

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON,)

Plaintiff,)

v.)

U.S. DEPARTMENT OF STATE,)

Defendant.)

Civil Action No. 20-2044 (CRC)

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND MEMORANDUM IN SUPPORT OF PLAINTIFF'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

As part of a larger effort to shield former President Donald Trump from any accountability for his actions and the actions of his administration, former Secretary of State Mike Pompeo refused to cooperate with congressional oversight requests from Democratic committee members, yet provided prompt and voluntary compliance with requests from Republican committee chairs investigating President Trump’s political rivals. His conduct directly conflicted with executive branch policy, State Department protocols, and possibly federal statutes barring the obstruction of federal employees communicating with Congress, yet Secretary Pompeo has yet to face any consequences for this conduct. This Freedom of Information Act (“FOIA”) lawsuit seeks to shed further light on the State Department’s pattern of releasing records to Congress along party lines in the hope of taking a first step toward that accountability.

The State Department continues to resist disclosure of critical portions of the requested documents, claiming they fall within Exemption 5 of the FOIA as predecisional deliberative

communications. The State Department's arguments in support of its withholdings, however, fail to come to terms with the factual, non-exempt nature of much of the withheld material, and generally pay lip service only to meeting its evidentiary burden. Moreover, the State Department fails completely to meet its statutory obligation of demonstrating a concrete, foreseeable harm to an interest the FOIA protects should the withheld material become public. Accordingly, the Court should enter summary judgment in favor of Plaintiff and order the agency to immediately release the withheld material.

FACTUAL BACKGROUND

Public reporting in June 2017 revealed that the White House under President Trump had instructed federal agencies to refuse congressional oversight requests from Democrats in an effort to “head off possible attacks on President Donald Trump.” Gabrielle Levy, White House Blocks Democrats’ Oversight Efforts, *U.S. News & World Report* (June 2, 2017), <https://bit.ly/2XP8rCe>. Reportedly then-Deputy Counsel to the President Uttam Dhillon instructed top agency officials to “disregard requests for information from Democrats,” who were then in the minority in both the House of Representatives and the Senate. *Id.* Republican sources inside and outside the administration corroborated the existence of this White House directive, explaining, “[t]he idea . . . is to choke off the Democratic congressional minorities from gaining new information that could be used to attack the President.” Burgess Everett and Josh Dawsey, White House orders agencies to ignore Democrats’ oversight requests, *Politico* (June 2, 2017), <https://politi.co/36RwKDA>.

Once Democrats assumed control of the House of Representatives in 2019, President Trump made clear his administration would submit to oversight only from Senate Republican committee chairs because “[t]he House is a bunch of Trump haters.” Kevin Breuninger and

Christina Wilkie, Trump: ‘We’re fighting all the subpoenas’ from House Democrats, *CNBC* (Apr. 24, 2019), <https://cnb.cx/3cIt8oM>; President Trump White House Departure, *C-Span* (May 5, 2020), c-span.org/video/?471788-1/president-trump-white-house-departure. Sources confirmed the administration would simply ignore oversight requests from House Democratic committee chairs. Kevin Liptak, Trump Says He Only Will Submit To GOP Oversight For His Administration, *CNN* (May 5, 2020), <https://www.cnn.com/2020/05/05/politics/donald-trump-congress-oversight/index.html>.

Apparently following the President’s directive, in 2019 Secretary Pompeo on behalf of the State Department told House Committee on Foreign Affairs Chair Eliot Engel, House Intelligence Committee Chair Adam Schiff, and House Oversight Committee Chair Elijah Cummings that five current and former State Department officials would not appear for scheduled depositions, questioning the authority of the Chairmen to compel their appearances. *See* Christina Marcos, House committee chairs warn Pompeo that stonewalling could be used as evidence of obstruction, *The Hill*, Oct. 1, 2019, <https://bit.ly/37swaN8>. A May 21, 2020 letter to Secretary Pompeo from Chairman Engel noted that the State Department since the beginning of the 116th Congress had refused to provide information requested in “more than a dozen requests for documents, information, and witness testimony.” Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel to Secretary of State Mike Pompeo (May 21, 2020) (“Engel Letter”), <https://bit.ly/2MCNKEf>. Many of the investigations that prompted those requests concerned “serious allegations” about the President’s conflicts of interest and abuse of the power of his office. *Id.* at 1. In his letter Chairman Engel further noted that “[i]n the case of the

impeachment inquiry, the Department's posture was an unprecedented blanket defiance of a duly authorized subpoena and attempts to muzzle key witnesses." *Id.* at 2 (footnotes omitted).¹

At the same time the State Department was ignoring requests from House Democratic chairs it was actively and consistently cooperating with requests from Senate Republican committee chairs. *See* Engel Letter. For example, in response to a November 2019 request from Senators Ron Johnson and Charles Grassley for information about Burisma Holdings and Ukraine, the State Department voluntarily produced thousands of pages of documents between February and April 2020. *See* Letter from Senate Finance Committee Chairman Charles E. Grassley and Senate Homeland Security and Governmental Affairs Committee Chairman Ron Johnson to Secretary of State Michael R. Pompeo (Nov. 7, 2019), <https://bit.ly/2APraWB>; Letter from Senate Finance Committee Ranking Member Ron Wyden to Secretary of State Michael Pompeo, 1-2 (May 6, 2020) ("Wyden Letter"), <https://www.documentcloud.org/documents/6883366-Wyden-to-Pompeo-05-06-2020.html>; Engel Letter at 2. Those responses, however, ignored document requests from Senate Finance Committee Ranking Member Ron Wyden. Wyden Letter at 2.

Significantly, the State Department made its voluntary production to Senators Johnson and Grassley amidst the State Department's response to the coronavirus pandemic, which the State Department's Office of Information Programs and Services ("IPS") Director, Eric F. Stein, declared had reduced its FOIA processing capability by 96 percent. Wyden Letter at 2; Emma Loop, [A Top Democrat Says The State Department Has Sent Republicans Thousands Of Pages For Their Biden Investigation While Ignoring Democratic Requests](#), *Buzzfeed* (May 6, 2020),

¹ In only one instance during the Trump administration was Chairman Engel able to reach an accommodation with the State Department. *See* Letter from House Committee on Foreign Affairs Chairman Eliot Engel to Secretary of State Mike Pompeo (June 12, 2020), <https://bit.ly/2Y7DF9b>.

<https://bit.ly/2Uhqlg3>; Decl. Of Eric F. Stein at 7, *John Solomon v. U.S. Dep't of State*, No. 1:20-cv-00132-RDM (D.D.C. March 25, 2020), ECF No. 13-1.

FOIA Requests At Issue

On June 26, 2020, CREW submitted to the State Department by email two FOIA requests seeking information regarding the State Department's pattern of releasing records along party lines.² Press Release, CREW Requests State Records On Politicized Response To Congress, CREW (June 26, 2020), <https://www.citizensforethics.org/foia/state-pompeo-politicized-congress-oversight/>. In its first request, CREW requested all documents created or received from June 1, 2017 to the date the State Department conducts its search "pertaining, concerning or reflecting any guidance, instruction, directive, or recommendation on how to handle document or testimony requests from congressional committee chairs, and whether that handling differs depending on the political party of the Chairman or Chairwoman who makes the request." Specifically, CREW requested documents "directing employees to give priority to requests made by Republican members of Congress." FOIA Request, CREW, June 26, 2020 (Exhibit A).

In its second request, CREW requested two categories of records created since the start of the 116th Congress on January 3, 2019 and the date the Department conducts its search. First, CREW requested all records regarding the requests for documents or testimony sent to the State Department by Democratic committee chairs (a) Rep. Elijah E. Cummings, former Chairman of the House Committee on Oversight and Reform ("HCOR") and HCOR staff; (b) Rep. Carolyn Maloney, Chairwoman of the HCOR and HCOR staff; or (c) Rep. Maxine Waters, Chairwoman

² Although the Stein Declaration states that the two requests are Exhibit 2 to the State Department's summary judgment motion, Declaration of Eric F. Stein ("Stein Decl.") ¶ 5 (Exhibit 1 to Def.'s Mem. in Support of Mot. For Sum. Judgment ("Def.'s Mem.") (ECF # 16-1)), in fact they were not included. For the Court's convenience Plaintiff attaches them as Exhibit A hereto.

of the House Financial Services Committee (“HFSC”) and HFSC staff. CREW specified that its request includes all documents sent to, copied to, or received by (d) Senior Advisor to the Secretary of State Mary Kissel, as well as any Department employee with the title “Chief of Staff” or “Deputy Chief of Staff” to the Secretary of State, or acting in any such capacity; (e) IPS Director Stein, as well as anyone with the title “Chief of Staff” or “Deputy Chief of Staff” to the Director, or acting in any such capacity; (f) Director of the Office of Foreign Missions Stephen J. Akard; as well as (g) Bureau of Legislative Affairs (“BLA”) Assistant Secretary Mary Elizabeth Taylor, BLA Deputy Assistant Secretary of House Affairs Jess Moore, BLA Executive Director Alicia A. Frechette, or Congressional Correspondence Unit Chief Cynthia Andrews in response to these requests. In responding to this request, CREW asked that the State Department exclude records, documents, and communications regarding requests made jointly by Chairman Engel and, either, (a) former Chairman Cummings or (b) Chairwoman Maloney. *See* Exhibit A.

