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8
9 UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

10 KENNETH ALLEN,
11 Plaintiff,

12 v.

13 DEPARTMENT OF HOMELAND
14 SECURITY and U.S. DEPARTMENT OF
STATE, *et al.*,
15 Defendants.

09-CV-00373-TUC-FRZ

**DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION
TO COMPEL**

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17 Plaintiff appears to believe that the Court's February 2010 order requiring the parties
18 to file a status report (and the parties' subsequent discussions regarding that report) somehow
19 entitles him to compel Defendants to provide documents in response to his Freedom of
20 Information Act ("FOIA") requests "by a date certain." Pl.'s Mot. to Compel [Dkt. #37] at 3.
21 His motion is both misguided and unnecessary. Pursuant to the Court's order, the parties
22 have conferred and agreed to a summary judgment briefing schedule. *See* Feb. 8, 2010 Order
23 [Dkt. #29]; Status Rpt. [Dkt. #33]. Inherent to this agreement was the parties' contemplation
24 that prior to Defendants' summary judgment deadline, Defendants would complete
25 processing of, and release any non-exempt records responsive to, Plaintiff's FOIA requests.
26 Status Rpt. As noted in the report, Defendants estimated that searches for records would be
27 completed by June 30. *Id.* at 3. Given this agreed-upon schedule, there is neither reason nor
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1 any basis for an additional order from the Court compelling any expedited release.

2 In seeking expedited processing, Plaintiff misconstrues both the nature of the Court's
3 February order and, by counsel's recollection, the nature of the parties' discussions. As to
4 the former, the order merely required the filing of a status report, and the parties complied
5 with this requirement on March 12, 2010. As to the latter, in the course of discussing the
6 status report, Defendants' counsel may have suggested the possibility that processing of
7 some documents could be completed by mid-spring, but such a suggestion would have been,
8 at best, an estimate. *See* Pl.'s Mot. at 1. In any event, Plaintiff's notion that such an
9 estimate, if given, would have constituted any kind of binding commitment is belied by the
10 status report signed by the parties. As expressly stated in the report, Defendants
11 "anticipate[d] that the searches will be complete on or before June 30, 2010." Status Rpt. at
12 3 (emphasis added). Although Defendants may require additional time to process Plaintiff's
13 requests beyond this estimated date for completion of the searches, Defendants fully expect
14 that processing will be completed prior to August 5 (the filing deadline).¹ Accordingly, the
15 expedited release Plaintiff seeks is not only unwarranted, but shortly also will be moot.

16 Finally, Defendants observe that Plaintiff's motion is brought as a discovery motion
17 under LRCiv 37.1. Pl.'s Mot. at 1. Such motions may not be considered or decided absent a
18 statement "certifying that after personal consultation and sincere efforts to do so, counsel
19 have been unable to satisfactorily resolve the matter." LRCiv 7.2(j). Plaintiff did not consult
20 with Defendants' counsel prior to filing his motion. Plaintiff states that he "has conferred
21 with the opposing counsel," Pl.'s Mot. at 3, but the only relevant consultations that have
22 taken place here were undertaken in conjunction with the filing of the parties' March status
23 report. As to this motion, there was no consultation. *See* LRCiv. 7.2(j), (k).

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26 ¹ Defendants' only binding obligation with respect to processing is the agreed-upon
27 summary judgment schedule, which contemplates that processing will be completed prior to
28 August 5, 2010.

CONCLUSION

For the foregoing reasons, Plaintiff's motion to compel should be denied.

Dated: June 7, 2010

Respectfully submitted,

TONY WEST
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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2010, I caused a copy of the foregoing document to be sent via first-class mail, postage pre-paid, to:

Kenneth L. Allen
10055 E. Gray Hawk Dr.
Tucson, AZ 85730

June 7, 2010

s/ Brigham J. Bowen