

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

ELECTRONIC PRIVACY )  
INFORMATION CENTER, )  
Plaintiff-Appellant, )  
)  
v. )  
)  
NATIONAL SECURITY )  
AGENCY, )  
Defendant-Appellee. )

---

Case No. 13-5369

**JOINT MOTION  
TO DISMISS PLAINTIFF’S APPEAL AS MOOT,  
VACATE THE DISTRICT COURT DECISION IN PART,  
AND REMAND TO ADDRESS ANY CLAIM FOR FEES**

On June 5, 2014, the National Security Agency released to the Electronic Privacy Information Center (“EPIC”) an unclassified version of National Security Policy Directive 54 (“NSPD 54”). The parties agree that the issue raised in plaintiff’s appeal is moot now that the agency has released the record at issue. As explained below, consistent with established practice, the parties respectfully request vacatur of the portion of the district court decision from which plaintiff appealed. Finally, the parties ask this Court to remand the matter to the district court, where plaintiff intends to argue that it is entitled to an award of attorney’s fees.

1. In district court, plaintiff EPIC sought to compel disclosure of NSPD 54 and two related documents under the Freedom of Information Act. The district court ruled that NSPD 54 was not an “agency record” subject to the FOIA. Regarding the

two related documents, the court upheld the government's redactions under Exemptions 1 and 3. Plaintiff appealed the court's judgment with regard to NSPD 54, asking this Court to vacate and remand for further proceedings.

2. On June 5, 2014, defendant provided to plaintiff an unclassified version of NSPD 54. The parties agree that plaintiff's appeal, currently pending before this Court, is moot. *See, e.g., Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1528 (2013). They therefore move to dismiss the matter.

3. In dismissing the appeal as moot, this Court should vacate the portion of the district court decision addressing plaintiff's request for NSPD 54. *Hall v. CIA*, 437 F.3d 94, 99-100 (D.C. Cir. 2006) ("The normal principle is that 'when mootness results from unilateral action of the party who prevailed below,' the moot judgment should be vacated lest the losing party, denied an opportunity to appeal by its adversary's conduct, should later be subject to the judgment's preclusive effect.") (quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994)); *see also Utah American Energy, Inc. v. Dep't of Labor*, 685 F.3d 1118, 1121-22 (D.C. Cir. 2012) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)). The parties respectfully request that the Court do so.

4. Finally, the parties ask that the case be remanded to the district court. On remand, plaintiff intends to argue that it is entitled to an award of attorney's fees.

For these reasons, the parties respectfully request that the Court dismiss plaintiff's appeal as moot, vacate the judgment of the district court with regard to NSPD 54, and remand for the district court to adjudicate plaintiff's argument that it is eligible for and entitled to attorney's fees. Nothing in the language of this joint motion should be understood to reflect on whether or not plaintiff is eligible for or entitled to attorney's fees.

Respectfully submitted,

MARC ROTENBERG  
President, EPIC

STUART F. DELERY  
Assistant Attorney General

GINGER MCCALL  
Director, EPIC Open Government Project

BETH S. BRINKMANN  
Deputy Assistant Attorney General

ALAN BUTLER  
DAVID HUSBAND  
(202) 483-1140  
Electronic Privacy Information Center  
1718 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20009

MARK B. STERN  
SAMANTHA L. CHAIFETZ /s/  
(202) 514-4821  
Attorneys, Appellate Staff  
Civil Division, Department of Justice  
950 Pennsylvania Ave., NW, Rm. 7248  
Washington, D.C. 20530

June 9, 2014

## CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2014, I caused the foregoing joint motion to be electronically filed with the United States Court of Appeals for the District of Columbia and served to all registered counsel via the CM/ECF system.

Samantha L. Chaifetz /s/  
Samantha L. Chaifetz