Second, CREW requested all documents, as well as all communications and records of communications sent to, copied to, or received by Secretary Pompeo, Director Akard, Senior Advisor Kissel, as well as any State Department employee with the title “Chief of Staff” or “Deputy Chief of Staff” to the Secretary, or acting in any such capacity related to a complaint CREW sent to the State Department Inspector General on June 18, 2020. *Id.*

In both FOIA requests, CREW sought a waiver of fees associated with processing its requests. CREW explained that it intends to analyze the information responsive to these requests and to share its analysis with the public through reports, press releases, or other means. CREW further explained that the requested records would shed light on whether the State Department has and is executing a biased, partisan policy in its handling of and responses to congressional oversight requests from congressional committee chairs. CREW noted that the requested records

would shed light on the circumstances surrounding the State Department's voluntary and efficient cooperation with requests from Senate Republican chairs regarding Burisma Holdings and Ukraine, while refusing to comply with numerous requests for information and testimony from House Democratic chairs. CREW explained that this conduct suggests a more nefarious purpose that has substantial legal implications; deficiencies in the State Department's policies related to congressional oversight; and possible misconduct by State Department employees handling these requests. CREW further explained that the State Department's apparent stonewalling of Democratic requests and fast-tracking of Republican ones impedes Congress' ability to conduct oversight, which is a crucial check on executive power. As CREW explained, the government's compliance with anticorruption mechanisms is of significant interest to the public. If there is particular guidance that the State Department was or is following that codifies responding to requests along party lines, the public deserves to know that Secretary Pompeo was inappropriately infusing partisan politics into the State Department and blocking congressional access to information. *See id.*

As of July 28, 2020, the date CREW filed its complaint in this action, CREW had received no response from the State Department to either of its June 26, 2020 FOIA requests. Once in litigation, the State Department conducted a search and released to CREW portions of the 12 documents it found. Stein Decl. ¶¶ 8-9. Those portions withheld pursuant to FOIA Exemption 5 remain at issue.

ARGUMENT

I. LEGAL STANDARDS

Congress enacted the FOIA to create an enforceable, statutory right of "access to official information long shielded unnecessarily from public view." *Dep't of Air Force v. Rose*, 425 U.S.

352, 361 (1976) (citation omitted). As the Supreme Court has explained, the “core purpose” of the FOIA is to increase “public understanding *of the operations or activities of the government.*” *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989) (internal quotation omitted) (emphasis in original).

The agency bears the burden of demonstrating that its withholdings properly fall within one of the FOIA’s nine exemptions. *Campbell v. Dep’t of Justice*, 164 F.3d 20, 30 (D.C. Cir. 1998), *as amended* (Mar. 3, 1999); *see also* 5 U.S.C. § 552(a)(4)(B). Further, “[c]onsistent with the Act’s goal of broad disclosure these exceptions consistently have been given a narrow compass,” *Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989), and the underlying facts “viewed in the light most favorable to the requester.” *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1350 (D.C. Cir. 1983).

FOIA cases typically are decided on summary judgment, with the movant required to show “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In the FOIA context an agency satisfies this requirement by providing “a detailed description of the information withheld[.]” *Hussain v. DHS*, 674 F. Supp. 2d 260, 267 (D.D.C. 2009). The agency must prove that “each document that falls within the class requested has been produced, is unidentifiable, or is wholly exempt from the Act’s inspection requirements.” *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978) (internal citation and omitted). A court may grant summary judgment only if the agency’s submissions “describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Larson v. Dep’t of State*, 565 F.3d 857, 862 (D.C. Cir. 2009) (quotation and citation omitted). Toward that end, the

agency bears the burden of providing a “‘relatively detailed justification’ for assertion of an exemption, and must demonstrate to a reviewing court that records withheld are *clearly* exempt.” *Birch v. U.S. Postal Serv.*, 803 F.2d 1206, 1209 (D.C. Cir. 1986) (emphasis added) (quoting *Mead Data Ctr., Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

II. The State Department Has Failed To Carry Its Evidentiary Burden To Demonstrate The Withheld Material Properly Falls Within the Protection of Exemption 5.

Exemption 5 of the FOIA permits agencies to withhold “inter-agency or intra-agency memorandums or letters that 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). This exemption, like all of the FOIA’s exemptions, must be “narrowly construed,” *Milner v. U.S. Dep’t of Navy*, 562 U.S. 562, 565 (2011) (internal quotation and citation omitted),³ and consistent with the “FOIA’s central purpose . . . to ensure that the *Government’s* activities be opened to the sharp eye of public scrutiny[.]” *Reporters Committee For Freedom of Press*, 489 U.S. at 774 (emphasis in original).

The State Department has withheld portions of 12 documents claiming they fall within the protection of the deliberative process privilege and therefore are exempt under Exemption 5. For the deliberative process privilege to apply, an agency must demonstrate that the communication in question is both predecisional and deliberative. The D.C. Circuit has held that documents qualify as predecisional and deliberative only if they “reflect[] advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated[.]” *Taxation With Representation Fund v. IRS*, 646 F.2d 666, 677 (D.C. Cir. 1981). Key to the privilege is the “role, if any, that the document plays in the process of agency deliberations.” *Formaldehyde Inst. v. HHS*, 889 F.2d 1118, 1122 (D.C. Cir.

³ See also *Murphy v. Exec. Office for U.S. Attys.*, 789 F.3d 204, 206 (D.C. Cir. 2015); *CREW v. U.S. Dep’t of Justice*, 746 F.3d 1082, 1088 (D.C. Cir. 2014).

1989) (quoting *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1161 (D.C. Cir. 1987), cert. denied, 485 U.S. 977 (1988)).

Here the State Department has fallen far short of its burden of demonstrating that the withheld material is decisional and not purely factual. The withheld material falls into three general categories: (1) letters to Congress with the substantive content entirely redacted;⁴ (2) email exchanges identifying factual material, such as the status of certain document requests and the number of pages gathered in response to congressional requests; and (3) snippets of discussions and proposals for dealing with the COVID pandemic.

In addition, many of the redacted pages addressed in the State Department's Vaughn Index (Exhibit 2 to Def.'s Mem.) (ECF # 16-3) concern Exemption 6 withholdings, which are not at issue. For example, page 3 of the Vaughn Index lists portions of multiple pages purportedly withheld pursuant to Exemption 5, while the actual pages note only Exemption 6 withholdings. *See* FL-2020-00132, 02/26/2021 26-27; FL-2020-00132, 03/15/2021 8-10, 11-12. *See also* FL-2020-00132 2/26/2020 21 (Vaughn Index at 5). This belies the "careful[] review[]" the State Department claims it made of all the documents listed in the Vaughn Index. Stein Decl. ¶ 13.

A. Letters to Members of Congress.

The State Department has withheld the entire body of two letters to the Chair of the House Committee on Oversight and Reform based solely on their purported status as drafts. *See, e.g.,* Def.'s Mem. at 5. Its Vaughn Index describes the documents as "edits to two drafts of a letter to the Chair of the House Committee on Oversight and Reform," and claims the withheld

⁴ The State Department's description of these redactions as involving "discrete portions," Def.'s Mem. at 3, is patently false, as a review of three largely redacted documents (attached as Exhibit B) demonstrates.

material is subject to the deliberative process privilege “because it is both predecisional (it predates any final version of the letter prepared by Department officials) and deliberative (it reveals the drafters’ and editors’ preliminary, non-final thoughts about what information should be included in the letter.” Vaughn Index at 1. The State Department admits in its Vaughn Index, however, that it “does not have a record of the letter being finalized or sent to Congress.” Vaughn Index at 1. In other words, it has no way to confirm that they are drafts, that they are predecisional or deliberative, or that the State Department never adopted the redacted material in a final letter to Congress. Tellingly, the Stein Declaration omits this critical detail.

Beyond parroting the basic requirements of the deliberative process privilege—that the material be predecisional and deliberative—the State Department offers nothing for the Court to assess whether the withheld letters in fact meet the requirements of Exemption 5. Instead, the agency appears to rely solely on the purportedly “draft” character of the letters as in and of itself qualifying them for withholding. As the D.C. Circuit has explained, however, designating a document as a “draft” for Exemption 5 purposes “does not end the inquiry[.]” *Arthur Andersen & Co. v. IRS*, 679 F.2d 254, 257 (D.C. Cir. 1982). In fact, “[t]he mere fact that a document is a draft . . . is not a sufficient reason to automatically exempt it from disclosure.” *N.Y. Times Co. v. U.S. Dep’t of Defense*, 499 F. Supp. 2d 501, 515 (S.D.N.Y. 2007) (quoting *Lee v. FDIC*, 923 F. Supp. 451, 458 (S.D.N.Y. 1996)). Instead, the agency must demonstrate “that the drafts ‘formed an essential link in a specified consultative process[.]’” *N.Y. Times Co.*, 499 F. Supp. 2d at 515 (quoting *Grand Cent. P’ship, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999)). See also *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 261 (D.D.C. 2004) (“agency must identify function and significance . . . in the agency’s decisionmaking process of the redacted and withheld documents.” (quotation and citation omitted)).

