UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ORGANIZED COMMUNITIES AGAINST DEPORTATIONS, IMMIGRANT DEFENSE PROJECT, and CENTER FOR CONSTITUTIONAL RIGHTS,	)	
Plaintiffs,	)	No. 21 C 2519
v.	)	Judge Blakey
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,	)	
Defendant.	)	

DEFENDANT'S CONSOLIDATED RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Nothing in plaintiffs' response (Dkt. 76) to U.S. Immigration and Customs Enforcement's motion for summary judgment presents a reason to deny ICE's motion (Dkt. 67). Nor does plaintiffs' filing—which also serves as a memorandum in support of plaintiffs' cross-motion for summary judgment (Dkt. 75)—present a basis for granting summary judgment to plaintiffs. ICE has conducted an adequate search for records responsive to plaintiffs' FOIA request and has not improperly withheld any material. The court should grant ICE's motion, deny plaintiffs' motion, and enter summary judgment in ICE's favor.

I. Local Rule 56.1 Violations

Plaintiffs' memorandum repeatedly violates Local Rule 56.1 so egregiously that the court should enter summary judgment for ICE on that basis alone. Local Rule 56.1 statements are the vehicle for presenting the court with the facts that a party believes are undisputed. LR 56.1(d). The rule provides "the only acceptable means of disputing the other party's facts and of presenting

additional facts." *Midwest Imports v. Coval*, 71 F.3d 1311, 1317 (7th Cir. 1995). Plaintiffs have elected to use a different means of disputing and presenting facts, which is a violation of the rule.

A. Improper Direct Citations to Underlying Record

Throughout their memorandum, plaintiffs repeatedly violate LR 56.1 by citing the record directly instead of citing either party's Local Rule 56.1 statement of facts. The rule requires summary judgment memoranda to cite "specific paragraphs" of either the movant's or the non-movant's LR 56.1 statement when "addressing facts." LR 56.1(g). But plaintiffs *never* cite even a single paragraph of their LR 56.1 statement or ICE's LR 56.1 statement. *See* Pl. Mem. at 1-3 of 16 (directly citing plaintiffs' exhibits as well as links to news articles), 6-7 of 16 (directly citing paragraphs from defendant's exhibit A and plaintiff's exhibit 1), 8-9 of 16 (directly citing plaintiff's exhibits 1, 5, and 13), 10-15 of 16 (directly citing defendant's exhibit A and plaintiffs' exhibits 1 and 7-12). A nonmoving party who sneaks "facts" into their response by directly citing the record rather than a LR 56.1 statement improperly prevents the moving party from responding to them according to the LR 56.1 procedure, which makes a mockery of the district court's local rules. *Malec v. Sanford*, 191 F.R.D. 581, 586 (N.D. Ill. 2000) (citations should be to a party's LR 56.1 statement, not "directly to pieces of the record"); *Madaffari v. Metrocall Companies Group Policy GL*, 2005 WL 1458071, *1 (N.D. Ill. June 15, 2005) ("parties are required to cite to the numbered paragraphs of their Local Rule 56.1 statements and not to the underlying parts of the record").

The court should grant summary judgment to ICE on the basis of plaintiffs' violations of LR 56.1. Plaintiffs have barely attempted to comply with LR 56.1's simple requirement, and the usual consequence of failure to comply with LR 56.1 is summary judgment for the movant. *Malec*, 191 F.R.D. at 584 ("This rule may be the most important litigation rule outside statutes of limitation because the consequences of failing to satisfy its requirements are so dire."). The

Seventh Circuit has "repeatedly held that a district court is entitled to expect strict compliance with Rule 56.1." *Ammons v. Aramark Unif. Servs.*, 368 F.3d 809, 817 (7th Cir. 2004); *Bordelon v. Chicago School Reform Bd. of Trustees*, 233 F.3d 524, 527 (7th Cir. 2000) ("Given their importance, we have consistently and repeatedly upheld a district court's discretion to require strict compliance with its local rules governing summary judgment."). Rather than overlooking plaintiffs' non-compliance, the court should grant summary judgment to ICE so that litigants understand that they must comply with the court's rules.

