UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN AFTERGOOD,	:		
	:		
Plaintiff,	:	Civil Action No.:	02-1146 (RMU)
	:		
v.	:	Document No.:	35
	:		
CENTRAL INTELLIGENCE AGENCY,	:		
	:		
Defendant.	:		

MEMORANDUM ORDER

DENYING THE PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

I. INTRODUCTION

This matter comes before the court on the plaintiff's motion to alter or amend judgment.[1] This suit stemmed from the defendant's denial of the plaintiff's December 18, 2001 Freedom of Information Act ("FOIA") request, which sought disclosure of the aggregate intelligence budget for Fiscal Year 2002 ("FY 2002"). On February 6, 2004, the court granted the defendant's motion for summary judgment and denied the plaintiff's cross-motion for summary judgment, concluding that the requested information was exempt under 5 U.S.C. § 552(b)(3). On February 17, 2004, the plaintiff filed a motion styled a "Motion for Reconsideration" because he believes that he presented evidence of bad faith on the part of the defendants and contrary record evidence. The court disagrees.

[1] Because the plaintiff filed his "Motion for Reconsideration" within the 10-day period set for Rule 59(e) motions, the court treats the motion as a Rule 59(e) motion to alter or amend judgment, as opposed to a Rule 60(b) motion seeking relief from a judgment or order. *United States v. Emmons*, 107 F.3d 762, 764 (10th Cir. 1997) (applying filing-date-determinative rule); *Small v. Hunt*, 98 F.3d 789, 797 (4th Cir. 1996) (treating filing as Rule 59(e) motion when it was not filed later than 10 days after the court entered judgment).

II. ANALYSIS

Federal Rule of Civil Procedure 59(e) provides that a motion to alter or amend a judgment must be filed within 10 days of the entry of the judgment at issue. FED. R. CIV. P. 59(e); *see also Mashpee Wamponoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1098 (D.C. Cir. 2003) (stating that a Rule 59(e) motion "must be filed within 10 days of the challenged order, not including weekends, certain specified national holidays (including Christmas Day and New Year's Day), or any other day appointed as a holiday by the President"). While the court has considerable discretion in ruling on a Rule 59(e) motion, the reconsideration and amendment of a previous order is an unusual measure. *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (*per curiam*); *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). Rule 59(e) motions "need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear legal error or prevent manifest injustice." *Ciralsky v. Cent. Intelligence Agency*, 355 F.3d 661, 671 (D.C. Cir. 2004) (quoting *Firestone*, 76 F.3d at 1208). Moreover, "[a] Rule 59(e) motion to reconsider is not simply an opportunity to reargue facts and theories upon which a court has already ruled," *New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995), or a vehicle for presenting theories or arguments that could have been advanced earlier. *Kattan v. District of Columbia*, 995 F.2d 274, 276 (D.C. Cir. 1993); *W.C. & A.N. Miller Cos. v. United States*, 173 F.R.D. 1, 3 (D.D.C. 1997). In his motion, the plaintiff contends that there are three instances of bad faith or contrary record evidence that should persuade the court to alter or amend its previous judgment.

First, the plaintiff argues that the Director of Central Intelligence ("DCI") modified an attachment to his declaration supporting his argument that foreign governments could use the

2002 budget total to expose "how and where intelligence funds are transferred for various purposes." Pl.'s Mot. for Reconsideration ("Pl.'s Mot.") at 2. The plaintiff argues that the DCI improperly truncated the attachment to obscure the publication date of the document. *Id*. The date of the attachment's publication, however, was and is irrelevant to the court's conclusion. The DCI merely submitted the attachment as an example of the type of analysis that an individual could perform with public information. The plaintiff appears to argue that because the attachment was written prior to the DCI's disclosure of the 1997 and 1998 intelligence budget, the DCI acted in bad faith when he decided not to reveal the FY 2002 intelligence budget.