The State Department’s explanation here for withholding the congressional letters falls far short of meeting this evidentiary burden. The agency offers nothing to aid the Court in identifying the function and significance of the letters, noting only that the drafts reflect “edits.” Vaughn Index at 1. Further, as in *Judicial Watch*, the State Department has “failed to indicate whether these drafts were . . . adopted formally or informally, as the agency position on an issue,” thereby “defeat[ing] a claim of privilege[.]” *Judicial Watch*, 297 F. Supp. 2d at 261 (internal quotation and citation omitted). Nor does the Stein Declaration fill in these missing pieces, as it fails to address any specific withheld document and instead offers only the general statement that the withheld material as a whole

reflects the internal exchange of ideas and recommendations that occurred while U.S. Government officials were formulating strategy and directing executive branch action relating to FOIA litigation and the production of records to Congress.

Stein Decl. ¶ 12. Failing to “correlate facts in or about each withheld document with the elements of the privilege,” *Judicial Watch*, 297 F. Supp. 2d at 260, the State Department leaves the Court with no basis to conclude the withheld material properly falls within the protection of Exemption 5.

The State Department’s brief attempts to fill in this void with citations from cases concluding “deliberations regarding how to respond to questions from Congress about matters of agency policy” fall within the deliberative process privilege. Def.’s Mem. at 6. The problem here, however, is that the agency offers no factual support—either in its Vaughn Index or the Stein Declaration—to support its suggestion that the withheld letters concern how to respond to a congressional request on a matter of agency policy. The agency simply has not met its evidentiary burden and on that basis alone its exemption claims must be rejected.

B. Purely Factual Material.

The State Department concedes, as it must, that the withheld material includes factual material, such as the number of pages of potentially responsive material and the status of the document processing by a State Department subcomponent. *See* Def.’s Mem. at 7-8. Despite its factual nature, the State Department argues this material properly falls within the deliberative process privilege relying on caselaw that recognizes that “[i]n some circumstances” factual material may be exempt. Def.’s Mem. at 8 (quoting *Elec. Frontier Found. v. U.S. Dep’t of Justice*, 739 F.3d 1, 13 (D.C. Cir. 2014) (emphasis added)). This case, however, does not present those circumstances.

As a factual matter, the State Department has failed to offer sufficient support for its claim that the purely factual material at issue here qualifies as deliberative. The Stein Declaration fails to mention this material specifically, offering instead only a one-paragraph general description. Stein Decl. ¶ 12. The Vaughn Index provides scant details, merely describing the withheld material as including: (1) “the numbers of pages internally considered for release to Congress”; (2) “a one-sentence description (with heading) of the preliminary status of a subcomponent’s processing of a document request prior to a final release determination,” Vaughn Index at 2; and (3) “status updates” on responding to congressional requests, *id.* at 3. As to the number of pages, the Vaughn Index states only that it “is subject to the deliberative process privilege because it predates the final decision about what to produce to Congress and in what form.” *Id.* at 2.

In arguing this material nevertheless is deliberative the State Department’s brief departs significantly from the factual record to essentially invent its own facts. For example, the State Department claims the numbers of pages is a preliminary assessment that, when compared with

the final number of documents deemed responsive, “would necessarily reveal the agency’s deliberative process[.]” Def.’s Mem. at 9. But neither the Vaughn Index nor the Stein Declaration describes the numbers of pages as “preliminary” and differing in any way from the final number of responsive documents. Instead, the Vaughn Index states simply that the “[t]he withheld information includes the numbers of *pages internally considered for release* to Congress[.]” Vaughn Index at 2 (emphasis added). As to status updates the Vaughn Index merely notes their “preliminary status,” *id.*, and justifies their withholding because they predate a final agency decision. *Id.* at 3. Nowhere in its Vaughn Index or Stein Declaration has the State Department made the requisite connection between the withheld factual material and some aspect of the agency’s deliberative process that would be revealed were that material disclosed.

The caselaw the State Department cites is not to the contrary. In appropriate circumstances courts permit agencies to withhold facts pursuant to the deliberative process privilege where their “selection or organization . . . is part of an agency’s deliberative process.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 513 (D.C. Cir. 2011) (quoted in Def.’s Mem. at 8). As that same court recognized, however, “[p]urely factual material usually cannot be withheld under Exemption 5 unless it reflects an ‘exercise of discretion and judgment calls.’” *Id.* (quoting *Mapother v. Dep’t of Justice*, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). Here the State Department has failed to demonstrate that the agency exercised any discretion or judgment in assembling the numbers of potentially responsive records or providing a factual update on the status of finalizing a response to the congressional inquiry. Unlike *Ancient Coin Collectors*, generating this information did not require culling the information from a “larger universe of facts” or represent “an exercise of judgment as to what issues are most relevant to the predecisional findings and recommendations.” *Id.* (quotation omitted). Instead the numbers of

pages and status updates are purely factual, divorced from the agency's "give-and-take . . . consultative process." *Fla. House of Representatives v. U.S. Dep't of Commerce*, 961 F.2d 941, 947 (11th Cir. 1992) (quoting *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)). As such they differ dramatically from the "evaluations, analysis, recommendations, and discussions" at issue in *Machado Amadis v. Dep't of Justice*, 388 F. Supp. 3d 1, 19 (D.D.C. 2019), on which the State Department relies. *See* Def.'s Mem. at 9.

Quite simply the State Department did not generate the factual material at issue through a deliberative or consultative process requiring the exercise of judgment. Its numbers are simply numbers and its status updates simply capture the factual situation as it existed in a specific moment in time. As purely factual, non-deliberative information they reflect nothing about the State Department's deliberative process. Accordingly they fall outside the protection of the deliberative process privilege.

C. Proposals For Dealing With The COVID Pandemic.

The State Department, like every other agency and entity within the federal government, has had to contend with the impact of the COVID pandemic and its deleterious effect on the agency's work force. As the State Department has been telling courts loudly and emphatically since the COVID outbreak, it has and continues to have a vastly reduced capability to respond to congressional and FOIA requests. For example, in a Joint Status Report the parties in this case submitted to the Court on September 17, 2020 (ECF # 7), the State Department detailed the problems it faces because of the pandemic and the steps it has taken. This is just one of the many such accounts the State Department has filed in pending litigation, in an effort to convince courts it is doing the best it can but faces significant obstacles.

Now, however, when faced with a FOIA request that would require the State Department to disclose in somewhat more granular detail how it has proposed to deal with congressional and FOIA requests, the agency insists it must remain silent. The irony of its position could not be greater. The State Department should not be permitted to pick and choose which facts it reveals to the public and the courts about its response to the COVID pandemic under cover of Exemption 5. Given the degree to which it already has placed in the public domain details about its handling of the pandemic, the State Department cannot justify withholding the additional information implicated by the Plaintiff's FOIA request here. Moreover, as discussed below, the agency has failed to demonstrate foreseeable harm to an interest the FOIA protects from disclosing the documents at issue.

III. The State Department Has Failed to Satisfy the FOIA's Foreseeable Harm Requirement.

The 2016 FOIA Improvement Act codified the “foreseeable harm” standard established administratively in 2009 by then-Attorney General Holder. *Rosenberg v. U.S. Dept. of Defense*, 342 F. Supp. 3d 62, 72 (D.D.C. 2018). The FOIA now provides that “[a]n agency shall . . . withhold information under this section only if . . . (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). This court has held that this “foreseeable harm” requirement imposes a tougher standard on agencies to meet. *Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, 375 F. Supp. 3d 93, 100 (D.D.C. 2019) (describing the new foreseeable-harm requirement as a “heightened standard”); *see also Ctr. for Investigative Reporting v. U.S. Customs & Border Protection*, 436 F. Supp. 3d 90, 106 (D.D.C. 2019). To carry “this independent and meaningful burden,” *id.* (quotation and citation omitted), an agency must “identify specific harms to the relevant protected interests that it can reasonably foresee

would actually ensue from disclosure of the withheld materials” and “connect[] the harms in [a] meaningful way to the information withheld.” *Id.* (quotation and citation omitted) Thus, an agency cannot merely “perfunctorily state that disclosure of all of the withheld information—regardless of category or substance—would jeopardize the free exchange of information.” *Judicial Watch v. U.S. Dep’t of Commerce*, 375 F. Supp. 3d at 100 (quotation and citation omitted).

Further, “pursuant to the FOIA Improvement Act, an agency must release a record—even if it falls within a FOIA exemption—if releasing the record would not reasonably harm an exemption-protected interest.” *Id.* at 98 (quotation and citation omitted). That is because the independent requirement was “intended to restrict agencies’ discretion in withholding documents under FOIA.” *Ctr. for Investigative Reporting*, 436 F. Supp. 3d at 106. In determining whether disclosure would harm an “exemption-protected interest,” the “information may not be withheld ‘merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.’” S. Rep. No. 114-4, at 7 (quoting White House Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (Jan. 21, 2009)). The addition of the foreseeable harm requirement ensures that agencies “comply” not only “with the letter of” the FOIA, but also “the spirit of the law.” *Ctr. for Investigative Reporting*, 436 F. Supp. 3d at 104 (quoting 162 Cong. Rec. H3717 (2016)). It also reflects Congress’ judgment that “[n]ondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.” S. Rep. No. 114-4, at 7.

Finally, the foreseeable harm standard warrants strict adherence in the present context because Congress, in adopting it, “was especially concerned about agencies’ . . . over-

withholding” of records under “Exemption 5 and the deliberative process privilege.” *Ctr. for Investigative Reporting*, 436 F. Supp. 3d at 104; *see* H.R. Rep. No. 114-319, at 10 (noting that Exemption 5 has been singled out as a particularly problematic exemption” and that the “deliberative process privilege is the most used privilege and the source of the most concern regarding overuse”); S. Rep. No. 114-4, at 3 (noting that “agencies used Exemption 5 . . . more than 79,000 times in 2012—a 41% increase from the previous year,” and that this was part of “a growing and troubling trend towards relying on . . . discretionary exemptions to withhold large swaths of Government information”).