B. Failures to Admit or Dispute Facts

Plaintiffs also violate LR 56.1 by neither admitting nor denying over 80 percent of ICE's LR 56.1 statements. LR 56.1 requires a party opposing summary judgment to file a response to each numbered paragraph in the moving party's statement of facts, including specific citations to the record in the case of disagreement. LR 56.1(b)(3). Instead of complying with the rule, plaintiffs repeatedly respond to ICE's statements by claiming to lack sufficient knowledge on which to admit or deny the statements because the statements discuss ICE's "internal operations." Pl. Resp. to DSOF ¶¶ 4-11, 13-30, 38, 44 (and the second and third sentences of DSOF ¶ 37).

Plaintiffs may be confusing the rules governing a party's response to a *complaint* with the rules governing a party's response to a *summary judgment motion*. When answering a complaint, a defendant may assert a lack of "knowledge or information sufficient to form a belief about the truth of an allegation." *See* Fed. R. Civ. P. 8(b)(5) (offering that language as one way to respond to an allegation in a complaint). But when a party submits a Local Rule 56.1(a)(2) statement of material facts in support of summary judgment, the responding party cannot simply assert a lack of knowledge in its LR 56.1(b)(2) response to those facts. The rule could not be clearer: "Each response must admit the asserted fact, dispute the asserted fact, or admit in part and dispute in part the asserted fact." LR 56.1(e). The consequence of failing to do so is that the statement is deemed

admitted. *See* LR 56.1(e)(2) ("[T]he failure to admit or dispute an asserted fact may constitute a waiver."), (3) ("Asserted facts may be deemed admitted if not controverted with specific citations to evidentiary material."); *Cracco v. Vitran Exp., Inc.*, 559 F.3d 625, 632 (7th Cir. 2009) ("When a responding party's statement fails to dispute the facts set forth in the moving-party's statement in the manner dictated by the rule, those facts are deemed admitted for purposes of the motion.").

Here, in response to DSOF ¶¶ 4-11, 13-30, 38, and 44 (and the second and third sentences of ¶ 37), plaintiffs should have simply admitted the statements, because there is no basis on which to dispute them. As it stands, plaintiffs' failure to admit or dispute the statements constitutes waiver or forfeiture, and the court should accordingly deem DSOF ¶¶ 4-11, 13-30, 38, and 44 (and the second and third sentences of ¶ 37) to be admitted. LR 56.1(e)(2); *Cracco*, 559 F.3d at 632. And plaintiffs have openly admitted DSOF ¶¶ 1-3, 12, 31, 33-35, which leaves only a handful of ICE's statements that could possibly be deemed to still be in dispute, namely DSOF ¶¶ 32, 36, the first sentence of 37, 39-43, and 45-47. *All* of those remaining statements involve ICE's withholdings, which demonstrates that no material questions of fact stand in the way of granting summary judgment for ICE on the adequacy of its search. (As will be explained below, despite plaintiffs' purported disputes regarding ICE's withholdings, ICE is entitled to summary judgment on that issue, as well.)

II. Summary Judgment on the Merits

Even if the court were to overlook plaintiffs' serial LR 56.1 violations and attempt to piece together on its own the evidence plaintiffs think supports their position, summary judgment for ICE would still be warranted. As explained in ICE's opening memorandum, ICE conducted an adequate search for responsive records, it did not improperly withhold any information, and it segregated all information not exempt from disclosure. Def. Mem. at 2-11.

A. ICE's Adequate Search for Records

ICE has explained that it conducted adequate searches for responsive records by making a good-faith effort to conduct searches reasonably calculated to uncover all relevant documents. Def. Mem. at 2-5. None of plaintiffs' arguments presents a reason to find otherwise.

