

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION,  
ELECTRONIC PRIVACY INFORMATION  
CENTER, AMERICAN BOOKSELLERS  
FOUNDATION FOR FREE EXPRESSION, and  
FREEDOM TO READ FOUNDATION,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.

Civil Action  
No. 03-CV-2522 (ESH)

**PLAINTIFFS' MOTION TO STAY PROCEEDINGS  
RELATED TO DEFENDANT'S *OPEN AMERICA* MOTION**

Plaintiffs hereby move this Court to stay proceedings related to the government's *Open America* motion.

**Points and Authorities**

This litigation concerns a request filed by plaintiffs under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for records concerning the government's implementation and use of Section 215 of the USA PATRIOT Act ("Patriot Act"), Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001). Plaintiffs' FOIA request seeks (i) an unredacted copy of a document (the "Section 215 List") that the government released in response to an earlier FOIA request; and (ii) any and all other records relating to Section 215. Plaintiffs sought expedited processing of their request under 28 C.F.R. § 16.5(d)(1)(ii) and (iv). The government denied plaintiffs' request for expedited processing.

The government has now moved for summary judgment with respect to plaintiffs' request for the Section 215 List, arguing that it is entitled under the FOIA to withhold the redacted portions of the document. The government has also moved for a stay of proceedings with respect to the remainder of plaintiffs' FOIA request, on the grounds that "exceptional circumstances exist and . . . the agency is exercising due diligence in responding to the request." 5 U.S.C. § 552(a)(6)(C)(i); *see also Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976).

Plaintiffs move this Court to stay proceedings related to defendant's *Open America* motion. In a separate motion filed today, plaintiffs have explained their entitlement to expedited processing under both 28 C.F.R. § 16.5(d)(1)(ii) and 28 C.F.R. § 16.5(d)(1)(iv). The government's *Open America* motion is not ripe and will become ripe only if this Court determines that plaintiffs are not entitled to expedited processing under either standard. *See Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all" (internal quotation marks omitted)).

Considerations of judicial economy, too, support plaintiffs' motion to stay proceedings related to defendant's *Open America* motion. There will be no need for this Court to reach the *Open America* issue if it agrees with plaintiffs that their FOIA request warrants expedited processing. Accordingly, proceedings related to the government's *Open America* motion should be stayed until the Court has determined whether plaintiffs are entitled to expedited processing.

Respectfully submitted,

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March 1, 2004