

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MARK A. GYETVAY,

Plaintiff,

v.

Case No.: 2:22-cv-571-JLB-KCD

THE UNITED STATES
DEPARTMENT OF JUSTICE,

Defendant.

_____ /

ORDER

Plaintiff Mark A. Gyetvay sues the United States Department of Justice (“Defendant”) to compel the disclosure of certain records under the Freedom of Information Act. Defendant moved for summary judgment. (Doc. 39.)¹ Then, after learning that a database had not been searched, Defendant supplemented the motion with a declaration from Carmen M. Banerjee (Doc. 44) and an updated *Vaughn* index (Doc. 44-1). Gyetvay now moves to strike this filing because it is untimely, materially alters the summary judgment motion, and is prejudicial. (Doc. 45 at 5.) For the reasons below, the motion is denied.

Motions to strike “are generally disfavored ... [and] often considered time wasters.” *Arthurs v. Glob. TPA LLC*, No. 6:14-CV-1209-ORL-40-TBS, 2015 WL

¹ Unless otherwise indicated, all internal quotation marks, citations, case history, and alterations have been omitted in this and later citations.

13652716, at *1 (M.D. Fla. Feb. 6, 2015). That is because a motion to strike is a drastic remedy reserved for circumstances where the material sought to be excluded is insufficient as a matter of law. *Guarantee Ins. Co., v. Brand Mgmt. Serv., Inc.*, No. 12-61670-CIV, 2013 WL 4496510, at *2 (S.D. Fla. Aug. 22, 2013).

While the Court can certainly understand the frustration created by Defendant's untimely supplement, striking these materials is not the answer. Gyetvay's gripe is that Defendant substantially altered its motion for summary judgment past the deadline, resulting in prejudice. But any prejudice can be alleviated by further briefing. And striking the exhibits will only inhibit addressing the merits. *See Owens v. Benton*, 190 F. App'x 762, 763 (11th Cir. 2006) ("There is a strong preference that cases be heard on the merits[.]").

Accordingly, it is **ORDERED**:

1. Plaintiff Mark Gyetvay's Motion to Strike (Doc. 45) is **DENIED**.
2. To account for Defendant's supplemental declaration (Doc. 44), Gyetvay may file a supplemental response to Defendant's motion for summary judgment. The supplemental response must be filed by **December 20, 2024**, and not exceed 10 pages.

ENTERED in Fort Myers, Florida on December 6, 2024.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record