

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00169-WJM-MJW

ROY ALBERT KAHN,

Plaintiff(s),

v.

UNITED STATES OF AMERICA,

Defendant(s).

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby ORDERED that the Pro Se Incarcerated Plaintiff's Motion to Compel Defendant to Resend FOIA documents by Certified Return Receipt and to Compel Warden Charles Daniels from Opening FOIA Legal Parcel Outside of Mr. Kahn's Presence [sic] (Docket No. 28) is DENIED AS MOOT. I find that Defendant has provided to the Pro Se Incarcerated Plaintiff a Vaughn Index as of August 16, 2012. See Exhibits A, B, and C attached to Response (Docket No. 39). Thus, Defendant has complied with Magistrate Judge Watanabe's Order entered on July 17, 2012 at the Status Conference, and therefore the subject motion (Docket No. 28) is moot. See minutes of Status Conference held on July 17, 2012 (Docket No. 30).

It is FURTHER ORDERED that Defendant's Partial Motion for Reconsideration (Docket No. 31) is GRANTED for the reasons stated below.

It is FURTHER ORDERED that the portion of Magistrate Judge Watanabe's Order of July 17, 2012 (Docket No. 30), requiring Defendant to file the 68 pages of redacted documents for, *in camera*, review is VACATED.

I find that the Pro Se Incarcerated Plaintiff recently received Defendant's Vaughn Index as of August 16, 2012. This index outlines with particularity the legal exemption(s) claimed by Defendant per document concerning the Pro Se Incarcerated FIOLA request. At this stage of the litigation there have been no dispositive motions filed nor has there been any amendments to the pleadings. Moreover, Pro Se Incarcerated Plaintiff has not yet exhausted administrative remedies on any such exemption claims because he has not filed an administrative appeal pursuant to 28 C.F.R. §§ 16.9 or 16.45. The Pro Se Incarcerated Plaintiff has been advised by Defendant [BOP] that he needs to file an administrative appeal. To date, the Pro Se Incarcerated Plaintiff has not done so. See exhibit A attached to Response (Docket No.

31). Accordingly, this court lacks jurisdiction over any claim that FOIA exemptions were improperly asserted. See Hull v. IRS, 656 F.3d 1174 at 1179-80 (10th Cir. 2001).

Date: September 4, 2012
