

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARK BOGAN,

Plaintiff,

v.

THE FEDERAL BUREAU OF INVESTIGATION,

Defendant.  
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ORDER

04-C-532-C

This is an action brought under the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a in which plaintiff contends that the defendant Federal Bureau of Investigation has failed to comply with his requests for information in a timely manner. On March 17, 2005, plaintiff moved for summary judgment. In response to the motion, defendant filed a brief, affidavits and two sets of proposed findings of fact. The first set of proposed findings of fact (Dkt. #12) are facts defendant believes are necessary to a judgment in its favor. The other set (Dkt. #13) is a direct response to the facts plaintiff proposed in support of his motion for summary judgment. Now plaintiff has filed a letter dated April 26, 2005, in which he asks whether he may present “matters outside the pleadings” in reply to defendant’s response.

Although it is not entirely clear what plaintiff is asking, I direct plaintiff's attention to this court's procedures to be followed on motions for summary judgment, a copy of which was attached to the magistrate judge's preliminary pretrial conference order dated December 9, 2004. Procedure II.B. anticipates that there will be occasions when the party opposing a motion for summary judgment will not be able to reveal all of the facts necessary to his case simply by responding to the moving party's proposed findings of fact. In such circumstances, the non-moving party is permitted to file a separate document proposing the necessary additional facts. Procedure III.A.1. then provides that the moving party may file an answer "to each numbered factual statement made by the non-moving party, together with references to evidentiary materials." If evidentiary materials are cited in the moving party's reply that are not already part of the record, then the moving party may submit those additional evidentiary materials with his reply. Procedure III.A.3. In other words, plaintiff does not need leave of the court to submit "matters outside the pleadings" with his reply materials.

#### ORDER

IT IS ORDERED that plaintiff's motion for leave to present matters outside the pleadings in reply to defendant's response to his motion for summary judgment is DENIED

as unnecessary.

Entered this 4th day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge