UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HALL & ASSOCIATES, Plaintiff, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Defendant.	)	Civil Action No. 15-286 (RBW)

ORDER

The plaintiff, Hall & Associates, brought this Freedom of Information Act ("FOIA") action against the defendant, the United States Environmental Protection Agency ("EPA"), seeking information concerning the defendant's basis for its proposed action regarding the National Pollution Discharge Elimination System ("NPDES") permit for the wastewater treatment plant in Tauton, Massachusetts (the "City"). See Complaint ("Compl.") ¶¶ 1-2. Currently pending before the Court is the Plaintiff's Motion for Attorneys' Fees and Costs ("Pl.'s Mot."). Upon careful consideration of the parties' submissions,[1] the Court concludes that it should grant in part and deny in part the plaintiff's motion.

[1] In addition to the motion, the Court considered the following submissions in rendering its decision: (1) the Memorandum of Points and Authorities in Support of [the] Plaintiff's Motion for an Award of Attorneys' Fees and Costs ("Pl.'s Mem."); (2) Memorandum of Points and Authorities in Support of [the] Defendant's Opposition to Plaintiff's Motion for Attorneys' Fees and Costs ("Def.'s Opp'n"); (3) the Plaintiff's Reply in Support of Its Motion for an Award of Attorneys' Fees and Costs ("Pl.'s Reply"); (4) the Response to [the] Court's Order Requesting Revised Exhibits for Plaintiff's Motion for an Award of Attorneys' Fees and Costs ("Pl.'s Resp."); and (5) the Defendant's Reply to [the] Plaintiff's Response to [the] Court's Order Requesting Revised Exhibits for [the] Plaintiff's Motion for an Award of Attorneys' Fees and Cost ("Def.'s Reply").

I. BACKGROUND

A. Statutory Background

"The Clean Water Act . . . requires that . . . [NPDES] permits be secured before pollutants are discharged from any point source into the navigable waters of the United States." Decker v. Nw. Envtl. Def. Ctr., _ U.S. _, _, 133 S. Ct. 1326, 1328 (2013) (citing 33 U.S.C. §§ 1311(a), 1362(12) (2012)). The process for obtaining a NPDES permit "may be administered by a state or by [the] EPA." City of Dover v. U.S. Envtl. Prot. Agency, 36 F. Supp. 3d 103, 108 (D.D.C. 2014) (citations omitted); see also 33 U.S.C. § 1342 (2012). As another member of this Court has explained:

> Permits are waterway- and discharger-specific. Permits limit those who discharge pollutants into particular waterways by limiting the amount of a particular pollutant a permitholder may release (often referred to as "effluent limits"). Those limits are set with reference to the waterway into which the permitholder is releasing pollutants. If the applicable water quality standard for a particular waterway is strict, a permitholder likely will face strict limits on how much of a particular pollutant it can release into that waterway.
>
> Permits contain both technology-based limits and water-quality-based limits. Technology-based limits essentially act as a floor: they describe a minimum level of treatment a permitholder must perform. Permitholders must meet both technology-based limits and water-quality-based limits. If technology-based limits are not strict enough to ensure that a state's water quality standards will be met, then a permit must contain additional limits regardless of technological or financial concerns. [The] EPA's regulations provide a detailed process for determining water-quality-based limits, starting with the identification of pollutants of concern. Thus, permits contain both technology-based limits and (usually more stringent) water-quality-based limits.

City of Dover, 36 F. Supp. 3d at 108-09 (citations omitted).