1. Search Locations

Plaintiffs say that ICE has not explained why a search of "a single ERO analyst's emails" is sufficient. Pl. Mem. at 6 of 16. But plaintiffs are simply wrong about what ICE searched. An analyst at ICE searched the ERO Chicago field office's shared drive and emails, not simply the emails of one particular analyst. Defendant's Statement of Additional Facts (DSAF) ¶ 55.

Plaintiffs say that ICE should have searched its Chief Financial Officer for budget-related records and that ICE has not justified searching only the Office of Public Affairs for budget-related records. Pl. Mem. at 7 of 16. But ICE's Office of the Chief Financial Officer was not involved in the citizens academy program. DSAF ¶ 56. The citizens academy program was an initiative under the purview of ICE's Office of Public Affairs and ICE's Office of Public Engagement. DSAF ¶ 56. The Office of the Chief Financial Officer is not reasonably likely to have records responsive to plaintiffs' FOIA request. DSAF ¶¶ 56-58.

Plaintiffs criticize ICE for not producing applications for a Chicago citizens academy that ended up being postponed. Pl. Mem. at 8. They say they "know" that the records exist because the Chicago ERO field office and the field office's director solicited applications. Pl. Mem. at 8. But plaintiffs have not presented any evidence that ICE ever *actually* solicited any applications for the Chicago academy. All they have offered is an email thread discussing a *plan* to solicit applications and a letter signed by the field office director that is not addressed to anyone and that may never have been sent. Pl. Mem. at 8. Compounding the problem, in presenting this argument plaintiffs cite exhibits directly rather than a LR 56.1 statement, which makes responding

challenging. In any event, the most that can be said in plaintiffs' favor is that ICE produced an email chain that documents an attempt at drafting a solicitation for applications, and the attempt culminated with ICE's acting deputy press secretary offering to "reassess the plan, if necessary." DSAF ¶¶ 48-53. The email chain does *not* show that any applications were ever sent. *Id.* And the same goes for the letter from the Chicago field office director: that the letter was drafted and even signed does not indicate that it was actually sent to anyone—particularly when the letter does not even list a recipient. DSAF ¶ 54. So even if their LR 56.1 violation were to be overlooked, plaintiffs still would not have presented a basis on which to conclude that ICE possessed responsive records but did not produce them. And even if it were indisputable that ICE possessed a responsive record that it did not produce, the relevant question is whether ICE's method of searching was adequate, *not* whether it found everything that there was to find. *Ancient Coin Collectors Guild v. State*, 614 F.3d 504, 514 (D.C. Cir. 2011) (search's adequacy is gauged "not by the fruits of the search, but by the appropriateness of the methods used to carry out the search"); *Weisberg v. DOJ*, 745 F.2d 1476, 1485 (D.C. Cir. 1984) (issue "is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate").

Plaintiffs also refer to "media reports" that supposedly "documented inquiries" that journalists and others made to ICE about the Chicago citizens academy. Pl. Mem. at 8 of 16. Once again, plaintiffs fail to cite a LR 56.1 statement as evidence of the supposed inquiries. Instead, they provide a footnote that refers the reader to a previous footnote that reads, "Plaintiffs are not aware of any announcement discontinuing the program and the ICE website still contains information about the program." Pl. Mem. at 8 n.9 (citing Pl. Mem. at 3 n.5). So even tracing back the citation-within-a-citation does not lead to evidence that ICE ever received any applications for the Chicago citizens academy.

Plaintiffs say that ICE should have searched the records of the Chicago field office director. Pl. Mem. at 8 of 16. But again, the analyst responsible for the search of ERO's Chicago field office searched the office's shared drive and emails. DSAF ¶ 55. Plaintiffs say that, because the Chicago academy was postponed "only" two weeks before it was set to begin, they expected ICE to produce a "full array" of applications, training materials, and schedules. Pl. Mem. at 8-9 of 16. In support of the assertion that the Chicago academy was postponed two weeks before it was set to begin, plaintiffs cite an exhibit directly instead of a LR 56.1 statement, in violation of LR 56.1. *Id*. But even if the court were to consider the cited exhibit, the exhibit does not constitute *admissible* evidence that the program was canceled two weeks before it was supposed to begin, because the exhibit simply cites a *Chicago Sun-Times* article saying as much, and newspaper articles are inadmissible hearsay when offered for the proof of their contents. *Chicago Firefighters Local 2 v. City of Chicago*, 249 F.3d 649, 654 (7th Cir. 2001). A party may not rely on inadmissible evidence to survive summary judgment. *MMG Fin. Corp. v. Midwest Amusements Park, LLC*, 630 F.3d 651, 656 (7th Cir. 2011).

