIG's briefing by nearly half again. *See* this Court's Standing Scheduling Order, and *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145, 152 (D.C. Cir. 1996) (noting importance of reducing litigation delays and advisory group recommendation that parties should be bound by dates in a scheduling order and that extensions should not be granted except by a showing of good cause).

OIG states that it learned of Ms. Sayre's intent to retire on June 22, yet despite being in the midst of a court-ordered briefing period did not notify Ms. Campbell—their litigation counsel—until July 5, or internally transfer the case files for several weeks.¹ Defendant OIG's Motion to Modify the Briefing Schedule, p. 2, ECF 58. The motion contains no explanation for why it took so long to notify Ms. Campbell or to transfer the case files to another OIG attorney. The motion is silent on whether OIG has done any work at all on its brief in the seven weeks since the briefing order or anything else to demonstrate diligence in working to comply with the court-ordered briefing schedule. In response to an inquiry from undersigned counsel, the only mention of such work is that OIG's FOIA officer is "part way" through a declaration.

¹ Plaintiff notes that OIG's litigation counsel, AUSA Campbell, acted promptly on July 5 to notify the parties, once she was finally made aware of Ms. Sayre's departure.

OIG does not explain why no other staff can take over as agency counsel to provide Ms. Campbell the information necessary to prepare its summary judgment motion. The claim is particularly confounding in light of the fact that OIG has had multiple attorneys involved throughout the case, and even attending the various status hearings.² Nor does OIG explain why, despite already having litigation counsel of record, the case needs to be delayed to bring in a new attorney entirely (from outside OIG) to “timely file OIG’s opening brief.” ECF 58 at 2.

Finally, Plaintiff addresses OIG’s oft-repeated claim of limited resources. No doubt agency resources deserve consideration, but not a blank check for extended delays upon the mere invocation. Such requests for enlargements of time must at a minimum demonstrate diligence in attempting to minimize the need for it. No demonstration of such diligence has been offered here. Ms. Sayre’s sudden retirement may require adjustments, but Plaintiff believes such adjustments would most fairly include some extra effort by the agency to mitigate the fallout from Ms. Sayre’s retirement. But OIG has not made any effort to cut down its briefing time— at least none that is apparent from its motion.³ The length of the requested

² In response to an inquiry from undersigned counsel, OIG stated that Mr. Feeney does not have detailed familiarity with this matter, but attended the hearings “because the Court asked that a FOIA program manager be present for OIG at hearings.” However, in a previously submitted proposed order, OIG noted that what was actually called for at the hearings was “a management official ... with responsibility for FOIA matters.”

³ Nonetheless, in the interest of Rule 7’s good faith requirement to avoid contested

extension would give OIG seven weeks to produce its opening brief. In contrast, Plaintiff's briefing period for its cross motion and opposition to *both* OIG and Intervenor's motions is just four weeks.

This case is nearing completion of its third year. Plaintiff has attempted throughout to advance the case in a reasonable manner, including accommodating OIG's request for a year-long production schedule, several "reprocessings," a failure of agency counsel to mention the existence of 9,000 previously undisclosed records during an August 2016 status hearing, and so on. This Court's intervention has been necessary to assure the case proceeds efficiently. Plaintiff's belief is that a three and a half month briefing schedule is unnecessarily long absent a showing of agency need and diligence. Plaintiff believes on the motion filed the request for delay should be denied, or in the alternative shortened to a period the Court believes reasonable.

Dated: July 13, 2017

Respectfully submitted,

/s/ Matthew E. Penzer

MATTHEW PENZER

Bar No. CO0016

The Humane Society of the U.S.

1255 23rd St, NW, Suite 450

Washington, DC 20037

(240) 271-6144

mpenzer@humanesociety.org

Counsel for Plaintiff

motions, Plaintiff suggested the possibility of a two-week extension to August 11 (and an equivalent adjustment to the other submission dates in the schedule). OIG rejected the offer. (Note that OIG's extended briefing period and request for added time is also being applied equally to Intervenor's briefing period.)