B. Factual Background

In March 2013, the EPA "published [a] draft NPDES permit" for the wastewater treatment plant in the City. Def.'s Opp'n at 3. From March through June of that year, the EPA "solicited public comments on the proposed NPDES permit." Id. "After the close of the public

comment period, [in] September . . . 2014, [the] EPA . . . met with Tauton City officials to discuss the City's concerns on the proposed NPDES permit." Id.; see also Pl.'s Mem. at 2. "At this meeting, [the] EPA asserted it had developed or received certain data, information, scientific analyses, and studies verifying that the City's prior [concerns] were misplaced." Pl.'s Mem. at 3; see also Def.'s Opp'n at 3 (citing Exhibit ("Ex.") A (September 16, 2014 Letter to EPA ("Sept. 16, 2014 Letter"))). The City requested that the EPA produce these materials, see Pl.'s Mem. at 3; see also Def.'s Opp'n at 3, Ex. A (Sept. 16, 2014 Letter) at 3-4, and in response to that request, see Def.'s Opp'n at 3, the EPA informed the City that the administrative record regarding the proposed NPDES permit was "available for review by any interested member of the public," including the City's attorneys and "any other representative of the City," in the "EPA's office[] in Boston," Massachusetts, Def.'s Opp'n, Ex. B (September 30, 2014 Email to City ("Sept. 30, 2014 Email")) at 2.

The plaintiff declined to review the administrative record, and instead filed a FOIA request in October 2014, "seeking records underlying [the] EPA's . . . assertions . . . [from] the [September 2014] meeting," i.e., "the basis for [the] EPA's NPDES draft permit." Pl.'s Mem. at 3; see also Def.'s Opp'n at 4; Compl., Ex. 1 (Request for Records Added to the Permit Administrative Record for NPDES Draft Permit #MA0100897 by EPA Region I [S]ince March 20, 2013 ("FOIA Request")). In November 2014, the EPA denied the City's FOIA request on the ground that it "[did] not reasonably describe the records being sought as required by [40 C.F.R. § 2.102(c) (2012)] . . . ." Compl., Ex. 2 (November 3, 2014 Letter to City ("EPA Denial of FOIA Request")). After the parties were unable to resolve the dispute concerning the reasonableness of the FOIA request, see generally Compl., Ex. 4 (November 2014 Email Correspondence ("Nov. 2014 Emails")), the City filed an administrative appeal later that month,

see generally Compl., Ex. 5 (Administrative Appeal of FOIA Request ("FOIA Request Appeal")). The EPA responded to the appeal in early February 2015, stating only that the appeal "[had] been assigned to a staff attorney for processing." Compl., Ex. 6 (February 9, 2015 Email to City ("Feb. 9, 2015 Email")). Hearing nothing regarding its administrative appeal for approximately two weeks, the plaintiff filed this FOIA case on behalf of the City against the EPA in late February 2015. See, e.g., Compl. ¶ 1.

About five months after this case was initiated, the EPA released records responsive to the City's FOIA request. Pl.'s Mem. at 5; see also Def.'s Opp'n, Ex. F (May 7, 2015 Letter to City ("May 7, 2015 Letter")) at 1 ("producing all records in full that [were] responsive to . . . [the] FOIA [R]equest," but "not[ing]" that "portions" of the FOIA Request "contain[ed] several mischaracterizations"). The EPA claims that the records it produced were "identical to the records found in the [a]dministrative [r]ecord" associated with the proposed NPDES permit, which was "made available to any interested members of the public" at the EPA's Boston office. Def.'s Opp'n at 6-7. The EPA further represents that "[i]n addition, . . . a number of the records [were] also publicly available through [the] EPA's website or were [already] in [the City's] possession." Id. at 7. The City reviewed the records produced to it and found the EPA's production "reasonable and adequate." Pl.'s Mem. at 6. The parties remain divided, however, over the propriety and extent of any award for attorneys' fees and costs to the plaintiff in this case. See id.

