UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JOSEPH P. CARSON, *Pro Se,*	)	
	)	
Plaintiff,	)	
	)	Civ. No. 3:10-CV-56
v.	)	PHILLIPS/SHIRLEY
	)	
UNITED STATES DEPARTMENT OF JUSTICE,	)	
	)	
	)	
Defendant.	)	

SECOND DECLARATION OF VANESSA R. BRINKMANN

I, Vanessa R. Brinkmann, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Counsel to the Initial Request (IR) Staff of the Office of Information Policy (OIP), United States Department of Justice. In this capacity, I am responsible for supervising the handling of the Freedom of Information Act (FOIA) requests processed by OIP. The IR Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from seven senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legal Policy, Legislative Affairs, Intergovernmental and Public Liaison, and Public Affairs. The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the Department of Justice, as well as with other Executive Branch agencies.

2. I make the statements herein on the basis of personal knowledge, my review of the case notes contained in the IR Staff file associated with plaintiff's initial request to OIP, which were taken immediately after the events described herein, as well as on information acquired by me in the course of performing my official duties.

3. In my declaration of September 15, 2010, I described this Office's handling of plaintiff's November 14, 2009 FOIA request to OIP for records pertaining to the Department of Justice's compliance with 5 U.S.C. § 2302(c), which requires the Attorney General to prevent "prohibited personnel practices" (PPP's) in the Department. See Declaration of Vanessa R. Brinkmann ¶¶ 3-5. This declaration responds to certain issues raised in plaintiff's August 6, 2011 Reply to Defendant's Response to Plaintiff's Motion for Litigation Costs by detailing the IR Staff's communications with plaintiff, and supplements and incorporates by reference my declaration of September 15, 2010.

4. Plaintiff's request was received by OIP on November 24, 2009. On that date, FOIA Specialist Natasha Jahangiri, a member of OIP's IR Staff, was assigned plaintiff's request. As such, OIP's December 11, 2009 acknowledgment letter, which acknowledged receipt of plaintiff's request and provided him with an opportunity to narrow the scope of his request, or agree to an alternative time frame for processing, should records be located, was signed by Ms. Jahangiri and contained her contact information. (The IR Staff of OIP's December 11, 2009 letter to plaintiff is attached to my September 15, 2010 declaration as Exhibit 2.)

5. On December 15, 2009, plaintiff left a voice mail message for Ms. Jahangiri stating that he wished to discuss the scope of his request. In response to this message, on that same day, the Chief of the IR Staff, Laurie Day, called and spoke to plaintiff. During this conversation,

plaintiff advised Ms. Day that his request sought two things: (1) Department of Justice procedures/policies against prohibited personnel practices; and (2) assessments of whether such policies are being implemented, and their effectiveness. Plaintiff also indicated that he was interested in receiving material dating within the last ten years. Upon completion of this phone call, Ms. Day relayed the content of the conversation to Ms. Jahangiri.

6. In accordance with the ordinary practice of OIP FOIA Specialists, Ms. Jahangiri memorialized the conversation between Ms. Day and plaintiff in the form of case notes. She then added these notes to the administrative file for plaintiff's request.

7. On December 16, 2009, records searches were initiated in the Office of the Attorney General (OAG) and in the electronic database of the Departmental Executive Secretariat, which is the official records repository of OAG. Both this search and the IR Staff's subsequent review of the records located were conducted in light of plaintiff's clarification of his FOIA request during his December 15, 2009 conversation with Ms. Day.

8. On January 11, 2009, Ms. Jahangiri received another voice mail message from plaintiff, stating that he wished to know the status of his FOIA request. On January 12, 2009, Ms. Jahangiri returned plaintiff's call and advised that a records search was then-pending in OAG. Ms. Jahangiri advised that she would contact that Office to check on the status of the pending search, and would endeavor to speed up the processing of his request to the extent possible. Moreover, Ms. Jahangiri informed plaintiff that she had already initiated a search in the electronic database of the Departmental Executive Secretariat and had located records, but had not yet determined whether those records were responsive to plaintiff's request.

9. Upon completion of this conversation, on that same day, Ms. Jahangiri advised me of the nature of her discussion with plaintiff. Moreover, once again, in accordance with the

ordinary practice of OIP FOIA Specialists, Ms. Jahangiri memorialized her conversation with plaintiff in her case notes. She then added these notes to the administrative file for plaintiff's request.

10. On January 12, 2009, plaintiff submitted a letter which further clarified the scope of his request. This letter stated that plaintiff sought "objective determinations" as to whether the Attorney General is complying with his duty to prevent prohibited personnel practices. Accordingly, upon receipt of this letter, the IR Staff proceeded to process plaintiff's request in light of this additional clarification.

11. On January 13, 2010, the search of the electronic database of the Departmental Executive Secretariat was completed. On this date, Ms. Jahangiri also conducted a search of the records indices of former Attorneys General and their staff. The records indices list file folder titles, arranged according to subject, for the files of former OAG staff.

12. On January 19, 2010, the OAG records search was completed.

13. On January 28, 2010, pursuant to my review of the searches conducted thus far, and upon my request, Ms. Jahangiri conducted a supplemental search of both the electronic database of the Departmental Executive Secretariat and of the records indices.

14. On February 23, 2010, OIP was notified that plaintiff had filed suit in connection with his FOIA request.

15. In his August 6, 2011 Reply to Defendant's Response to Plaintiff's Motion for Litigation Costs, plaintiff provides an affidavit in which he describes a conversation with Ms. Jahangiri. His affidavit does not indicate the date of this conversation, but asserts that during this conversation, Ms. Jahangiri informed plaintiff that: (1) she would not ask him to modify the

scope of his FOIA request, and (2) she was unable to establish an alternative time frame on behalf of the Department. This representation is inconsistent with the administrative record maintained by OIP, including the case notes discussed above. Moreover, plaintiff's affidavit fails to note that plaintiff had two separate discussions with OIP staff prior to his filing suit.

I declare under penalty of perjury that the forgoing is true and correct.

Vanessa R. Brinkmann

Executed this 18th day of August 2011.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARYELLEN TRAUTMAN and ANTHONY CLARK,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:16-cv-01629-TSC
UNITED STATES DEPARTMENT OF JUSTICE, et al.	)	
Defendant.	)	

DECLARATION OF VANESSA R. BRINKMANN

I, Vanessa R. Brinkmann, declare the following to be true and correct:

1. I am Senior Counsel in the Office of Information Policy (OIP), United States Department of Justice (DOJ). In this capacity, I am responsible for supervising the handling of the Freedom of Information Act (FOIA) requests processed by OIP. The I nitial Request (IR) Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), and the Associate Attorney General (OASG), and the Offices of Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO). The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the DOJ, as well as with other Executive Branch agencies.

2. I make the statements herein based on my personal knowledge, as well as on

information that I acquired while performing my official duties.

OIP's Processing of Plaintiffs' FOIA Request

3. On July 8, 2016, Bradley P. Moss, on behalf of his clients Maryellen Trautman and Anthony Clark, submitted a FOIA request via the OIP FOIAOnline Portal seeking certain records dated from June 1, 2007 to December 31, 2009, concerning his clients, Maryellen Trautman and Anthony Clark, pertaining to Federal Bureau of Investigation (FBI) case number 58A-WF-237717. Mr. Moss provided his email address, brad@markzaid.com, as contact information to be used in communications about the FOIA request he submitted on behalf of his clients. (A copy of plaintiffs' initial request letter dated July 8, 2016, is attached as Attachment A.)

4. By letter dated July 18, 2016, OIP acknowledged receipt of plaintiffs' FOIA request, informing plaintiffs that their request was being processed on behalf of OAG, ODAG, and OASG, and providing administrative tracking numbers DOJ-2016-004064 (AG), DOJ-2016-004117 (DAG), and DOJ-2016-004118 (ASG). (A copy of OIP's acknowledgment letter to plaintiffs dated July 18, 2016, is attached as Attachment B.)

5. By letter dated July 20, 2016, OIP provided its final response on behalf of OAG, ODAG and OASG. OIP transmitted its final response letter to plaintiffs via email to Bradley P. Moss at brad@markzaid.com on July 20, 2016. As stated above, this email address was provided to OIP by Mr. Moss when he submitted the FOIA request via the OIP FOIAOnline Portal on behalf of his clients. (Copies of OIP's final response letter and corresponding transmittal email to plaintiffs' counsel dated July 20, 2016, are attached hereto as Attachment C.)[1]

[1] The sender of this transmittal email, Douglas Hibbard, is a Senior Advisor in OIP responsible for supervising the handling of the requests processed by the IR Staff, and who served as reviewer on this response letter. Attached by

6. During the course of preparing OIP's response to the instant lawsuit and in order to ensure that the email message was in fact sent from the Department's email system and delivered to the servers hosting the email address brad@markzaid.com, OIP staff reached out to the Information Technology (IT) staff within the Department who are responsible for OIP's email accounts. Upon researching the July 20, 2016 email sent by OIP to plaintiffs' counsel, IT staff advised that the simple mail transfer protocol (SMTP) relay logs associated with the July 20, 2016 email message sent from OIP indicated that the email was delivered to Google's mail relay servers[2] on July 20, 2016 at approximately 12:23 p.m. OIP was further advised by IT that the sender would have received an email message from Google's mail relays if the email was rejected, *i.e.*, "bounced," or was returned, or deemed not deliverable. There was no indication of an error or that the email message never got to the intended recipient.

7. In the July 20, 2016 response letter to plaintiffs, OIP advised plaintiffs that a search had been conducted and no records responsive to plaintiffs' request were located. OIP also notified plaintiffs of their administrative appeal rights. Specifically, OIP advised plaintiffs that if they were not satisfied with OIP's response to their request, they could submit an appeal to OIP's Director within ninety days from the date of the letter.[3] Plaintiffs were provided with the address to which their appeal could be submitted. Plaintiffs were also informed that they could submit an appeal electronically through OIP's FOIAOnline portal.

8. On August 11, 2016, plaintiffs filed suit in connection with their July 8, 2016

"bcc" to this email is Eric Hotchkiss, a Government Information Specialist on the IR Staff who was assigned to plaintiffs' request.

[2] Departmental IT staff has advised that, according to the mail exchanger (MX) records, the brad@markzaid.com domain is hosted by Google.

[3] OIP's Administrative Appeals Staff is a separate and distinct unit within OIP which handles the adjudication of administrative appeals of initial request responses made by Department components.

request.

9. On August 22, 2016, plaintiffs filed an amended complaint in connection with their July 8, 2016 request.

10. On September 20, 2016, plaintiffs filed a second amended complaint in connection with their July 8, 2016 request.

11. Based on a review of OIP's FOIA request/appeal tracking system, it appears that plaintiffs have not filed an administrative appeal of the IR Staff of OIP's July 20, 2016 final response that no records responsive to their request were located on behalf of OAG, ODAG, and OASG.

I declare under penalty of perjury that the foregoing is true and correct.

Vanessa R. Brinkmann

Executed this 30th day of November 2016.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BARBARA FEINMAN Plaintiff, v. CENTRAL INTELLIGENCE AGENCY, et al., Defendants.	))))))))))	Civil Action No. 08-2188 (EGS)

DECLARATION OF MELANIE ANN PUSTAY

I, Melanie Ann Pustay, declare the following to be true and correct:

1) I am the Director of the Office of Information Policy (OIP),[1] United States Department of Justice. In this capacity, I am responsible for overseeing the actions of the Initial Request (IR) Staff. The IR Staff is responsible for searching for and reviewing records within OIP and the senior leadership offices of the Department of Justice, including the Office of the Attorney General, in response to requests made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No 110-175, 121 Stat. 2524. The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the Department of Justice as well as with other Executive Branch agencies.

[1] On March 5, 2009, the Office of Information and Privacy was renamed the Office of Information Policy.

2) I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

Plaintiff's FOIA Request

3) By letter dated July 11, 2008, plaintiff submitted a FOIA request to OIP for "all documents and communications from the Office of Attorney General Alberto Gonzales" pertaining to an alleged phone call to Mariane Pearl regarding Khalid Sheikh Mohammed's confession to the murder of her husband, reporter Daniel Pearl. Plantiff stated that this phone call was reportedly made by former Attorney General Gonzales to Mrs. Pearl, and advised that the relevant time period could be restricted to dates between February 1, 2007, and March 30, 2007. Finally, plaintiff requested a waiver of fees.[2] (A copy of plaintiff's initial request letter is attached hereto as Exhibit A.)

4) By letter dated August 15, 2008, OIP acknowledged receipt of plaintiff's FOIA request and advised that, because the request required a search in another Office, OIP staff had not yet been able to complete a search for records within the scope of plaintiff's request. (A copy of OIP's August 15, 2008 acknowledgment letter is attached hereto as Exhibit B).

Records Searches

5) In her request letter, plaintiff specifically sought records from the Office of the Attorney General from February and March of 2007. Therefore, OIP conducted searches for records responsive to plaintiff's request in that Office, and limited to that time period. Moreover, given plaintiff's description of the records requested, OIP determined that the files of former Attorney General Gonzales would be most likely to maintain responsive records. Furthermore, and in an effort to locate any records referencing a phone call from the former Attorney General

[1] No fees were assessed for this request and so the fee waiver request is moot.

to Mariane Pearl, OIP also determined that the available files of staff who had been employed by the Office of the Attorney General in February and March 2007 would be searched.

6) On August 6, 2008, OIP conducted a search of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office of the Attorney General. The Departmental Executive Secretariat uses a central database to control and track certain incoming and outgoing correspondence for the Department's senior management offices. This Intranet Quorum (IQ) database maintains records from January 1, 2001 through the present. Records received by the senior management offices are entered into IQ by trained Executive Secretariat analysts. The data elements entered into the system include such items as the date of the document, the date of receipt, the sender, the recipient, as well as a detailed description of the subject of the record. In addition, entries are made that, among other things, reflect what action is to be taken on the records, which component has responsibility for that action, and when that action should be completed. Key word searches of the electronic database may then be conducted by utilizing a single search parameter or combinations of search parameters. Search parameters may include the subject, organization, date, name, or other key words. The FOIA Specialist assigned to plaintiff's request conducted a key word search of the Executive Secretariat's IQ database using the terms, "Mariane Pearl," "Daniel Pearl," and "Khalid Sheikh Mohammed." No records pertaining to a phone call to Mariane Pearl from former Attorney General Gonzales were located in the IQ database.

7) Searches were also performed within the Office of the Attorney General. In order to identify which staff members in the Office of the Attorney General were present in February and March of 2007, the former Chief of the IR Staff contacted an Office of the Attorney General Staff Assistant to determine which staff members were present in that Office during the relevant

time period. Three staff members were identified.[2] Subsequently, by e-mails dated August 18 and 20, 2008, the three identified staff members were contacted by the former Chief of the IR Staff and requested to advise OIP whether they had records responsive to plaintiff's request. Once an individual in the Office of the Attorney General receives a FOIA request, standard practice is for that individual, based on their experience and knowledge of their files, to determine whether they might have records responsive to the request. If an individual determines that it is possible they might have records, that individual will either search his or her paper and electronic files him or herself, or that individual will ask that an IR Staff FOIA Specialist perform the search for them.

8) By e-mails dated August 18 and 20, 2008, all three Office of the Attorney General staff members who were present in February and March 2007 advised OIP that they did not have any records responsive to plaintiff's request.

9) Searches were also conducted of the classified and unclassified records indices of former Attorney General Gonzales. The indices supplement the electronic database of the Departmental Executive Secretariat and list file folder titles, arranged according to subject, for the records of the former Attorneys General and their staff. In conducting an indices search, the file folders which, based on their titles, are identified as possibly containing responsive records are retrieved, and their contents are searched. In this instance, the FOIA Specialist assigned to plaintiff's request and the former Chief of the IR Staff conducted a search of the general subject indices of former Attorney General Alberto Gonzales and, based on the nature of the records

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[2] The Staff Assistant also indicated that one of former Attorney General Gonzales' personal assistants could possibly have placed the call for the Attorney General. Because OIP was informed that the personal assistants' records were integrated with the former Attorney General's files, any reference to such a call in their files would have been encompassed by the search of the former Attorney General's indices, described below.

sought by plaintiff, determined that only the files entitled "Official Schedule," "Events," and "Chron" could reasonably be expected to contain responsive records, to the extent such records existed. Specifically, the FOIA Specialist assigned to plaintiff's request and the former Chief of the IR Staff searched the February and March 2007 files entitled "Official Schedule," "Events," and "Chron" because those files encompass: scheduled agenda items for a specific day, a more detailed summary of what the Attorney General did on a specific day, and chronological records of general correspondence matters, respectively. No records that referenced a phone call by the former Attorney General to Mariane Pearl were located in any of these files.

10) In addition to searching the indices of former Attorney General Gonzales, OIP searched the indices of former members of his senior staff -- inasmuch as such officials' records may mention a phone call made by the Attorney General -- including former Chiefs of Staff David Ayres and Kyle Sampson, former Deputy Chief of Staff and Counselor to the Attorney General Courtney Elwood, and Senior Counsel to the Attorney General Monica Goodling. We did not locate any records responsive to plaintiff's request in the indices of these former officials.

11) In sum, OIP determined that the searches of the indices and files, as described above, were exhaustive and no further indices or files were likely to contain responsive records.

OIP's Final Response to Plaintiff

12) By letter dated September 8, 2008, OIP provided its final response to plaintiff's request. In this response, OIP informed plaintiff that records searches had been conducted in the Office of the Attorney General and the Departmental Executive Secretariat, which is the official repository for the Office of the Attorney General. Specifically, OIP informed plaintiff that OIP's searches encompassed the relevant records of Attorney General Gonzales and his staff. Finally OIP advised plaintiff that no records responsive to plaintiff's request had been located. (A copy of OIP's August 15, 2008 letter is attached hereto as Exhibit C.)

Plaintiff's Administrative Appeal

13) By letter dated October 16, 2008, plaintiff administratively appealed the IR Staff's response that no records responsive to plaintiff's request were located. (A copy of plaintiff's October 16, 2008 administrative appeal is attached hereto as Exhibit D.)

14) By letter dated October 20, 2008, OIP acknowledged receipt of plaintiff's administrative appeal and advised that OIP would notify the plaintiff of OIP's decision as soon as possible. (A copy of OIP's October 20, 2008 acknowledgment letter is attached hereto as Exhibit E.) Before a final determination was made on her appeal, plaintiff filed the present suit.

I declare under penalty of perjury that the foregoing is true and correct.

Melanie Ann Pustay
MELANIE ANN PUSTAY

Executed this 24 day of March, 2009.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD and RYAN NOAH SHAPIRO, Plaintiffs, v. UNITED STATES DEPARTMENT OF JUSTICE, Defendant.	)	Civil Action No. 1:14-cv-02198 (JEB)

DECLARATION OF VANESSA R. BRINKMANN

I, Vanessa R. Brinkmann, declare the following to be true and correct:

1) I am the Senior Counsel to the Office of Information Policy (OIP), United States Department of Justice (DOJ). In this capacity, I am responsible for supervising the handling of the Freedom of Information Act (FOIA) requests processed by OIP. The Init ial Request (IR) Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), and the Associate Attorney General (OASG), and the Offices of Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO). The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the DOJ, as well as with other Executive Branch agencies.

2) I make the statements herein based on my personal knowledge, as well as on information that I acquired while performing my official duties.

Processing of Plaintiffs' FOIA Request

3) By letter dated September 5, 2014, Jeffrey L. Light, on behalf of his clients Jason Leopold and Ryan Noah Shapiro, submitted a FOIA request to the DOJ's FOIA/Privacy Act (PA) Mail Referral Unit (MRU) for records (including duplicates) related to the dispute between the Central Intelligence Agency (CIA) and the Senate Select Committee on Intelligence (SSCI) regarding the SSCI's review of the CIA's former Detention and Interrogation Program. In particular, the request sought the following categories of records:

a) Any and all records constituting, discussing, mentioning, or referring to hacking and/or unauthorized/inappropriate access by employees of the CIA into SSCI computers and shared computer hard drives set up for the purposes of reviewing classified CIA documents about the rendition, detention and interrogation program.

b) The case file pertaining to a Department of Justice investigation into the hacking and/or unauthorized/inappropriate access by employees of the CIA into SSCI computers.

c) Any and all records constituting, discussing, mentioning, or referring to SS CI staffers accessing a CIA document(s) referred to as the "Panetta Review."

d) Any and all witness statements, investigation reports, prosecution memoranda, and FBI 302 reports referring into the hacking and/or unauthorized access of SSCI computers and the seizure of a document(s) referred to as the "Panetta Review."

e) Any and all records (including but not limited to notes and/or recordings)

reviewed at, prepared for, generated at, discussing, mentioning, or reflecting decisions by the DOJ not to launch a formal criminal investigation into the CIA's unauthorized access of SSCI computers and the SSCI's seizure of a document(s) referred to as the "Panetta Review."

f) Any and all communications between any DOJ employee and any CIA employee discussing, mentioning, or referring to the unauthorized access/hacking of SSCI computers by CIA employees and the seizure of a CIA document(s) by SSCI staffers referred to as the "Panetta Review."

4) Plaintiffs originally directed their September 5, 2014 request to the Department's MRU via e-mail. On November 19, 2014, the MRU forwarded plaintiffs' FOIA request to OIP for processing and direct response to plaintiffs.[1] Plaintiffs' FOIA request was received in OIP on November 19, 2014. (A copy of plaintiffs' September 5, 2014 initial request letter including the FOIA/PA Referral/Action Slip from the MRU is attached hereto as Exhibit A.)

5) Plaintiffs did not initially specify a time frame in their FOIA request. However, in a later e-mail dated February 20, 2015, plaintiffs proposed a search initiation date of November 1, 2013. Accordingly, OIP conducted its records searches in response to plaintiffs' September 5, 2014 request within the timeframe of November 1, 2013 (the date proposed by plaintiffs) to November 25, 2014 (the date OIP's searches were initiated, consistent with Department regulation 28 C.F.R. §16.4 (2015)).[2] (A copy of the February 20, 2015 e-mail from plaintiffs is attached hereto as Exhibit B.)

[1] The MRU also forwarded plaintiffs' request to the Federal Bureau of Investigation (FBI) for processing and direct response. In addition, OIP later referred plaintiffs' FOIA request to the National Security Division (NSD) and the Criminal Division (CRM).
[2] OIP's records searches are described in detail below.

6) Additionally, plaintiffs requested expedited processing of their September 5, 2014 request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv). Plaintiffs also requested expedited processing pursuant to the Department's standard involving "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information." See id. § 16.5(e)(1)(ii).

7) Plaintiffs also requested a waiver of fees in their September 5, 2014 request.[3]

8) As notedin paragraph 1 above, OIP processes FOIA requests on behalf of itself and six leadership offices of the DOJ. OIP makes a determination upon receipt of a FOIA request as to the appropriate office or offices in which to conduct initial records searches. In this instance, OIP determined, based on a review of plaintiffs' request, on its knowledge of the records maintained by the senior leadership offices, and on its knowledge of and research into the subject of the request, that OAG and ODAG were the most likely leadership offices to maintain the records sought by plaintiffs in their September 5, 2014 request.