Finally, plaintiffs say that the existence of applications and training materials from other cities' academies suggests that such records should exist for the Chicago academy. Pl. Mem. at 9 of 16. But again, the adequacy of a search is gauged "not by the fruits of the search, but by the appropriateness of the methods used to carry out the search." *Ancient Coin Collectors Guild*, 614 F.3d at 514; *see also Weisberg*, 745 F.2d at 1485 (issue "is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate"). That ICE's search ended up uncovering applications and training materials from other cities but not from Chicago has no bearing on whether ICE's search was adequate in the first place.

2. Search Terms

Plaintiffs say that ICE used varying and arbitrary search terms and did not use "clearly relevant" search terms. Pl. Mem. at 9 of 16. First, plaintiffs fault ICE for not searching for the words "Chicago," "New York," or "Puerto Rico." Pl. Mem. at 10 of 16. But that approach would have been ridiculous on its face: searching for records containing the word "Chicago" would return every single email containing that word, as opposed to records regarding Chicago's *citizens academy*, which is what plaintiffs' FOIA request asked for. To that end, all four of ICE's component offices searched for the word "Academy," which is exactly what they should have done to find citizens-academy-related records. DSOF ¶¶ 20, 22-23, 25-26, 28-29.

Plaintiffs criticize ICE for using "search terms highly unlikely to yield responsive documents." Pl. Mem. at 10 of 16. To be sure, *some* of the search terms the component offices used may not have been calibrated with precision; plaintiffs rightly point out that "national budget for all ICE citizen academy programs" is not an ideal search term for identifying records relating to the budget for the citizens academy program. *Id*. But plaintiffs miss the mark when they argue that ICE's search was therefore was not reasonably calculated to uncover responsive records, because they overlook the fact that all four components used the word "Academy," *by itself*, to search for records. DSOF ¶¶ 20, 22-23, 25-26, 28-29. So any record relating to a *budget* for the citizens academy program would necessarily be captured as long as it contained the word "Academy." It would hardly have made sense for ICE to search its databases for records containing the word "budget," when the topic about which plaintiffs wished to receive records was merely the budget for a particular program. And searching for records containing the word "Academy" *and* the word "budget" would have been redundant, because any records containing both terms would already have been found by the search term "Academy" by itself, which all four of the components used. DSOF ¶¶ 20, 22-23, 25-26, 28-29.

Plaintiffs also criticize ICE for using a "haphazard and inconsistent" approach: the component offices that ran searches did not employ the exact same list of search terms, and some used more than others. Pl. Mem. at 10 of 16. But again, all four components searched for records containing the term "Academy." DSOF ¶¶ 20, 22-23, 25-26, 28-29. That some components elected to search for records containing additional terms such as "DHS Academy" indicates a redundancy, not a glaring omission on the part of the components that did not. Indeed, the list of search terms contains a number of such redundancies, reflecting an apparent "belt-and-suspenders" approach that can hardly be faulted. DSOF ¶¶ 20, 22-23, 25-26, 28-29.