The State Department has not met the foreseeable harm standard here and instead has paid lip service to the statutory requirements. Simply reciting that disclosure would chill agency discussions, Def.’s Mem. at 6, 10, 11, fails to provide the “meaningful connection” between the withheld material and the harm claimed. The State Department’s declarant has provided no “context or insight into the specific decision-making processes or deliberations at issue, and how they in particular would be harmed by disclosure.” *Ctr. for Investigative Reporting*, 436 F. Supp. 3d at 107 ; *cf. Machado Amadis v. Dep’t of State*, 971 F.3d 364, 371 (D.C. Cir. 2020) (foreseeable harm shown where declaration provided a detailed explanation of the forms at issue, how they are used by DOJ administrative appeals staff attorneys, and why disclosure of the particular information at issue would hamper those attorneys’ day-to-day duties). Without the factual predicate, the State Department cannot satisfy the statutory foreseeable harm requirement.

Moreover, the background to the FOIA requests at issue suggests a far more sinister reason for the agency’s withholdings—to prevent the public from accessing information that would confirm the extent to which former Secretary of State Pompeo abused the power of his

office to block Democratic congressional requests that sought information damaging to President Trump, while eagerly aiding efforts by Republican members of Congress to obtain damaging information on the President's political rival. Because this is not an "exemption-protected interest," the State Department "must release [the] record[s]—even if [they] fall[] within a FOIA exemption[.]" *Judicial Watch v. U.S. Dep't of Commerce*, 375 F. Supp. 3d at 98.

IV. The State Department Has Failed To Demonstrate That It Released All Non-Exempt Segregable Information.

Under the FOIA the State Department also bears the burden of demonstrating that it has provided all non-exempt "reasonably segregable" portions of the requested records. 5 U.S.C. § 552(b). Consistent with this requirement, agencies can only withhold a document in its entirety if all "discrete units of information" that comprise the document fall within one of the FOIA's exemptions. *Billington v. Dep't of Justice*, 233 F.3d 581, 586 (D.C. Cir. 2000). The statutory duty to segregate prevents agencies from relying on "sweeping, generalized claims of exemption for documents." *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d at 260. And where an agency claims an inability to segregate, it must "describe what proportion of the information in a document is non-exempt and how the material is dispersed throughout the document." *Id.* at 261. In the special circumstance where exempt and nonexempt information is "inextricably intertwined," courts will not require the agency to go through the costly exercise of excising information of limited value. *Neufield v. IRS*, 646 F.2d 661, 666 (D.C. Cir. 1981). But, as the U.S. Court of Appeals for the First Circuit concluded in *Wightman v. Bureau of Alcohol, Tobacco & Firearms*, where only a small number of documents are at issue—36 pages in that case—doing a line-by-line analysis does not impose an unreasonable burden on the agency that would otherwise allow it to claim the non-exempt material was "inextricably intertwined." 755 F.2d 979, 983 (1st Cir. 1985).

The State Department's showing here does not satisfy these requirements. The Stein Declaration offers only a passing reference to the duty to segregate, baldly claiming the State Department "has implemented segregation when possible" and "[o]therwise . . . determined that no segregation of meaningful information in the documents could be made without disclosing information warranting protection under the law." Stein Decl. ¶ 13. The Vaughn Index is similarly unenlightening, stating at the bottom of each page that the State Department "conducted a line-by-line review . . . and determined that there is no additional meaningful, non-exempt information that can be reasonably segregated and released." Vaughn Index at pp. 1-5.

If this statutory duty is to have any meaning, agencies must do more than parrot the words of the statute. The State Department must demonstrate why, in redacting the congressional letters in full, it found no non-exempt material that could meaningfully be redacted. Moreover, given the limited number of pages containing material withheld under Exemption 5, the State Department can hardly claim that a line-by-line analysis would impose an undue burden. Its broad generalized statements do not substitute for the particularized showing it must make that it has produced all non-exempt segregable information. Further, if the Court is not prepared to order disclosure of the State Department's withholdings, it should at least review those withholdings *in camera* to determine whether they satisfy the criteria for properly withholding under Exemption 5. *See Rosenberg*, 342 F. Supp. 3d at 79 (*in camera* review to determine if DOD met foreseeable harm requirement). The small number of documents at issue makes *in camera* review a preferred option if the Court has remaining questions on the propriety of DOJ's withholdings. *Quinon v. FBI*, 86 F.3d 1222, 1228 (D.C. Cir. 1996) (number of withheld documents is "important[] factor" in deciding whether to conduct *in camera* review).

CONCLUSION

The State Department has failed to carry its evidentiary burden under the FOIA on multiple grounds to justify its withholdings. Accordingly, for the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's summary judgment motion, grant Plaintiff's cross-motion for summary judgment, and order the State Department to immediately release all withheld documents.

Dated: June 18, 2021

Respectfully submitted,

/s/ Anne L. Weismann

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Attorneys for Plaintiff

EXHIBIT A



June 26, 2020

BY EMAIL: foiarequest@state.gov

Freedom of Information Act Officer
Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Re: Freedom of Information Act Request

Dear Sir/Madam,

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Department of State ("Department") regulations, 22 C.F.R. Part 171.

For the following requests, please search for records, documents, and communications created since the start of the 116th Congress on January 3, 2019 and the date the Department conducts the search.

First, CREW requests all documents, as well as all communications and records of communications sent to, copied to, or received by:

1. Senior Advisor to the Secretary of State Mary Kissel; as well as any Department employee with the title "Chief of Staff" or "Deputy Chief of Staff" to the Secretary of State, or acting in any such capacity;
2. the Department's Office of Information Programs and Services ("IPS") Director Eric F. Stein; as well as anyone with the title "Chief of Staff" or "Deputy Chief of Staff" to the Director, or acting in any such capacity;
3. Stephen J. Akard, Director, Office of Foreign Missions; as well as,
4. Bureau of Legislative Affairs ("BLA") Assistant Secretary Mary Elizabeth Taylor; BLA Deputy Assistant Secretary of House Affairs Jess Moore; BLA Executive Director Alicia A. Frechette; or Congressional Correspondence Unit Chief Cynthia Andrews;

regarding requests for documents or testimony from:

- a. Rep. Elijah E. Cummings, former Chairman of the House Committee on Oversight and Reform ("HCOR") and HCOR staff;
- b. Rep. Carolyn Maloney, Chairwoman of the HCOR and HCOR staff; or

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- c. Rep. Maxine Waters, Chairwoman of the House Financial Services Committee (“HFSC”) and HFSC staff.

In responding to this first request CREW asks that the Department explicitly exclude those records, documents, and communications regarding requests made jointly by Rep. Eliot L. Engel, Chairman of the House Foreign Affairs Committee, and either former Chairman Cummings (a) or Chairwoman Maloney (b).

Second, CREW requests all documents, as well as all communications and records of communications sent to, copied to, or received by Secretary of State Michael R. Pompeo, Director Akard, Senior Advisor Kissel, as well as any Department employee with the title “Chief of Staff” or “Deputy Chief of Staff” to the Secretary, or acting in any such capacity related to CREW’s complaint to the Department’s Office of Inspector General to review Department practices related to congressional oversight responses.

Please search for responsive records regardless of format, medium, or physical characteristics. CREW seeks records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. CREW’s request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. CREW’s request also includes any attachments to emails and other records, as well as emails to which the subjects of this request were cc’ed or bcc’ed.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Department regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

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The President first demanded partisan cooperation with congressional oversight requests in 2017.¹ Since Democrats assumed control of the House of Representatives in 2019, the President has continued to make clear that his administration will only submit to oversight from Senate Republicans, stating, “[t]he House is a bunch of Trump haters.”² The Department’s documented failure to respond to congressional oversight requests from Democratic congressional committee chairs, and subsequent allegations that the Department has politicized its approach to several high-profile congressional investigations, suggest that Department employees have executed President Trump’s directive to only cooperate with Republican oversight.³

The Department continually cooperates with oversight requests from Senate Republican committee chairs, and continually ignores requests from House Democratic chairs.⁴ In response to Sen. Johnson and Sen. Grassley’s November 2019 requests for information about Burisma Holdings and Ukraine, the Department voluntarily produced thousands of pages of documents between February and April 2020.⁵ These responses were made—voluntarily—amidst the Department’s response to the coronavirus pandemic, which the IPS Director Stein declared, reduced the Department’s FOIA processing capability by 96%.⁶ Strikingly, the Department has also continually failed to provide any information in response to requests from House Foreign Affairs Committee Chairman Eliot Engel as well as other Democratic committee chairs with direct legislative authority over the Department. This recalcitrance began even before the coronavirus pandemic. These unfulfilled requests include multiple inquiries from Chairman Engel and other Democratic chairs dating back to February 2019.⁷

¹ Gabrielle Levy, *White House Blocks Democrats' Oversight Efforts*, *U.S. News & World Report*, June 2, 2017, <https://bit.ly/2XP8rCe>; Burgess Everett and Josh Dawsey, *White House Orders Agencies to Ignore Democrats' Oversight Requests*, *Politico*, June 2, 2017, <https://politi.co/36RwKDA>.

