

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FLETA CHRISTINA COUSIN SABRA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 20-0681 (CKK)
)	
U.S. CUSTOMS AND BORDER)	
PROTECTION,)	
)	
Defendant.)	
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**DEFENDANT’S OPPOSITION TO
PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendant United States Customs and Border Protection (“CBP”) respectfully requests that the Court deny plaintiff Fleta Christina Cousin Sabra’s motion for judgment on the pleadings on Count I of her complaint (the “Motion”), ECF No. 7.¹ The purpose of the Motion is unclear here, where CBP has advised that it completed its search and has begun its rolling productions of non-exempt, responsive records.² More importantly, the Motion appears to be premised on Sabra’s misunderstanding of the Freedom of Information Act (“FOIA”).

FOIA does not require agencies to produce all responsive documents within the 20-day or 30-day statutory windows in 5 U.S.C. § 552(a)(6)(A)(i) or § 552(a)(6)(B)(i), respectively. Those

¹ Local Civil Rule 7(m) only applies to non-dispositive motions. A Rule 12(c) motion is a dispositive motion. Thus, the section in the Motion that addressed Sabra’s counsel’s attempts to confer regarding the Motion is superfluous. *See* ECF No. 7, Pl. Mot. at 2-3.

² In contrast, in *Gov’t Accountability Project v. U.S. Dep’t of Health & Human Servs.*, 568 F. Supp. 2d 55 (D.D.C. 2008), a case Sabra relies upon, ECF No. 7-1, Pl. Mem. at 2, the Court granted in part the plaintiff’s motion for judgment on the pleadings “insofar as it seeks a judgment that Defendants are required to process Plaintiff’s FOIA request and release documents on a rolling basis.” *Gov’t Accountability*, 568 F. Supp. 2d at 56.

statutory deadlines merely apply to an agency's "determination," and do not set a deadline for when an agency is required to *produce* documents. *See Elec. Privacy Info. Ctr. v. Dep't of Justice*, 15 F. Supp. 3d 32, 40-41 (D.D.C. 2014) (recognizing that the "determination" that is to be made within the statutory 20-day window "is distinct from the act of *producing* the requested records," and "the impact of blowing the 20-day deadline relates *only to the requester's ability to get into court*"). "[N]othing in the FOIA statute establishes that an agency's failure to comply with this 20-day deadline automatically results in the agency's having to produce the requested documents without continued processing." *Id.* at 40. Furthermore, the statutory determination deadline "is not always practicable." *Id.* at 42. The consequence of not meeting the statutory determination deadline is that "the FOIA requester is deemed to have exhausted his administrative remedies and can proceed immediately to federal court, after which the agency 'may continue to process the request,' but will do so under the court's supervision." *Id.*

As for Sabra's request for expedited processing, CBP in effect denied it. As a practical matter, it is unclear why Sabra focuses on her request for expedited processing. Once CBP provides its final response to Sabra's FOIA request, her request for expedited processing will be moot. *See Muttitt v. Dep't of State*, 926 F. Supp. 2d 284, 296 (D.D.C. 2013) ("Once an agency has made its final determination under § 552(a)(6)(A), the *timeliness* of that determination is no longer a live controversy fit for judicial review.>").

CONCLUSION

For the foregoing reasons, the Court should deny the Motion. In the alternative, CBP respectfully requests that the Court hold the Motion in abeyance until after CBP provides its final response.

Dated: June 18, 2020

Respectfully submitted,

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