

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAYMOND GAGNON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-1433 (KBJ)
)	
FEDERAL BUREAU)	
OF INVESTIGATION <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Defendants' Motion for Summary Judgment in this FOIA case is held in abeyance pending their supplementation of the record. (*See* Memorandum Opinion and Order, ECF No. 30.) Defendants move to file late the supplemental declaration with regard to the Executive Office for United States Attorneys' processing of Plaintiff's FOIA request. (Mot. for Leave to File Supplemental Decl. Out of Time, ECF No. 33.) Also pending are Plaintiff's motions to expand the record (ECF No. 31), for leave to pursue limited discovery and an order for production (ECF No. 34), and for leave to file documents under seal (ECF No. 35).

Defendants purportedly oppose the latter motions but have only addressed the motion for discovery. (*See* Mem. in Opp'n to Pl.'s Mots. For Limited Discovery and Protective Order and to File Under Seal, ECF No. 36.) Consequently, the Court will grant as unopposed Plaintiff's motion to seal the documents attached thereto and his motion to expand the record, which will be considered in conjunction with Plaintiff's opposition to the pending summary judgment motion. (*See* Mem. in Opp'n to Def.'s

Statement of Material Facts Not in Dispute, ECF No. 27.) In addition, the Court will grant Defendants' enlargement motion and set a deadline for Plaintiff to respond only to Defendants' supplemental filing.

As for Plaintiff's motion for discovery, " '[d]iscovery in FOIA is rare and should be denied where,' " as here, " 'an agency's declarations are reasonably detailed, submitted in good faith and the court is satisfied that no factual dispute remains,' " *Baker & Hostetler LLP v. US. Dep't of Commerce*, 473 F.3d 312, 318 (D.C. Cir. 2006) (quoting *Schrecker v. Dep't of Justice*, 217 F. Supp. 2d 29, 35 (D.D.C.2002)). In addition, discovery might be warranted upon a showing of "bad faith" on the agency's part but merely asserting bad faith does not suffice to overcome summary judgment. *Id.* Even when discovery is granted, it is generally limited to the question of whether "an agency has [] taken adequate steps to uncover responsive documents." *Schrecker*, 217 F. Supp. 2d at 35. Plaintiff's motion is difficult to follow, but he appears to seek discovery on the ultimate question of whether the agency has produced all non-exempt records responsive to the FOIA request. Given the pending summary judgment motion, Plaintiff's motion for discovery is at best premature.

Accordingly, it is

ORDERED that Defendants' motion to file the supplemental declaration out of time is **GRANTED**, and Plaintiff shall have until **January 12, 2015**, to respond to this supplemental filing; it is further

ORDERED that Plaintiff's motion to expand the record is **GRANTED**; it is further

ORDERED that Plaintiff's motion for leave to pursue discovery and an order for production is **DENIED**; it is further

ORDERED that Plaintiff's motion to file the attached documents under seal is **GRANTED**.

Ketanji Brown Jackson

Ketanji Brown Jackson
United States District Judge

DATE: December 3, 2014