² Kevin Breuninger and Christina Wilkie, *Trump: 'We're Fighting All the Subpoenas' from House Democrats*, *CNBC*, Apr. 24, 2019, <https://cnb.cx/3cIt8oM>; Kevin Liptak, *Trump Says He Only Will Submit to GOP Oversight for His Administration*, *CNN*, May 5, 2020, <https://cnn.it/30kbzZJ>; The White House, *Remarks by President Trump Before Marine One Departure*, WhiteHouse.gov (May 5, 2020; 10:21 A.M.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-89/>.

³ E.g. Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel to Secretary of State Mike Pompeo, May 21, 2020 (“Engel Letter”), <https://bit.ly/2MCNKEf>; see also Emma Loop, *A Top Democrat Says The State Department Has Sent Republicans Thousands Of Pages For Their Biden Investigation While Ignoring Democratic Requests*, *Buzzfeed*, May 6, 2020, <https://bit.ly/2UhqJg3>.

⁴ Engel Letter.

⁵ Letter from Senate Finance Committee Chairman Charles E. Grassley and Senate Homeland Security and Governmental Affairs Committee Chairman Ron Johnson to Secretary of State Michael R. Pompeo, Nov. 7, 2019, <https://bit.ly/2APraWB>; Letter from Senate Finance Committee Ranking Member Ron Wyden to Secretary of State Michael Pompeo, 1-2, May 6, 2020 (“Wyden Letter”), <https://bit.ly/2MCNKEf>; Engel Letter at 2.

⁶ Wyden Letter at 2; Loop, *Buzzfeed*, May 6, 2020; Declaration of Eric F. Stein at 7-8, *John Solomon v. U.S. Dep’t of State*, Case No. 1:20-cv-00132-RDM, (March 25, 2020), (Civ. No. 20-132), <https://www.politico.com/f/?id=00000171-1bd0-d4a1-ad77-ffd06f650000>

⁷ Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel, House Committee on Oversight and Reform Chairman Elijah E. Cummings, and House Permanent Select Committee on Intelligence Chairman Adam to Secretary of State Michael R. Pompeo, Sept. 27, 2019, <https://bit.ly/3d3b9d7>; Engel Letter at 1; Letter from House Committee on Foreign Affairs Chairman Eliot Engel and House Committee on Foreign Affairs Subcommittee on Oversight and Investigations Chairman Joaquin Castro to Secretary of State Michael R. Pompeo, May 18, 2020, <https://bit.ly/2MC293G>.

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The requested records will shed light on whether the Department has and is executing a biased, partisan policy in its handling of and responses to congressional oversight requests from congressional committee chairs. In particular, the requested records will shed light on the circumstances surrounding the Department's voluntary and efficient cooperation with requests from Senate Republican chairs regarding Burisma Holdings and Ukraine, while refusing to comply with numerous requests for information and testimony from House Democratic chairs, which suggests (i) a more nefarious purpose that has substantial legal implications, (ii) deficiencies in Department policies related to congressional oversight, or even, (iii) misconduct of Department employees' handling of such requests.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all documents it receives under the FOIA its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or dsherman@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested

FOIA Officer

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records to dsherman@citizensforethics.org or Donald K. Sherman, Citizens for Responsibility and Ethics in Washington, 1101 K St, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D K Sherman', followed by a long horizontal flourish.

Donald K. Sherman
Deputy Director



June 26, 2020

BY EMAIL: foiarequest@state.gov

Freedom of Information Act Officer
Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Re: Freedom of Information Act Request

Dear Sir/Madam,

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Department of State (“Department”) regulations, 22 C.F.R. Part 171.

Specifically, CREW requests all documents created or received from June 1, 2017 to the date the Department conducts the search pertaining, concerning, or reflecting any guidance, instruction, directive, or recommendation on how to handle document or testimony requests from congressional committee chairs, and whether that handling differs depending on the political party of the Chairman or Chairwoman who makes the request. This request includes but is not limited to any instruction or guidance directing Department employees to give priority to requests made by Republican members of Congress.

Please search for responsive records regardless of format, medium, or physical characteristics. CREW seeks records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. CREW’s request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. CREW’s request also includes any attachments to emails and other records, as well as emails to which the subjects of this request were cc’ed or bcc’ed.

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Fee Waiver Request

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² Kevin Breuninger and Christina Wilkie, *Trump: 'We're Fighting All the Subpoenas' from House Democrats*, *CNBC*, Apr. 24, 2019, <https://cnb.cx/3cIt8oM>; Kevin Liptak, *Trump Says He Only Will Submit to GOP Oversight for His Administration*, *CNN*, May 5, 2020, <https://cnn.it/30kbzZJ>; The White House, *Remarks by President Trump Before Marine One Departure*, *WhiteHouse.gov* (May 5, 2020; 10:21A.M.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-89/>.

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FOIA Officer

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June 26, 2020

chairs with direct legislative authority over the Department. This recalcitrance began even before the coronavirus pandemic. These unfulfilled requests include multiple inquiries from Chairman Engel and other Democratic chairs dating back to February 2019.⁷

The requested records will shed light on whether the Department has directed its employees to execute, and whether the Department's employees are executing, a biased, partisan policy in handling and responding to oversight requests from congressional committee chairs and the extent to which that directive may have originated outside of the Department. In particular, the requested records will shed light on the circumstances surrounding the Department's voluntary and efficient cooperation with requests from Senate Republican chairs regarding Burisma Holdings and Ukraine, while refusing to comply with numerous requests for information and testimony from House Democratic chairs, which suggests (i) a more nefarious purpose that has substantial legal implications, (ii) deficiencies in Department policies related to congressional oversight, or even, (iii) misconduct of Department employees' handling of such requests.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all documents it receives under the FOIA its website, and those documents have been visited hundreds of thousands of times.

⁷ Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel, House Committee on Oversight and Reform Chairman Elijah E. Cummings, and House Permanent Select Committee on Intelligence Chairman Adam to Secretary of State Michael R. Pompeo, Sept. 27, 2019, <https://bit.ly/3d3b9d7>; Engel Letter at 1; Letter from House Committee on Foreign Affairs Chairman Eliot Engel and House Committee on Foreign Affairs Subcommittee on Oversight and Investigations Chairman Joaquin Castro to Secretary of State Michael R. Pompeo, May 18, 2020, <https://bit.ly/2MC293G>.

FOIA Officer

Page 4

June 26, 2020

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or dsherman@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to dsherman@citizensforethics.org or Donald K. Sherman, Citizens for Responsibility and Ethics in Washington, 1101 K St, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D K Sherman', followed by a long horizontal flourish.

Donald K. Sherman
Deputy Director

EXHIBIT B



United States Department of State

Washington, D.C. 20520

February 26, 2021

Case No. FL-2020-00132
FL-2020-00133

Anne L. Weismann
Citizens for Responsibility and Ethics in Washington
1101 K Street NW, Suite 201
Washington, D.C. 20005

Dear Ms. Weismann:

As we noted in our letter dated January 29, 2021, we are processing your request for material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552. The Department has located seven documents responsive to your request. Upon review, we have determined that all seven records may be released in part. The processing of your request is ongoing.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made redactions, the applicable FOIA exemptions are marked on each document. All non-exempt material that is reasonably segregable from the exempt material has been released, and is enclosed.

The processing of your request is ongoing. If you have any questions, you may contact Trial Attorney, Daniel Riess at Daniel.Riess@usdoj.gov. Please refer to case numbers, FL-2020-00132 and FL-2020-00133 and the civil action number, 20-cv-02044, in all correspondence about this case.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne Miller".

Jeanne Miller
Chief, Programs and Policies Division
Office of Information Programs and Services

Enclosures:
As stated

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

(b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

(b)(2) Related solely to the internal personnel rules and practices of an agency

(b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

(b)(4) Trade secrets and confidential commercial or financial information

(b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

(b)(6) Personal privacy information

(b)(7) Law enforcement information whose disclosure would:

- (A) interfere with enforcement proceedings
- (B) deprive a person of a fair trial
- (C) constitute an unwarranted invasion of personal privacy
- (D) disclose confidential sources
- (E) disclose investigation techniques
- (F) endanger life or physical safety of an individual

(b)(8) Prepared by or for a government agency regulating or supervising financial institutions

(b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

NR Material not responsive to a FOIA request excised with the agreement of the requester

From: (b)(6)
To: Sullivan, John C (b)(6)
CC: (b)(6)
Subject: FW: HCOR letter for clearance
Date: Wed, 23 Jan 2019 15:53:55 +0000

John: We've been asked to clear the attached letter. (b)(6) are reviewing now. (b)(5)
(b)(5)

(b)(6)

Official - SBU
UNCLASSIFIED

From: (b)(6)
Sent: Wednesday, January 23, 2019 10:53 AM
To: (b)(6)
Subject: FW: HCOR letter for clearance
Importance: High

For your clearance.

(b)(6)

Official
UNCLASSIFIED

From: (b)(6)
Sent: Wednesday, January 23, 2019 10:52 AM
To: (b)(6)
(b)(6) M_Clearance <M_Clearance@state.gov>
Cc: (b)(6)
(b)(6)
Subject: HCOR letter for clearance

I appreciate your clearance on the attached interim response to HCOR Chairman Cummings.