II. ANALYSIS

The FOIA provides that courts "may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case . . . in which the [plaintiff] has substantially prevailed." 5 U.S.C. § 552(a)(4)(E)(i). "This language naturally divides the

attorney-fee inquiry into two prongs, which [District of Columbia Circuit] case law has long described as fee 'eligibility' and fee 'entitlement.'" Brayton v. Office of the U.S. Trade Rep., 641 F.3d 521, 524 (D.C. Cir. 2011) (quoting Judicial Watch, Inc. v. U.S. Dep't of Commerce, 470 F.3d 363, 368-69 (D.C. Cir. 2006)). "The eligibility prong asks whether a plaintiff has 'substantially prevailed' and thus 'may' receive fees." Id. "If so, the court proceeds to the entitlement prong and considers a variety of factors to determine whether the plaintiff should receive fees." Id. "Finally, '[a] plaintiff who has proven both eligibility for and entitlement to fees must submit [its] fee bill to the court for [the court's] scrutiny of the reasonableness of (a) the number of hours expended and (b) the hourly fee claimed.'" Judicial Watch, 470 F.3d at 369 (quoting

Long v. IRS, 932 F.2d 1309, 1313-14 (9th Cir. 1991)). There is no dispute here that the plaintiff is eligible for attorneys' fees and costs.

A. Fee Entitlement

The Court must "consider at least four criteria in determining whether a substantially prevailing FOIA litigant is entitled to attorneys' fees: (1) the public benefit derived from the case; (2) the commercial benefit to the plaintiff; (3) the nature of the plaintiff's interest in the records; and (4) the reasonableness of the agency's withholding of the requested documents." Davy v. CIA, 550 F.3d 1155, 1159 (D.C. Cir. 2008) (citations omitted). However, "no one factor is dispositive . . . ." Id. The Court will address each factor in turn.

1. The Public Benefit

The plaintiff[2] argues that the requested information is of public value because it was useful to "formulate comments on the permit." Pl.'s Mem. at 12; see also Pl.'s Reply at 5 ("[T]here was a substantial public benefit in providing adequate information to allow the public to [comment intelligently] on permit requirements and understand the efficacy of the [defendant's] selected methods of effluent derivation."). In response, the defendant argues that the requested information cannot be of public value because they were already available in the public domain. Def.'s Opp'n at 11-12; see also id. at 13 ("[The] [p]laintiff has failed to make any showing that the release of the information sought here adds to the fund of information that citizens may use in vital political choices when [the] plaintiff . . . could have publicly accessed the information."). The plaintiff has the better of this argument.

"[T]he Court must consider 'both the effect of the litigation for which fees are requested and the potential public value of the information sought[.]'" Judicial Watch, Inc. v. U.S. Dep't of Justice, 878 F. Supp. 2d 225, 234 (D.D.C. 2012) (Walton, J.) (quoting Davy, 550 F.3d at 1159). Although any release of documents undoubtedly adds, to some degree, to the public's knowledge concerning its government, an award of fees is not necessarily appropriate in every case where documents have been released. See id. "The public-benefit prong 'speaks for an award of attorneys' fees where the complainant's victory is likely to add to the fund of information that citizens may use in making vital political choices.'" Cotton v. Heyman, 63 F.3d 1115, 1120 (D.C. Cir. 1995) (alteration omitted) (quoting Fenster v. Brown, 617 F.2d 740, 744

[2] "[T]he Court makes clear that any evaluation of the . . . entitlement prerequisites for attorneys' fees in this case must be focused on the circumstances of [the City]." Dorsen v. SEC, 15 F. Supp. 3d 112, 117 (D.D.C. 2014). Although the plaintiff—the City's counsel who initiated this FOIA litigation—"made the underlying FOIA request, is named as the plaintiff in the complaint, and filed the pending motion for attorneys' fees, these actions were taken on behalf of [the City]." Id. (citation omitted). "Indeed, if this motion were successful, any attorneys' fees would be awarded to [the City], not to the plaintiff." Id. (citation omitted).

(D.C. Cir. 1979)); see also Morley v. CIA, 810 F.3d 841, 844 (D.C. Cir. 2016) ("To have 'potential public value,' the request must have at least a modest probability of generating useful new information about a matter of public concern." (quoting Davy, 550 F.3d at 1159)).