9) On November 25, 2014, pursuant to Department regulation ,[4] OIP directed plaintiffs' request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under the Department's expedition standard (iv). The Director of Public Affairs subsequently granted the request under this standard.[5]

10) By letter dated November 26, 2014, OIP acknowledged receipt of plaintiffs' FOIA

[3] No fees have been assessed for plaintiffs' request. As such, plaintiffs' request for a waiver of fees is moot.
[4] 28 C.F.R. § 16.5(e)(2).
[5] Inasmuch as expedition was granted under the Department's expedition standard (iv), plaintiffs' request for expedited processing under standard (ii) was moot.

request on behalf of OAG and ODAG. In this letter, OIP notified plaintiffs that the Director of Public Affairs had granted plaintiffs' request for expedited processing. OIP also informed plaintiffs that the records sought required searches in other offices and their request therefore fell within "unusual circumstances" under 28 C.F.R. § 16.5(c). In addition, OIP offered plaintiffs the opportunity to reformulate their request in order to reduce the time that would be needed to complete the search for responsive records. OIP also invited plaintiffs to agree to an alternative time frame for processing. (A copy of OIP's letter to plaintiffs dated November 26, 2014, is attached hereto as Exhibit C.)

11) On December 24, 2014, plaintiffs filed suit in connection with their September 5, 2014 request.

Description of OIP Search Methods

12) When processing a FOIA request for one or more of the senior leadership offices, OIP typically initiates records searches by sending a memorandum to the specific office(s), which notifies the office(s) of the receipt of the request and the need to conduct a search. OIP's search memoranda are sent to a designated point-of-contact in each office who serves as the liaison between OIP and the senior leadership office(s). The liaison in each office then, upon receipt of OIP's search memorandum, notifies each individual staff member in that office of the receipt of OIP's memorandum requesting that a search be conducted. The individual staff members of each office, as the custodians of their own records and the best authorities on what records they would personally maintain, will then advise the liaison if they (1) have no records responsive to the request; (2) have potentially responsive material which will be provided directly to OIP for review and processing (in which case the staff member conducts their own search); or (3) have potentially responsive material for which they request an OIP Government Information Specialist or

Attorney-Advisor to conduct a search. Senior leadership office staff members who conduct their own searches will do so depending on how they maintain their own records. If, for example, an individual organizes their records by topic, office, or other category and already knows where potentially responsive material would be located, they may simply review that material and provide it to OIP without the need for, or in addition to, a "keyword" search. This practice ensures that each individual staff member of the given office reviews OIP's search memorandum and the accompanying FOIA request, and the records searches are conducted by or for only those individuals who indicate that they would have potentially responsive material. Once the review of the search memoranda and accompanying request is completed in the senior leadership office(s), the designated liaison responds to OIP's records search request on behalf of the senior leadership office,[6] and OIP takes next steps – e.g., conducting searches of identified records custodians, or reviewing records returned to OIP – as appropriate.[7]

13) When searching the records of leadership office custodians identified as having potentially responsive material, OIP staff employ any one of a variety of search methods, or a combination of methods, depending on the factors at hand and on the type of records systems implicated in the search. Potentially responsive records may be located in unclassified or classified e-mail systems, computer hard drives, and/or hard copy (paper) files.

Unclassified E-mail Systems

14) Unclassified e-mail records (which today comprise the bulk of records identified in

[6] Where appropriate, the senior leadership offices may also identify former staff whose records should be searched by OIP.

[7] The initial determination regarding records custodians is not always final; rather, in order to ensure that reasonably thorough records searches are conducted, during the course of processing a given FOIA request, OIP continually assesses – based on our review of records that are located in the initial records searches, discussions with Department personnel, or other pertinent factors – whether other (both current and former) staff members' records should be searched, and will initiate such additional searches as appropriate.

response to FOIA requests processed by OIP) are searched using a sophisticated electronic system which remotely searches through a given custodian's entire e-mail collection to isolate and locate potentially responsive records within that collection of electronic communications, using search parameters that are provided by OIP staff. This same system then serves as the review platform by which OIP staff review the records retrieved using those initial search parameters. This platform allows broad search terms to be used initially and then for OIP staff to run more targeted, secondary searches within the gathered universe to identify records responsive to each request. If and when secondary searches are conducted, the parameters used are based on a variety of factors, including keywords/search terms and contextual or background information provided in the request letter, topical research conducted on the request subject, discussions with knowledgeable officials within the Department, and on OIP's review of the initial search results which allows OIP to identify common terms and phrasing that is actually employed by records custodians on the topic of the request. This two- tiered search approach leverages the technological advancements of the electronic search and review system and, by enabling a broad initial search followed by a focused secondary search, allows OIP staff to conduct thorough, precise, and informed searches of unclassified e-mail systems.

Unclassified Computer Hard Drives

15) Unclassified computer hard drives (including C:, G:, and H: drives) are searched "on-site" by OIP staff, who typically meet with the records custodians beforehand, then conduct local searches of the custodians' computers using search terms identified as most likely to return responsive records based on the subject and content of the request, applicable research, input from the custodians, and information discerned during the course of the search. In some instances, a

records custodian may know in advance of the search what file or folder names were used. Hard drive searches do not employ the electronic search system used for unclassified e-mails, but are more tailored in nature based on the individual custodian's recordkeeping methods, and therefore more focused terms are used. OIP staff work together and in collaboration with the knowledgeable staff in the leadership offices to develop search parameters appropriate for each hard drive search.

Unclassified Paper Files

16) Similar to hard drive searches, paper or "hard copy" files are searched on-site, typically after OIP meets with the relevant records custodians. Paper files identified by the records custodians are then searched by hand, with the OIP staffer reviewing potentially responsive paper records one-by-one, and making copies of those documents they identify as responsive to the subject of the request.

Classified E-mail Systems

17) Due to security restrictions attendant to classified e-mails, classified e-mail systems are searched on-site by credentialed OIP staff, using the search function of the e-mail system itself. OIP staff may meet with the records custodians beforehand, and conduct local searches of the custodians' computers using search terms identified as most likely to return responsive records based on the subject and content of the request, applicable research, input from custodians, and information discerned during the course of the search. To the extent practicable, classified e-mail searches will use the same terms as unclassified searches, but this may not always be appropriate due to the different functionality of the two systems. If responsive records are identified in classified e-mail systems, file copies are preserved in an appropriate storage facility for further

review and processing by OIP staff.

Classified Hard Drives and Paper Files

18) Properly credentialed OIP staff members search classified hard drives and paper files in a secure location, following the same methodologies described above for unclassified hard drives and paper files. If responsive material is identified, file copies are preserved in an appropriate storage facility for further review and processing by OIP staff.

Departmental Executive Secretariat

19) The Departmental Executive Secretariat (DES) is the official records repository of OAG, ODAG, and OASG and maintains records of all formal, controlled, unclassified[8] correspondence sent to or from those Offices from January 1, 2001, to the present day. Moreover, the DES is used to track internal Department correspondence sent through formal channels, as well as certain external correspondence including Departmental correspondence with Congress.

20) Records received by the designated senior leadership offices are entered into DES's Intranet Quorum (IQ) database by trained analysts. The data elements entered into the system include such items as the date of the document, the date of receipt, the sender, the recipient, as well as a detailed description of the subject of the record. In addition, entries are made that, among other things, reflect what action is to be taken on the records, which component has responsibility for that action, and when that action should be completed. Keyword searches of the electronic IQ database may then be conducted by utilizing a single search parameter or combinations of search parameters. Search parameters may include the subject, organization, date, name, or other keywords.

Classified and Unclassified Searches of Former Department Employees' Records

[8] The DES does not maintain classified information.

21) Former officials' electronic files are searched with the aid of the Department's Office of the Chief Information Officer (OCIO), which provides Information Technology (IT) support services, including the capability to collect and isolate electronic records of former leadership office officials. The same electronic search methods and parameters used for current records custodians are applied to searches of former officials.

22) Paper files of former officials are searched using a subject matter index. Leadership office officials are usually assigned a portfolio of responsibilities. Support staff maintains a subject matter index of active files for these officials. These active files consist of paper records, but may also include e-mails and other printed electronic records. Upon a n official's departure, their records are physically boxed and provided to the Office of Records Management Policy (ORMP) of the Justice Management Division (JMD), which reviews the records and the indices for accuracy and puts the indices on a shared drive. The paper records are then put into storage. When a former official is identified as having potentially responsive records and/or when the subject of a request suggests former officials may have maintained potentially responsive records, OIP will review the indices to determine if any of the file listings appear to contain potentially responsive records. If such files are identified, OIP will then request that ORMP retrieve the appropriate boxes from storage facilities, and OIP staff will then hand-search those file contents for responsive material.

Searches Conducted by OIP in Response to Plaintiffs' Request

23) By memoranda dated November 25, 2014, OIP initiated searches within OAG and ODAG for records responsive to plaintiffs' FOIA request. As noted above, the practice for these offices is for the OAG and ODAG liaisons to notify each individual staff member in those offices

of receipt of OIP's memorandum requesting that a search be conducted, and each staff members' files, including electronic files, are then searched as necessary – either by the staff member directly, or by OIP staff – for records responsive to the request.

24) In response to OIP's records search request, OAG identified five current and former officials within that office who might have potentially responsive unclassified e-mail records, and/or classified e-mail, hard drive, and/or paper files. OAG requested that OIP conduct a search of the unclassified e-mails, classified e-mails, classified computer files, and/or classified paper files of the identified officials. As detailed below, OIP subsequently conducted records searches of the records systems identified by OAG. OAG did not indicate that they had potentially responsive unclassified paper records or unclassified hard drive files.

25) In response to OIP's records search request, ODAG identified four current and former officials within that office who might have potentially responsive unclassified e-mail records. ODAG requested that OIP conduct a search of the unclassified e-mails of these four officials. As detailed below, OIP subsequently conducted a records search of the e-mails identified by ODAG. ODAG did not indicate that they had potentially responsive unclassified paper or hard drive records, or classified e-mail, computer or paper files.

Search of Unclassified Records (E-mails)

26) Upon receipt of OAG and ODAG's search responses, the unclassified e-mails for the identified records custodians were searched using the electronic search and review system described in paragraph 14 above. The initial search parameters used were the date range of November 1, 2013 to November 25, 2014, and the broad search term "CIA." As described previously, the initial search gathers records from across the entire collection of e-mail for the

relevant custodians. After an assessment of the initial search results, OIP staff proceeded to conduct a focused secondary search, consistent with the search protocols described in paragraph 14.

27) In conducting the secondary search of the broader universe of documents, OIP used a "common concept" search method to effectively identify records relevant to the request. A "common concept" search is a more advanced method than common keyword searches and is particularly helpful in conducting complex searches that do not lend themselves to simple keyword searches. This method finds common terms and information within documents that is conceptually similar to terms provided in a search query. As stated in paragraph 26, in response to plaintiffs' request, OIP conducted its initial search of unclassified e-mail using a broad search term: "CIA." Once the results of this broad search were within the electronic system's platform, OIP conducted a secondary, concept search across the universe of located material. This concept search first surveyed all documents containing the term "CIA," identified 200 terms within those documents related to "CIA," and provided a rating identifying each term's relevance to the term "CIA." OIP reviewed these terms in light of the relevance ratings assigned to each term and the subject matter of the request, which allowed OIP staff to identify an informed set of secondary search terms based on the automated assessment of the content of the documents culled in the initial search. OIP then conducted a common concept search using these terms, which were: "Dianne," "Feinstein," "spy," "computer," "computers," "wrongdoing," "dispute," "accusations," "Brennan," and "apology." As a result of this common concept search, OIP identified a total of 4,524 potentially responsive items in the electronic search and review system.[9] Those items were

[9] The electronic search and review system only provides an accounting of "items" – which includes e-mail chains and attachments – and does not provide a page count for records retrieved. As such, the actual number of pages resulting

then individually reviewed by OIP staff to determine responsiveness, and responsive documents were processed accordingly.

Search of Classified Records

28) Consistent with OAG's search response, OIP searched the classified e-mail, computer and paper records of the officials identified by OAG as having potentially responsive classified records.[10] Using the methodologies described in paragraphs 17 and 18 above, OIP staff reviewed the request and developed terms that would most likely return responsive documents from the e-mail and computer systems based on their knowledge of the way records are maintained in leadership offices, the search functionality of the classified systems, and an assessment of the responsive unclassified e-mails reviewed in the electronic system platform. The search terms used in this instance were "SSCI improper accessed," "SSCI unauthorized access," "SSCI hack," "CIA SSCI dispute," "Panetta Review," "SSCI Spy scandal," "SCI RDINet," "Sen Whitehouse," "SSCI criminal referral," "David Buckley," "SSCI declination letter," and "SSCI wiretap act violation." These term combinations would have yielded any variation of these terms within the electronic systems searched. The timeframe was limited to November 1, 2013 through November 25, 2014, consistent with agreement with plaintiffs.

29) OIP staff also reviewed classified paper files designated by OAG pursuant to the methodologies described in paragraph 18 above. Specifically, all files identified by OAG were reviewed by OIP staff by hand, and were individually assessed for responsiveness to plaintiffs' FOIA request. Because the identified files were reviewed in their entireties, no keyword searches were utilized for the classified paper search.

from this search is significantly higher than 4,524.

[10] ODAG did not identify classified material in response to this request.

30) OIP located no records responsive to the request pursuant to the above-described classified records searches.

Search of the Departmental Executive Secretariat

31) In addition to the OAG and ODAG searches described above, an OIP Government Information Specialist conducted a search for records responsive to plaintiffs' FOIA request in the electronic database of the DES which, as described in paragraphs 19 and 20 above, is the official records repository of OAG and ODAG and, in particular, of records of all formal, controlled, unclassified correspondence sent to or from OAG and ODAG from January 1, 2001, to the present day. OIP's search of the DES was conducted using the same terms as the common concept search in the unclassified e-mail platform, i.e.: "CIA" and "Dianne"; "CIA" and "Feinstein"; "CIA" and "Brennan"; "CIA" and "Spy"; and "CIA" and "Computer"; "CIA" and "Wrongdoing"; "CIA" and "Dispute"; "CIA" and "Accusations"; and "CIA" and "Apology." These term combinations would have yielded documents containing any variation of these terms. The time frame was limited to November 1, 2013 to November 25, 2014, consistent with agreement with plaintiffs.

32) Records located as a result of the DES search were then reviewed for responsiveness to plaintiffs' request by OIP staff. Ultimately, no records responsive to plaintiffs' request were identified from the DES search.

Supplemental Search of OLA Records

33) Upon review of the records identified in the OAG, ODAG, and DES searches described above during the course of preparing defendant's motion for summary judgment, and upon discussion with knowledgeable staff in OLA, OIP identified an additional records custodian as potentially maintaining unclassified e-mail records responsive to plaintiffs' FOIA request. In

an effort to ensure that all potentially responsive records had been identified, OIP staff decided to conduct a supplemental search of this OLA custodian's unclassified e-mails.[11]

34) As a result of the supplemental OLA search, OIP located eight documents, totaling forty pages, that contained information responsive to plaintiffs' FOIA request, most of which was duplicative of material which had already been located and provided to plaintiffs. These documents contained some new e-mail threads and, accordingly, have been provided to plaintiffs in supplement to OIP's response to their FOIA request.

Summary of OIP's Records Searches

35) In sum, plaintiffs' FOIA request sought various documents related to the SSCI and CIA "dispute." The applicable time frame for OIP's records searches was November 1, 2013 to November 25, 2014 – based on plaintiffs' own proposed start date and a search cut-off date consistent with Department regulations. As a result of the records searches conducted in OAG and ODAG, the DES, and OLA, OIP identified a total of ten officials who might have maintained potentially responsive records. As appropriate, OIP searched the unclassified e-mail, classified e-mail, classified computer records, and classified paper files of the identified officials, as well as the electronic database of the DES, to locate records responsive to plaintiffs' FOIA request. Based on my experience with the Department and my familiarity with the records maintained by the leadership offices, as well as my understanding of the scope of plaintiffs' request, and information gathered from the documents themselves, these searches were reasonably calculated to uncover all responsive documents. As a result of these records searches, OIP ultimately identified a total of 1,124 pages containing material responsive to plaintiffs' FOIA request.

[11] There was no indication that searches of other records systems (paper or hard drive) for this custodian was warranted.

National Security Division Referral

36) On June 2, 2015, the National Security Division (NSD) referred to OIP thirty- two pages of e-mail records for processing and direct response to the requester.

37) Upon review of the records referred by NSD, OIP determined that all referred documents should be withheld in full. Further explanation of the documents withheld in full is provided below.

OIP's Final Response to Plaintiffs' FOIA Request

38) As a result of the searches conducted by OIP and the NSD referral, OIP identified 1,156 pages containing material responsive to plaintiffs' FOIA request.[12] By letter dated February 16, 2016, OIP provided its final response to plaintiffs, with a supplemental response provided subsequently. Pursuant to these responses and as explained further below, the responsive portions of 452 pages have been released to plaintiffs with excisions made pursuant to Exemptions 3,[13] 5, 6, and 7(C) of the FOIA, 5 U.S.C. § 552(b)(3), (b)(5), (b)(6), (b)(7)(C). The responsive portions of the remaining 704 pages were withheld in full pursuant to Exemptions 5, 6, and 7(C) of the FOIA. (A copy of OIP's February 16, 2016 final response to plaintiffs is attached hereto as Exhibit D.)

Explanation of Withheld Material

39) Of the 452 pages OIP has provided to plaintiffs, 249 pages (within fifty-three individual documents) contain redactions made pursuant to Exemptions 3, 5, 6, and 7(C) of the FOIA. In addition, eighty-one documents, totaling 704 pages, were withheld in full pursuant to Exemptions 5, 6, and 7(C) of the FOIA.

[12] Plaintiffs requested all duplicates and thus, a large portion of this material is duplicative.
[13] While not initially cited in the response letter to plaintiffs, Exemption 3 has been applied to protect the identity of a CIA employee, in addition to the previously-cited Exemption 6, and is therefore addressed herein.

40) Attached to this decl aration is a Vaughn Index containing detailed descriptions of partially withheld records and records withheld in full. This Vaughn Index includes the following information for each document withheld in part and in full: Document ID Number (for documents released in part, this number corresponds to Bates stamps on documents released to plaintiffs); Date Sent; From; To; CC; Subject; Page Count; Exemption(s); Document Category; Description of Withheld Material. (OIP's Vaughn Index is attached hereto as Exhibit E). For clarity of presentation and discussion, each partially- or fully-withheld document has been organized into a "document category" which is keyed to the individual documents on the OIP Vaughn Index. The designated document categories and applicable FOIA exemptions/privileges for each document category are as follows:

Documents Released in Part (249 pages):

- *Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements* (twenty-two documents/seventy pages): Exemptions 5 (deliberative process privilege), 6 and 7(C);
- *Briefing Material (in part)* (one document/five pages): Exemption s 5 (deliberative process privilege) and 6;
- *Internal Department E-mails Contemplating Response to a CIA Inquiry* (twenty-nine documents/173 pages): Exemptions 3, 5 (deliberative process and attorney work-product privileges), 6 and 7(C);
- *Press* (one document/one page): Exemption 6.

Documents Withheld in Full (704 pages):

- *Investigation-Related Discussion* (thirty-five documents/162 pages): Exemptions 5 (deliberative process and attorney work-product privileges), 6 and 7(C);
- *Briefing Material* (forty-six documents/542 pages): Exemptions 5 (deliberative process privilege) and 6.

Exemption 3

41) Exemption 3 protects information exempted from release by statute. In this instance, the use of Exemption 3 is taken on behalf of the CIA (in conjunction with Exemptions 6 and 7(C),

further described below) under Section 6 of the Central Intelligence Agency Act of 1949, to protect intelligence sources and methods from unauthorized disclosure. Specifically, the name of a CIA employee occurring within the *Internal Department E-mails Contemplating Response to a CIA Inquiry* document category was protected pursuant to Exemption 3 – as indicated in the OIP Vaughn Index. Exemption 3, as applicable to the identities of certain CIA employees, is addressed in more detail in the Declaration of Antoinette B. Shiner, filed contemporaneously herewith.

Exemption 5

42) Exemption 5 of the FOIA exempts from mandatory disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). As discussed in detail below, the documents protected by OIP in part or in full pursuant to FOIA Exemption 5 fall squarely within the deliberative process and/or attorney work-product privileges. Each of these privileges will be discussed in turn.

Exemption 5: Inter-/Intra-Agency Threshold

43) The information withheld from plaintiffs pursuant to this exemption consists of communications generated by and wholly internal to the Executive Branch. As such, they are "inter-/intra-agency" documents within the threshold of FOIA Exemption 5. To the extent communications external to the Executive Branch were identified among the documents responsive to plaintiffs' FOIA request – including communications with Congress or the press – such exchanges were released to plaintiffs with only (as applicable) limited Exemption 6 redactions.

Exemption 5: Deliberative Process Privilege

44) OIP has protected information within the following document categories pursuant to the deliberative process privilege: *Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements*; *Internal Department E-mails Contemplating Response to a CIA Inquiry*; *Briefing Material* & *Briefing Material (in part)*; and *Investigation-Related Discussion*. All of these documents consist of e- mail communications.

45) Inter- and intra-agency e-mails, such as those withheld in this case by OIP, frequently include preliminary assessments by attorneys and other staff about issues on which they have been asked to make recommendations and give advice. Department officials routinely e-mail each other as they contemplate how to respond to inquiries or statements regarding the Department's activities – as in the protected portions of the documents in the *Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements* and *Internal Department E-mails Contemplating Response to a CIA Inquiry Discussion* categories identified in OIP's Vaughn Index. Department staff also use e-mail to brief senior officials, in this case the Attorney General, on a variety of pending matters and in preparation for responding to inquiries and/or engaging with the press – as in the *Briefing Material* categories identified in OIP's Vaughn Index. Finally, as Department attorneys engage in the core work of the Department, as in the *Investigation-Related Discussion* category identified in OIP's Vaughn Index, e-mails reflect the essential give and take between the Department's law enforcement, litigating, and leadership components as they evaluate the merits of potential law enforcement actions and whether to pursue criminal referrals. In all of these instances, the protected (in part or in full) e-mail exchanges reflect staff members' developing, preliminary assessments about matters on which no final

decision has yet been made. Indeed, all of the e-mails protected by OIP pursuant to the deliberative process privilege reflect this preliminary give-and-take of agency deliberations.

46) The deliberative process privilege is intended to protect the decisionmaking processes of government agencies from public scrutiny in order to enhance the quality of agency decisions. Disclosure ofthe e-mails at issue would severely hamper the efficient day-to-day workings of the Department as individuals would no longer feel free to discuss their ideas, strategies, and advice in e-mail messages and Department employees will be much more circumspect in their discussions with each other. This lack of candor will seriously impair the Department's ability to foster the forthright internal discussions necessary for efficient and proper decisionmaking. Certainly, disclosure of such preliminary assessments and opinions would make officials contributing to pre-decisional deliberations much more circumspect in providing their views. Agency decisionmaking is at its best when employees are able to focus on the substance of their views and not on whether their views may at some point be made publicly available.

Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements

47) Documents in OIP's Vaughn Index categorized as *Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements* are e-mails among DOJ staff containing deliberations concerning how to respond to a question from a SSCI staffer relating to access to a CIA-leased facility, exchanges regarding an Inspector General Report provided to Congress and a Senator's statement related to that report, and deliberations regarding how to respond to a congressional representative's letter on surveillance matters.

48) The e-mail portions protected within this document category contain discussions

among Department staff regarding how to respond to questions from and statements made by members of Congress. Because these discussions precede any final decisions on the matters at hand – i.e., the Department's responses to the questions and statements presented by Congress – they are pre-decisional.