Regards,

(b)(6)

Senior Congressional Advisor
Bureau of Legislative Affairs
United States Department of State
Room 7531

Office: (b)(6)
Cell: (b)(6)

Official
UNCLASSIFIED

Sender:	(b)(6)
Recipient:	Sullivan, John C (b)(6) (b)(6)

The Honorable Elijah Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

(b)(5)



Sincerely,

Mary Elizabeth Taylor
Assistant Secretary
Bureau of Legislative Affairs

Cc: The Honorable Jim Jordan, Ranking Member

Approved: Mary Elizabeth Taylor

Drafted: (b)(6)

Cleared:

L/M: (b)(6)

S/ES:

S/EX:

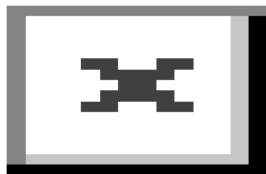
M:

A/GIS:

From:	"Sullivan, John C"
To:	(b)(6)
Subject:	MET to HCOR Interim Response 20190122
Date:	Wed, 23 Jan 2019 16:09:31 +0000

See my edits.

(b)(5)



Official
UNCLASSIFIED

Sender:	"Sullivan, John C"
Recipient:	(b)(6)

The Honorable Elijah Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

(b)(5)



Sincerely,

Mary Elizabeth Taylor
Assistant Secretary
Bureau of Legislative Affairs

Cc: The Honorable Jim Jordan, Ranking Member

Approved: Mary Elizabeth Taylor

Drafted: (b)(6)

Cleared:

L/M: (b)(6)
S/ES:
S/EX:
M:
A/GIS

From:	(b)(6)
To:	
Subject:	RE: For Review - WAR and Stats
Date:	Thu, 30 May 2019 21:40:25 +0000

Per our conversation, here are the updated Quick Stats for your review.

(b)(6)

Acting Deputy Director, A/GIS/IPS

(b)(6)

From: (b)(6)
Sent: Thursday, May 30, 2019 4:36 PM
To: (b)(6)
Subject: FW: For Review - WAR and Stats

Need to discuss the charts. Can you stop by at 5pm? Will take two minutes.

(b)(6)

Official
UNCLASSIFIED

From: (b)(6)
Sent: Thursday, May 30, 2019 4:17 PM
To: A-GIS-FO-DL <A-GIS-FO-DL@state.gov>
Cc: IPS-FO <IPS-FO@state.gov>
Subject: FW: For Review - WAR and Stats

Good afternoon,

With apologies for the delay, attached is the IPS WAR including the charts and quick stats consolidated into the "Quick Stats" document.

Thanks,

(b)(6)

Official

UNCLASSIFIED

From: (b)(6)
Sent: Thursday, May 30, 2019 2:00 PM
To: (b)(6)
Subject: For Review - WAR and Stats

Would appreciate your review, particularly of the new charts. Thanks.

(b)(6)

Acting Deputy Director, A/GIS/IPS

(b)(6)

Sender:	(b)(6)	
Recipient:		



United States Department of State

Washington, D.C. 20520

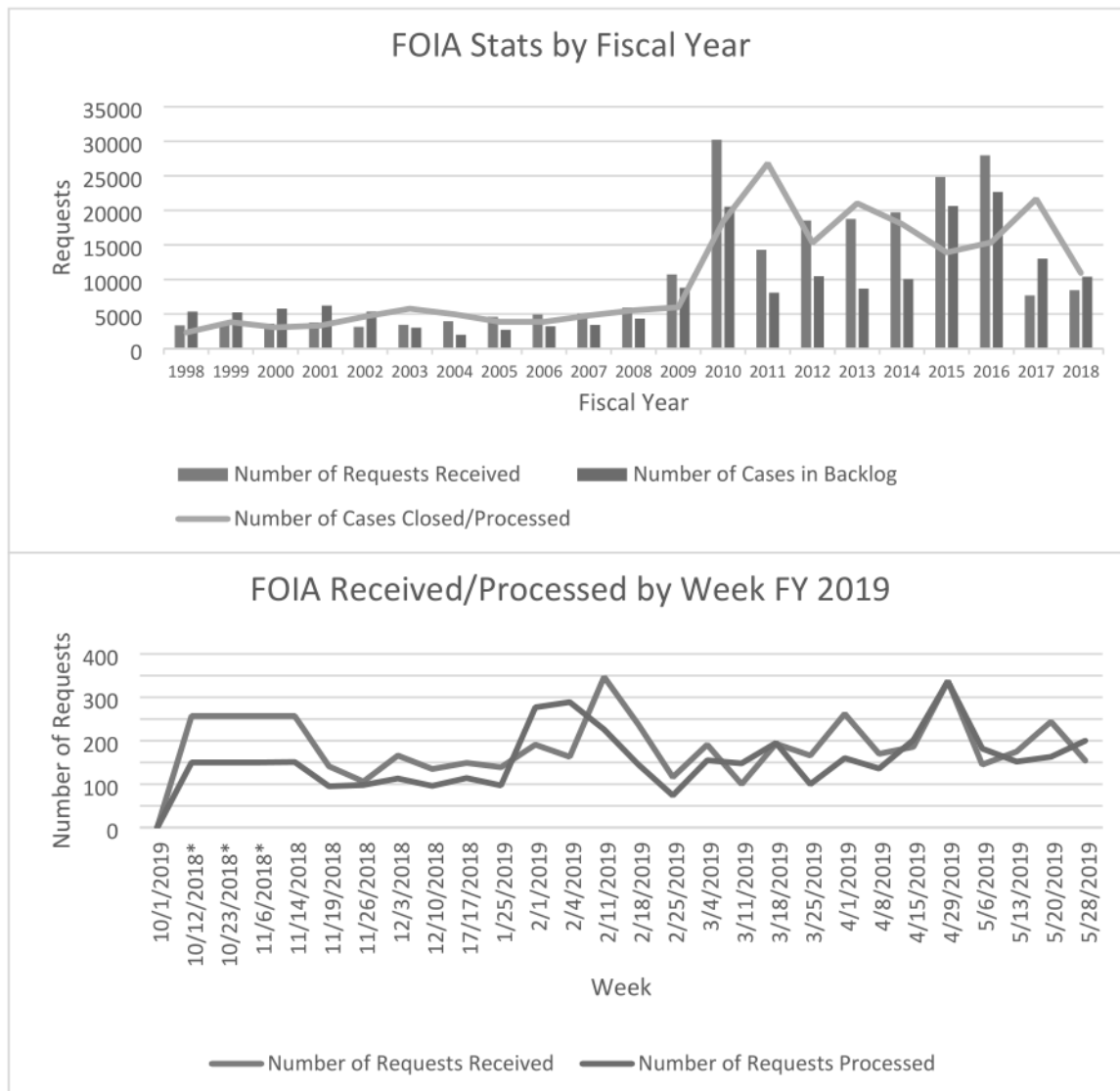
May 30, 2019

UNCLASSIFIED
MEMORANDUM

TO: A/GIS – John C Sullivan

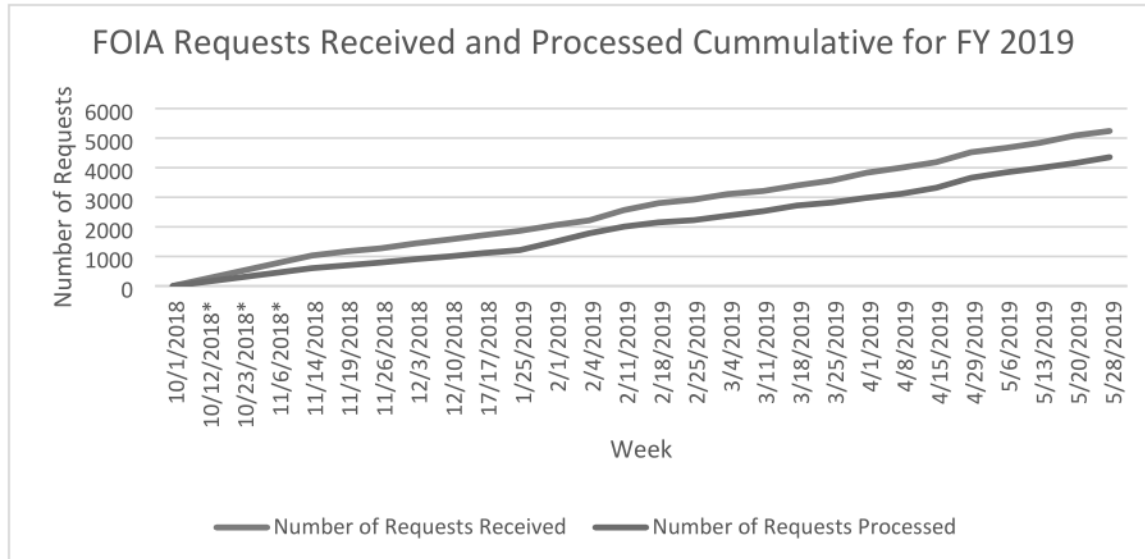
FROM: A/GIS/IPS – (b)(6)

