

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, *et al.*, :  
 :  
 Plaintiffs, :  
 :  
 v. : Civil Action No. 96-1285 (JR)  
 :  
 DIRK KEMPTHORNE, Secretary of :  
 the Interior, *et al.*, :  
 :  
 Defendants. :

ORDER

The government's motion for reconsideration [3316] of that portion of my order of 4/20/07 [3312] which directs the payment of attorneys fees to plaintiffs' counsel is well taken and is **granted**. The statement in that order that defendants have not seriously contested plaintiffs' fees was obviously erroneous, in light of the government's oppositions [2619] and [2783]. The order to pay attorneys fees is **vacated** and will be replaced by another as soon as a proper review of the record can be accomplished. Plaintiffs never replied to the government's oppositions and are encouraged to do so now. While the government's generalized objections to plaintiffs' fee petitions (too much time, out of proportion to task, etc.) need not be answered, a number of more specific objections need to be confronted and resolved, including without limitation: that, in their petition for fees relating to their opposition to the government's Third Motion for Summary Judgment, plaintiffs

included work unrelated to that task, [2619-2] at 6; that the fees claimed for the work of Geoffrey Rempel are improper, id. at 9-10; that plaintiffs submitted claims for fees that had already been submitted and rejected by Judge Lamberth, id. at 10-11; that, in the petition for fees relating to the motion to compel and the re-deposition of Dana Erwin, plaintiffs again claimed improper fees for Geoffrey Rempel [2783] at 6; that they improperly included fees for scheduling and taking Erwin's deposition in 2002, id. at 11; that they improperly included fees related to Michelle Singer's deposition, id. at 12; and that fees related to plaintiffs' "Report on Status of Evidence" should not be reimbursed, id. at 15. Counsel should be prepared to discuss the two fee petitions in detail at the May 9 status conference.

The argument I expect to hear on May 9 on the government's motion [3299] to vacate the IT consent order [1063] will deal with the consent order's continuing viability after the resignation of the Special Master and after successive rulings of the Court of Appeals limiting this Court's oversight of the government's IT systems -- with, in other words, whether and to what extent "ascertain[ing] the security posture of Information Technology ("IT") systems for Interior's offline bureaus and offices; the investigation and testing of those IT systems; security vulnerabilities; steps taken to mitigate and correct such vulnerabilities; specific incidents of improper access to,

and theft and abuse of, Individual Indian Trust Data ("IITD"); and steps taken by offline bureaus and offices to reconnect to the Internet" [3314] at 1-2, remain the proper province of this Court after *Cobell XII*, *Cobell XIII* and *Cobell XVIII*.

Accordingly, plaintiffs' motion to compel [3314] is **denied without prejudice**.

JAMES ROBERTSON  
United States District Judge