49) Moreover, these discussions are deliberative in that they reflect the exchange of ideas and suggestions leading up to final decisions – in this case, decisions regarding how to respond to Congress. Such exchangesare at the core of the Department's deliberative process as relevant staff engage in the decisionmaking process that ultimately leads to an informed decision on how to, or whether to, respond to external inquiries and statements.

50) Disclosure of the protected portions of e-mails in this document category would undermine Department staff's ability to candidly express opinions on matters raised by Congress and by extension, the Department's ability to formulate cohesive, well-reasoned, and accurate responses to the legislative branch. Release of such discussions would therefore hinder the deliberative process because Department employees would no longer feel free to discuss their ideas and advice in e-mail messages such as these, for fear that their preliminary thoughts and comments would be publicly released.

Internal Department E-mails Contemplating Response to a CIA Inquiry [14]

51) Documents inOIP's Vaughn Index categorized as *Internal Department E-mails Contemplating Response to a CIA Inquiry* are e-mails among DOJ attorneys containing deliberations concerning how to respond to questions raised by a CIA attorney related to the Department's decision not to pursue criminal charges or prosecution in response to the SSCI and

[14] Portions of these e-mails were also withheld pursuant to the attorney work-product privilege which is explained further below.

CIA crimes referrals.

52) The e-mail portions protected within this document category contain discussions among Department staff regarding how to respond to questions from the CIA. Because these discussions precede any final decisions on the matters at hand – i.e., the Department's response to the questions from CIA – they are pre-decisional.

53) Moreover, thesediscussions are deliberative in that they reflect the exchange of ideas and suggestions leading up to final decisions – in this case, decisions regarding how to respond to the CIA. Such exchanges are at the core of the Department's deliberative process as relevant staff engage in the decisionmaking process that ultimately leads to an informed decision on how to, or whether to, respond to external inquiries regarding the Department's criminal investigatory decisions.

54) Disclosure of the protected portions of e-mails in this document category would undermine Department staff's ability to candidly express opinions on matters raised by other agencies and by extension, the Department's ability to formulate cohesive, well-reasoned, and accurate responses regarding its investigatory activities. Release of such discussions would therefore hinder the deliberative process because Department employees would no longer feel free to discuss their ideas and advice in e-mail messages such as these, for fear that their preliminary thoughts and comments would be publicly released.

Briefing Material

55) Another aspect of the decisionmaking process consists of the drafting of briefing materials, to aid senior leadership officials and prepare them to address various legal and policy points that may arise. In the documents categorized as *Briefing Material* and *Briefing Material*

(in part) in OIP's Vaughn Index, Department staff is preparing materials in order to brief the Attorney General in advance of a press conference. Such briefing materials are therefore pre-decisional, inasmuch as they precede the event the Attorney General is being prepped for and do not embody final agency action.

56) The drafters of these briefing materials attempt to succinctly summarize particular events, identify important issues, and provide key background information in a concise, summary format for ease of understanding and presentation. Throughout this process, the authors necessarily review the universe of facts and possible issues arising on the topic at hand, and then select those facts and issues that they deem most appropriate for briefing the Attorney General. The decision to include or exclude certain factual information in or from analytical documents is itself an important part of the deliberative process. The Department's most senior officials rely heavily on the creation of such briefing materials so that they can be fully informed on the substance of the many legal and policy issues being worked on in the Department every day in individual offices.

57) Briefing materials such as these reflect the drafters' opinions and analysis on important newsworthy topics and on how best to convey and respond to questions on these topics from the Department's perspective. Revealing such opinions and analysis would hinder Department staff's ability to provide candid evaluations on the topics of the day for Department leadership and by extension, Department leadership's ability to prepare for press events and to provide informed and accurate representation of the Department's interests. Because the selection of facts and source material is itself a part of the deliberative process inherent to preparation of briefing materials, these documents are generally protected in full pursuant to

FOIA Exemption 5. In this case, one e-mail chain (designated as *Briefing Material (in part)*) contained a tangential aside in the context of briefing the Attorney General – and OIP segregated this portion for release to plaintiff.

Investigation-Related Discussion[15]

58) The documents categorized in OIP's Vaughn Index as *Investigation-Related Discussion* consist of internal Department e-mails including e-mails stemming from communications between the Department and the CIA in which DOJ attorneys provide recommendations, analysis, advice and comments related to the internal Department discussion about whether to pursue possible criminal charges or prosecutions stemming from the crimes referrals submitted to the Department by SSCI and CIA. Because the documents in this category are also wholly protected by the attorney work-product privilege, as detailed below, they have been withheld from disclosure in full.

59) All of the documents withheld in this category pre-date the Department's determination not to pursue criminal charges or prosecution stemming from the criminal referrals from SSCI and the CIA. As such they are pre-decisional, inasmuch as they precede and do not embody final agency action on the crimes referrals.

60) The documents in this category are at the core of the Department's deliberative process, as they reveal the internal evaluations and considerations weighed by Department attorneys as they consider matters referred to DOJ for investigation and potential criminal action, and engage in legal analysis as they decide upon the merits of matters presented and whether further legal action is warranted. The release of these deliberations related to ongoing

[15] Portions of these e-mails were also withheld pursuant to the attorney work-product privilege which is explained further below.

Department investigations would hinder Department attorneys from providing candid, fulsome recommendations and advice on investigatory matters for fear that these preliminary deliberations would be opened to public scrutiny.

Segregation of Non-Exempt Information

61) OIP carefully reviewed each of the e-mails discussed above, and withheld from release pursuant to the deliberative process privilege of Exemption 5 only that information which would reveal the Department's pre-decisional decisionmaking process. OIP conducted a line-by-line review of these documents and determined that some non-exempt information in them could be segregated for release. Ho wever, all of the remaining information was withheld from plaintiffs because that information was protected by the deliberative process privilege and, in some instances as noted above and discussed in detail below, the attorney work-product privilege. The *Investigation-Related Discussion* e-mails, in particular, are wholly protected by the attorney work-product privilege. The *Briefing Material* e-mails, aside from the one document designated *Briefing Material (in part)* all show Department staff's selection of certain facts from various news stories. Releasing any part of these documents reveal facts of news stories that attorneys deem important in preparing the Attorney General for press questions and therefore was withheld in full. All reasonably segregable, nonexempt information from these documents has been disclosed to plaintiffs.

Exemption 5: Attorney Work-Product Privilege

62) The attorney work-product privilege encompassed by Exemption 5 of the FOIA shields materials prepared by an attorney or at the direction of an attorney, generated in reasonable anticipation of litigation, 5 U.S.C. § 552(b)(5). The privilege protects any part of a

document prepared in anticipation of litigation, not just the portions concerning opinions and legal theories. The purpose of this privilege is to protect the adversarial process by insulating the attorneys' preparation of litigation materials from scrutiny.

63) OIP has protected information within the *Investigation-Related Discussion* and *Internal Department E-mails Contemplating Response to a CIA Inquiry* document categories of the OIP Vaughn Index pursuant to the attorney work-product privilege.[16] All of these documents consist of e-mail communications exchanged among or at the direction of government attorneys.

Investigation-Related Discussion

64) The documents categorized in OIP's Vaughn Index as *Investigation-Related Discussion* are inter- and intra-agency e-mails consisting of deliberations between attorneys providing recommendations, analysis, and strategic comments as they evaluate matters related to crimes referrals made to the Department.

65) These e-mails were sent in the course of making legal determinations on an open investigatory discussion regarding whether to pursue possible criminal violations by SSCI staff and CIA personnel and involve input by NSD and the Criminal Division, both of which are law enforcement, litigating branches of the Department.

66) Department attorneys' are singularly tasked with enforcing federal laws, and defending the interests of the United States, a critical responsibility which extends to Department attorneys' review of specific criminal matters referred to it. Disclosure of communications in this document category would reveal Department attorneys' process in interpreting evidence and assessing potential legal risk and strategy on various aspects of pending and potential

[16] As discussed above, these documents are also protected by the deliberative process privilege.

investigations. The e-mails withheld in this category reflect this routine yet essential attorney work-product that Department attorneys engage in as they execute this core function of the Department of Justice.

Internal Department E-mails Contemplating Response to a CIA Inquiry

67) The e-mails in this document category, as described in detail above in paragraphs 51-54, are e-mails between Department attorneys in response to a question from the CIA. These e-mails have been released to plaintiffs in part. The withheld portions of these e-mails are protected by the attorney work-product privilege, in addition to the deliberative process privilege, because these portions consist of discussions among DOJ attorneys regarding how to explain to the CIA certain aspects of the Department's decision not to pursue criminal charges or prosecution in response to the CIA criminal referral regarding SSCI's activities. These e-mails discuss the recollection of conversations and recommendations contemplating a decision on whether the Department would pursue criminal law enforcement actions. In addition, these discussions involve attorneys from the Criminal Division and NSD, which are both litigating components of the Department, who provided input on the discussion from a law enforcement perspective.

Segregation of Non-Exempt Information

68) OIP carefully reviewedthe documents withheld in full pursuant to the attorney work-product privilege encompassed by FOIA Exemption 5 and determined that none of the materials could be further segregated for release. Documents in the *Investigation-Related Discussion* category are covered in there entireties by the attorney work-product privilege. T he disclosure of these documents, and the facts selected for and contained within them, would

undermine the core legal advice and analysis that the privileges are meant to protect by revealing attorneys' assessments of what was deemed significant in the course of determining whether to pursue potential criminal violations. Thus, documents in the *Investigation- Related Discussion* category are not appropriate for segregation. The documents included in the *Internal Department E-mails Contemplating Response to a CIA Inquiry* category were segregated to the extent that some portions of those documents did not directly relate to the Department's work-product regarding the crimes referrals and thus, were appropriate for segregation under the deliberative process privilege. The remainder of these documents is covered by the attorney work-product privilege and, accordingly, is not appropriate for segregation.

Exemptions 6 and 7(C)

69) FOIA Exemption 6 protects information about individuals when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). FOIA Exemption 7(C) protects information "compiled for law enforcement purposes" and protects personal privacy when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).

70) When determining whether to withhold information pursuant to Exemptions 6 and/or 7(C), OIP balances the privacy interests of individuals identified in records against any "FOIA public interest" in disclosure of that information. In making this analysis, the FOIA public interest considered in the balance is limited to information which would shed light on the Department's performance of its mission: to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those

guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

71) Information withheld by OIP pursuant to Exemption 6 consists of personal contact information, including cell phone numbers, contact information of White House staff, and personal e-mail addresses. Information withheld by OIP pursuant to Exemption 7(C) consists of the names and identifying information, including contact information, of certain CIA, Criminal Division, and NSD employees.[17]

Personal Contact Information

72) The release of personal e-mail addresses, cell phone numbers, and contact information of White House employees would not aid the public's understanding of how the Department carries out its duties, particularly considering that the identities of these individuals have been disclosed, and only some direct contact information protected. On the other hand, the release of such information could subject those employees to unwarranted harassment, and as such the release of such information would "constitute a clearly unwarranted invasion of personal privacy," 5 U.S.C. 552(b)(6). As listed in OIP's Vaughn Index the *Press*, *Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements*, *Investigation-Related Discussion*, and *Briefing Material*, contain e-mail addresses that were withheld from release to plaintiffs pursuant to Exemption 6. Cell phone numbers that appeared in OIP's Vaughn Index in the *Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements*, *Briefing Material (in part)*, and *Briefing Material* document categories were withheld from release by OIP pursuant to Exemption 6. For both cell

[17] See Declaration of Peter Sprung filed contemporaneously herewith for description of Criminal Division employees protected by Exemptions 6 and 7(C). See also Declaration of Antoinette B. Shiner filed contemporaneously herewith for description of CIA employees protected by Exemptions 6 and 7(C).

phone numbers and e-mail addresses, a balancing analysis between the public interest in disclosure and personal privacy interests favors the withholding of such information pursuant to Exemption 6.

Names/Identifying Information of Law Enforcement Personnel

73) The names and identifying information, including contact information, of law enforcement employees have been withheld by OIP in the following Vaughn Index document categories: *Internal Department E-mails Contemplating Responses to Congressional Inquiries and Statements*, *Internal Department E-mails Contemplating Response to a CIA Inquiry*, and *Investigation-Related Discussion*. OIP withheld this information from plaintiffs pursuant to FOIA Exemptions 6 and 7(C). As an initial matter, inasmuch as the information withheld by OIP appears within e-mail discussing a law enforcement investigation, and the information relates to the identity of employees of law enforcement components of DOJ, I have determined that this information meets the threshold of Exemption 7 because there is a rational nexus between the law enforcement employees' identities and the Department's law enforcement duties.

74) Releasing the names and identifying information of law enforcement personnel would and could reasonably be expected to "constitute an unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(6), (b)(7)(C). As noted above, in order to withhold information pursuant to these two exemptions, a balancing of the privacy interest of the individuals mentioned in these records against any public interest in disclosure must weigh in favor of non-disclosure. Considering the sensitive and often contentious nature of the work law enforcement personnel conduct, disclosure of their identities could seriously prejudice their effectiveness in conducting investigations to which they are assigned and subject them to unwarranted harassment.

Furthermore, releasing the names of law enforcement personnel would not aid the public's understanding of how the Department carries out its duties. I have therefore determined that the law enforcement employees' privacy interests outweigh the dearth of public interest in the disclosure of the names of those employees.

Segregation of Non-Exempt Information

75) In each instance where information was withheld from plaintiffs pursuant to Exemptions 6 and 7(C), OIP determined that the individuals' privacy interests were not outweighed by any FOIA public interest in disclosure of that information. Every effort has been made to release all segregable information to plaintiffs without invading the privacy interests of individuals who were mentioned in the records discussed below. Where possible, only the names and contact information were protected. Elsewhere, information protected by Exemptions 6 and 7(C) fell within material protected under Exemption 5, as detailed above, so further segregation was not possible.

I declare under penalty of perjury that the foregoing is true and correct.

Vanessa R. Brinkmann

Executed this 5th day of April 2016.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

MARY M. ZAPATA et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:13-cv-00022 (ASH)
UNITED STATES et al.,	)	
Defendant.	)	

DECLARATION OF VANESSA R. BRINKMANN

I, Vanessa R. Brinkmann, declare the following to be true and correct:

1) I am the Senior Counsel to the Office of Information Policy (OIP), United States Department of Justice (DOJ). In this capacity, I am responsible for supervising the handling of the Freedom of Information Act (FOIA) requests processed by OIP. The I nitial Request (IR) Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), and the Associate Attorney General (OASG), and the Offices of Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO). The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the DOJ, as well as with other Executive Branch agencies.

2) I make the statements herein based on my personal knowledge, as well as on information that I acquired while performing my official duties.

OIP's Processing of Plaintiffs' FOIA Request

Routing and Receipt of Initial Request

3) By letter dated June 14, 2011, Benigno Martinez, on behalf of his clients Mary M. Zapata, Amador Zapata, Jr., and Victor Avila, Jr., submitted a FOIA request to the U.S. Attorney's Office for the Southern District of Texas seeking "[copies] of any FBI 302s, DEA 6s, ICE ROIs, ATF documentation, or any other investigative reports linked to" the death of ICE Special Agent Jaime J. Zapata as well as answers to the written and oral questions pertaining to his death asked by Senator Grassley and Congressman Issa.[1] (A copy of plaintiffs' initial request letter dated June 14, 2011 is attached hereto as Exhibit A.)

4) By letter dated June 30, 2011, the U.S. Attorney's Office for the Southern District of Texas forwarded plaintiffs' request to DOJ's Executive Office for United States Attorneys (EOUSA). (A copy of the U.S. Attorney's Office for the Southern District of Texas' letter dated June 30, 2011, including enclosures, is attached hereto as Exhibit B.)

5) On July 28, 2011, OIP received plaintiffs' request from EOUSA.[2] As the request was not addressed to OIP, nor any of the senior leadership offices for which OIP processes FOIA requests, OIP had not received this request prior to July 28, 2011.[3] (A copy of EOUSA's letter dated July 28, 2011 forwarding plaintiffs' initial request to OIP is attached hereto as Exhibit C.)

[1] This request was also addressed to the FBI's San Antonio Division and the U.S. Immigration and Customs Enforcement Offices in Harlingen, San Antonio, and Brownsville, Texas.
[2] See 28 C.F.R. § 16.4(c) (2015).
[3] EOUSA also forwarded this request to DEA, FBI, ATF, and ICE.

6) By letter dated August 23, 2011, the IR Staff of OIP provided plaintiffs with a response on behalf of OIP, which maintains the case files of initial requests and appeals it processes. (A copy of OIP's response dated August 23, 2011 is attached hereto as Exhibit D.)

7) By letter dated October 19, 2011, plaintiffs appealed OIP's August 23, 2011 response. (A copy of plaintiffs' appeal letter dated October 19, 2011 is attached hereto as Exhibit E.)

8) By letter dated June 6, 2012, OIP's Appeal Staff affirmed, on partly modified grounds, the IR Staff's action in the August 23, 2011 response. This letter further noted that, pursuant to a May 9, 2012 conversation between an Appeals Staff attorney and plaintiffs' counsel, plaintiffs requested that the IR Staff of OIP conduct searches of the six leadership offices for which it handles FOIA requests, and that the IR Staff agreed to conduct the requested searches in all leadership offices, as well as in OIP itself.[4] This letter also confirmed that plaintiffs had clarified the scope of their request as seeking any records pertaining to the death of Special Agent Zapata, including investigations concerning the circumstances surrounding his death. (A copy of OIP's Appeal Staff's June 12, 2012 letter is attached hereto as Exhibit F.) OIP's IR Staff memorialized this agreement by letter dated June 6, 2012 and on that same date opened a FOIA administrative file for plaintiffs' modified request, which was assigned tracking numbers AG/12-01032 (F), DAG/12-01033 (F), ASG/12-01034 (F), PAO/12-01035 (F), OLA/12-01036 (F), OLP/12-01037 (F), and OIP/12-01038 (F). (A copy of OIP's IR Staff's acknowledgement letter, dated June 6, 2012, is attached hereto as Exhibit G.)

OIP's Records Searches

[4] OIP's initial response of August 23, 2011 indicated that OIP processes records for the Office of Intergovernmental and Public Liaison. That Office was subsequently combined with the Office of Legislative Affairs.

9) When processing a FOIA request for one or more of the senior leadership offices, OIP typically initiates records searches by sending a memorandum to the specific office(s), which notifies the office(s) of the receipt of the request and the need to conduct a search. OIP's search memoranda are sent to a designated point-of-contact in each office who serves as the liaison between OIP and the senior leadership office(s). The liaison in each office then, upon receipt of OIP's search memorandum, notifies each individual staff member in that office of the receipt of OIP's memorandum requesting that a search be conducted. The individual staff members of each office, as the custodians of their own records and the best authorities on what records they would personally maintain, will then advise the liaison if they (1) have no records responsive to the request; (2) have potentially responsive material which will be provided directly to OIP for review and processing (in which case the staff member conducts their own search); or (3) have potentially responsive material for which they request an OIP Government Information Specialist or Attorney-Advisor to conduct a search. Senior leadership office staff members who conduct their own searches will do so depending on how they maintain their own records. If, for example, an individual organizes their records by topic, office, or other category and already knows where potentially responsive material would be located, they may simply review that material and provide it to OIP without the need for, or in addition to, a "keyword" search. This practice ensures that each individual staff member of the given office reviews OIP's search memorandum and the accompanying FOIA request, and that the records searches are conducted by or for only those individuals who indicate that they would have potentially responsive material. Once the review of the search memoranda and accompanying request is completed in the senior leadership office(s), the designated liaison responds to OIP's records search request on behalf of the senior

leadership office,[5] and OIP takes next steps – e.g., conducting searches of identified records custodians, or reviewing records returned to OIP – as appropriate.[6]

10) When searching the records of leadership office custodians identified as having potentially responsive material, OIP staff employ any one of a variety of search methods, or a combination of methods, depending on a number of factors, including the type of records systems implicated in the search. Potentially responsive records may be located in unclassified or classified e-mail systems, computer hard drives, and/or hard copy (paper) files.

11) Consistent with the search methods described in paragraphs 9 and 10 above, in response to plaintiffs' FOIA request, OIP searched relevant e-mail, computer records, and paper files in OAG, ODAG, OASG, PAO, OLA, and OLP and located 17,085 pages containing responsive material. Additionally, a search was conducted of OIP's electronic tracking database, which tracks all FOIA requests and appeals processed by OIP, and no records responsive to plaintiffs' request were located therein.

OIP's Interim and Final Responses to Plaintiffs' Request

12) By letter dated September 27, 2012, OIP provided its response on behalf of OASG. In this letter, OIP advised plaintiffs that a search had been conducted in OASG, and that no records responsive to plaintiffs' request were located on behalf of that Office. (A copy of OIP's first interim response letter dated September 27, 2012 is attached hereto as Exhibit H.)

13) On February 12, 20 13 plaintiffs filed suit in connection with their FOIA request.

[5] Where appropriate, the senior leadership offices may also identify former staff whose records should be searched by OIP.

[6] The initial determination regarding records custodians is not always final; rather, in order to ensure that reasonably thorough records searches are conducted, during the course of processing a given FOIA request, OIP continually assesses – based on our review of records that are located in the initial records searches, discussions with Department personnel, or other pertinent factors – whether other (both current and former) staff members' records should be searched, and will initiate such additional searches as appropriate.

14) By letter dated May 17, 2013, OIP provided its response on behalf of OIP and OLP. In this letter, OIP advised plaintiffs that a search had been conducted in OIP, and that no records responsive to plaintiffs' request were located. Additionally, OIP advised that a search had been conducted in OLP and that records were located that were responsive to plaintiffs' request. These records were withheld in full pursuant to Exemption 7(A) of the FOIA, 5 U.S.C. §552(b)(7)(A). (A copy of OIP's second interim response letter dated May 17, 2013 is attached hereto as Exhibit I.)

15) By letter dated June 24, 2013, OIP provided an interim response on behalf of PAO. In this letter, OIP advised plaintiffs that the search in PAO was partially complete and that this search had produced a voluminous amount of potentially responsive records. In an effort to facilitate OIP's processing of plaintiffs' request, the June 2, 2013 letter described six categories of e-mails that had been located in the PAO search to assist plaintiffs in determining which categories were of interest to them. OIP's letter provided a checklist for plaintiffs to use for this purpose. (A copy of OIP's third interim response letter dated June 24, 2013 is attached hereto as Exhibit J.)

16) By letter dated July 12, 2013, plaintiffs responded to OIP's June 24, 2013 letter, enclosing a completed checklist that indicated that plaintiffs sought records pertaining to three of the six categories detailed in OIP's checklist. Plaintiffs nonetheless indicated that this agreement did not waive their right to later seek additional records. (A copy of plaintiffs' response dated July 12, 2013 is attached hereto as Exhibit K.)

17) By letter dated September 30, 2013, OIP advised plaintiffs that its PAO search had been completed. In this letter, OIP further explained that because the material located contained

information of interest to ODAG, it was continuing to be processed on behalf of ODAG. (A copy of OIP's fourth interim response dated September 30, 2013 is attached hereto as Exhibit L.)

18) By letter dated April 22, 2014, OIP advised plaintiffs that searches in OAG, ODAG, and OLA were partially complete and that this search had produced a voluminous amount of potentially responsive records. In an effort to facilitate OIP's processing of plaintiffs' request, the April 22, 2014 letter described nine categories of e-mails that had been located in the OAG, ODAG, and OLA searches to assist plaintiffs in determining which categories were of interest to them. OIP's letter provided a checklist for plaintiffs to use for this purpose. (A copy of OIP's fifth interim response dated April 22, 2014 is attached hereto as Exhibit M.)