Plaintiffs offer other criticisms of ICE's search, but none has merit. They say that ICE's HSI office did not search for emails, Pl. Mem. at 10 of 16, but in fact the HSI office did search for emails. DSOF ¶ 29. They say that the OPE and OPE offices searched emails of "certain unidentified employees," Pl. Mem. at 11 of 16, but in fact both offices searched *the office's* sent and received emails, not merely the sent and received emails of certain employees. DSOF ¶¶ 23, 26. They criticize ICE for not explaining what kinds of records are located on a "shared drive," Pl. Mem. at 11 of 16, as if it were not apparent on its face that a shared drive is where employees of an office store their electronic records. *E.g.*, *Stevens v. BBG, et al.*, 2023 WL 2428839 (N.D. Ill. Mar. 9, 2023) (granting summary judgment where USAID component offices searched shared drives using key search terms). They criticize ICE's ERO office for searching the emails of only one employee. Pl. Mem. at 11 of 16. Once again, they are simply incorrect about the search's scope. DSAF ¶ 55.

Plaintiffs express confusion about whether every record containing the word "Citizen" was considered potentially responsive or if "Boolean connectors were used to limit results." Pl. Mem. at 11 of 16. But ICE has explained that its component offices used each of the search terms listed.

DSOF ¶¶ 20, 22-23, 25-26, 28-29. Plaintiffs have not offered any basis for even speculating that ICE might have used additional terms to winnow the results.

Finally, plaintiffs say that it is unclear whether ICE's searches were "case sensitive." Pl. Mem. at 11 of 16. But the searches were *not* case-sensitive: a search term with a capitalized first letter would return the same result as a search term where the first letter was in lower case. DSAF ¶ 59.

B. ICE's Proper Withholdings

1. Exemptions 5 and 7(C)

ICE explained in support of its motion for summary judgment that it withheld certain information under FOIA Exemptions 5 and 7(C). DSOF ¶¶ 34-37. In response, plaintiffs assert that they are not challenging those withholdings "at this time." Pl. Resp. to DSOF ¶¶ 34-37. Of course, the time for a FOIA plaintiff to assert a challenge to any withholdings is in response to the agency's motion for summary judgment. Here, plaintiffs have offered nothing to suggest that ICE's withholdings under Exemptions 5 and 7(C) were improper, so the court should grant summary judgment to ICE with respect to the material ICE withheld under Exemptions 5 and 7(C).

2. Exemption 6

Plaintiffs say that ICE has improperly redacted under Exemption 6 the names of participants in citizens academies along with their employers and job titles. Pl. Mem. at 11-12 of 16. Plaintiffs say that disclosing the identities of people who "voluntarily applied to participate" does not "implicate privacy concerns." *Id*. They cite nothing for this proposition, and indeed there is no basis for it. ICE has already explained that third-party individuals have a privacy interest in not being publicly associated with law enforcement organizations through the release of records compiled for law enforcement purposes, due to the stigmatizing connotation that could come from being mentioned in law enforcement files, and that that privacy interest outweighs the minimal

public interest (if any) in the information's disclosure. DSOF ¶ 39. Plaintiffs have offered no basis for rebutting this proposition. *See* Pl. Resp. to DSOF ¶ 39 (purporting to dispute the statement but offering no basis for the dispute).

Plaintiffs say that ICE has not adequately explained why the applicants' employers and job titles should be withheld, because that information "does not contain personally identifying information." Pl. Mem. at 12 of 16. But ICE has already explained that the withheld information is *personally identifiable*. DSOF ¶ 36. Plaintiffs have offered no basis for concluding that the disclosure of the applicants' employers and job titles would *not* allow the applicants to be personally identified. *See* Pl. Resp. to DSOF ¶ 36 (purporting to dispute the statement but offering no basis for the dispute). The truth is that many of the citizens academy participants had notable and unique job titles with prominent employers, and that information combined with the geographic area and calendar year would likely lead to the discovery of particular individuals' identities. DSAF ¶ 60.