Here, there can be no dispute that "the effect of [this] litigation" was the production of records responsive to the plaintiff's FOIA request. Davy, 550 F.3d at 1159. And the defendant does not directly rebut the plaintiff's argument that there was "potential public value . . . [in] the information sought," id., because the public had an interest in ensuring that the defendant did not act arbitrarily or capriciously in the NPDES permitting process, i.e., disclosure provided the means for reviewing government decisions for impropriety or errors, see Pl.'s Reply at 5.

The defendant hangs its hat on the fact that it had already made the requested information publicly available to the plaintiff. See Def.'s Opp'n at 11-13. The mere availability of the requested information to the plaintiff, however, does not mean that the value of the requested information has been fully realized and appreciated by the public. See Morley, 810 F.3d at 845 (reasoning that documents responsive to a FOIA request located at the National Archives are not necessarily in the public domain if public access to the documents is difficult); Elec. Privacy Info. Ctr. v. FBI, 72 F. Supp. 3d 338, 346-47 (D.D.C. 2014). The defendant "has not explained how and to what extent" the requested information "was already publicly disseminated . . . ." Elec. Privacy Info. Ctr., 72 F. Supp. 3d at 346 (emphasis added); cf. Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs., 481 F. Supp. 2d 99, 111 (D.D.C. 2006) ("Faced with the argument that requested materials are already publicly available such that public understanding will not be increased through their disclosure, courts consistently require substantiation of the agencies' assertions in the record."). Nor is making that information available for inspection and review to the plaintiff sufficient to inject that information into the

public domain. Cf. Judicial Watch, Inc. v. Gen. Servs. Admin., No. 98-cv-2223(RMU), 2000 WL 35538030, at *10 (D.D.C. Sept. 25, 2000) ("[T]he fact that the some of the requested information has been released to sources other than the requestor, does not necessarily mean that it is readily available to the public."); Fitzgibbon v. Agency for Int'l Dev., 724 F. Supp. 1048, 1051 (D.D.C. 1989) ("The availability of FOIA material in an agency's public reading room does not thrust the material into the public domain."). Therefore, the information sought and obtained by the plaintiff can be said to "add to the fund of information that citizens may use in making vital political choices." Judicial Watch, 878 F. Supp. 2d at 234 (Walton, J.).

2. Commercial Benefit of the Documents to the Plaintiff and the Plaintiff's Interest in the Documents

"The second factor [of the fee entitlement analysis] considers the commercial benefit to the plaintiff, while the third factor considers the plaintiff's interest in the records." Davy, 550 F.3d at 1160. These factors, "which are often considered together, assess whether a plaintiff has 'sufficient private incentive to seek disclosure' without attorneys' fees." Id. (quoting Tax Analysts v. U.S. Dep't of Justice, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

Although there is public value to the information sought by the plaintiff's FOIA request, the impetus behind the request was purely personal. See Md. Dep't of Human Res. v. Sullivan, 738 F. Supp. 555, 563 (D.D.C. 1990) ("While plaintiffs are public-interest oriented, their motive in the FOIA request was personal: they sought information about the program instruction in order to aid their litigation against defendants."). The plaintiff's FOIA request was motivated by the City's September 2014 meeting with the defendant concerning the proposed NPDES permit. See Compl., Ex. A (FOIA Request) at 1; see also Pl.'s Mem. at 5 (produced records incorporated into appeal of final NPDES permit); Pl.'s Reply at 8 ("The . . . [FOIA] request was submitted to identify [the] EPA's rationale for rejecting information provided by the City in its permit

comments."). Thus, the plaintiff's incentive to participate more fully in the administrative process regarding the proposed NPDES permit weighs against it on factors two and three. See Md. Dep't of Human Res., 738 F. Supp. at 563 (FOIA request "suggest[ed] [it was made in] preparation for suit concerning . . . legislative or interpretive status" of agency action); see also Dorsen v. SEC, 15 F. Supp. 3d 112, 122-23 (D.D.C. 2014) (explaining that fees are generally inappropriate where there is a personal, litigation interest).

