United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5315

September Term, 2017

FILED ON: APRIL 9, 2018

HALL AND ASSOCIATES,
　　　　　　APPELLANT

v.

ENVIRONMENTAL PROTECTION AGENCY,
　　　　　　APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-cv-00823)

Before: KAVANAUGH and MILLETT, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and arguments of the parties. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the district court's decision be affirmed for the reasons set forth in the memorandum filed simultaneously herewith.

Pursuant to Rule 36 of this Court, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:　/s/
　　　Ken Meadows
　　　Deputy Clerk

M E M O R A N D U M

Appellant Hall & Associates appeals from a judgment of the district court in a Freedom of Information Act ("FOIA") action, 5 U.S.C. § 552, complaining that the Environmental Protection Agency ("EPA") did not properly respond to requests by appellant for information concerning EPA's response to alleged science misconduct in tightening nitrogen requirements for the Great Bay Estuary in New Hampshire. Hall submitted two sets of FOIA requests to EPA in October 2012. EPA provided five responsive documents to one of the requests but refused to process the other requests. Those requests recited allegations of science misconduct and requested that EPA "provide us with all records or factual analyses that show this statement is incorrect." EPA refused to process these requests because they did not reasonably identify the records sought and would require EPA to perform analysis and research and formulate opinions. After a failed administrative appeal, Hall sued.

On cross-motions for summary judgment, the district court held that EPA's response to the first request was adequate and granted EPA's motion to that extent. *Hall & Assocs. v. EPA*, 83 F. Supp. 3d 92, 98-100 (D.D.C. 2015). As to the requests that EPA had rejected, the district court held that EPA had improperly failed to consider a modification proposed by Hall in its administrative appeal. *Id.* at 104. The court ordered EPA to either process the requests as amended or, if they still did not reasonably describe the records sought, then to provide Hall with another chance to clarify or modify the requests. *Id.* EPA maintained that the requests even as amended were improper, and Hall maintained that it could modify its requests no further and

wanted to litigate EPA's refusal to process the requests. The district court then took an "unusual step," proposing modifications to Hall's requests. The parties accepted those modifications and the court ordered EPA to produce all responsive records. About forty documents were produced, and the parties stipulated that merits litigation was at an end, with only the question of attorney's fees left to be determined. Along with its motion for attorney's fees, Hall moved for reconsideration of the court's summary judgment determination. The district court denied both motions and dismissed the case. *Hall & Assocs. v. EPA*, 210 F. Supp. 3d 13, 18-21 (D.D.C. 2016).

Hall appealed, alleging error in the district court's summary judgment decision and denial of reconsideration as to the adequacy of EPA's response to FOIA requests, and its denial of Hall's motion for attorney's fees.

Hall does not identify any reversible error in the court's rulings on the motions for summary judgment or the motion for reconsideration. In its summary judgment decision, the district court properly held that EPA's response to the first set of requests was adequate based on a declaration by an EPA employee detailing the efforts undertaken to collect and identify responsive documents. *Hall*, 83 F. Supp. 3d at 99-100. Concerning the second set of requests, the district court properly held that the requests as initially drafted did not reasonably describe the documents sought by Hall and would have required EPA to undertake research, analysis, and formulation of opinions—actions not required by FOIA. *Id.* at 100-03; *see also Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980). As to the motion for reconsideration, the court properly held that Hall had presented "no new evidence, no

extraordinary circumstance, and no risk of manifest injustice to warrant reconsideration." *Hall*, 210 F. Supp. 3d at 18.

As to the attorney's fees issue, although Hall may be technically eligible for fees, "we can 'affirm the District Court on any valid ground.'" *Baird v. Gotbaum*, 792 F.3d 166, 171 (D.C. Cir. 2015) (quoting *Molerio v. FBI*, 749 F.2d 815, 820 (D.C. Cir. 1984)). Hall argues that it is *eligible* for fees because the firm "obtained relief through . . . a judicial order, or an enforceable written agreement or consent decree." 5 U.S.C. § 552(a)(4)(E)(ii) (defining "substantially prevailed"); *see Judicial Watch, Inc. v. FBI*, 522 F.3d 364, 367-70 (D.C. Cir. 2008). Assuming Hall is correct as to eligibility, under our precedents, Hall cannot be *entitled* to fees because "[i]f the Government's position [in refusing a FOIA request] is correct as a matter of law, that will be dispositive." *Davy v. CIA*, 550 F.3d 1155, 1162 (D.C. Cir. 2008). In this case, the government adequately responded to one request and correctly refused to process requests that failed to reasonably identify the documents sought. No litigation would have been necessary had Hall been willing to modify its requests, so Hall is not entitled to fees.

For the foregoing reasons, we affirm the district the district court's judgment in full.