19) By letter dated April 30, 2014, plaintiffs responded to OIP's letter dated April 22, 2014, indicating that they sought records pertaining to five of the nine categories described in the April 22, 2014 letter described above. Plaintiffs nonetheless indicated that this agreement did not waive their right to later seek additional records.[7] (A copy of plaintiffs' response dated April 30, 2014 is attached hereto as Exhibit N.)

20) By letter dated July 31, 2015, OIP provided its sixth interim response to plaintiffs, which advised that OIP had partially completed its review of the records located in the OAG, ODAG, OLA, and PAO searches. In this response, OIP released thirty-two pages of material without excision, and seventeen pages of material with excisions made, some on behalf of the Criminal Division (CRM) and EOUSA, pursuant to Exemptions 5, 6, and 7(C), of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6), and (b)(7)(C). Furthermore, OIP advised plaintiffs that it had determined that twenty-three pages of material were of primary interest to other federal entities,

[7] Because plaintiffs ultimately sought all records located in response to their request, irrespective of the categories identified in the checklists described in paragraphs 16 & 19, these checklists were ultimately rendered moot.

and as such had referred that material to those agencies. Specifically, thirteen pages were referred to U.S. Immigration and Customs Enforcement (ICE) and ten pages were referred to the U.S. Department of State[8]. (A copy of OIP's sixth interim response letter dated July 31, 2015 is attached hereto as Exhibit O.)

21) By letter dated October 2, 2015, OIP provided its seventh interim response to plaintiffs. In this letter, OIP advised that it had completed its initial review of an additional 14,848 pages of records. In this response, 427 pages were released without excision, and 14,421 pages were withheld in full pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). Portions of the released material were marked as "Not Responsive" as they consisted of news clippings that did not pertain to the death of Special Agent Zapata. (A copy of OIP's seventh interim response letter dated October 2, 2015 is attached hereto as Exhibit P.)

22) By letter dated November 12, 2015, OIP provided its eighth interim response to plaintiffs. In this letter, OIP advised that it had completed its review of an additional 1,815 pages of records. In this response, 231 pages were released without excision; two pages were released with excisions made pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5); and plaintiffs were advised that 1,328 pages of records were already publicly available, and links to those documents were included as an attachment to the letter. Finally, 254 pages were withheld in full pursuant to Exemption 5 of the FOIA. Portions of the released material were marked as "Not Responsive" as they consisted of news clippings and congressional questions for the record that

[8] The material referred to the Department of State (DOS) was later returned to OIP with DOS disclosure recommendations. OIP produced these ten pages of material, with excisions made on behalf of DOS pursuant to Exemptions 5 and 6 of the FOIA, to plaintiffs via supplemental production dated May 20, 2016. (A copy of OIP's supplemental response letter dated May 20, 2016 is attached hereto as Exhibit S.)

did not pertain to the death of Special Agent Zapata. (A copy of OIP's eighth interim response letter dated November 12, 2015 is attached hereto as Exhibit Q.)

23) By letter dated January 8, 2016, OIP provided its ninth and final response to plaintiffs. In this letter, OIP advised that it had completed its review of an additional 350 pages of records. In this response, 114 pages were released without excision, and forty-four pages were released with excisions made, some on behalf of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), CRM, Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and the Office of the Director of National Intelligence (ODNI), pursuant to Exemptions 3, 5, 6, 7(C), and 7(F) of the FOIA, 5 U.S.C. § 552(b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(F). Finally, a remaining 133 pages were withheld in full pursuant to Exemptions 5, 6, 7(A), 7(C), 7(D), and 7(F) of the FOIA. Portions of the releas ed material were marked as "Not Responsive" as they consisted of comments, news clippings, and other information that did not pertain to the death of Special Agent Zapata.[9] Fifty-nine pages of material were of primary interest to the FBI and accordingly were referred to the FBI for processing and direct response to plaintiffs. This response completed OIP's processing of the material located in response to plaintiffs' request.[10] (A copy of OIP's final response letter dated January 8, 2016 is attached hereto as Exhibit R.)

Explanation of Withheld Material

24) Subsequent to OIP's final response to plaintiffs' FOIA request, during the course of preparing Defendants' Motion for Summary Judgment in the instant matter, OIP conducted further

[9] During the course of OIP's document review, a large volume of material was determined to be not-responsive or duplicative and, as such, was not processed.
[10] As stated in note 8 above, an additional ten previously-referred pages were later returned to OIP by DOS; these pages were released to plaintiffs on May 20, 2016.

consultations with law enforcement entities – specifically, the FBI, DEA, ATF, and U.S. Immigration and Customs Enforcement (ICE) – regarding law enforcement information maintained in certain investigatory records which OIP had withheld in full from plaintiffs pursuant to Exemption 5. As a result of these consultations, additional bases for protecting the records at issue were identified and are asserted herein.[11] Moreover, during the course of this review, forty-two pages of records which had been withheld from plaintiffs by OIP were determined to be not responsive to plaintiffs' FOIA request; accordingly, those pages will not be addressed further.

25) Of the 2,205 pages OIP released to plaintiffs, sixty-eight pages contain redactions made pursuant to Exemptions 3, 5, 6, 7(C), and 7(F) of the FOIA. In addition, 14,771 pages[12] have been withheld in full by OIP pursuant to Exemptions 3, 5, 6, 7(A), 7(C), 7(D), 7(E) and 7(F) of the FOIA. In some instances, these excisions were made on behalf of other federal entities and/or DOJ components to protect information of specific interest to them.

26) Attached to this declaration is a Vaughn Index containing descriptions of records withheld in full and records withheld in part. For clarity of presentation and discussion, each fully- or partially-withheld document has been organized into a corresponding category. The designated document categories and applicable FOIA exemptions/privileges for each document category are as follows:

Documents Withheld in Full (14,771 pages):

- *Draft Congressional Correspondence* (12 documents, totaling 10,224 pages): Exemption 5 (Deliberative Process Privilege);
- *Draft Statements* (7 documents, totaling 1,705 pages): Exemption 5 (Deliberative

[11] These additional FOIA exemptions were applied to records which were already withheld by OIP pursuant to Exemption 5 – in other words, no additional records or portions thereof were withheld from plaintiffs as a result of this supplemental consultation.

[12] While 14,813 pages were initially withheld, this revised page count excludes the forty-two pages deemed non-responsive to plaintiffs' FOIA request, as noted in paragraph 24 above.

Process Privilege);

- *Draft Reports* (2 documents, totaling 1,364 pages): Exemption 5 (Deliberative Process Privilege);
- *Briefing Material* (25 documents, totaling 847 pages): Exemption 5 (Deliberative Process and Attorney Work-Product Privileges), in conjunction with Exemption 7(A);
- *Draft Press Releases and Responsive Portions of E-mails Discussing Draft Press Releases* (2 documents, totaling 7 pages): Exemption 5 (Deliberative Process and Attorney Work-Product Privileges);
- *Drafts of Prepared Remarks* (5 documents, totaling 204 pages): Exemption 5 (Deliberative Process Privilege);
- *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* (420 pages): Exemptions 5 (Deliberative Process and Attorney Work-Product Privileges) and 7(A), in conjunction with Exemptions 3, 6, 7(C), 7(D), 7(E) and 7(F).[13]

Documents Withheld in Part (68 pages[14]):

- *E-mails Forwarding News Articles, with Commentary* (7 pages): Exemption 5 (Deliberative Process and Attorney Work-Product Privileges);
- *Agency Names and Contact Information* (42 pages): Exemptions 3, 6, 7(C), and 7(F);
- *E-mails Discussing Drafts* (20 pages): Exemption 5 (Deliberative Process and Attorney Work-Product Privileges).

Exemption 3

27) Exemption 3 of the FOIA does not require the production of records that are specifically exempted from disclosure by statute, "provided that such statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matter to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009,

[13] While FOIA Exemptions 5 and 7(A) protect the 420 pages of records in this category in their entireties, FOIA Exemptions 3, 6, 7(C), 7(D), 7(E) and 7(F) provide additional grounds for protecting this investigatory material. This declaration briefly addresses these additional exemptions, as applicable to the *Investigatory Material and Responsive Portions of Emails Discussing Investigatory Matters* category, for purposes of preserving OIP's ability to rely on these exemptions should Exemption 7(A), which is temporal in nature, expire.

[14] One page withheld in part from plaintiff contains redactions made pursuant to both Exemptions 5 and 6, and is accounted for in both the *E-mails Forwarding News Articles, with Commentary* and *Agency Names and Contact Information* document categories.

specifically cites to this paragraph." 5 U.S.C. § 552(b)(3). In this instance, information was protected by OIP pursuant to Exemption 3, on behalf ODNI in the *Agency Names and Contact Information* document category, and on behalf of the ATF in the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* document category, as indicated in the OIP Vaughn Index.

28) Exemption 3 has been asserted on behalf of ODNI to protect ODNI employees' e-mail addresses. This information was withheld pursuant to the National Security Act of 1947, 50 U.S.C. § 3024(m)(1), which prohibits ODNI from releasing such information by giving the Director of National Intelligence the same authority in protecting agency personnel that is given to the Director of the Central Intelligence Agency pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g (the "CIA Act"). In short, the CIA Act -- a well-established Exemption 3 statute -- is applicable to the ODNI through Section 3024(m)(1) of the National Security Act of 1947. Specifically, ODNI e-mail addresses occurring within the *Agency Names and Contact Information* document category were protected pursuant to Exemption 3, as indicated in the OIP Vaughn Index.

29) Section 6 of the CIA Act, which has long been held to be an Exemption 3 statute, provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires "the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. . ." Among other things, this provision allows the CIA to withhold employee names and personal identifiers, including e-mail addresses.

30) Section 3024(m)(1) of the National Security Act, provides that:

> In addition to the authorities under subsection (f)(3), the Director of National Intelligence may exercise with respect to the personnel of the Office of the Director of National Intelligence any authority of the Director of the Central Intelligence Agency with respect to the personnel of the Central Intelligence Agency under the Central Intelligence Agency Act of 1949 (50 U.S.C. § 403a *et seq.*), and other applicable provisions of law, as of the date of the enactment of this subsection to the same extent, and subject to the same conditions and limitations, that the Director of the Central Intelligence Agency may exercise such authority with respect to personnel of the Central Intelligence Agency.

31) As a result of Section 3024(m)(1), the ODNI relies on the CIA Act to withhold ODNI information that falls within the statute, including the employee names, phone numbers, and e-mail addresses to the same extent that this information is withheld by the CIA.

32) Exemption 3 has also been asserted on behalf of ATF in conjunction with Public Law 111-117 to protect firearms trace information and information required to be maintained by Federal Firearms Licensees (FFLs) pursuant to 18 U.S.C. § 923(g). Specifically, certain firearms database information from within the 420 pages withheld in full in the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* document category, which are protected in their entireties by Exemptions 5 and 7(A) of the FOIA, is also protected on the basis of FOIA Exemption 3 and Public Law 111-117. The application of Exemption 3 to such information is addressed more substantively in the Declaration of Stephanie M. Boucher, Chief, Disclosure Division, ATF, filed contemporaneously with Defendants' Motion for Summary Judgment

(¶¶ 13-14).

Exemption 5

33) Exemption 5 of the FOIA exempts from mandatory disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an

agency in litigation with the agency." 5 U.S.C. § 552(b)(5). As discussed in detail below, the documents protected by OIP in part or in full pursuant to FOIA Exemption 5 fall squarely within the deliberative process and/or attorney work-product privileges. Each of these privileges will be discussed in turn.

Exemption 5: Inter-/Intra-Agency Threshold

34) Inter- and intra-agency documents may be withheld from release pursuant to Exemption 5 of the FOIA. T he information withheld from plaintiffs pursuant to this exemption consists of communications generated by and wholly internal to the Executive Branch. As such, they are "inter-/intra-agency" documents within the threshold of FOIA Exemption 5. To the extent communications external to the Executive Branch were identified among the documents responsive to plaintiffs' FOIA request, such exchanges were released to plaintiffs without excision, including communications with Congress.

Exemption 5: Deliberative Process Privilege

35) OIP has protected information within the following document categories pursuant to the deliberative process privilege: *Draft Congressional Correspondence; Draft Statements; Draft Reports; Draft Press Releases and Responsive Portions of E-mails Discussing Draft Press Releases; Drafts of Prepared Remarks; E-mails Discussing Drafts (in part); E-mails Forwarding News Articles, with Commentary (in part); Briefing Material; Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters*.

36) The deliberative process privilege is intended to protect the decisionmaking processes of government agencies from public scrutiny in order to enhance the quality of agency decisions. If pre-decisional, deliberative communications are routinely released to the public,

Department employees will be much more circumspect in their discussions with each other and in providing all pertinent information and viewpoints to senior officials in a timely manner. This lack of candor would seriously impair the Department's ability to foster the forthright, internal discussions necessary for efficient and proper decisionmaking. Certainly, disclosure of preliminary assessments and opinions would make officials commenting on sensitive matters much more circumspect in providing their views and severely hamper the efficient day-to-day workings of the Department, as individuals would no longer feel free to candidly present their views on component operations, or to discuss their ideas and advice on these activities in e-mail messages. Agency decisionmaking is at its best when employees are able to focus on the substance of their views and not on whether their views may at some point be made publicly available.

Draft Congressional Correspondence; Draft Statements; Draft Reports; Draft Press Releases and Responsive Portions of E-mails Discussing Draft Press Releases; and Drafts of Prepared Remarks[15]

37) A significant aspect of the decisionmaking process consists of the creation of draft documents which are then reviewed, edited, and modified before they become final. Over the course of their creation, draft documents are transmitted back and forth, continually changing as relevant staff make track changes, suggest edits, and contemplate strategies as they work toward a final document. The employees preparing such materials must feel free to create the most thorough and well-vetted document possible which is only possible with the knowledge that their preliminary, nascent views and working drafts will not be disclosed.

[15] Portions of these documents were also withheld pursuant to the attorney work-product privilege which is explained further below.

38) Documents in OIP's Vaughn Index categorized as *Draft Congressional Correspondence* are draft versions of correspondence with Congress, including draft responses to requests for information (RFIs) and answers to Questions for the Record (QFRs) submitted to the Department following oversight hearings. The category *Draft Statements* is comprised of Department comments on and drafts of statements, statements for the record, and draft testimony for submission to Congressional oversight committees prior to testimony. The category *Draft Reports* consists of draft versions of, including preliminary Department comments on, Executive Branch reports. Documents in OIP's Vaughn Index categorized as *Draft Press Releases and Responsive Portions of E-mails Discussing Draft Press Releases* are draft versions of Department press releases and responsive portions of e-mails discussing them (including suggested language, edits, and approaches to drafting) interspersed with material that is not responsive to plaintiffs' FOIA request. Finally, the category *Drafts of Prepared Remarks* is comprised of drafts of remarks prepared for senior Department leadership prior to speaking engagements at conferences and other meetings including: (1) FBI's National Executive Institute Meeting, (2) Barrio Azteca Press Conference, (3) Memorial for Special Agent Jaime Zapata, (4) National Association of Attorney's General Spring Meeting, and (5) U.S. Conference of Mayors. These draft documents are mostly undated, all unsigned and unfinalized, and include editorial mark-ups, comments, redline, revisions, etc. made by Department staff.

39) These drafts and discussions thereof are deliberative as they reflect Departmental deliberations regarding the content of documents, which had not been finalized by relevant decisionmakers. Furthermore, they reflect successive versions of working drafts and as such, show the internal development of the Department's decisions. Because these drafts precede the creation and/or transmission of final documents, correspondence, reports, or press releases and

statements, and precede events for which remarks or statements were being drafted, they are pre-decisional. Disclosure of the draft releases would undermine the ability of Department staff to freely engage in the candid "give and take" and forthright collaboration which is critical to the eventual development of well-reasoned and accurate communication, particularly with the public and Congress. DOJ deliberations on these documents cannot be effectively or reasonably segregated from the draft correspondence, and thus the documents have been withheld in full. Accordingly, they are protected in full pursuant to the deliberative process privilege. Where available, the final versions of these drafts have been provided to plaintiffs.

E-mails Discussing Drafts (in part) and

E-mails Forwarding News Articles, with Commentary (in part)[16]

40) Documents in OIP's Vaughn Index categorized as *E-mails Discussing Drafts* consist of intra-agency e-mails discussing the content and language of contemplated press releases and official statements. The document category *E-mails Forwarding News Articles, with Commentary* is comprised of e-mail chains forwarding news articles, in which agency staff provide commentary of a deliberative nature, including how to respond to possible media inquiries that may be generated by such news articles. The documents in both of these categories were only partially withheld – specifically, the pre-decisional, deliberative portions of these e-mails were withheld pursuant to FOIA Exemption 5.

41) The withheld portions of these e-mails are pre-decisional because they precede and/or do not embody final decisions on the drafts and topics being discussed, and are deliberative because they contain evaluative discussion and preliminary assessments by attorneys and other

[16] Portions of these documents were also withheld pursuant to the attorney work-product privilege which is explained further below.

staff about drafts and other matters on which they analyze, make recommendations, give advice, and work toward formulating strategies for agency action. Department officials routinely e-mail each other as they engage in such discussions. The protected e-mail exchanges reflect staff members' developing, preliminary assessments about matters on which no final decision has yet been made. All of the e-mails protected in part by OIP pursuant to the deliberative process privilege reflect this preliminary give-and-take of agency deliberations.

42) Disclosure of the e-mails at issue would severely hamper the efficient day-to-day workings of the Department as individuals would no longer feel free to discuss their ideas, strategies, and advice in e-mail messages and Department employees would be much more circumspect in their discussions with each other. This lack of candor would seriously impair the Department's ability to foster the forthright internal discussions necessary for efficient and proper decisionmaking. Certainly, disclosure of such preliminary assessments and opinions would make officials contributing to pre-decisional deliberations much more circumspect in providing their views. As noted previously, agency decisionmaking is at its best when employees are able to focus on the substance of their views and not on whether their views may at some point be made publicly available.

Briefing Material[17]

43) Another critical aspect of the decision-making process consists of the drafting and preparation of briefing materials created to aid in the development of senior leadership positions and to prepare senior leadership officials to address various legal and policy points that may arise during the course of anticipated meetings, official travel, and engagement with Congress and the

[17] Portions of these documents were also withheld pursuant to the attorney work-product privilege and contain information which is protected by Exemption 7(A), which are explained further below.

press. In the documents categorized as *Briefing Material* in OIP's Vaughn Index, Department staff prepared materials in order to brief senior leadership, concisely summarizing particular issues and providing key background information to assist in decision-making and to prepare leadership officials for meetings, testimony, inquiries, and/or official travel. Such briefing materials are therefore pre-decisional, inasmuch as they precede the events or actions that Department leadership is being prepared for and do not embody final agency action.

44) The drafters of these briefing materials attempt to succinctly summarize particular events, identify important issues, and provide key background information in a concise summary format for ease of understanding and presentation. Throughout this process, the authors necessarily review the universe of facts and possible issues arising on the topic at hand, and then select those facts and issues that they deem most appropriate for briefing senior leadership. The decision to include or exclude certain factual information in or from analytical documents is itself an important part of the deliberative process. The Department's most senior officials rely heavily on the creation of such briefing materials so that they will be fully informed on the substance of the many legal and policy issues being analyzed in the Department every day in individual offices.

45) Briefing materials such as those withheld by OIP reflect the drafters' opinions and analyses on important newsworthy topics and focus on how best to convey and respond to questions on these topics from the Department's perspective. Revealing such opinions and analyses would hinder Department staff's ability to provide candid evaluations on the topics of the day for Department leadership and by extension, Department leadership's ability to prepare for press events, and to provide informed and accurate representation of the Department's

interests. Because the selection of facts and source material is itself a part of the deliberative process inherent to preparation of briefing materials, these documents are generally protected in full pursuant to FOIA Exemption 5, as no non-exempt information may be segregated for release.

Investigatory Material and Responsive Portions of

E-mails Discussing Investigatory Matters[18]

46) Documents in OIP's Vaughn Index categorized as *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* consist of documents and responsive portions of e-mails, interspersed with material that is not responsive to plaintiffs' FOIA request, discussing and detailing ongoing investigation activities regarding Special Agent Zapata's death, and related criminal procedures.

47) The e-mail portions protected within this document category contain discussions among Department staff regarding how to respond to inquiries regarding the subject of the investigation, as well exchanges between Department staff interspersed with sensitive investigatory information. Because these discussions precede any final decisions on the matters at hand – i.e., the Department's response to inquiries or decisions on the underlying investigatory actions – they are pre-decisional.

48) Moreover, these discussions are deliberative in that they reflect the exchange of ideas and suggestions leading up to final decisions – in this case, decisions regarding how to respond to inquiries and other requests for information and, ultimately, to investigatory decisions made pursuant to an active, ongoing criminal investigation. Such exchanges are at the core of

[18] The 420 pages of documents in this category are also protected in full pursuant to the attorney work-product privilege of Exemption 5 and Exemption 7(A), and Exemptions 3, 6, 7(C), 7(D), 7(E) and 7(F) provide additional grounds for protecting this investigatory material, as discussed further below.

the Department's deliberative process as relevant staff engage in the decisionmaking process that is key to Departmental investigatory activities and/or ultimately leads to an informed decision on how to, or whether to respond to external inquiries regarding the Department's criminal investigatory decisions.

49) Disclosure ofany of the documents in this category would undermine Department staff's ability to candidly express opinions on investigatory matters and would therefore hinder the deliberative process because Department employees would no longer feel free to fully share and exchange investigatory information, for fear that their preliminary thoughts and comments would be publicly released.

Segregation of Non-Exempt Information

50) OIP thoroughly reviewed each of the documents discussed above, and withheld from release, on the basis of the deliberative process privilege of Exemption 5, only that information which would reveal the Department's pre-decisional decisionmaking process. In some instances as noted, the attorney work-product privilege of Exemption 5, Exemption 7(A), and/or other FOIA exemptions detailed herein provide independent and overlapping protection of information in these documents. OIP conducted a line-by- line review of these documents released any portions thereof that were not protected by an applicable FOIA exemption. As with the *E- mails Discussing Drafts (in part) and E-mails Forwarding News Articles, with Commentary (in part)* document categories, OIP determined that some non-exempt information could be segregated for release. In other instances, such as with draft documents and briefing materials, the nature of the documents prevents segregation inasmuch as the documents themselves, and selected facts therein, embody the deliberative process. Nonetheless, final versions of draft documents were

released whenever possible. All reasonably segregable, nonexempt information from these documents has been disclosed to plaintiffs. Finally, it is noted that large portions of these documents are not responsive to plaintiffs' FOIA request, inasmuch as they pertain to other unrelated topics.

Exemption 5: Attorney Work-Product Privilege

51) The attorney work-product privilege encompassed by Exemption 5 of the FOIA shields materials prepared by an attorney or at the direction of an attorney, generated in reasonable anticipation of litigation, 5 U.S.C. § 552(b)(5). The privilege protects any part of a document prepared in anticipation of litigation, not just the portions concerning opinions and legal theories. The purpose of this privilege is to protect the adversarial process by insulating Department attorneys' preparation of litigation materials from scrutiny.

52) OIP has protected information within the *Briefing Material, Draft Press Releases and Responsive Portions of E-mails Discussing Draft Press Releases, Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters, E-mails Forwarding News Articles, with Commentary,* and *E-mails Discussing Drafts* document categories of the OIP Vaughn Index pursuant to the attorney work-product privilege.[19] All of these documents consist of information exchanged among or at the direction of government attorneys, generated in reasonable anticipation of litigation.