In support of their argument that the job titles of applicants should not be protected, plaintiffs cite a single instance of one job title *not* being redacted on one particular application that ICE produced. Pl. Mem. at 13 of 16. They cite the document in question directly rather than either side's LR 56.1 statement, which is improper, and the court should disregard the argument on that basis alone. But even if the argument were to be considered, a single instance of information not being withheld does not support an inference that other, different information should be disclosed generally. *Anderson v. United States*, 1999 WL 282784, *4 (W.D. Tenn. Mar. 24, 1999) ("courts generally find no waiver . . . even though there has been a limited, discretionary disclosure"); *James Madison Project v. NSA*, 2023 U.S. Dist. LEXIS 111105, *17 (D. Md. June 26, 2023) (agency's having released documents "does not amount to a waiver" when the withheld documents are "sufficiently different").

Plaintiffs concede that ICE's withholding of the participants' actual names "may be a closer question." Pl. Mem. at 13 of 16. They insist, though, that the public interest outweighs the participants' privacy interest, on the ground that the public has an interest in knowing who ICE selects for the program, and they say that ICE itself has previously disclosed the names and photographs of previous participants. Pl. Mem. at 13 of 16. In support of this assertion, plaintiffs once again cite exhibits directly, in violation of LR 56.1, so the court can simply disregard this argument. But even if the argument were to be considered, the fact that ICE previously disclosed *some* individuals' names has no bearing on whether *different* individuals have a privacy interest in not having their names disclosed. *Neuman v. United States*, 70 F.Supp.3d 416, 426 (D.D.C. 2014) ("Plaintiff must point to specific information in the public domain that appears to *duplicate* that being withheld.") (quotation omitted, emphasis added); *Pub. Citizen v. State*, 11 F.3d 198, 201 (D.C. Cir. 1993) (FOIA plaintiffs cannot simply show that similar information has been released, but must establish that a *specific fact* already has been placed in the public domain.") (emphasis added).

3. Exemption 7(E)

Plaintiffs say that the information ICE withheld under Exemption 7(E) is not sensitive law enforcement information and should therefore be disclosed. Pl. Mem. at 13 of 16. They cite *AIC v. DHS*, 950 F.Supp.2d 221, 247 (D.D.C. 2013), for the proposition that ICE needed to present four "prongs" of information to support its withholdings under Exemption 7(E). Pl. Mem. at 14 of 16. But in fact, the *AIC* court merely noted that two other courts had ruled in the agency's favor when the agency had submitted that type of information. 950 F.Supp.2d at 247. The case does not stand for a proposition that the only way an agency can support a withholding under Exemption 7(E) is by providing all four types of information described in *AIC*.

Plaintiffs say that the law enforcement techniques in question are known to the public by the very nature of their having been disclosed to "civilian participants" in the citizens academy program, which they say can operate as a waiver of Exemption 7(E)'s protection. Pl. Mem. at 14-15 of 16. But ICE can voluntarily disclose certain law enforcement techniques to *people who were approved to participate in an ICE program after undergoing a background check* while remaining concerned that disclosing the techniques to *the general public* "could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E); DSAF ¶ 61. ICE has explained that public disclosure of the methods it uses to conduct removal operations could cause interference with those operations and allow bad actors to evade removal. DSOF ¶ 43. Plaintiffs have offered nothing to rebut that explanation. *See* Pl. Resp. to DSOF ¶ 43 (contending that the information at issue is not "law enforcement sensitive" but offering no basis for the dispute); *see also Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011) ("Exemption 7(E) sets a relatively low bar for the agency to justify withholding," requiring agency only to "demonstrate logically how the release of the requested information *might* create a risk of circumvention of the law.") (emphasis added, quotation omitted).

III. Exempt Information Reasonably Segregated

ICE explained in its opening memorandum that it fulfilled its obligation to release all reasonably segregable, non-exempt information to plaintiffs. Def. Mem. at 10-11. Plaintiffs have not argued otherwise, but the court must still make an express finding on the issue of segregability. *Patterson v. IRS*, 56 F.3d 832, 840 (7th Cir. 1995) (remanding when court made no segregability finding). The court should accordingly find that ICE has shown that it did not withhold any non-exempt information that was reasonably segregable.

Conclusion

For the above reasons, and for the reasons in ICE's opening memorandum (Dkt. 68), the court should enter summary judgment in ICE's favor.

Respectfully submitted,

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