3. Reasonableness of the Withholdings

The final factor of the fee entitlement analysis concerns "whether the agency's opposition to disclosure 'had a reasonable basis in law,'" Davy, 550 F.3d at 1162 (quoting Tax Analysts, 965 F.2d at 1096), and "whether the agency had not been recalcitrant in its opposition to a valid claim or otherwise engaged in obdurate behavior,'" id. (quoting LaSalle Extension Univ. v. FTC, 627 F.2d 481, 486 (D.C. Cir. 1980)). "If the [g]overnment's position is correct as a matter of law, that will be dispositive." Id. at 1163 (quoting Chesapeake Bay Found., Inc. v. U.S. Dep't of Agric., 11 F.3d 211, 216 (D.C. Cir. 1993)). The agency bears the burden of showing that "it had [a] colorable or reasonable basis [in law] for not disclosing the material until after [the plaintiff] filed suit." Id.

The plaintiff claims that the defendant had no reasonable legal basis for withholding records responsive to its FOIA request that were ultimately released in the course of this litigation. See Pl.'s Mem. at 10. Specifically, the plaintiff contends that any suggestion by the defendant that the plaintiff's FOIA request did not reasonably describe the records it sought should be rejected, and further, the defendant has not justified its delay in processing the plaintiff's administrative appeal. See id. The defendant "recognizes that it was delayed in its response to [the] [p]laintiff['s] [FOIA request]," having failed to produce responsive records

until May 2015, Def.'s Opp'n at 16, but maintains that any delay was brought about by the "interrogative" nature of the plaintiff's FOIA request, id. at 16-17 (citing 40 C.F.R. § 2.102(c)), as well as the plaintiff's refusal to review the records at the defendant's Boston office, id. at 18.

Without determining whether the defendant properly construed the plaintiff's FOIA request as essentially one set of interrogatories,[3] the Court finds that the defendant engaged in obdurate conduct. There is no dispute that the defendant ignored the plaintiff's administrative appeal and disregarded its deadline for responding to that appeal. And the defendant has not justified its sluggish response to the plaintiff's appeal, which did not occur until over two months after the appeal was filed. See Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec., 811 F. Supp. 2d 216, 236 (D.D.C. 2011) (finding that the agency unreasonably withheld responsive documents to a FOIA request where it failed to communicate timely with the plaintiff regarding the status of its request); Judicial Watch, Inc. v. U.S. Dep't of Justice, 774 F. Supp. 2d 225, 231 (D.D.C. 2011) (failure to respond timely favored award of fees); Nw. Coal. for Alternatives to Pesticides v. Reilly, No. 90-cv-0707(JGP), 1992 WL 122718, at *3 (D.D.C. May 26, 1992) (similar). This factor, therefore, weighs in favor of the plaintiff.

On balance, the Court concludes that the four entitlement factors considered collectively support an award of attorneys' fees and costs to the plaintiff.

B. Reasonableness of the Requested Fees

The precise amount of the award for attorneys' fees and costs is also contested by the parties. See, e.g., Def.'s Opp'n at 18-26. The plaintiff seeks a total of $52,839.99 as reasonable

[3] The Court is dubious of the defendant's insinuation that it could not reasonably decipher what records were sought by the plaintiff. Compare Compl., Ex. 1 (FOIA Request), with Def.'s Opp'n, Ex. F (May 7, 2015 Letter) at 1-3 ("producing all records in full that [were] responsive to . . . [the] FOIA [R]equest" and describing with particularity the extent to which the request "contain[ed] several mischaracterizations" of the defendant's arguments concerning the proposed NPDES permit).