Briefing Material

53) The documents categorized in OIP's Vaughn Index as *Briefing Material* are inter- and intra-agency communications between attorneys and information provided by attorneys used

[19] As discussed above, certain of these documents are also fully protected by the deliberative process privilege of FOIA Exemption 5, and contain information protected by Exemption 7(A) of the FOIA.

to provide recommendations, analysis, and strategic comments as they evaluate matters related to ongoing criminal investigations.

54) As discussed in detail in paragraphs 43-45 above, these documents were prepared to inform senior leadership in the course of making legal determinations on an open investigatory discussion regarding Agent Zapata's death and involve input from the law enforcement branches of the Department. Specifically, these briefing materials were created to prepare senior leadership for official travel, press conferences, and testimony before Congress. During the course of briefing senior leadership on topics related to the death of Agent Zapata which may have arisen during the course of official events, engagements, and/or travel and in meetings with international counterparts, the authors of these briefing materials also relayed details of pending investigatory matters and open or anticipated criminal law enforcement actions. Moreover, these briefing materials provided detailed information regarding the legal theories and considerations relevant to the open law enforcement action.

55) Department attorneys are singularly tasked with enforcing federal laws, and defending the interests of the United States, a critical responsibility which extends to Department attorneys' review of specific criminal matters referred to it. Disclosure of communications in this document category -- to the extent that they consist of briefing materials which discuss active investigatory and/or criminal law enforcement actions -- would reveal Department attorneys' processes and strategies in engaging in investigations, preparing criminal law enforcement cases, interpreting evidence and assessing potential legal risk and strategy on various aspects of pending and potential investigations. The documents withheld in this category reflect this routine yet essential attorney work-product produced by Department

attorneys who execute this core function of enforcing federal laws.

Draft Press Releases and Responsive Portions of

E-mails Discussing Draft Press Releases

56) The e-mails in this document category, as described in detail above in paragraphs 37-39, consist of e-mails between Department attorneys regarding the contents of a press release announcing the creation of a joint task force to assist Mexico's investigation into Special Agent Zapata's death. These e-mails are protected by the attorney work-product privilege, in addition to the deliberative process privilege, because they consist of discussions among Department attorneys, including attorneys from the law enforcement and/or litigating components of the Department, which provide non-public details and/or characterizations of the pending investigation from a criminal law enforcement perspective. These investigatory details are shared in the context of preparing a press release, as Department employees openly discuss elements of the investigation to ensure that they have an accurate understanding of the events at hand (even if such details are not ultimately included in the press release).

Investigatory Material and Responsive Portions of

E-mails Discussing Investigatory Matters

57) The documents categorized in OIP's Vaughn Index as *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters*, as described in detail above in paragraphs 46-49, consist of e-mails and information shared between Department attorneys regarding open criminal investigations pertaining to the death of Special Agent Zapata. These documents are protected by the attorney work-product privilege, in addition to the deliberative process privilege, because they consist of discussions among Department attorneys regarding

these open criminal investigations. The information includes discussions involving attorneys from the law enforcement and/or litigating components of the Department, which provided input on these discussions regarding evidence and other substantive details on the scope of the investigations from their singular criminal law enforcement perspective. Additionally, summaries and reports of these pending investigations are included in these materials to better inform Department attorneys concerning the death of Special Agent Zapata.

E-mails Forwarding News Articles, with Commentary, and E-mails Discussing Drafts

58) The e-mails in these document categories, as described in detail in paragraphs 40-42 above, consist of e-mails between Department attorneys pertaining to and commenting on working drafts and other actions contemplated by the Department. These e-mails have been released to plaintiffs in part. The withheld portions of the e-mails are protected by the attorney work-product privilege, in addition to the deliberative process privilege, because they pertain to recommendations and advice from Department attorneys concerning contemplated Department responses to RFIs and QFRs, as well as questions from members of the press. In the context of informing these discussions, information involving ongoing criminal investigations and law enforcement proceedings was exchanged by staff in the law enforcement and/or litigating components of the Department, which provided input on these discussions regarding evidence and other substantive details on the scope of the investigations from their singular criminal law enforcement perspective.

Segregation of Non-Exempt Information

59) OIP thoroughly reviewed the documents withheld pursuant to the attorney work-product privilege encompassed by FOIA Exemption 5 and determined that none of the

materials could be further segregated for release. Documents in the *Briefing Material*, *Draft Press Releases and Responsive Portions of E-mails Discussing Draft Press Releases,* and *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* categories are protected in their entireties by the attorney work-product and deliberative process privilege. The disclosure of attorney work-product in these documents would reveal Department attorneys' assessments of what was deemed significant in the context of potential criminal violations concerning the death of Special Agent Zapata, and the facts selected for and contained within them, thus undermining the core legal advice and analysis that the privileges are meant to protect. Accordingly, documents in these categories are not appropriate for segregation. The documents included in the *E-mails Forwarding News Articles, with Commentary,* and *E-mails Discussing Drafts* categories were segregated to the extent that portions of those documents did not directly relate to the Department's work-product regarding the ongoing criminal investigations into the death of Special Agent Zapata and thus, were appropriate for segregation under the deliberative process privilege. The remainder of these documents are covered by the attorney work-product privilege and, accordingly, is not appropriate for segregation.

Exemption 7

60) FOIA Exemption 7 exempts from mandatory disclosure records or information "compiled for law enforcement purposes" when disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. 5 U.S.C. § 552(b)(7).

Exemption 7: Threshold

61) As an initial matter, inasmuch as the information withheld by OIP pursuant to Exemption 7 appears within documents discussing a criminal law enforcement investigation, I have determined that this information meets the threshold of Exemption 7 because there is a

rational nexus between the documents and the Department's law enforcement duties. More specifically, the information protected on the basis of Exemption 7 pertains to a criminal investigation consistent with the Department's law enforcement mission. Additional details regarding the nature of the criminal investigation relevant to these documents are provided in the Declaration of David M. Hardy, Section Chief, Record/Information Dissemination Section, Records Management Division, FBI [hereinafter Hardy Declaration], filed contemporaneously with Defendants' Motion for Summary Judgment (¶ 27).

Exemption 7(A)

62) FOIA Exemption 7(A)protects records or information "compiled for law enforcement purposes" when disclosure "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A).

63) In this instance, all of the records withheld by OIP in the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* category[20] are fully protected by Exemption 7(A) in that they are law enforcement records relating to a pending FBI criminal investigation.[21] The application of Exemption 7(A) to these documents is substantively addressed in the Hardy Declaration (¶¶ 28-38 & n.9). The FBI has determined that disclosure of any of the 420 pages of records in this document category is reasonably expected to interfere with its active, ongoing investigation, as well as any resulting prosecutions. As such, inasmuch as the FBI has confirmed that the release of the records in the *Investigatory Material and Responsive Portions of E-mails Discussing*

[20] Some of the investigatory information protected by Exemption 7(A) in this document category is restated in portions of the documents contained in the *Briefing Material* document category – and thus Exemption 7(A) extends to such "duplicative" investigatory information in the *Briefing Material* category.

[21] As discussed above, all of the records in this document category are also fully protected by FOIA Exemption 5, and FOIA Exemptions 3, 6, 7(C), 7(D), 7(E) and 7(F) provide additional grounds for protecting this investigatory material. Moreover, Exemption 7(A) may apply independently and concurrently to other active investigations referenced in these documents.

Investigatory Matters document category would interfere with FBI enforcement proceedings and related prosecutions, these records are fully protected by FOIA Exemption 7(A). Accordingly, and considering the applicability of other FOIA exemptions to these documents, there is no non-exempt information that may be segregated for release to plaintiffs from within this category.

Exemptions 6 and 7(C)

64) FOIA Exemption 6 protects information about individuals when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). FOIA Exemption 7(C) protects information "compiled for law enforcement purposes" and protects personal privacy when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).

65) When determining whether to withhold information pursuant to Exemptions 6 and/or 7(C), OIP balances the privacy interests of individuals identified in records against any "FOIA public interest" in disclosure of that information. In making this analysis, the FOIA public interest considered in the balance is limited to information which would shed light on the Department's performance of its mission: to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

66) OIP has protected information within the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* and *Agency Names and Contact Information* document categories of the OIP Vaughn Index pursuant to FOIA Exemptions 6 and 7(C). Specifically, *Agency Names and Contact Information* withheld by OIP pursuant to Exemptions 6 and 7(C) consists of the identities and identifying information of certain agency

personnel, including law enforcement agents, intelligence, and U.S. Embassy personnel and their contact information, and personal contact information, including cell phone numbers and personal e-mail addresses. Moreover, information from within the 420 pages withheld in full in the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* document category, which are protected in their entireties by Exemptions 5 and 7(A) of the FOIA, is also protected on the basis of FOIA Exemptions 6 and 7(C) to the extent that it includes agency names and contact information, and names and identifying information of third parties mentioned in these law enforcement records. The application of Exemptions 6 and 7(C) to the latter category of information is addressed more substantively in Hardy Declaration (¶¶ 40-42).

Law Enforcement/Intelligence/Embassy Personnel

67) The names and contact information of law enforcement, intelligence, and U.S. Embassy personnel has been withheld pursuant to FOIA Exemptions 6 and 7(C). Releasing the names of law enforcement personnel would and could reasonably be expected to "constitute an unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(6), (b)(7)(C). As noted above, in order to withhold information pursuant to these two exemptions, a balancing of the privacy interest of the individual mentioned in these records against any public interest in disclosure must weigh in favor of non-disclosure. Considering the sensitive and often contentious nature of the work law enforcement and intelligence personnel conduct, disclosure of their identities or contact information could seriously prejudice their effectiveness in conducting investigations to which they are assigned and subject them to unwarranted harassment. Furthermore, releasing the names or contact information of law enforcement personnel would not aid the public's understanding of how the Department carries out its duties. With respect to the identities and contact information

of certain personnel in the U.S. Embassy, Mexico City, which have been withheld on behalf of the DOS, release could subject these individuals to harassment, intimidation, threats of reprisal, or physical harm, and would not shed light on U.S. government business. I have therefore determined that the law enforcement, intelligence, and U.S. Embassy employees' privacy interests outweigh the dearth of public interest in the disclosure of the names of these employees.

Personal Contact Information

68) The release of the personal contact information of agency employees would also not aid the public's understanding of how the Department carries out its duties. The release of such information could subject those employees to unwarranted harassment, and as such the release of such information would "constitute a clearly unwarranted invasion of personal privacy," 5 U.S.C. 552(b)(6).

Segregation of Non-Exempt Information

69) In each instance where information was withheld from plaintiffs pursuant to Exemptions 6 and 7(C), OIP determined that the individuals' privacy interests were not outweighed by the FOIA public interest in disclosure of that information. Every effort has been made to release all segregable information to plaintiffs without invading the privacy interests of individuals who were mentioned in the records discussed above. Where possible, only the names and contact information of individuals were protected. Elsewhere, information protected by Exemptions 6 and 7(C) fell within material protected under Exemption 5 and 7(A), as detailed above, so further segregation was not possible.

Exemption 7(D)

70) Exemption 7(D) protects "records or information compiled for law enforcement purposes" when disclosure could reasonably be expected to disclose the identity of a confidential

source. 5 U.S.C. § 552(b)(7)(D). Specifically, certain confidential source information from within the 420 pages withheld in full in the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* document category, which are protected in their entireties by Exemptions 5 and 7(A) of the FOIA, is also protected on the basis of FOIA Exemption 7(D). The application of Exemption 7(D) to c onfidential source information is addressed more substantively in Hardy Declaration (¶¶ 40-42).

Exemption 7(E)

71) Exemption 7(E) protects "records or information compiled for law enforcement purposes" when disclosure would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. 5 U.S.C. § 552(b)(7)(E). Specifically, certain non-public investigatory procedures and techniques appearing within the 420 pages withheld in full in the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* document category, which are protected in their entireties by Exemptions 5 and 7(A) of the FOIA, are also protected on the basis of FOIA Exemption 7(E). The application of Exemption 7(E) to such information is addressed more substantively in Hardy Declaration (¶¶ 48-49).

Exemption 7(F)

72) Exemption 7(F) protects "records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F).

73) OIP has protected information within the *Investigatory Material and Responsive Portions of E-mails Discussing Investigatory Matters* and *Agency Names and Contact Information* document categories of the OIP Vaughn Index pursuant to FOIA Exemption 7(F). In this instance, the identities of certain of DEA agents were protected pursuant to Exemption 7(F), on behalf of the DEA.[22]

74) The DEA has advised OIP that given the nature of the criminal activities under investigation, publicly disclosing identifying information regarding law enforcement officials working on this investigation could reasonably endanger their lives and/or safety. Accordingly, the DEA determined that protection of the identities of these individuals was justified pursuant to Exemption 7(F). OIP concurred with this determination and, accordingly, withheld the names of DEA agents working on this investigation pursuant to Exemption 7(F), on behalf of the DEA.

Segregation of Non-Exempt Information

75) Because OIP only withheld the identities of individual law enforcement agents pursuant to Exemption 7(F), no non-exempt information was withheld pursuant to this exemption and thus further segregation was not possible.

I declare under penalty of perjury that the foregoing is true and correct.

Vanessa R. Brinkmann

Executed this 20th day of May 2016.

[22] This information was also protected pursuant to Exemption 7(C) of the FOIA, discussed above. Moreover, to the extent this information appears within the 420 pages withheld in full in the *Investigatory Material and Responsive Portions of Emails Discussing Investigatory Matters* document category, those records are protected in their entireties by Exemptions 5 and 7(A) of the FOIA.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSHUA GERSTEIN,	)	
Plaintiff,	)	
v.	)	Civil Action No. 06-4643 (MMC)
CENTRAL INTELLIGENCE AGENCY et al.,	)	
Defendants.	)	

Introduction of the declarant.

DECLARATION OF MELANIE ANN PUSTAY

I, Melanie Ann Pustay, declare the following to be true and correct:

1) I am the Director of the Office of Information and Privacy (OIP), United States Department of Justice. In this capacity, I am the final decision-making authority for matters of the Initial Request (IR) Staff which are subject to litigation. The IR Staff is responsible for searching for and reviewing records within OIP and the senior leadership offices of the Department of Justice, including the Offices of the Attorney General, Deputy Attorney General, and Legislative Affairs, in response to requests made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000 & Supp. IV 2004). The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the Department of Justice as well as with other Executive Branch agencies.

All statements in a declaration must be made on the basis of personal knowledge or information acquired in an official capacity. A declarant can attest to actions taken by others under her supervision.

2) I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

3) In my declarations of December 21, 2006, and January 26, 2007, I described the records searches conducted for and the processing of plaintiff's FOIA request up to those dates. This declaration supplements and incorporates by reference my December 21, 2006, and January 26, 2007 declarations, describes the actions taken to complete the processing of plaintiff's request since January 26, 2007, and addresses the basis for withholding documents pursuant to Exemption 5 of the FOIA.[1]

Recount the administrative history of the FOIA request. This may include a summary of the records searches, interpretation of the scope of the request, consultations and referrals, and should always describe and attach any correspondence with the requester/plaintiff. In this case, the declaration supplements a previous declaration in which the initial request and records searches had already been discussed.

OIP's Processing of Plaintiff's Request

Since January 26, 2007

4) In my previous declaration I informed the Court that OIP was continuing to process 221 pages of documents and was at that time waiting for consultation responses from other Offices before a final response could be provided to plaintiff. Additionally, I estimated that a final response could be provided to plaintiff by within sixty days (which would have been March

[1] Although OIP's final response to plaintiff included some documents with redactions made pursuant to Exemptions 6 and 7(C) of the FOIA, all redactions on the basis of those exemptions were made on behalf of other entities (the Central Intelligence Agency, Federal Bureau of Investigation, and Office of Professional Responsibility (OPR) of the Department of Justice) and will therefore be justified in declarations by those Offices.

29, 2007).

5) On February 27, 2007, OIP completed all required consultations on the documents remaining to be processed.

6) On February 28, 2007, the Central Intelligence Agency initiated a telephonic consultation with OIP regarding one document, totaling three pages, which OIP had previously referred to that Office for direct response to plaintiff. Pursuant to this consultation, OIP requested that the document be withheld on OIP's behalf pursuant to the deliberative process privilege of FOIA Exemption 5.[2]

7) By letter dated February 28, 2007, OIP provided its final response to plaintiff's FOIA request. This response included records referred to OIP by OPR, the Office of the Inspector General, and the Criminal Division of the Department of Justice. OIP informed plaintiff that the number of responsive documents remaining had been adjusted to 216 pages.[3] OIP disclosed to plaintiff thirty-five documents, totaling ninety-three pages, without excision, and eighteen documents, totaling one hundred thirteen pages, with excisions made pursuant to Exemptions 5, 6, and 7(C) of the FOIA, 5 U.S.C § 552 (b)(5), (6), (7)(C). Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process and presidential communications privileges. Exemptions 6 and 7(C) pertain to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties, and to records compiled for law enforcement proceedings to the extent that disclosure of such

[2] This declaration will address the withholding of this document on OIP's behalf, pursuant to Exemption 5.
[3] After OIP's prior response to plaintiff and upon further review of the remaining two hundred and twenty-one documents, five of those pages were determined to be duplicative of material already being processed.

information could reasonably be expected to cause an unwarranted invasion of personal privacy.[4] Additionally, OIP provided plaintiff seven pages of electronic mail (e-mail) messages, with excisions made pursuant to Exemptions 5 and 6 of the FOIA.[5] Finally, one document, totaling three pages, was withheld in full pursuant to the presidential communications privilege of Exemption 5.[6] (A copy of OIP's February 28, 2007 final response to plaintiff is attached hereto as Exhibit A).

8) On March 28, 2007, the Criminal Division of the Department of Justice referred five documents, totaling sixteen pages, to OIP for processing and direct response to plaintiff on behalf of the Offices of the Attorney General and Deputy Attorney General. This referral was received by OIP on April 3, 2007.

9) On July 9, 2007, OIP provided plaintiff with a final response on the documents referred by the Criminal Division. Four documents, totaling ten pages, were released without excision. Also, one document, totaling six pages, was released with excisions made on behalf of the Criminal Division pursuant to Exemptions 5, 6, and 7(C) of the FOIA, 5 U.S.C § 552 (b)(5), (6), (7)(C).[7] (A copy of OIP's July 9, 2007 final response to plaintiff on the

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[4] As previously stated, all of the redactions made pursuant to Exemptions 6 and 7(C) were made on behalf of other Offices, which will justify those withholdings separately.

[5] Only the Exemption 5 excisions, made to a one-page e-mail, were made by OIP. The excisions to the e-mails pursuant to Exemption 6 were made on behalf of the Office of Professional Responsibility, and that Office will therefore justify those withholdings.

[6] Also, a limited amount of classified material located in the Office of the Deputy Attorney General was withheld in full pursuant to Exemption 1 of the FOIA, 5 U.S.C. § 552(b)(1), which pertains to information that is properly classified in the interests of national security pursuant to Executive Order 12958, as amended. The withholding of this material will not be addressed in this declaration because plaintiff is not at this time challenging documents relating to specific cases or investigations.

[7] The Criminal Division will justify these withholdings, made on its behalf, in a separate declaration.

Provide a summary of what has been withheld. Doing so provides the framework for what is at issue in the litigation and will be addressed by the declaration.

documents referred by the Criminal Division is attached hereto as Exhibit B).

10) At this time, OIP's processing of plaintiff's FOIA request is completed, and four responses have been made to plaintiff. OIP has disclosed to plaintiff a total of 257 pages in full.[8] Also, excluding redactions made on behalf of other offices, OIP has withheld 109 pages in part[9] and 611 pages in full[10] pursuant to the deliberative process and presidential communications privileges of Exemption 5 of the FOIA. Accordingly, this declaration addresses the withholding in full, or in part, of 720 pages of documents pursuant to the deliberative process and presidential communication privileges of Exemption 5.

11) Attached to this declaration is a Vaughn Index containing a detailed description of the withheld documents. Because certain records are similar to one another, we have categorized them into nine distinct groups. The Vaughn Index describes the responsive documents contained in each group, including such information as the date and the general content of the material, provides the number of pages for each group, and identifies the privileges – deliberative process and presidential communications – which protect each group from full or partial disclosure under Exemption 5 of the FOIA.

If you have also prepared a Vaughn Index, introduce it in the declaration, and explain how it is structured/organized for ease of reference.

[8] This includes 138 pages released in OIP's second interim response, twenty-six pages released in OIP's third interim response, and ninety-three pages released in OIP's final response.

[9] This includes 108 pages released with excisions made pursuant to the deliberative process privilege, and one page released with excision made pursuant to the presidential communications privilege, in OIP's final response to plaintiff. The final eleven pages withheld in part in the final response will be justified by other offices (the Central Intelligence Agency, Federal Bureau of Investigation, and Office of Professional Responsibility of the Department of Justice).

[10] This includes 600 pages withheld in OIP's second interim response, five pages withheld in OIP's third interim response, and three pages withheld by the CIA on OIP's behalf pursuant to the deliberative process privilege; as well as three pages withheld in OIP's final response pursuant to the presidential communications privilege.

Next, provide a thorough description of the information withheld and, in a non-legalistic manner, provide a justification for the withholdings by explaining your analysis of the information and the attendant harm in its release.

Explanation of Withheld Material

FOIA Exemption 5

12) Exemption 5 of the FOIA protects certain inter- and intra- agency communications protected by the deliberative process privilege. All of the responsive records withheld from plaintiff in whole or in part pursuant to Exemption 5 are inter- and intra- agency communications exchanged, or drafts and handwritten notes created within, the Executive Branch. In one group, the withheld documents consist of a letter, and the portion of a list of attachments describing that letter, sent by the Department to the White House; in another group one withheld document consists of a letter sent by the Department to the Office of Management and Budget; and in one case a letter from the Central Intelligence Agency to the Department was withheld. All other documents are internal to the Department of Justice.

13) Seven hundred sixteen pages of the records withheld in whole or in part are protected by the deliberative process privilege of Exemption 5 of the FOIA. The information withheld on the basis of the deliberative process privilege fall into four overall, but inter-related categories: 1) draft documents, 2) e-mail discussions about the content of drafts, 3) handwritten marginalia and notes, 4) back-and-forth predecisional deliberations, analyses, recommendations and assessments. The remaining four pages of records withheld in whole or in part, comprising Group 9, are protected by the presidential communications privilege as well as the deliberative process privilege and are discussed separately.

Deliberative Process Privilege

14) The deliberative process privilege is intended to protect the decisionmaking processes of government agencies from public scrutiny in order to enhance the quality of agency

decisions.

15) A significant part of the deliberative process within the Department of Justice involves the creation of draft documents which are then reviewed, edited, and modified before they become final. The draft documents in Group 1 consist of unsigned, usually undated, draft letters and memoranda, many with extensive handwritten notes, including multiple versions of a letter from the Attorney General to Congress and draft versions of the final and interim reports to Congress on the Interagency Task Force on Unauthorized Disclosures of Classified Information (hereinafter "classified leaks" task force). By their very nature as drafts, these documents are predecisional, preliminary versions of what will later become a final document. The process by which a draft evolves into a final document is itself a deliberative process. As a result, there is no reasonably segregable, non-exempt information that can be disclosed from the drafts. However, to the extent that final, signed versions of the drafts being protected in Group 1 were located, they were processed and ultimately disclosed to plaintiff. A total of 264 pages of the material withheld in Group 1 consisted of drafts, the final versions of which were provided to plaintiff.

