

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WHITMAN-WALKER CLINIC, INC., *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 20-1630 (JEB)

ORDER

As Defendants filed their Motion to Dismiss on September 29, 2020, see ECF No. 57, Plaintiffs now move to compel them to produce the administrative record. See ECF No. 58. Plaintiffs argue both that Defendants have ignored Local Civil Rule 7(n) and that they cannot oppose the Motion without materials in the record. Although the Court agrees that Defendants have not complied with Rule 7(n), it will not at this point mandate production of the administrative record.

Rule 7(n) does require that “the agency must file a certified list of the contents of the administrative record with the Court . . . simultaneously with the filing of a dispositive motion.” While Defendants acknowledge this requirement, they contend that it is waived where such motion does not rely on the administrative record — for example, where it is purely jurisdictional. That seems a fair position, but Defendants should have, in connection with their Motion to Dismiss, sought Court relief from the Rule. Plaintiffs rejoin that the Government does rely on the record in its Motion and that Plaintiffs need access to respond to the Motion. The

Court need not decide whether this is true at this juncture; the wiser course is for Plaintiffs, in opposing the Motion, to point out which of Defendants' arguments require Plaintiffs to access the record. If the Court agrees, it will deny without prejudice those portions of Defendants' Motion. Finally, the Court believes that this procedure best utilizes the resources of the parties and the Court.

The Court, accordingly, ORDERS that:

1. Plaintiffs' [58] Motion to Compel is GRANTED IN PART and DENIED IN PART;
2. Defendants need not produce the administrative record at this point;
3. Plaintiffs shall have until December 18, 2020, to oppose Defendants' Motion;
4. Defendants shall have until January 19, 2021, to reply; and
5. The Court will not grant any portion of Defendants' Motion that Plaintiffs establish relies on the administrative record or that requires access to such record for Plaintiffs to respond.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: November 3, 2020