Specifically, the plaintiff asserts that, "Deleting the date of publication from the attachment was a 'deceitful act' for purposes of establishing bad faith, because it obscured the unresolved contradiction in the defendant's position, namely: The intelligence budget totals that were disclosed in 1997 and 1998 did not reveal 'how and where intelligence funds are transferred,' but defendant nevertheless claims that a two year old budget total, if disclosed today, would reveal that same intelligence method information." Pl.'s Mot. at 2 (emphasis in the original). The plaintiff, however, could not know that intelligence budget totals disclosed in 1997 and 1998, in fact, did not reveal how and where intelligence funds are transferred. It is possible that the DCI made a poor decision in deciding to disclose the intelligence budget totals in 1997 and 1998 and that those disclosures actually *did* reveal how and where intelligence funds are transferred. The plaintiff cannot know whether or not anyone was able to deduce from the 1997 and 1998 disclosures " how and where intelligence funds are transferred." Without an "unresolved contradiction" in the defendant's position, it is also clear that the DCI's attachment did not "obscure" the purported contradiction.

Second, the plaintiff asserts that the fact that the defendant has thus far refused to declassify historical intelligence data from 1947 through 1970 is evidence of bad faith. Pl.'s Mot. at 3. The plaintiff's position is that "[i]f the 1997 and 1998 declassifications did not compromise intelligence sources and methods, then it is obvious that budget figures from half a century ago could not do so." It appears that the plaintiff believes that because the DCI disclosed budget figures from 1997 and 1998, then the intelligence budgets of all previous years must be released as well. It is not clear to the court why this "obvious" proposition is true. The DCI specifically stated that he authorized the 1997 disclosure "after careful consideration of the facts and circumstances unique to that point in time[.]" DCI Decl. ¶ 16. The DCI also indicated that the decision to withhold or release aggregate budget information depends on consideration of the facts and circumstances unique to that point in time. *Id*. ¶¶ 16-19. Putting aside the fact that the plaintiff has no basis of knowing whether or not "the 1997 and 1998 declassifications did not compromise intelligence sources and methods," there is no logical support for the plaintiff's proposition that just because the DCI disclosed aggregate budget information in 1997 and 1998, disclosure of budget information from prior years could not compromise intelligence sources and methods.

The plaintiff next argues that because the DCI revealed the precise amount of the 2002 intelligence budget supplemental, the "fact" that the disclosure did not reveal how and where intelligence funds are transferred means that the publication of the 2002 supplemental figure constitutes contrary record evidence. This argument fails for the same reason as the plaintiff's argument regarding the DCI's attachment. The plaintiff has no way of knowing whether or not the publication of the 2002 supplemental figure exposed how and where intelligence figures are

transferred. Accordingly, it is not contrary record evidence.

Finally, the plaintiff argues that the FY 2002 aggregate intelligence budget should be released because it is "legally distinct" from the 1999 figure. Pl.'s Mot. at 4-5. Specifically, the plaintiff asserts that publication of the FY 2002 intelligence budget would not provide too much trend information. As noted in the court's memorandum opinion, "[t]he assessment of harm to intelligence sources, methods and operations is entrusted to the Director of Central Intelligence[.]" *Fitzgibbon v Cent. Intelligence Agency*, 911 F.2d 755, 766 (D.C. Cir.1990). The plaintiff is not the DCI. Accordingly, it is irrelevant that the plaintiff subjectively believes that disclosure of the FY 2002 intelligence budget would not tend to reveal the secret transfer and spending of intelligence funds.

In sum, the plaintiff provides no basis for the court to alter its previous conclusion that the defendant's affidavits were not controverted by contrary record evidence or evidence of agency bad faith. Thus, there is no basis for the court to alter or amend its judgment. *Ciralsky v. Cent. Intelligence Agency*, 355 F.3d at 671.

Accordingly, it is this 29th of September, 2004,

ORDERED that the plaintiff's motion to alter or amend judgment is **DENIED**.

SO ORDERED.

RICARDO M. URBINA
United States District Judge