Address segregability throughout, and provide as much detail as possible. In this case, although drafts were withheld, final versions of the documents were released. It's a good idea to call attention to this fact.

16) In addition to the draft documents themselves, e-mail messages pertaining to the preparation of the Attorney General's report to Congress on classified leaks were protected. The seventy-seven pages of e-mail messages located in Group 4 contain commentaries on and discussions of the proposed content and formatting of the report, including extensive editing

suggestions and recommendations.[11]

17) All of these documents, the drafts themselves, and the discussions reflecting the drafting process, are part of the exchange of ideas and suggestions that accompanies all decision-making and reflect preliminary assessments by attorneys and other staff about issues in which they have been asked to make recommendations and give advice. Agency officials routinely e-mail each other, sharing language, giving and responding to suggestions and proposed language as they draft documents or respond to inquiries. E-mail operates as a way for individual Department of Justice employees to communicate with each other about current matters without having to leave their offices. These "discussions," which get memorialized online, are part of the exchange of ideas and suggestions that accompanies all decision-making and typically reflect staff members' very preliminary assessments about issues on which they may be asked to make recommendations. Indeed, such online discussions most resemble conversations between staff members which are part of the give and take of agency deliberations. Disclosure of such e-mails would severely hamper the efficient day-to-day workings of the Department as individuals would no longer feel free to discuss their ideas and advice on the content of documents in e-mail messages. If e-mail messages such as these are routinely released to the public, Department employees will be much more circumspect in their

Make sure not to be conclusory. In other words, don't assume that the harm in releasing withheld information is obvious to the Court, but lay out exactly what that harm is.

[11] Some individual e-mail messages within these seventy-seven pages are purely logistical in nature and are not substantively related to the subject of plaintiff's request. Accordingly, because those e-mails are not responsive to the request, they are not discussed in this declaration.

online discussions with each other. This lack of candor will seriously impair the Department's ability to foster the forthright, internal discussions necessary for efficient and proper decisionmaking. Certainly disclosure of such preliminary assessments and opinions would make officials commenting on drafts much more circumspect in providing their views. Agency decisionmaking is at its best when employees are able to focus on the substance of their views and not on whether their views may at some point be made publicly available. We carefully reviewed the responsive e-mail messages and determined that they contain no reasonably segregable, non-exempt information.

18) Another aspect of the drafting process consists of the creation of handwritten notes and the making of notations on documents. Fifty pages of the documents in Group 2 are purely handwritten notes containing sentence fragments, questions, and other notations reflecting legal analyses. Additionally, sixty-one pages of Group 2 consist of a copy of the March 31, 1982 "Willard Report" on classified leaks and a copy of the Attorney General's October 15, 2002 letter to Congress on the classified leaks task force. The final, unmarked copies of these documents were disclosed to plaintiff. These withheld versions contain unsegregable marginalia and notations. Finally, twenty-seven pages of Group 2 are federal statutes, printed from the internet, which contained extensive notes and marginalia which likewise could not be segregated. OIP located and provided to plaintiff unredacted copies of these federal statutes, thereby only protecting the notes and marginalia.

19) The handwritten notes, markings and marginalia on the documents in Group 2 reveal the thought processes and mental impressions of the agency officials who made the markings. Handwritten notes by their very nature embody the initial thoughts, comments, and evaluations

If you went above and beyond in order to segregate non-exempt information for release, be sure to say so. In this case, the withheld documents were so marked-up with deliberative information, they could not be segregated. Accordingly, clean copies were located and provided to the requester/plaintiff in an effort to disclose as much as possible.

of their writers before they are assembled into a final document. In this sense, handwritten notes represent the writers' distillation of issues and convey information about their original thinking processes. Also, it is common practice for agency lawyers reading documents and statutes to mark them up with underlining, bracketing, or highlighting, and to write comments in the margins. This process allows the attorney to evaluate the document as it is being read and to mark significant portions for later reference. It is crucial that agency officials feel completely free to undergo this process without fear that their views as to what is and is not significant in a document or statute would be publicly revealed. We reviewed these documents for the purpose of segregation. We determined that it is not possible to protect only the markings, as the very act of excising them on the documents would itself reveal where the marginalia was, and correspondingly, would reveal those portions of the documents that were considered significant. However, as stated above, for all the documents with marginalia OIP provided to plaintiff unmarked, "clean copies" of documents.

Address segregation as much as possible.

20) An essential part of the creation of agency policy and final agency decisions is the internal, predecisional back-and-forth among agency officials leading up to the making of final decisions. The final, overall categories of documents withheld on the basis of the deliberative process privilege, located in Groups 3 and 5, and in Groups 6, 7, and 8, reflect this back-and-forth decisionmaking process.

21) The documents protected in full and in part in Group 3 were created pursuant to the classified leaks task force, and the working groups under the umbrella of that task force. The thirty-five pages of taskings, agendas, analyses, group goals, initial reports, issues, and questions for consideration; the twenty pages of working group meeting summaries; and the e-mail

message from the Office of the Deputy Attorney General to three of the task force's working groups, identifying and soliciting comments on areas of interest, all were created pursuant to the classified leaks task force. The purpose of the classified leaks task force was to assess the issue of classified leaks and to advise the Attorney General of recommendations for handling the matter, leading up to the Attorney General's subsequent report to Congress.

22) Like the documents in Group 3, the documents in Group 5 similarly reflect Department officials' input on a larger decisionmaking process, in this instance on the Executive Branch's input on legislation relating to the issue of classified leaks. The memorandum from the Office of Legislative Affairs to the Office of Management and Budget, and the suggested revisions made to the Intelligence Authorization Act for Fiscal Year 2001, provide the Department's views on the legislation with respect to classified leaks. As such, all of the protected information in Groups 3 and 5 are part of the exchange of ideas and suggestions that accompanies all decisionmaking and reflect preliminary assessments by attorneys and other staff about issues on which they have been asked to make recommendations and give advice.

23) Finally, the documents protected in Groups 6, 7, and 8 also reflect the back-and-forth decisionmaking process of the Executive Branch. The memoranda which comprise Group 6 relate to the establishment of the classified leaks task force, and address initial considerations to be addressed in anticipation of its creation, including proposed issues and preliminary questions, and recommendation on selecting a task force chair. The information protected in Group 7 reflects the crafting of solutions in response to the issue of classified leaks, including memoranda discussing a former official's and other offices' views on the topic, a letter from former CIA director George Tenet providing his agency's views and recommendations on the subject, and the

report of the task force to the Attorney General providing its findings, analyses, and recommendations on the leaks issue. The two unsigned, undated documents protected in part in Group 8 provide assessments relevant to the classified leaks issue, including analyses of the recommendations of the Willard Report and of the implementation of whistleblower protections.

24) All of the documents protected in Groups 3 and 5, and in Groups 6, 7, and 8 were prepared by officials within the Department or otherwise in the Executive Branch to assist the Attorney General in addressing the problem of unauthorized leaks of classified information. In doing so, the protected information discusses various options under consideration and contains legal and policy analyses. No final decisions are made in these documents; rather, they are tools for discussion and advice in the larger initiative relating to classified leaks, and leading up to the Attorney General's report to Congress on the issue. The authors of the documents intend to make relevant officials aware of all of the legal and policy implications pertaining to this topic so that a thorough discussion of the issue could take place. It is extremely important that agency decisionmakers be completely aware of every aspect of a given issue so that fully informed decisions can be made. If these documents were disclosed, agency officials tasked with creating and participating in such task forces and working groups would surely be inhibited from including all relevant information and would not be as candid in presenting their views. A staff member who is aware that his or her policy analysis or proposed recommendation may be released to the public may not be as forthcoming as he or she would otherwise be. That staff member may be more concerned with the public perception of the document he or she is drafting than with providing the necessary information to the decision maker. This inhibition would be extremely detrimental to the Department's deliberative process. By affording confidentiality to

agency deliberations such as these, decisionmakers can operate most effectively. We carefully reviewed the withheld documents and released all reasonably segregable, nonexempt information.

25) All of the documents that have been withheld pursuant to the deliberative process privilege are intrinsically a part of the deliberative processes of the Department and the Executive Branch. In the course of drafting documents and advising senior officials, attorneys and staff communicate with each other, seeking information, providing advice, and offering suggestions. The documents at issue consist of just such communications. These documents are part of the exchange of ideas and suggestions that accompanies all decision-making and typically reflect staff members' preliminary assessments about the issue on which they have been asked to make recommendations. Here, the draft documents, internal agency e-mail discussions, notes and marginalia, and similar communications are part of the exchange among government officials who were analyzing the issue of classified leaks and proposing solutions for the problems that issue presents to the Executive Branch. Throughout the process, advice is being requested, analysis is being conducted, and recommendations are being given.

It's a good idea restate your segregation efforts at the end of the discussion.

26) As discussed above in connection with each category of withheld records, we carefully reviewed each of the documents and determined whether there was any reasonably segregable, non-exempt information that could be disclosed. Whenever possible, OIP redacted only those portions of the documents which were exempt from disclosure, and released all non-exempt information to plaintiff.

Presidential Communications Privilege

27) In addition to the documents described above that are protected by the deliberative

process privilege, OIP withheld the two documents in Group 9 pursuant to the presidential communications privilege as well as the deliberative process privilege. One document is a letter from former Deputy Attorney General Jamie Gorelick to the Deputy Assistant to the President for National Security Affairs, National Security Council providing the Department's views and advice on the handling of classified leaks. The second document in Group 9 is a listing of three documents, one of which describes the letter from former Deputy Attorney General Gorelick to the Deputy Assistant to the President for National Security Affairs. The information protected in Group 9 was provided to an adviser to the President who was responsible for handling matters of concern to national security. The underlying purposes of the presidential communications privilege are the same as those of the deliberative process privilege, but they take on a distinct significance at the level of presidential decisionmaking. Advisers must feel free to give the most candid and thorough advice possible in order for the President's decisionmaking process to be effective. The President was the ultimate decisionmaker on Executive Branch policy for responding to classified leaks. He, and his advisors must be free to solicit the advice of the Department on matters they are considering without fear of those communications being disclosed.

28) Because the communication protected in the documents in Group 9 were sent by the Deputy Attorney General to a presidential adviser in response to solicited advice regarding a matter of presidential decision, the letter itself and the description of the letter are protected by the presidential communications privilege.[12] As such the letter is exempt in full and contains no reasonably segregable, non-exempt information. As to the listing of documents, OIP only

[12] This letter is also, in the alternative, protected under the deliberative process privilege for the reasons discussed above.

protected that portion which described the protected letter, and released all non-exempt information to plaintiff.

The declaration should be personally signed and dated by the declarant under the penalty of perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Melanie Ann Pustay

MELANIE ANN PUSTAY

Executed this 30 day of July, 2007.

Joshua Gerstein v. Central Intelligence Agency, et al.

Litigation Considerations: Sample "Grouped" Vaughn Index.

Civil Action No. 06-4643 (MMC)
U.S. District Court
Northern District of California
San Francisco Division

Vaughn Index

Description of the records of the Offices of the Attorney General, Deputy Attorney General, and Legislative Affairs protected in full and in part by FOIA Exemption 5. The 720 pages of withheld records are divided into nine groups and are described below.

Group Number	Date	Description	Privilege	Pages
1	Varied dates in 2002, but mostly undated	Unsigned drafts, many with handwritten notations, the final versions of which were also processed and provided to plaintiff: consist of draft letters to Congress, draft transmittal memorandum, drafts of the final and interim reports to Congress on classified leaks, and draft memoranda regarding the Interagency Task Force.	Deliberative process in full	264
	Varied dates in 2002, but mostly undated	Unsigned, incomplete, drafts, many with handwritten notations, of which no final versions were located, consisting of draft remarks, portions of memoranda, and analysis of issues involving leaks	Deliberative process in full	71
	None	One unsigned, undated draft statement regarding the Intelligence Authorization Act for Fiscal Year 2001	Deliberative process in full	2

Group Number	Date	Description	Privilege	Pages
2	3/31/82 and 10/15/02	Two documents containing unsegregable marginalia; specifically, marked-up version of the 1982 "Willard Report" and the October 15, 2002 letter to Congress, which were also processed and provided to plaintiff	Deliberative process in full	61
	None	Handwritten notes reflecting legal discussions and analysis	Deliberative process in full	50
	11/21/02	Federal statutes containing unsegregable marginalia, the underlying statutes for which OIP retrieved and provided to plaintiff	Deliberative process in full	27
3	Varied dates in 2002	Documents comprising the "work product" of the working groups on classified leaks, including taskings, analyses, comments, recommendations, agendas with handwritten notations, interim reports offering proposals and analyses, group goals and questions for consideration	Deliberative process in full	35
	12/20/01 to 2/11/02	Summaries of six separate working group chair meetings discussing back and forth between meeting participants	Deliberative process in part	20
	3/11/02	One e-mail message from the PADAG to members of three classified leaks working groups, soliciting comments on particular areas of interest to the leaks task force	Deliberative process in part	1
4	Varied dates in 2002	Responsive portions of related e-mail messages among various DOJ staff, discussing the drafting of and making recommendations on the AG's classified leaks report to Congress	Deliberative process in full	77
5	10/19/00	Memorandum from the AAG of OLA to the Director of OMB regarding DOJ's comments and views on the Intelligence Authorization Act for Fiscal Year 2001	Deliberative process in full	3

Group Number	Date	Description	Privilege	Pages
	7/12/00	One marked-up version of the Intelligence Authorization Act for Fiscal Year 2001, including suggested legislative revisions	Deliberative process in full	3
6	7/23/99	Two versions of a memorandum from the PADAG to the AAG of the Criminal Division asking various questions about the handling of classified leaks and constituting an initial assessment regarding the anticipated creation of a working group on the handling of classified leaks	Deliberative process in full	6
	7/28/99	One memorandum from the Associate DAG to the PADAG proposing issues for consideration and preliminary questions for the classified leaks working group	Deliberative process in full	6
	11/19/01	One memorandum from the Associate DAG, through the ODAG, to the AG providing recommendations for selecting a task force chair in anticipation of the establishment of a classified leaks task force	Deliberative process in part	5
7	3/12/01	One memorandum from the Inspector General to the PADAG regarding investigating classified leaks, and describing the content of a separate deliberative memorandum in which a former AAG discussed options regarding classified leaks	Deliberative process in part	2
	9/3/02, 9/23/02, and 10/15/02	Three memoranda from the Associate DAG, through the DAG, to the AG seeking signature and approval to submit the report on classified leaks to OMB for clearance, and discussing other offices' views on, and modification of, the draft report	Deliberative process in part	11
	4/29/02	Report to the AG on the work of the interagency task force on classified leaks, submitted by the Associate DAG, and discussing	Deliberative process in part	62

Group Number	Date	Description	Privilege	Pages
		the task force's findings, recommendations, and analysis of the problem of leaks		
	undated	Letter from the Director of the CIA to the AG making multiple recommendations on the approach to be taken with respect to the draft report on classified leaks	Deliberative process in full	3
8	Undated	One unsigned, undated summary, created by the legislative working group on classified leaks, on implementation of the 1982 Willard Report on classified leaks, and assessing the success of the recommendations of that report	Deliberative process in part	3
	Undated	One unsigned, undated document discussing whistleblower protections and procedures, and providing recommendations for successful implementation of whistleblower protections	Deliberative process in part	4
9	4/1/97	One final letter from the DAG to the Deputy Assistant to the President for National Security Affairs, National Security Council, regarding the DOJ's review of and providing advice on classified leaks	Presidential communications privilege in full Deliberative process privilege in full	3
	None	One portion of a list of attachments which describes the above letter from the DAG to the Deputy Assistant to the President for National Security Affairs, National Security Council, regarding the DOJ's review of and providing advice on classified leaks	Presidential communications privilege in part Deliberative process privilege in part	1

Legend:

DOJ – Department of Justice
OAG – Office of the Attorney General
ODAG – Office of the Deputy Attorney General
PADAG – Principal Associate Attorney General
AAG – Assistant Attorney General
OMB - Office of Management and Budget
AG – Attorney General
DAG – Deputy Attorney General
OLA – Office of Legislative Affairs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,	)	
Plaintiff,	)	
v.	)	Civil Action No. 10-00851 (RBW)
DEPARTMENT OF JUSTICE,	)	
Defendant.	)	

SECOND SUPPLEMENTAL DECLARATION OF VANESSA R. BRINKMANN

I, Vanessa R. Brinkmann, declare the following to be true and correct:

1) I am the Counsel to the Initial Request (IR) Staff of the Office of Information Policy (OIP), United States Department of Justice. In this capacity, I am responsible for supervising the handling of the Freedom of Information Act (FOIA) requests processed by OIP. The IR Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from seven senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), Deputy Attorney General (ODAG), Associate Attorney General (OASG), Legal Policy, Legislative Affairs, Intergovernmental and Public Liaison, and Public Affairs. The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the Department of Justice, as well as with other Executive Branch agencies.

2) I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

3) In my declaration of November 2, 2010, I described OIP's handling of plaintiff's FOIA request for records concerning the Department's decision to seek a dismissal of defendants in *U.S. v. New Black Panther Party for Self-Defense* [hereinafter "*NBPP* litigation"], including an explanation of the forty-eight pages of material withheld from plaintiff pursuant to Exemption 5 of the FOIA. This declaration supplements and incorporates by reference my November 2, 2010 declaration, and provides additional detail regarding the segregability of the withheld documents. In particular, this declaration addresses the segregability of the records withheld by OIP which this Court has determined are solely protected by the deliberative process privilege of FOIA Exemption 5.

4) In its Memorandum Opinion and Order dated August 4, 2011, the Court ruled that OIP properly asserted FOIA Exemption 5 in withholding all of the forty-eight pages of documents at issue, and which were addressed in ¶¶ 38-60 of my November 2, 2010 declaration. OIP had asserted both the deliberative process privilege and the attorney work product privilege for all forty-eight pages. With respect to documents withheld by OIP which post-date the May 15, 2009 filing of the Department's notice of voluntary dismissal in the *NBPP* litigation [hereinafter the "post-dismissal" documents], the Court determined that only the deliberative process privilege of FOIA Exemption 5 applies and ordered the Department to renew its motion for summary judgment, accompanied by declarations that solely address the segregability of documents 37a-c and the post-dismissal documents.

5) As described in my November 2, 2010 declaration, during OIP's original review of the information withheld from plaintiff, we carefully reviewed each of the documents to determine whether any information could be segregated for release. At that time, inasmuch as the

documents that remained at issue were being protected in their entireties by the attorney work-product privilege, OIP determined that disclosure of the documents, and the facts selected for and contained within them, would reveal individual assessments of what was deemed significant in the course of the litigation, what strategies and options were being considered, when, and by whom. Because the attorney work-product doctrine protects from disclosure the entire contents of documents to which it applies, and OIP had asserted that doctrine in conjunction with the deliberative process privilege to withhold all of the documents at issue, none of the forty-eight pages of withheld documents were identified as appropriate for segregation.

6) In light of the Court's August 4, 2011 Order, OIP has now conducted a supplemental review of the documents that the Court held were protected only by the deliberative-process privilege, specifically: documents 107a, 110, 111, 113, 116, and 117a-d.[1] As a result of this supplemental segregability review, OIP has now determined that certain material in these documents is appropriate for segregation and release to plaintiff inasmuch as such disclosure does not reveal information protected by the deliberative process privilege. Accordingly, portions of documents 107a, 116, and 117a-d have now been segregated and released to plaintiff through counsel. The newly-released material consists of certain purely factual information, including e-mail envelope information (such as the "to," "from," "sent date," and "subject" fields)[2]; information that is already a matter of public record, including language excerpted from public court filings, and other non-deliberative statements. The material which OIP continues to

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[1] The remaining post-dismissal documents and Document 37a-c are discussed in the Second Supplemental Declaration of Nelson D. Hermilla.

[2] Most e-mail envelope information, such as the authors, recipients, dates and subjects of e-mails, had already been disclosed to plaintiff through the Vaughn Index attached to my November 2, 2010 declaration.

withhold within the post-dismissal documents, as detailed in the following paragraphs, consists of information that this Court has ruled is protected by the deliberative process privilege or is so intertwined with exempt information that it cannot be segregated for release. OIP's segregability review of each of the post-dismissal documents is addressed comprehensively below.

Document 107a

7) As a result of our supplemental segregability review, OIP has determined that factual portions of document 107a are appropriate for segregation and release to plaintiff, inasmuch as such portions do not reveal deliberative process privileged information. Document 107a is described in OIP's Vaughn Index as follows:

> [An] e-mail from OASG to OAG, ODAG, and OASG officials forwarding court papers filed in the NBPP litigation, as well as emails briefing recipients on the relief sought therein. E-mail provides additional comment and characterization of relief sought.

The information that has now been released to plaintiff in this document consists of e-mail envelope information and the author's factual statements regarding a public court-filing. The remaining information consists of the author's above-described opinion about the judicial relief sought in the *NBPP* litigation and, as such, is the very information which this Court has determined is properly protected by the deliberative process privilege. Document 107a therefore cannot be segregated any further without disclosing privileged information.

Documents 110 and 111

8) As a result of our supplemental segregability review, OIP has determined that documents 110 and 111 do not contain any non-exempt segregable information, inasmuch as the factual information included within these predecisional briefing papers is inextricably intertwined with the analysis they contain, so that disclosure of any portions of these documents

would reveal the very deliberative process this Court has determined applies to these materials.

Document 110 is described in OIP's Vaughn Index as follows:

> [A] briefing paper, including talking points, for the [Attorney General] regarding the Department's handling of the NBPP litigation and the decision to drop charges against three of the defendants. This briefing paper identifies selected aspects of the Department's handling of the NBPP litigation, and serves to brief the [Attorney General] on how he may prepare for potential inquiries during upcoming Hill testimony.

Document 111 is described as:

> [A] briefing paper, including talking points, for the [Associate Attorney General] regarding the Department's handling of the NBPP litigation and the decision to drop charges against three of the defendants. This briefing paper identifies potential issues and various aspects of the Department's handling of the NBPP litigation, and serves to brief the [Associate Attorney General] on how he may prepare for inquiries.

The information withheld from plaintiff in these internal briefing papers represents the authors' internal decisions to select particular facts and present their analysis of them to the Department's senior leadership. These documents were assembled through the authors' exercise of judgment in extracting pertinent material from any number of sources, to be used and relied upon by the Attorney General and Associate Attorney General as they are called upon to take discretionary action in representing the Department -- in this instance, as they respond to outside inquiries on the *NBPP* litigation. The decision to include or exclude certain factual information from analytical documents is itself an important part of the deliberative process. Accordingly, I have carefully reviewed documents 110 and 111, but have determined that they are not segregable, and that any further disclosure would reveal details of the Department's deliberative process.

Document 113[3]

9) As a result of our supplemental segregability review, OIP has determined that the very limited portion of document 113 that is responsive to plaintiff's request does not contain any non-exempt segregable information. Document 113 consists of handwritten meeting notes and any further disclosure of the responsive portion of these notes would reveal the very deliberative process this Court has determined applies to these notes. Document 113 is described in OIP's Vaughn Index as follows:

> Handwritten notes taken at a "[Civil Rights Division] Weekly Meeting" in which a variety of pending [Civil Rights Division] matters are discussed. Author's notes reflect a discussion of a development in the NBPP litigation.
>
> *Only a limited portion of these notes relate to the subject of plaintiffs FOIA request.