SUBJECT: IPS Quick Stats, May 24 - May 30



*Average number between October 1 and November 14, 2018

UNCLASSIFIED

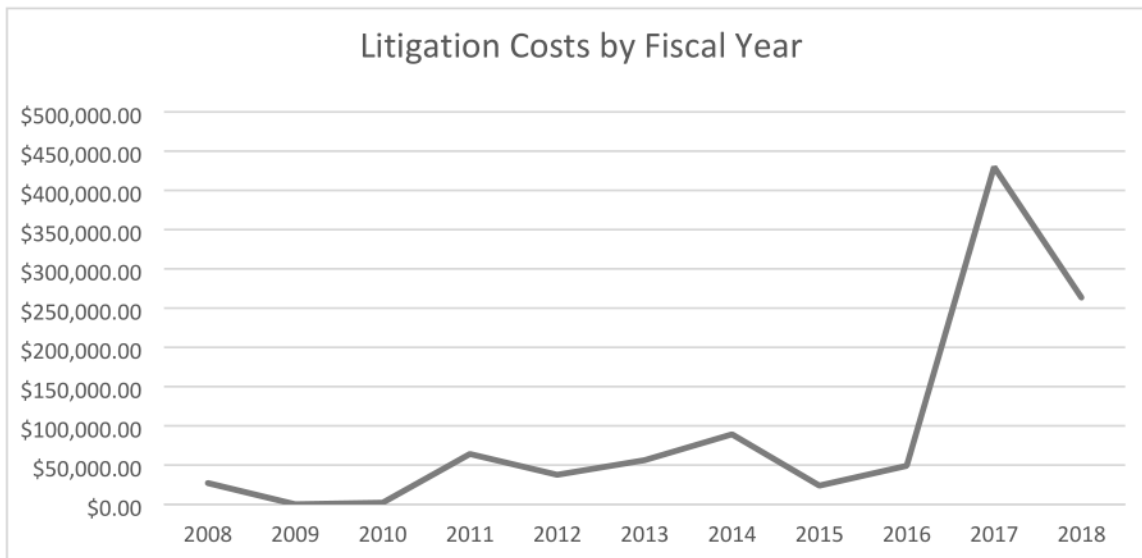
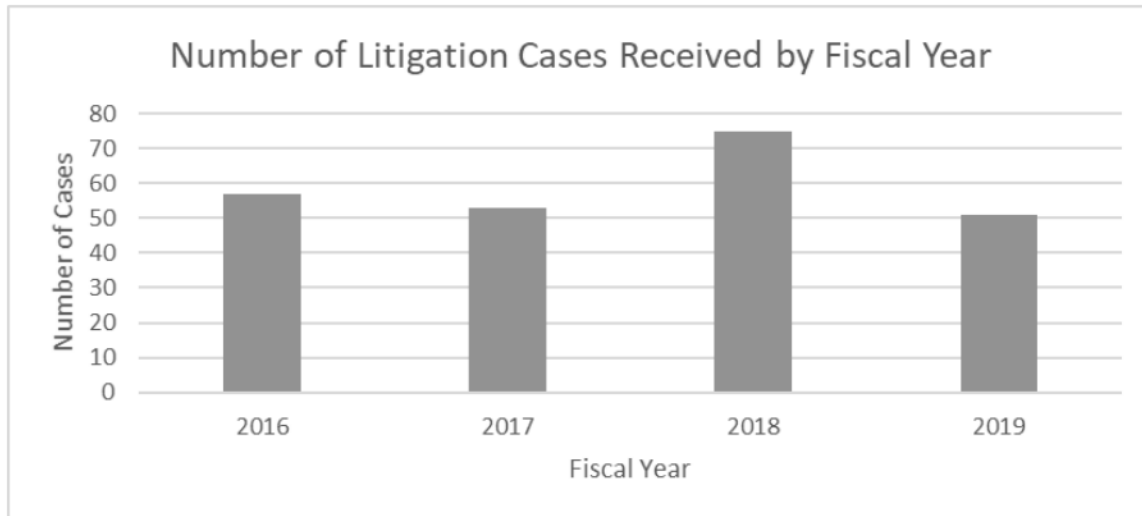
UNCLASSIFIED

*Average number between October 1 and November 14, 2018

(U) FY 2019 FOIA Requests Pending, Received, and Processed:

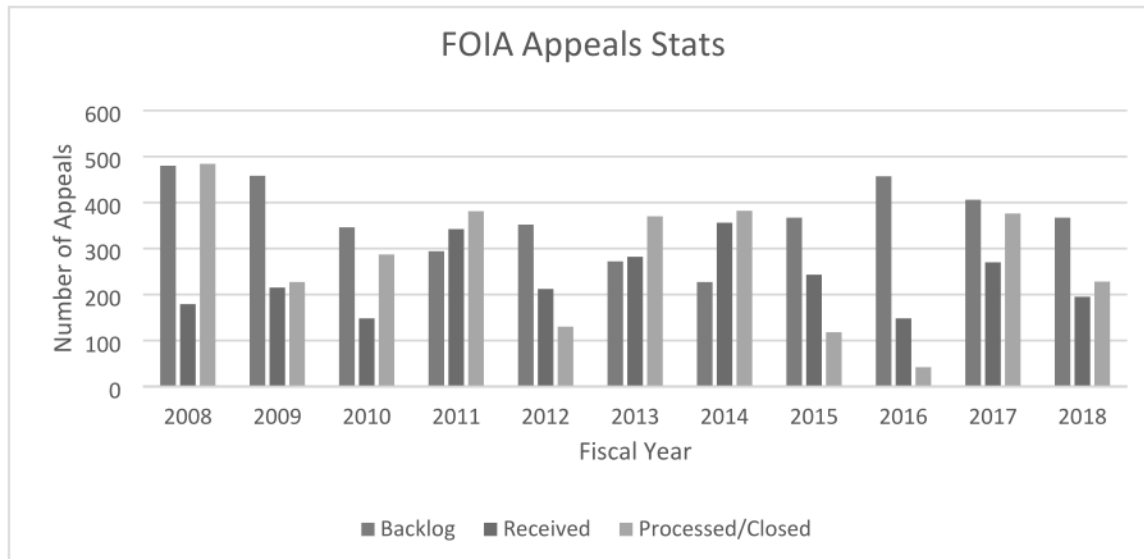
- Current Pending Requests (as of 05/29/19): 11,450
- Number of Requests Pending (as of 10/01/18): 10,578
- Number of Requests Received (10/01/18 to date): 5,285
- Number of Requests Processed (10/01/18 to date): 4,413

UNCLASSIFIED

UNCLASSIFIED**(U) FOIA Litigation Statistics:**

- Number of Open Litigation cases = 165
- Number of Associated FOIA requests = 262
- Number of Litigation Cases Received in FY 19 = 51
- Number of Litigation Cases Received in FY 18 = 75
- Number of Litigation Cases Received in FY 17 = 53
- Number of Litigation Cases Received in FY 16 = 57

UNCLASSIFIED

UNCLASSIFIED**(U) FOIA Appeals Statistics:**

- Number of Open Appeals cases = 363
- Number of Appeals Cases Received in FY 19 = 146
- Number of Appeals Cases Received in FY 18 = 190
- Number of Appeals Cases Received in FY 17 = 266
- Number of Appeals Cases Received in FY 16 = 156

(U) FOIA Appeals Backlog:

- Number of FY 19 Ten Oldest Appeals Closed = 3
- Number of Appeals Received in FY 19 = 146
- Number of Appeals Closed in FY 19 = 151
- Appeals Pending at the Start of FY 19 = 368

Congressional Document Production Branch:

(U) STATE-2019-05 Allegations of Political Retaliation (HCOR): On May 23, 2019, the Congressional Document Production branch (CDP) provided the Bureau of Legislative Affairs (H) with two identical discs, (b)(5) for production to the House Committee on Oversight and Reform.

(U) STATE-2019-08 Documents Related to Christopher Steele (SJC): On May 23, 2019, the CDP provided H with two identical discs, (b)(5) for production to the Senate Judiciary Committee.

(U) CDP Production Statistics:

- Number of Documents/Pages produced to H in calendar year 2019: (b)(5)

UNCLASSIFIED

UNCLASSIFIED

- Number of Documents/Pages produced to H in calendar year 2018: (b)(5)
- Number of Documents/Pages produced to H in calendar year 2017: (b)(5)

Information Access Branch:

(U) (b)(5)

(b)(5)

(U) Mandatory Declassification Review:

- Total Open 1,276;
- Opened 101 cases for May
- Closed 161 cases for May;
- Closed 530 cases for CY19

(U) Pre-Publication Review Statistics (E.O. 13526):

- Number of Prepublication Cases Completed YTD: 24 cases, totaling 1,916 pages

(U) Ralph J. Bunche Library:

- Library walk-in visitors: 444
- Meetings in the Rare Book Room: 13
- Events in Speaker Space: 4, with 154 attendees
- Research Questions Answered: 143
- DRS Requests Filled: 6
- Virtual Library Hits: 456

(U) Library Acquisitions Quick Stats: Using funds transferred to the Library by the bureaus listed below, the Library purchased the following items on behalf of those bureaus:

Bureau	Items Ordered	Title	Amount Ordered
PA/PRA	1	Business week.	\$75.00
PA/PRA	1	Fortune.	\$70.00
PA/PRA	1	Harper's.	\$27.00
PA/PRA	1	Mother Jones.	\$35.00
PA/PRA	1	New York.	\$76.00
PA/PRA	1	Rolling stone.	\$60.00
PA/PRA	1	Smithsonian.	\$46.00
PA/PRA	1	The economist.	\$152.00
PA/PRA	1	The nation.	\$114.00
PA/PRA	1	The New Yorker.	\$100.00
PA/PRA	1	Time.	\$77.00

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PA/PRA	1	Vanity fair.	\$34.00
PA/PRA	1	Wired.	\$30.00
ECA/EC	1	Archaeology.	\$15.30
ECA/EC	1	Journal of field archaeology.	\$362.10
ECA/EC	1	The journal of art crime.	\$109.09
ECA/EC	1	IFAR journal	\$86.70
ECA/EC	1	The art newspaper.	\$183.48
TOTAL			\$1652.67

UNCLASSIFIED

From:	"Sullivan, John C"
To:	(b)(6)
Subject:	RE: Investigations Meeting
Date:	Wed, 9 Jan 2019 21:02:12 +0000

Thanks

John C. Sullivan
Deputy Assistant Secretary
Global Information Services
U.S. Department of State
(o) (202) 663-2215 (b)(6)
(b)(6)

Official - SBU
UNCLASSIFIED

From: (b)(6)
Sent: Wednesday, January 9, 2019 4:00 PM
To: Sullivan, John C (b)(6)
Subject: RE: Investigations Meeting

No. I did a quick search and did not find the letters. (b)(5)

(b)(5)

(b)(5)

(b)(6)

Official - SBU
UNCLASSIFIED

From: Sullivan, John C (b)(6)
Sent: Wednesday, January 9, 2019 2:32 PM
To: (b)(6)
Subject: RE: Investigations Meeting

Do you have the travel letters as well?