attorneys' fees and costs associated with this FOIA litigation. Pl.'s Reply at 1; see also Pl.'s Resp., Ex. A (Summary of Fees[,] Time[,] and Expenses ("Fees and Costs Calculations I")); Pl.'s Reply, Ex. A (Summary of Fees[,] Time[,] and Expenses ("Fees and Costs Calculations II")). More specifically, the plaintiff requests attorneys' fees and costs associated with three categories of work: (1) work performed leading up to and including the filing of the FOIA complaint; (2) work performed after the filing of the complaint; and (3) work regarding the pending motion for fees. E.g., Pl.'s Resp., Ex. A (Fees and Costs Calculations I) at 1. Such work was carried out by several members of the plaintiff firm: Mr. Hall, Mr. Rosenmann, Mr. Carlesco, and Mr. English. E.g., id. Despite their purported work on this matter, the Court finds that not all of this time was well-spent. See Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980) ("[T]he amount of time actually expended is [not necessarily] the amount of time reasonably expended.").

The Court is tasked with the responsibility of assessing the accuracy of any fees and costs requested, see, e.g., Fenster, 617 F.2d at 742 ("Congress, in authorizing the award of attorneys' fees, left to the traditional equitable discretion of the courts the decision whether such fees are appropriate in any given disclosure case."), and excluding "hours that are excessive, redundant, or otherwise unnecessary," Piper v. U.S. Dep't of Justice, 339 F. Supp. 2d 13, 24 (D.D.C. 2004) (citing Hensley v. Eckerhart, 461 U.S. 424, 434-40 (1983)). The plaintiff has the burden of establishing the reasonableness of the award it seeks. E.g., Role Models Am., Inc. v. Brownlee, 353 F.3d 962, 970 (D.C. Cir. 2004) (citation omitted). The "usual method of calculating reasonable attorneys' fees is to multiply the hours reasonably expended in the litigation by a reasonable hourly fee, producing the 'lodestar' amount." Bd. of Trs. of the Hotel & Rest. Emps. Local 25 v. JPR, Inc., 136 F.3d 794, 801 (D.C. Cir. 1998). Courts in this Circuit apply the Laffey matrix, a schedule of charges based on years of experience, to determine reasonable

hourly rates in order to compute the "lodestar" amount.[4] Id. Further, "hours reasonably devoted to a request for fees are compensable," i.e., "fees on fees," Elec. Privacy Info. Ctr. v. FBI, 80 F. Supp. 3d 149, 162 (D.D.C. 2015) (alteration omitted) (quoting Noxell Corp. v. Firehouse No. 1 Bar-B-Que Rest., 771 F.2d 521, 528 (D.C. Cir. 1985)), so long as they are "reasonable[] and not excessive," id. (quoting Boehner v. McDermott, 541 F. Supp. 2d 310, 325 (D.D.C. 2008)).

Here, the plaintiff initiated this case by filing a straightforward, eight-page FOIA complaint with several exhibits. See Compl. at 1-8; Compl., Exs. A-K. The complaint bears similarities to complaints recently filed by the plaintiff against the defendant in cases before other members of this Court. Compare, e.g., Compl. ¶¶ 1, 5, 7, 9-12, 24-25 with Complaint ¶¶ 1, 8-11, 38-39 Hall & Assocs. v. EPA, No. 15-cv-1055 (D.D.C. July 6, 2015), and Complaint ¶¶ 1, 3, 6-10, 28-29 Hall & Assocs. v. EPA, No. 13-cv-823 (D.D.C. June 3, 2013). A review of the plaintiff's billing record in this case,[5] see generally Pl.'s Resp., Ex. B, reveals "inefficiencies and redundancies that makes [the plaintiff's] fee[s] [and costs] request . . . [associated with] the [filing and service of the] [c]omplaint unreasonable," Elec. Privacy Info. Ctr., 80 F. Supp. 3d at 158. For example, in February 2015, Mr. Alexander purportedly spent over 30 hours drafting and revising the uncomplicated, FOIA complaint. See Pl.'s Resp., Ex. B at 1-2. But it appears he had no discussion with either Mr. Rosenmann or Mr. Hall before he started drafting the complaint. Had Mr. Alexander afforded either of them the opportunity to conveyed to him their

[4] The defendant has not challenged the methodology utilized by the plaintiff as support for attorneys' fees and costs the plaintiff seeks to recover on behalf of the City.