The information withheld from plaintiff in document 113 consists of a mere six words, which reflect a discussion regarding a course of action that was under consideration at this early May meeting.[4] The remainder of this one page of meeting notes reflects discussions of non-*NBPP* Civil Rights Division matters, which are not responsive to plaintiff's FOIA request. It is not possible to segregate these six words in document 113 without revealing the nature of the underlying, privileged discussion.

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[3] In Defendant's Reply and Opposition to Plaintiff's Cross-Motion for Summary Judgment, filed January 10, 2011, it was erroneously noted that document 113 post-dated the dismissal in the *NBPP* litigation. See Def.'s Reply at 11 n. 8. Document 113 is dated "early May" and was located along with other "weekly meeting" notes, including document 112 (dated April 30, 2009) and document 114 (dated May 14, 2009). Therefore, Document 113 likely was created on May 7, 2009, prior to the *NBPP* dismissal on May 15, 2009. In keeping with the Court's analysis, document 113 thus would be protected by the attorney work-product privilege.

[4] As noted above, although document 113 was previously listed as a post-dismissal document, it reflects a discussion from a meeting that likely occurred May 7, 2009.

Document 116

10) As a result of our supplemental segregability review, OIP has determined that certain factual portions that are separate and apart from the analyses comprising document 116 are appropriate for segregation and release to plaintiff, inasmuch as such portions do not reveal deliberative process privileged information. Document 116 is described in OIP's Vaughn Index as follows:

> Detailed "chronology" of the Department's involvement in the NBPP litigation as presented from the author's perspective. Includes the author's characterization of actions and discussions with and among Department colleagues since the inception of the lawsuit, but focusing primarily on the time period of 4/29/09-5/21/09.

The information that has now been released to plaintiff in this document consists of information that was presented in papers filed by the Department in the *NBPP* litigation, including factual details of the *NBPP* events, litigation dates, and contents of court filings.[5] The remaining material cannot be segregated any further without revealing the analysis, assessments and evaluations of the document's author.[6] Moreover, the author's decision to include or exclude certain factual information from this analytical document is an important part of his deliberative process, as he exercises his judgment in extracting pertinent material from a vast number of sources and notes his own "take" on events that are discussed. The very facts that the author chooses to discuss, the nature in which he discusses them, and the manner in which he arranges them reveals his thought process. Furthermore, information revealing dates that certain actions in the deliberative process were (or were not) undertaken is non-segregable because such

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[5] An example of information that was released to plaintiff includes the entry for April 28th, on page 5 of the document, which reads "The United States sent the Defendants notice that it would file a motion for default judgment after at least three days."

[6] Document 116 contains and discusses full-text excerpts of draft court filings, which the Court has elsewhere determined to be protected by the attorney-work product privilege.

information regarding the timing of internal *NBPP* developments and discussions would disclose the details of the consultative process at each stage of the process. Accordingly, certain factual information not released to plaintiff pursuant to OIP's supplemental review is so inextricably intertwined with the deliberations contained in this predecisional document that any further disclosure would inevitably reveal the deliberations that the Court has determined are protected by Exemption 5 of the FOIA. Document 116 therefore cannot be segregated any further without revealing privileged information.

Documents 117a-d

11) As a result of our supplemental segregability review, OIP has determined that certain factual portions of documents 117a-d are appropriate for segregation and release to plaintiff, inasmuch as such portions do not reveal deliberative process privileged information. Document 117a-d is described in OIP's Vaughn Index as follows:

> Forward of an e-mail with the subject "New Black Panther Party: Response to Lamar Smith" by an ODAG attorney, who then presents a detailed analysis to the DAG on certain points of [the Civil Right Division's] decisionmaking process in the NBPP litigation. The ODAG attorney provides [the Civil Right Division's] explanations on its handling of the litigation and opines on how most appropriately to present certain aspects of the case in a draft letter to Congress.

The information that has now been released to plaintiff in this document consists of e-mail envelope information, a non-substantive statement unrelated to plaintiff's FOIA request, and factual statements regarding a draft response letter to a Congressional inquiry involving the *NBPP* litigation. The remaining information consists of the author's above-described legal analysis of judicial relief sought in the *NBPP* litigation and, as such, is the very information which this Court has determined is properly protected by the deliberative process privilege. Any additional segregation of these documents would produce only incomplete, fragmented,

unintelligible sentences and phrases that are devoid of any meaning. Documents 117a-d therefore cannot be segregated any further without disclosing privileged information.

12) When initially processing plaintiff's FOIA request, OIP conducted a line-by line review and analysis of the documents at issue to ensure that only exempt material was withheld from plaintiff. Consistent with the Court's August 4, 2011 Memorandum Opinion and Order, OIP concluded a supplemental review of the documents that the Court determined are properly protected by the deliberative-process privilege of Exemption 5 of the FOIA, but not the attorney work product privilege. As a result of that review, OIP was able to segregate and release certain material without revealing protected deliberative process privileged material. That segregable material has been provided to plaintiff. The remaining information in documents 107a, 110, 111, 113, 116, and 117a-d that has not been segregated and released to plaintiff consists of the protected deliberations and information so inextricably intertwined with those deliberations that its disclosure would reveal the deliberations themselves.

I declare under penalty of perjury that the foregoing is true and correct.

Vanessa R. Brinkmann

Executed this 30th day of September 2011.

Electronic Frontier Foundation v. U.S. Department of Justice
Civil Action No. 10-CV-0641 (RBW)
U.S. District Court for the District of Columbia

OIP Vaughn Index

This index contains a description of the 221[1] pages of records protected, either in part or in full by OIP, pursuant to Freedom of Information Act Exemption 5 (deliberative process privilege).[2] For clarity of presentation, the documents are assembled into two general groups and nine sub-groups. The documents in Group 1 of this Index includes records withheld from plaintiff in part (Groups 1(a) – 1(e)), and the documents in Group 2 include records withheld from plaintiff in full (2(a) – 2(d)).

Group 1: Documents withheld in part pursuant to Exemption 5.
- Group 1(a): E-mail messages in which issues raised in a meeting between the U.S. and EU are discussed among DOJ officials.
- Group 1(b): E-mail messages in which DOJ senior officials solicit and receive advice and discuss questions, developments, and potential ramifications, concerning the HLCG deliberations.
- Group 1(c): E-mail discussions pertaining to the development of drafts.
- Group 1(d): E-mail discussions pertaining to strategies, progress, and next steps regarding HLCG negotiations.
- Group 1(e): Briefing material.

Group 2: Documents withheld in full pursuant to Exemption 5.
- Group 2(a): Drafts.
- Group 2(b): Comments on drafts.
- Group 2(c): Briefing material.
- Group 2(d): Handwritten meeting notes.

Acronyms:

OAG: Office of the Attorney General
ODAG: Office of the Deputy Attorney General
OPCL: Office of Privacy and Civil Liberties
CRIM: Criminal Division
DHS: Department of Homeland Security
State: Department of State
OIP: Office of Information Policy
EU: European Union
HLCG: High Level Contact Group

Identification of Relevant Department Personnel:

Thomas Burrows: CRIM
Nancy Libin: ODAG
David Ogden: ODAG
Amy Jeffress: OAG
Bruce Swartz: CRIM
Stuart Delery: ODAG
Kenneth Harris: CRIM
Emily Petty: OAG
Melanie Ann Pustay: OIP
Kirsten Moncada: OPCL
Molly Warlow: CRIM
Miriam Vogel: ODAG

[1] Although 221 pages are included in the Vaughn Index, it should be noted that these pages were not withheld in their entireties. As a result of OIP's efforts to segregate as much information as possible for release to plaintiff, many of the individual pages within documents or e-mail chains contain no redactions at all.

[2] Shaded entries within this Vaughn Index denote information that was withheld on behalf of the Criminal Division, and, accordingly, the justification for those withholdings is being addressed by that component.

Patricia Reedy: CRIM **Lisa Monaco**: ODAG **Mary Lee Warren**: CRIM

Group 1: Description of documents that were released in part with excisions made pursuant to Exemption 5 of the FOIA.

Group	Document Numbers		Date	Description	Exemption	Pages
1(a)	SD-18 SD-23 SD-24		10/15/09 through 10/16/09	E-mail messages between David Ogden and Stuart Delery discussing issues raised by a meeting between U.S. and EU representatives on HLCG information sharing principles.	Exemption 5 Deliberative process privilege	2
1(b)	NLI-14 NLI-23 NLI-25 NLI-48 NLI-68 NLI-69	NLI-70 NLI-71 TB-672 SD-1 SD-15	7/22/09 through 10/23/09	E-mail messages among Nancy Libin, Melanie Pustay, Thomas Burrows, and Bruce Swartz, in which senior officials seek and receive advice, and discuss questions, developments, and potential ramifications, with respect to the HLCG deliberations.	Exemption 5 Deliberative process privilege	11

Group	Document Numbers		Date	Description	Exemption	Pages
1(c)	KMI-14 KMI-7 KMI-8 KMI-9 KM-72 KM-73 KM-74 NLI-34 NLI-35 NLI-36 NLI-37 NLI-38 NLI-39 NLI-40 MW-1 NLI-27 NLI-28 NLI-29 NLI-30 KM-104 KM-105 NLI-1 TB-60 TB-61 TB-350 TB-351	TB-352 TB-500 TB-501 TB-682 TB-683 TB-684 TB-605 TB-606 TB-551 TB-552 TB-541 NL-321 KM-113(a) KM-114 NL-426 NL-427 NL-348 NL-451 NL-183 NL-184 NL-185 NL-186 NL-188 NL-188(a) NL-102 TB-558	1/23/09 through 10/28/09	E-mail messages among Thomas Burrows, Mary Lee Warren, Kirsten Moncada, Nancy Libin, and Bruce Swartz sharing and discussing various comments and opinions in the development of drafts, including suggested language, edits, mark-ups, additions, and contextual extractions. Authors of these e-mails address questions that arise in connection with the drafts, explain their reasoning for making certain edits, and their assessments as to the effect of the prepared draft language in the context of the HLCG negotiations.	Exemption 5 Deliberative process privilege	27

Group	Document Numbers		Date	Description	Exemption	Pages
1(d)	NLI-42 NLI-43 NLI-44 NLI-45 NLI-46 SD-5 SD-16 NL-68 NLI-52 NLI-53 NLI-54 NLI-55 NLI-56 TB-465 TB-466 TB-715	TB-716 TB-597 NL-171 NL-89 NL-13 NLI-57 NLI-59 NLI-60 NLI-61 NLI-62 NLI-63 NLI-64 NLI-65 NLI-67	9/3/09 through 10/27/09	E-mails among Bruce Swartz, Mary Lee Warren, Nancy Libin, Thomas Burrows, Miriam Vogel, Stuart Delery, Kirsten Moncada, and Patricia Reedy consisting of discussions and opinions about negotiation strategies, the progress of the deliberations, and next steps in the HLCG deliberations, including reactions by DOJ officials to issues raised during HLCG deliberations, and discussions and analysis of pertinent U.S. statutes and case law.	Exemption 5 Deliberative process privilege	17

Group	Document Numbers	Date	Description	Exemption	Pages
1(e)	TB-696 TB-697 TB-710 TB-711 TB-712 NL-231(b) TB-456(a) TB-456(b)	8/26/09 through 10/27/09	E-mail messages among Mary Lee Warren, Kenneth Harris, Bruce Swartz, Molly Warlow, Thomas Burrows, Amy Jeffress, Emily Petty, and Stuart Delery regarding the creation of briefing materials for upcoming meetings with EU member state dignitaries, as well as the briefing materials themselves.	Exemption 5 Deliberative process privilege	14
	SD-24(a) SD-24(b) SD-24(c)		Two copies of an October 7, 2009 memorandum (one with a handwritten notation) from Nancy Libin to the Deputy Attorney General, through Stuart Delery, concerning a U.S.-E.U. meeting in Brussels, and an attachment thereto consisting of a preliminary "Agreed Text from the HLCG Experts" dated October 2, 2009. Redacted information consists of the author's briefing of senior officials on the meeting, and portions of the attachment consisting of sections that were subsequently changed in the final version of the text.		11

Group 2: Description of documents protected in full pursuant to Exemption 5 of the FOIA.

Group	Document Number		Date	Description	Exemption	Pages
2(a)	KMI-9(a) KMI-10(a) KMKC-6(a) KM-85(a) KM-86(a) KM-87(a) KM-88(a) KM-89(a) NL-143(a) NL-231(g) TB-578(a) TB-528(a)	TB-598(a) TB-353(a) NLI-77(c) TB-390(a) TB-526(a) TB-426(a) TB-438(a) TB-438(b) TB-534(b) NLI-30(a)	Undated	Various drafts, including mark-ups, proposed language, and edits by U.S. government personnel, including drafts of: a proposed agreement on data privacy protections; joint EU-U.S. statement on enhancing transatlantic cooperation; insert regarding HLCG conclusions; and agendas for upcoming EU-U.S. meetings.	Exemption 5 Deliberative process privilege	60
2(b)	TB-464(a) KM-90 KM-91 KM-92 NLI-73 NLI-74 NLI-75 NLI-76 NLI-77 TB-389(a)		Undated, 4/3/09, 9/28/09	Discussion papers and general comments, including e-mails among Kirsten Moncada, Thomas Burrows, Mary Lee Warren, Nancy Libin, and various DHS and State officials, on drafts and revisions to drafts.	Exemption 5 Deliberative process privilege	11
2(c)	OIPGEB-1 TB-17(a) NL-231(a)		3/16/09 through 10/28/09	Briefing materials consisting of a "briefing book" for the Attorney General, and draft talking points/briefing papers for upcoming meetings with EU member state dignitaries.	Exemption 5 Deliberative process privilege	50

Group	Document Number		Date	Description	Exemption	Pages
2(d)	KMI-1 KMI-4 KMI-5 NLI-82 NLI-83 NLI-84	NLI-85 NLI-86 NLI-87 NLI-89 NLI-90 NLI-91	Various Dates (some undated)	Handwritten notes of senior DOJ officials from teleconferences, meetings, and other discussions. Notes which include the author's evaluations and contemporaneous thoughts on internal U.S. discussions regarding HLCG deliberations and negotiations, as well as notes to self and questions for follow-up.	Exemption 5 Deliberative process privilege	18

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARL OGLESBY, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, et al, Defendants.	)	Civ. A. No. 02-CV-00603 (RWR)

THIRD DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), formerly at Federal Bureau of Investigation Headquarters ("FBIHQ") in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 280 employees who staff a total of ten (10) FBIHQ units and two field operational service center units whose collective mission is to effectively plan, develop, direct and manage responses to requests for access to FBI records and information pursuant to the FOIA, as most recently

amended by the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 13526[1], and the preparation of declarations in support of Exemption 1 claims asserted under the FOIA[2]. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13526, §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's response to plaintiff's FOIA/Privacy Act requests directed to FBIHQ, Chicago, New York City, and Washington Field Offices for records pertaining to himself.

(4) The purpose of this declaration is to provide the Court and plaintiff with an explanation of the procedures used by the FBI to review and process the 205-page sample chosen by plaintiff. The 205 page sample included four permanent serial charge-out forms[3], indicating

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[1] 75 Fed. Reg. 707 (2010).

[2] 5 U.S.C. § 552 (b)(1).

[3] Serial charge-out forms authorize the removal of a document from an FBI file, and placement of a document in another location, e.g., confidential file room or a supervisor's office. Document is to be replaced by the "serial charge-out." Normally, an agent wanting to see a document will call for an entire

that additional pages were located in the FBI's Special File Room[4] ("SFR"). Despite the fact that all SFR documents were located and provided to plaintiff previously as part of the entire release, the four SFR documents which have been selected in the sample have been placed behind each corresponding serial charge-out form and are identified as Bates-stamp pages CPO-656-A, 658-A, 659-A, and 660-A. Therefore, these four corresponding pages have been added to plaintiff's sample, despite their previous release to plaintiff. Plaintiff also selected a Change-to Memo[5], identified as CPO-1722, which indicates that file 100-123974 Serial 539 was changed to 62-111917 Serial 4. Serial 4 of 62-111917 was located and identified as three pages which originated with a division of the U.S. Justice of Department ("DOJ"), which is now a part of the DOJ National Security Division ("DOJ/NSD"). These pages have been referred to DOJ/NSD for direct response to plaintiff and will not be included in this sample. A Deleted Page Information Sheet ("DPIS")[6] indicating this referral has been placed behind the Change-to Memo. Two DPIS forms were also chosen by plaintiff as a part of this sample. The first is identified as CPO-1734. The documents which correspond with this form are Air Force-originated documents identified as Bates-Stamp pages CPO-1735 to CPO-1738. All of these pages, with the exception of

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"section" of a file and the section will later be returned. "Serial charge-out" is thus a fairly unusual procedure.

[4] Special File Room is a location outside the Central Records complex for particularly sensitive FBI files.

[5] A Change-to Memo indicates that a document has been removed and placed in a more appropriate file. The "Change-to memo" is placed where the document had been. It is a more routine procedure than the "serial charge-out."

[6] The FBI replaced pages withheld in their entireties with a "Deleted Page Information Sheet" ("DPIS") which identifies the FOIA exemptions asserted to withhold the document in full as well as the Bates-page numbers for the withheld pages. If the document originated with another Government agency, the DPIS will state that it was referred to that agency for review and direct response.

CPO-1735, were chosen by plaintiff as a part of this sample. CPO-1735 has now been included as it corresponds with the DPIS. Therefore, one additional page --CPO-1735-- was added to this sample, however, this page contains no exemptions and was released in its entirety. All of these pages were previously processed and released by the FBI after consult with the Air Force and will be addressed by the Air Force by separate declaration. The second DPIS is identified as CPO-2114. The documents which correspond with this form are Army-originated documents identified as Bates-stamped pages CPO-2113, 2115, and 2010-2126. These nine pages will not be included in this sample as they were sent to the Army for direct response previously and the Army responded directly to plaintiff's counsel by letter dated March 12, 2008 with respect to these pages.

(5) In summary, a total of five pages have been added to the plaintiff's 205-page selection resulting in a **210-page selection**. The remainder of the material mentioned above will be addressed in separate declarations to be submitted by the Army, Air Force and DOJ NSD, respectively, in accordance with Vaughn v. Rosen, 484 F.2d 820, 827 (D.C. Cir. 1973).[7] This declaration therefore provides a justification only for the FBI-originated information in this 210-page sample which the FBI has withheld from disclosure by the FBI pursuant to Privacy Act Exemption (j)(2), 5 U.S.C. § 552a (j)(2), and FOIA Exemptions 1, 2, 6, 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552(b)(1), (b)(2), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E). Moreover, this declaration supplements, and hereby incorporates, the Declaration of Scott A. Hodes, dated July

[7] The FBI also located certain documents which originated with CIA and NSA within this sample. The FBI sent referrals – either for consult or direct response – to these agencies on or about February 14, 2008 and February 3, 2009 and will address these in further detail infra, ¶¶ 145-154. This material will also be addressed separately by these agencies.

8, 2002 ("Hodes Declaration"), the Declaration of Nancy L. Steward, dated August 10, 2005 ("Steward Declaration"), the Declaration of David M. Hardy dated March 7, 2006 ("Hardy Declaration-March 7, 2006"), and the Declaration of David M. Hardy dated May 22, 2009 ("Hardy Declaration-May 22, 2009") all of which have been submitted previously in this case.

CORRESPONDENCE

(6) The Hodes Declaration contains correspondence related to this case from approximately April 1999 to approximately June 2002. See Hodes Declaration, ¶¶ 4-15.

(7) On or about May 23, 2002, the FBI notified plaintiff that his fee waiver was denied, that he did not qualify for a waiver of search fees or duplication fees, and that upon receipt of plaintiff's willingness to pay fees the remainder of the interim release will be mailed and the remaining documents will continue to be processed. (See **Exhibit A**).

(8) By letter dated June 21, 2002 Office of Information and Privacy[8] ("OIP") responded to an appeal regarding a fee waiver and plaintiff's status as a representative of the news media. OIP advised plaintiff that he qualified as a journalist and is entitled to news media status, and that his fee waiver was properly denied by the FBI. (See **Exhibit B**).

(9) By letter dated October 7, 2002, the FBI requested payment a second time of $85.10 from plaintiff for the release mailed on June 21, 2002 of 851 pages. The FBI stated that if it did not receive payment by October 21, 2002, a dispositive motion would be prepared based on plaintiff's failure to exhaust administrative remedies. (See **Exhibit C**).

(10) By letter dated October 21, 2002, plaintiff submitted a check in the amount of

[8] The Office of Information and Privacy changed its name to the Office of Information Policy on or about March 11, 2009.

$85.10. (See **Exhibit D**).

(11) By letter dated May 7, 2003[9], the FBI made an interim release to plaintiff. Plaintiff was advised that 295 pages were reviewed and 287 pages were being released. (See **Exhibit E**).

(12) By letter dated June 5, 2003, the FBI made the second interim release to plaintiff. Plaintiff was advised that 250 pages were reviewed and 240 pages were being released. (See **Exhibit F**).

(13) By letter dated July 2, 2003, the FBI made the third interim release to plaintiff. Plaintiff was advised that 298 page were reviewed and 294 pages were being released. (See **Exhibit G**).

(14) By letter dated August 6, 2003, the FBI made the fourth interim release to plaintiff. Plaintiff was advised that 345 pages were reviewed and 344 pages were being released. (See **Exhibit H**).

(15) By letter dated September 29, 2003, the FBI made the fifth interim release to plaintiff. Plaintiff was advised that 907 pages were reviewed and 404 pages were being released. (See **Exhibit I**).

(16) By letter dated October 31, 2003, the FBI made the sixth interim release to plaintiff. Plaintiff was advised that 242 pages were reviewed and 222 pages were being released. (See **Exhibit J**).

(17) By letter dated November 26, 2003, the FBI made the seventh interim release to

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[9] See Hodes Declaration, ¶¶ 4-15 regarding release letters dated June 10, 2002 (101 pages reviewed, 100 pages released) and June 21, 2002 (880 pages reviewed, 851 pages released). This brings the total pages released in 2002-2003 to 4,510 pages reviewed and 3,770 pages released.

plaintiff. Plaintiff was advised that 399 pages were reviewed and 353 pages were being released. (See **Exhibit K**).

(18) By letter dated December 23, 2003, the FBI made the eighth and final release to plaintiff. Plaintiff was advised that 793 pages were reviewed and 685 pages were being released. (See **Exhibit L**).

(19) In response to plaintiff's "Cross-Motion for Summary Judgment" and "Opposition to Defendants' Motion for Summary Judgment" the following items were provided to plaintiff by letter dated March 6, 2006: search slips, worksheets, a prior request letter from plaintiff dated January 17, 1976, and one audiotape from the TV program "Impact." (See **Exhibit M**).

(20) OIP acknowledged receipt of plaintiff's appeal by letter dated June 29, 2007. (See **Exhibit N**).

(21) Pursuant to the joint status report dated April 30, 2007, the FBI made a series of interim releases beginning on or about July 2, 2007. By letter dated July 2, 2007, [10] the FBI provided the first interim release to plaintiff and advised him that 761 pages were reviewed and 747 pages were being released. (See **Exhibit O**).

(22) Pursuant to the joint status report of April 30, 2007, the FBI also sent a letter to plaintiff dated July 2, 2007 detailing the FBI's search efforts for any and all COINTELPRO records and the results thereof. (See **Exhibit P**).