[5] The Court expended significant resources and effort attempting to verify the accuracy of the plaintiff's calculation of its fees. In doing so, it found a discrepancy in the materials relied upon by the plaintiff to support its request for attorneys' fees. See February 3, 2016 Order at 1, ECF No. 13. The Court, therefore, ordered the plaintiff to explain this discrepancy and to submit revised materials if necessary. Id. at 2. The plaintiff blamed the discrepancy on an administrative error, but also notified the Court of another error in its submissions. See Pl.'s Resp. at 2. These events could alone justify a reduction in fees requested. See Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice, _ F. Supp. 3d _, _, 2015 WL 6529371, at *9 (D.D.C. 2015). But as explained below, the Court has other reasons to reduce the fees requested by the plaintiff.

expectations about the content of the complaint, he surely would not have spent over three full workdays drafting and revising the complaint. Simply put, the Court finds it unreasonable that forty-three hours—more than five full, eight-hour days of work—were expended preparing and filing the complaint in this matter. See, e.g., Elec. Privacy Info. Ctr., 80 F. Supp. 3d at 158 (reducing fees for filing a "straightforward, nine-page FOIA complaint, similar to the complaints that [the plaintiff] frequently files in FOIA litigation in [district courts] in this Circuit"); Elec. Privacy Info. Ctr., 811 F. Supp. 2d at 238 (unreasonable to spend twenty hours on two complaints that "consist[ed] largely of boilerplate language and an uncomplicated factual history"). A reasonable award of attorneys' fees associated with the filing and service of the complaint requires a downward adjustment of work as follows: 17.5 hours for Mr. English and 6.5 hours for Mr. Rosenmann. However, no adjustment will be made to Mr. Hall's hours for this phase of the litigation as they are reasonable. A reasonable award for this work is, therefore, $6,430.00.

Similarly, the Court's review of the case billing record, see generally Pl.'s Resp., Ex. B, also reveals inefficiencies and redundancies with respect to the post-complaint work performed in this case.[6] It is unclear why Mr. Alexander needed 2 hours to summarize the defendant's answer in this case, see Pl.'s Resp., Ex. B. at 4, which was only six pages in length and lacked

[6] There appears to be disagreement among members of this Court concerning whether a plaintiff may recover fees associated with the review of records produced by the government in a FOIA matter. Compare, e.g., Am. Immigration Council v. U.S. Dep't of Homeland Sec., 82 F. Supp. 3d 396, 412 (D.D.C. 2015) ("[T]he cost of reviewing documents produced in response to a FOIA request—to see if they are responsive or for other reasons—is simply the price of making such a request. The Court will thus deduct these charges as well."), with Elec. Privacy Info. Ctr., 80 F. Supp. 3d at 159 ("[T]o the extent that the released documents are being reviewed to evaluate the sufficiency of the release or the propriety of a specific withholding so that the attorney can then challenge the release or withholding, such document review time is properly included in a FOIA attorneys' fees award."), and Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec., 999 F. Supp. 2d 61, 75 (D.D.C. 2013) (permitting fees sought "for review of documents produced during . . . [FOIA] litigation"). The Court finds the rationale for awarding fees for such work more persuasive. See, e.g., Elec. Privacy Info. Ctr., 811 F. Supp. 2d at 239-40 ("Indeed, it would seem critical to the prosecution of a FOIA lawsuit for a plaintiff to review an agency's disclosure for sufficiency and proper withholding during the course of its FOIA litigation. The court thus awards fees related to the plaintiff's review of [the agency's] disclosures.").

significant substance, see generally Answer at 1-6 (short answer denying all but three factual allegations), or why Mr. Rosenmann, a senior attorney at the plaintiff firm, needed to review this uncomplicated answer multiple times, see Pl.'s Resp., Ex. B at 4-5. Moreover, some of the entries lack an adequate description of the nature of the work performed. For example, one entry identifies Mr. Hall as "[c]oordinat[ing] a response to [a U.S.] attorney with [Mr. Rosenmann]," but it fails to even explain what the coordinated response addressed. Pl.'s Resp., Ex. B at 3. Such entries also warrant a reduction in fees. See Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec., 999 F. Supp. 2d 61, 73 (D.D.C. 2013). A reasonable award of attorneys' fees for this work requires a downward adjustment of the work as follows: 20 hours for Mr. Rosenmann, 1.5 hours for Mr. Hall, and 4 hours for Mr. English. Accordingly, a reasonable fee for the plaintiff's post-complaint work is $8,780.00.[7]

Finally, the fees request of $16,786.25 associated with the pending motion for attorneys' fees and costs and $15,790.50 for the reply in support thereof is also excessive.[8] Elec. Privacy Info. Ctr., 80 F. Supp. 3d at 163 ("The Court finds that . . . a fees-on-fees award would be excessive especially in light of the straightforward, short-term merits litigation and the equally straightforward fees litigation in this case."). On the record before the Court, a full award of "fees on fees" would result in the plaintiff receiving well over two times the amount the Court is

[7] The Court has great difficulty fathoming how the law firm was able to complete post-complaint, case management tasks, including the "review of . . . released documents for compliance with [the] FOIA," Pl.'s Reply at 11, which consisted of "300 [megabytes] of (compressed and uncompressed) data, an estimated 12,000 pages of PDF, Word, and .txt files[,] and 5,000 pages of Excel files (printed in portrait, scaled to fit all columns on page)," and contained scientific "data and reports," Pl.'s Mem. at 5, in just 30.5 hours, while on the other hand, it purportedly took the firm 43 hours to prepare, file, and serve a straightforward complaint.

[8] There is a dispute as to whether the proper hourly rate has been assessed for work performed by Mr. Carlesco. See Pl.'s Reply at 10; Def.'s Opp'n at 26. However, despite having less than one year of legal experience, he is appropriately categorized as an attorney with "1-3" years of experience. See, e.g., Elec. Privacy Info. Ctr., 72 F. Supp. 3d at 353-54 (attorneys with less than one year of experience can qualify for Laffey matrix category for attorneys with "1-3" years' experience).

awarding the plaintiff for fees associated with the actual litigation of the merits of this case. And this would represent a prohibited "windfall" to the plaintiff. Id. (quoting Boehner, 541 F. Supp. 2d at 325). The Court will, therefore, reduce the amount of attorneys' fees related to the plaintiff's motion by 21.9%, which is the same percentage the Court has reduced the plaintiff's requested fees for litigating the merits of this case. See Judicial Watch, 878 F. Supp. 2d at 240-41 (Walton, J.) ("reduc[ing] . . . requested fees on fees award commensurate with the Court's reduction of . . . award for the litigation of th[e] case"); see also Elec. Privacy Info. Ctr., 80 F. Supp. 3d at 163 (reducing "requested fees-on-fees award by 21%" because it "represent[ed] . . . the reduction in [the plaintiff's] requested attorneys' fees and costs award for litigating the merits of th[e] FOIA action"). Thus, the "fees on fees" award is reduced to $25,445.30.[9]

III. CONCLUSION

For the foregoing reasons, the plaintiff is both eligible for and entitled to an award of attorneys' fees and costs, but not in the total amount requested. Accordingly, it is hereby

ORDERED that the Plaintiff's Motion for Attorneys' Fees and Costs is **GRANTED IN PART AND DENIED IN PART**. It is further

ORDERED that the defendant shall pay the plaintiff forthwith an amount of $41,446.54, comprising $40,655.30 in attorneys' fees and $791.24 in costs for this litigation. It is further

ORDERED that this case is **CLOSED**.

SO ORDERED this 7th day of March, 2016.

REGGIE B. WALTON
United States District Judge

[9] The defendant has not challenged the plaintiff's request for $791.24 in litigation costs, and so the Court has added these expenses to the final award.