(23) By letter dated August 31, 2007, the FBI made a second interim release to

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[10] As a result of the re-processing of the entire collection of documents in this case, plaintiff received four interim releases of the re-processed documents from approximately July 2007-February 2008.

plaintiff. Plaintiff was advised that 1,105 pages were reviewed and 786[11] were being released. (See **Exhibit Q**).

(24) OIP responded to an appeal by letter dated September 25, 2007 and stated they were closing the appeal as the matter is before the Court. (See **Exhibit R**).

(25) By letter dated November 30, 2007, the FBI made a third interim release to plaintiff. Plaintiff was advised that 1,214 pages were reviewed and 1,201 pages were being released. (See **Exhibit S**).

(26) By letter dated February 14, 2008, the FBI made a fourth and final interim release to plaintiff. Plaintiff was advised that 815 pages were reviewed and 776 pages were being released. (See **Exhibit T**).

(27) The FBI released a total of 34 pages that were inadvertently omitted from the fourth release by letter dated February 22, 2008. These pages were included in the original number of pages reviewed and released as stated in the February 14, 2008 letter. (See **Exhibit U**).

(28) As a result of consultation with the Department of State, the FBI released five documents to plaintiff by letters dated April 30, 2008 and May 15, 2008. (See **Exhibit V**).

(29) On or about June 30, 2008, plaintiff submitted to the FBI a selection of 221 pages to be Vaughned for the prior Hardy Declaration dated May 22, 2009. (See **Exhibit W**).[12]

(30) As a result of consultation with the Internal Revenue Service (IRS), the FBI made

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[11] Due to an inadvertent administrative error, the totals in this letter are incorrect and should instead reflect 1,038 pages reviewed and 799 pages released.

[12] Seven pages were added to this sample, making it a 228 page sample. See ¶14 of Hardy Decl filed May 22, 2009.

a release of one document to plaintiff by letter dated July 8, 2008. (See **Exhibit X**).

(31) As a result of consultation with the Central Intelligence Agency (CIA), Department of the Army (Army), and the Defense Intelligence Agency (DIA), the FBI made a release to plaintiff by letter dated April 10, 2009. Plaintiff was advised that 41 pages were reviewed and 41 pages were being released. (See **Exhibit Y**).

(32) In the process of reviewing the documents in the prior 228 page sample for Hardy Declaration dated May 22, 2009, it was determined by the FBI that some additional information withheld pursuant to Exemption 7(D) and Exemption 1 should be released. The FBI completed its review and released additional information within the prior 228 page sample. As a result, the FBI re-processed an additional 148 pages from the larger collection of documents. This information was released to plaintiff by letter dated May 21, 2009. Plaintiff was advised that 148 pages were reviewed and 147 pages were being released. (See **Exhibit Z**).

(33) As a result of consultation with National Security Agency (NSA) and the Department of the Air Force (Air Force), the FBI made a release to plaintiff by letter dated July 30, 2009. Plaintiff was advised that 17 pages were reviewed and 17 pages were being released. (See **Exhibit AA**).

(34) By letter dated February 12, 2010, one CD was mailed to plaintiff at his request which contained the four interim releases ranging from July 2007-February 2008. (See **Exhibit BB**).

(35) On November 12, 2010, a detailed listing of the location of all referred material, within the entire collection of documents, was e-mailed to plaintiff upon his request. (See **Exhibit CC**). At the same time, a detailed chart of all FOIA processing changes, made to the

entire collection of documents, was provided by e-mail to plaintiff pursuant to a re-review of the material (See **Exhibit DD**).

(36) As a result of the re-review of all of the material in this case, the FBI made a release to plaintiff by letter dated April 14, 2010. Plaintiff was advised that 3,828 pages were reviewed and 3,523 pages were being released. See ¶46. (See **Exhibit EE**).

(37) The FBI identified pages included in the sample which had been inadvertently marked improperly with regard to classification. Because of this, the FBI re-reviewed the entire collection of documents with regard to classification markings, and made a release to plaintiff of 115 corrected pages within the entire collection of documents by letter dated July 20, 2010. (See **Exhibit FF**).

(38) On or about May 8, 2010 plaintiff provided a 205 page sample selection by e-mail. (See **Exhibit GG).**

EXPLANATION OF THE FBI'S CENTRAL RECORDS SYSTEM

(39) The CRS enables the FBI to maintain information which it has acquired in the course of fulfilling its mandated law enforcement responsibilities. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. The CRS is organized into a numerical sequence of files called FBI "classifications," which are broken down according to subject matter. The subject matter of a file may correspond to an individual, organization, company, publication, activity, or foreign intelligence matter (or program). Certain records in the CRS are maintained at FBIHQ, whereas records that are pertinent to specific field offices of the FBI are maintained in those field offices. While the CRS is primarily designed to serve as an investigative tool, the FBI searches the CRS

for documents that are potentially responsive to FOIA and Privacy Act requests. The mechanism that the FBI uses to search the CRS is the Automated Case Support System ("ACS").

(40) The ACS was implemented for all field offices, Legal Attaches ("Legats"), and FBIHQ in order to consolidate portions of the CRS that were previously automated. ACS can be described as an internal computerized subsystem of the CRS. Because the CRS cannot electronically query the case files for data, such as an individual's name or social security number, the required information is duplicated and moved to the ACS so that it can be searched. More than 105 million records from the CRS were converted from automated systems previously utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated more economic and expeditious access to records maintained in the CRS.

(41) The retrieval of data from the CRS is made possible through the ACS using the General Indices, which are arranged in alphabetical order.[13] The entries in the General Indices fall into two categories:

> (a) A "main" entry -- A "main" entry, or "main" file, carries the name corresponding with a subject of a file contained in the CRS.
>
> (b) A "reference" entry --"Reference" entries, sometimes called "cross-references," are generally only a mere mention or reference to an individual, organization, or other subject matter, contained in a document located in another "main" file on a different subject matter.

(42) Searches made in the General Indices to locate records concerning a particular subject, such as Carl Oglesby, are made by searching the subject requested in the index.

(43) The ACS consists of three integrated, yet separately functional, automated

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[13] The General Indices are not only automated but also include index cards which allow a manual search for records that pre-date the implementation of ACS on October 16, 1995.

applications that support case management functions for all FBI investigative and administrative cases:

(a) Investigative Case Management ("ICM") – ICM provides the ability to open, assign, and close investigative and administrative cases as well as set, assign, and track leads. The Office of Origin ("OO"), which sets leads for itself and other field offices, as needed, opens a case. The field offices that receive leads from the OO are referred to as Lead Offices ("LOs"). When a case is opened, it is assigned a Universal Case File Number ("UCFN"), which is used by all FBIHQ, as well as all FBI field offices and Legats that are conducting or assisting in the investigation. Using a fictitious file number "111-HQ-12345" as an example, an explanation of the UCFN is as follows: "111" indicates the classification for the specific type of investigation, "HQ" is the abbreviated form used for the OO of the investigation, which in this case is FBIHQ; and "12345" denotes the individual case file number for the particular investigation.

(b) Electronic Case File ("ECF") – ECF serves as the central electronic repository for the FBI's official text-based documents. ECF supports the universal serial concept in that only the creator of a document serializes it into a file. This provides a single-source entry of serials into the computerized ECF system. All original serials are maintained in the OO case file.

(c) Universal Index ("UNI") – UNI continues the universal concepts of ACS by providing a complete subject/case index to all investigative and administrative cases. Only the OO is required to index; however, the LOs may index additional information as needed. UNI, an index of approximately 109.2 million records, functions to index names to cases, and to search names and cases for use in FBI investigations. Names of individuals or organizations are recorded with identifying applicable information such as date or place of birth, race, sex, locality,

Social Security number, address, and/or date of event.

(44) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent ("SA") - and on occasion, support employees - assigned to work on the investigation, the Supervisory SA ("SSA") in the field office conducting the investigation, and the SSA at FBIHQ. The FBI does not index every name in its files; rather, it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. Without a "key" (index) to this enormous amount of data, information essential to ongoing investigations could not be readily retrieved. The FBI files would thus be merely archival in nature and could not be effectively used to serve the mandated mission of the FBI, which is to investigate violations of federal criminal and national security statutes. Therefore, the General Indices to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its CRS files on a particular subject matter or individual, i.e., Carl Oglesby.

RECORDS RESPONSIVE TO PLAINTIFF'S REQUEST

(45) An explanation of the records responsive to plaintiff's request is detailed in the Hodes Declaration, ¶¶ 30-34.

(46) From the files referenced in ¶¶ 31-35 of the Hodes Declaration dated July 8, 2002, ten releases were made to plaintiff in 2002-2003 consisting of approximately **3,770** pages released of **4,510** pages reviewed.[14] This material was processed in paper, and redactions were

[14] The FBI located certain documents within the entire collection of documents, as well as in this 210 page sample and the prior 228 page sample, which originated with the IRS, U.S. Air Force, U.S. Army, U.S. Navy, Central Intelligence Agency, U.S. Department of Defense, U.S. Department of State, the National Security Agency, and the National Security Division. The FBI sent referrals -- either for consult or direct response -- to these agencies on or about February 14, 2008, February 3, 2009, February

made by hand. In 2007-2008, the material was entered into the electronic system, reprocessed, and four interim releases were sent to the plaintiff consisting of approximately **3,523** pages released of **3,828** pages reviewed.[15] On April 14, 2010, defendant FBI provided a supplemental release to plaintiff consisting of approximately **3,523** pages released of **3,828** pages reviewed. The FBI agreed to a re-review of the material with regard to Exemption 1, however, the FBI also conducted a re-review with regard to all FOIA exemptions to determine if any additional segregable material could be released. The material was Bates-stamped so it could be easily identified and a sample chosen by plaintiff. Plaintiff has selected **205** pages[16] out of the entire collection of material from the 2010 Bates-stamped release. One additional page is included in this sample for a total of **210** pages (See ¶¶ 4-5 above) which will be justified by the FBI herein.

4, 2009, April 17, 2009 and June 9, 2010 and will address these in further detail infra, ¶¶ 145-154.

[15] FBI employees attempted to locate the paper copy of some of the material that was processed and released in 2002-2003, but were unsuccessful in their efforts. Therefore, this material could not be scanned into the system or reprocessed in 2007-2008. This is the reason for the difference in page counts.

[16] Since the prior declaration filed in May 2009, the FBI conducted two separate reviews of the entire collection of documents. In the first review, the FBI conducted a re-review of the material with regard to Exemption b1. The FBI also conducted a re-review with regard to all FOIA exemptions to determine if any additional segregable material could be released. In the second review, the FBI reviewed the entire collection of documents with regard to classification markings. During this review, it was determined that some pages had been inadvertently marked improperly with regard to classification. As a result of corrective action, additional information previously withheld pursuant to Exemptions 1 and 7(D) is being released. All of these pages are now properly marked. Because of this error noted in the sample, the FBI determined that it was necessary to review the classification markings of the entire set of approximately 3,523 responsive pages. As a result of this review, the FBI identified and corrected the classification markings and released additional information pursuant to Exemptions 1 and 7(D), where appropriate, on approximately 115 pages (within the large collection) and made a release to plaintiff by letter dated July 20, 2010.

ELECTRONIC SURVEILLANCE INDICES[17]

(47) The Electronic Surveillance ("ELSUR") indices are used to maintain information on subjects whose electronic and/or voice communications have been intercepted as the result of a consensual electronic surveillance or a court-ordered (and/or sought) electronic surveillance conducted by the FBI. The ELSUR indices date back to January 1, 1960. On or about October 9, 1991, the ELSUR indices were automated. Since that time, FBIHQ and all FBI field offices have electronically generated, maintained, modified and accessed all ELSUR records.

(48) The ELSUR indices are a separate system of records from the CRS. Prior to automation, the ELSUR indices consisted of index cards on individuals who had been the subject of a microphone or telephone surveillance by the FBI from 1960. As stated above, the previous manual index card system was converted to an automated system on or about October 9, 1991. These indices include individuals who were the (a) targets of direct surveillance, (b) participants in monitored conversations, and (c) owners, leasers, or licensors of the premises where the FBI conducted electronic surveillance. In addition to the names of individuals in the above categories, the cards in the ELSUR index contain the date the voice was monitored, a source number to identify the individual on whom the surveillance was installed, and the location of the FBI field office that conducted the monitoring.

(49) ELSUR indices are published as a separate records system in the Federal Register

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[17] The FBIHQ ELSUR indices were searched previously in this case, and revealed no records. The ELSUR indices for the New York and Washington Field Offices were also searched, and revealed no records. The Chicago Field Office located ELSUR records. An extensive search of the Chicago Field Office failed to disclose a tape. However, a transcript of the audio was processed and released to plaintiff in the August 6, 2003 and November 30, 2007 releases and is located in File 100-CG-40903, Sub A. This supplements and corrects Hodes Declaration ¶35.

because not all names contained in the ELSUR index can be retrieved through the General Index and CRS. See 52 Fed. Reg. 8482 (1992).

(50) The FBI field offices that have conducted electronic surveillance at any time from 1960 to the present also maintain ELSUR indices. Since January 1, 1960, the field offices have been including in their ELSUR indices - and reporting to FBIHQ for inclusion in its index - the names of all persons whose voices have been monitored through a FBI microphone installation or a telephone surveillance. The names of monitored subjects are retrievable through the FBIHQ or local field office ELSUR indices.

CONFIDENTIAL INDICES[18]

(51) In 1999, plaintiff submitted requests to Washington Field Office, Chicago Field Office, and New York Field Office. The field offices conducted searches of the confidential indices at that time, and forwarded all responsive material to FBIHQ. The FBI does not search the confidential indices on third parties without privacy waivers. The confidential indices were only searched with regard to Carl Oglesby.

JUSTIFICATION FOR NON-DISCLOSURE UNDER PRIVACY ACT EXEMPTION (j)(2)

(52) Section (j)(2) of the Privacy Act exempts from mandatory disclosure systems of records "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals . . . ."

(53) Records concerning plaintiff were compiled by the FBI for various law

[18] Confidential indices, located only at the field offices, consist of the Confidential Human Source ("CHS") information.

enforcement investigations. Specifically, the responsive documents relate to an internal security investigation of the "Students for a Democratic Society" organization; Domestic Security which covers investigations by the FBI in the domestic security field (see 58 Fed. Reg. 51861 (1993); Anti-Riot Laws, 18 U.S.C. § 245 (b)(3); and various Foreign Counter Intelligence investigations. Accordingly, these documents are exempt from disclosure pursuant to 5 U.S.C. § 552a (j)(2) of the Privacy Act, in conjunction with 28 C.F.R. § 16.96. Although access to the records at issue was denied under the Privacy Act, the documents located responsive to plaintiff's requests were processed under the access provisions of the FOIA to achieve maximum disclosure.

JUSTIFICATION FOR REDACTED INFORMATION UNDER THE FOIA AND EXPLANATION OF CODED FORMAT USED

(54) All information was processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable portions of releasable material. No reasonably segregable, nonexempt portions were withheld from plaintiff. To further describe the information withheld could identify the material sought to be protected. Copies of the **210 sample pages** are attached hereto as **Exhibit HH**. Each page of Exhibit HH is numbered with the corresponding Bates number at the bottom of each page. Also included are pages labeled in a different manner as CPO-656-A, CPO-658-A, CPO-659-A, CPO-660-A. The FBI properly denied records responsive to plaintiff's requests in their entirety pursuant to Privacy Act Exemption (j)(2), 5 U.S.C. § 552a (j)(2) in conjunction with C.F.R.§ 16.96(2003) and released pages with partial redactions pursuant to FOIA Exemptions 1, 2, 6, 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E).

(55) Copies of the documents contain coded categories of exemptions which detail the nature of the information withheld pursuant to the provisions of the FOIA. To further describe the information withheld in more detail could identify the very material that the FBI is protecting. No reasonably segregable, nonexempt portions were withheld from plaintiff. The coded categories are provided to aid the Court's review of the FBI's explanations of FOIA exemptions used to withhold the protected material. Accordingly, a review of this information will reveal that all material withheld is exempt from disclosure pursuant to a properly asserted FOIA/Privacy Act Exemption or it is so intertwined with protected material that segregation is not possible without revealing the underlying protected material.

(56) A coded format is used in this case to assist the Court and plaintiff in reviewing the information withheld within the context of the material itself. Each instance of information withheld pursuant to the FOIA on the attached documents is accompanied by a coded designation that corresponds to the categories listed below. For example, if "(b)(7)(C)-1" appears on a document, the "(b)(7)(C)" designation refers to Exemption (b)(7)(C) of the FOIA concerning "Unwarranted Invasion of Privacy." The numerical designation, "1" following the "(b)(7)(C)" narrows the main category to the more specific subcategory, "Names and/or Identifying Information of FBI Special Agents and Support Personnel." Listed below are the categories used to explain the FOIA exemptions asserted to withhold this material:

SUMMARY OF JUSTIFICATION CATEGORIES

CODED CATEGORIES	CODE	CATEGORY OF INFORMATION WITHHELD
(b)(1)		**CLASSIFIED INFORMATION**
		Information Properly Classified By an FBI Official Pursuant to E.O. 13526
(b)(2)		**INTERNAL AGENCY RULES AND PRACTICES**
	-1	Investigative Techniques and Procedures
	-2	Confidential Source Symbol Numbers [Cited at times in conjunction with (b)(7)(D)-1]
	-3	Confidential Source File Numbers [Cited at times in conjunction with (b)(7)(D)-4]
	-4	Confidential Identification Symbol Numbers of Electronic Microphone Surveillances
(b)(6) & (b)(7)(C)		**CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY**
	-1	Names and/or Identifying Information of FBI Special Agents and Support Personnel
	-2	Names and/or Identifying Information of Third Parties who Provided Information to the FBI [Cited at times in conjunction with (b)(7)(D)-3 and (b)(7)(D)-5]
	-3	Names and/or Identifying Information Concerning Foreign and Local Law Enforcement Personnel
	-4	Names and or/ Identifying Information of Third Parties of Investigative Interest
	-5	Names and/or Identifying Information of Third Parties Merely Mentioned
(b)(7)(D)		**CONFIDENTIAL SOURCE MATERIAL**
	-1	Confidential Source Symbol Numbers (Express Confidentiality) [Cited at times in conjunction with (b)(2)-2]
	-2	Foreign Law Enforcement Agency Information (Express Confidentiality)

	-3	Names and/or Identifying Information of Third Parties who Provided Information to the FBI under an "Express" Assurance of Confidentiality [Cited at times in conjunction with(b)(6)-2 and (b)(7)(C)-2, (b)(6)-4 and (b)(7)(C)-4 and (b)(6)-5 and (b)(7)(C)-5]
	-4	Confidential Source File Numbers (Express Confidentiality) [Cited at times in conjunction with (b)(2)-3]
	-5	Information Provided by and/or Identifying Data Concerning Source Symbol Numbered Informants under an Express Promise of Confidentiality [Cited at times in conjunction with (b)(6)-2 and (b)(7)(C)-2]
	-6	Foreign Government Agency Information (Express Confidentiality)
	-7	Names and/or Identifying Information of Third Parties who Provided Information to the FBI Under an "Implied" Assurance of Confidentiality [Cited at times in conjunction with (b)(6)-2 and (b)(7)(C)-2, (b)(6)-4 and (b)(7)(C)-4 and (b)(6)-5 and (b)(7)(C)-5]
(b)(7)(E)		**INVESTIGATIVE TECHNIQUE OR PROCEDURE**
		Investigative Techniques and Procedures

JUSTIFICATION FOR REDACTIONS

(57) Paragraphs 57-143 infra, explain the FBI's rationale for withholding each particular category of information under the specific exemption categories described above.

APPLICATION OF FOIA EXEMPTION (b)(1) AND E.O. 13526

(58) The FBI's analysis of the withholding of classified information contained in these documents is based on the standards articulated in the FOIA statute, 5 U.S.C. § 552 (b)(1). Exemption (b)(1) protects from disclosure those records that are: "(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and (B) are in fact properly classified pursuant to such Executive Order."

(59) The FBI's analysis of whether Exemption (b)(1) permits the withholding of agency

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARL OGLESBY, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, et al., Defendants.	)	Civ. A. No. 02-CV-00603 (RWR)

Exhibit HH

KEEP AS TOP SERIAL

REQUESTOR	MI.#	SUBJECT	DATE
[redacted]	6362	[redacted]	4-26-81

b6 -5
b7C -5

CPO-1

8-1-00 SOSJ/TMP
447931
922181

SAC, Detroit

6/23/65

Director, FBI

1 - [redacted] b6 -1
1 - b7C -1
1 -

CARL OGELSBY
SECURITY MATTER - SDS

[redacted] b6 -4
b7C -4
SECURITY MATTER - SDS

"The New York Times," page 26, dated June 15, 1965, carried a news item entitled "Left-Wing Student Group Elects New President." This article indicated Carl Ogelsby was elected President of the "Students for a Democratic Society." He is described as a 23-year-old graduate of the University of Michigan who formerly was head of the technical writing department of the Systems Division of the Bendix Corporation. He left this position to work full time for the Students for a Democratic Society (SDS).

This same article indicated that one Jeffrey Shero, a student at the University of Texas, Austin, Texas, was elected Vice President of the SDS.

Bureau files contain no information identifiable with these individuals other than racial activities of Shero, which is already in possession of San Antonio. Detroit and San Antonio are instructed to open security-type investigations concerning these individuals. These investigations should be conducted in accordance with Section 87D of the Manual of Instructions. Contact at the University of Michigan and University of Texas should be confined to established sources. These investigations should be handled promptly and the results submitted to the Bureau in report form suitable for dissemination along with your recommendation as to whether their names should or should not be included in the Security Index.

MCT-10 105-142056-1

14 JUN 25 1965

2 - San Antonio
1 - Chicago

ENCLOSURE

NOTE:

Bufiles contain no subversive information identifiable with subjects. The SDS is a socialist-oriented youth organization which has in recent months been extremely active in protest demonstrations against the United States policy in Vietnam. This organization is currently under investigation to determine the extent of infiltration by communists and other subversive elements.

WTF:baf (11)

MAIL ROOM ☐ TELETYPE UNIT ☐

CPO-2

92219/
8-1-00 SDS-JC/TMB 447931

RECORDED COPY FILED IN 142057

9/13/65

DETAIL

TO: DIRECTOR, FBI

FROM: SAC, WFO

STUDENTS FOR A DEMOCRATIC SOCIETY
IS - C
(WFO file 100-44325) (P)

LEWIS PRESTON OGLESBY
IS - C
(WFO file 100-new)

Re Chicago radiogram to the Bureau, Washington Field, and Detroit dated 8/13/65, captioned "STUDENTS FOR A DEMOCRATIC SOCIETY: IS-C.

Submitted herewith are 11 copies of an LHM for the Bureau and 2 copies each for Chicago and Detroit. LHM sets forth passport data concerning travel plans of OGLESBY for France and Japan.

The records of the Passport Office, U.S. Department of State, were checked on 9/10/65, by IC [redacted] b6 -1 b7C -1

Passport photos of OGLESBY will be submitted to the Detroit Office by 9/- when processed.

ORIGINAL FILED IN 100-

4 - Bureau (Encs. 11)
2 - Detroit (Encs. 2)
2 - Chicago (Encs. 2)
2 - WFO

GTT:cgk
(10)

105-142056-4

NOT RECORDED
193 AUG 26 1965

DETAIL

ENCLOSURE

1-25-85 SAB-BJJ/ALM
CPO-12

50 SEP 16 1965