John C. Sullivan
Deputy Assistant Secretary

Global Information Services

U.S. Department of State

(o) (202) 663-2215 (b)(6)

(b)(6)

Official - SBU

UNCLASSIFIED

From: (b)(6)

Sent: Wednesday, January 9, 2019 8:57 AM

To: Sullivan, John C (b)(6)

Cc: (b)(6)

Subject: FW: Investigations Meeting

Good morning,

We have a meeting with H at 9:30am this morning to discuss document requests that have come from the Hill. HOCR has already sent a couple of letters that we will be discussing.

(b)(5)

One of the topics for today involves the Federal Records Act. Secretary Tillerson received a HOCR letter in September 2017; the Department provided a response in October 2017. Chairman Cummings has followed up on the request asking for documents. We will be discussing this request today. The three letters on this matter are attached (HOCR to Tillerson, Department to HOCR, HOCR to Department).

Also attached is another incoming request.

No action necessary. Sharing for your awareness of the issues that we are undertaking.

Thanks,

(b)(6)

Official - SBU

UNCLASSIFIED

From: (b)(6)

Sent: Tuesday, January 8, 2019 10:07 AM

To: (b)(6)

(b)(6)

Subject: RE: Investigations Meeting

Good morning and happy new year –

I plan to proceed with the meeting tomorrow for those of you who are currently exempt. Our agenda will be:

- Document Search/Collection: Review updated tasking procedures in light of eRecords
- Attached Cummings requests (we anticipate receiving a chairman's letter reaffirming the requests for the 116th Congress)

Regards,

(b)(6)

-----Original Appointment-----

From: (b)(6)

Sent: Wednesday, December 12, 2018 9:38 AM

To: (b)(6)

(b)(6)

Subject: Investigations Meeting

When: Wednesday, January 9, 2019 9:30 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: HST 4835

We'll pick these meetings back up starting on January 2. Enjoy the end of the quiet days of Congressional investigations!

Official

UNCLASSIFIED

Sender:	"Sullivan, John C"
Recipient:	(b)(6)

From:	(b)(6)
To:	
Subject:	FW: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017
Date:	Wed, 9 Jan 2019 13:46:41 +0000

I found this letter.

Official - SBU
UNCLASSIFIED

From: (b)(6)
Sent: Monday, October 23, 2017 4:12 PM
To: (b)(6)
 (b)(6)
Cc: (b)(6)
Subject: RE: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

This letter went out on Friday. Here's the final.

Official - SBU
UNCLASSIFIED

From: (b)(6)
Sent: Monday, October 23, 2017 4:11 PM
To: (b)(6)
Cc: (b)(6)
Subject: RE: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

A few edits and a comment in the attached. Also attaching the Chaffetz outgoing. (b)(5)

(b)(5)

Official - SBU
UNCLASSIFIED

From: (b)(6)
Sent: Friday, October 13, 2017 10:26 AM
To: (b)(6)
Cc: (b)(6)
Subject: FW: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

Looping in (b)(6) on this as she was working it (b)(6) (b)(5)

(b)(5)

Official - SBU
UNCLASSIFIED

From: (b)(6)

Sent: Thursday, October 12, 2017 4:25 PM

To: (b)(6)

Cc:

Subject: RE: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

(b)(6)

With apologies for the delay, attached is a draft letter.

(b)(5)

Thanks,

(b)(6)

Official - SBU
UNCLASSIFIED

From: (b)(6)

Sent: Thursday, October 12, 2017 9:09 AM

To: (b)(6)

Cc:

Subject: RE: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

Just checking on the status of this letter (b)(5). Is your draft ready for clearance?

Official
UNCLASSIFIED

From: (b)(6)

Sent: Thursday, October 05, 2017 5:29 PM

To: (b)(6)

Cc:

Subject: Re: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

We have been working on it. (b)(6) will have details.

From: (b)(6)

Date: October 5, 2017 at 4:47:02 PM EDT

To: (b)(6)

Cc:

(b)(6)

Subject: FW: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

Hi (b)(6) - Letter has been tasked to A/GIS as you and (b)(6) (cc:ed here) discussed on 9/26.

(b)(6) - Can you please provide an update (ref A FO Tasker# 737) ?

Thanks,

(b)(6)

Official
UNCLASSIFIED

From: (b)(6)

Sent: Thursday, October 05, 2017 9:03 AM

To: (b)(6)

Cc:

(b)(6)

Subject: RE: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

Hi (b)(6) - I wanted to check on the status of this one. (b)(5)

(b)(5)

(b)(5)

Regards, (b)(6)

Official
UNCLASSIFIED

From: (b)(6)

Sent: Tuesday, September 26, 2017 10:52 AM

To: (b)(6) H CCU

Cc: H CCTasking-A; (b)(6)

(b)(6)

Subject: FW: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

Hi (b)(6)

Ref attached from HOCR, (b)(5)

(b)(5)

Specifically:

(b)(5)

Requesting this letter be an agenda item for the next H/L/A investigations meeting.

For now, (b)(5)

Thank you,

(b)(6)

From: H_CCU@state.gov [mailto:H_CCU@state.gov]

Sent: Tuesday, September 26, 2017 10:06 AM

To: H_CCTasking-A

Cc: (b)(6)

Subject: Control Number: H20170926=000 -- Member: Gowdy, Trey -- Date Due: 9/29/2017

Congressional Correspondence - 2 day tasker Investigatory Letter/Document Request Multi-signer:
Cummings Please prepare a narrative response

Control Number: H20170926=000

Date Due: 9/29/2017

Actions:

- Reply for signature by Charles S. Faulkner, Deputy Assistant Secretary, Bureau of Legislative Affairs.
- Other. Investigatory Letter/Document Request

Member: Gowdy, Trey

Subject: Multi-signer (Cummings) Investigatory Letter/Document Request regarding the Federal Records Act.

2 Day Tasker

- For all correspondence that will be signed by the Secretary or other Principal: Please submit a draft response under cover of a **joint action memo by H and your Bureau**. Please submit the action memo on the **classified (high) side to the H Staffers**. Also, please advise the CCU on the unclassified (low) side when the action memo has been submitted.
- The attached Substantive Correspondence is due in the Congressional Correspondence Unit (CCU) on the due date indicated on the tasker.
- Document Requests: All request for DOS documents require an interim response to the Member within 2 days of the official tasker. The interim response acknowledges receipt of the request and advises that a search for the requested information has begun. All responsive documents must be cleared for release by P via action memo.
- All Unclassified responses to congressional inquiries should be submitted to the CCU on OpenNet, as a word document, named using the H Control Number (e.g. H20110321=000.docx)

for substantive or 11002201.docx for constituent). In the case of interim responses use the control number plus interim plus. (e.g. H20110321=000interim.docx for substantive or 11002201interim.docx for constituent)

- All Classified responses to congressional inquiries should be submitted to CCU on ClassNet to the ccu2ndtasker@state.sgov.gov email box, as a word document, named using the H Control Number (e.g. H20110321=000.docx for substantive or 11002201.docx for constituent). In the case of interim responses use the control number plus interim plus. (e.g. H20110321=000interim.docx for substantive or 11002201interim.docx for constituent)

Official**UNCLASSIFIED**

Sender:	(b)(6)	
Recipient:		

From:	(b)(6)
To:	
CC:	
Subject:	RE: Investigations Meeting
Date:	Tue, 8 Jan 2019 15:15:08 +0000

(b)(6)

(b)(6) usually covers these for L and won't be back in the office until Friday. I have a conflict at 10 with the L front office staff meeting. If you have a call in number, I'd be happy to dial in for the first part of the meeting. Otherwise, can catch up separately. Best, (b)(6)

Official
UNCLASSIFIED

From: (b)(6)

Sent: Tuesday, January 08, 2019 10:07 AM

To: (b)(6)

(b)(6)

Subject: RE: Investigations Meeting

Good morning and happy new year –

I plan to proceed with the meeting tomorrow for those of you who are currently exempt. Our agenda will be:

- Document Search/Collection: Review updated tasking procedures in light of eRecords
- Attached Cummings requests (we anticipate receiving a chairman's letter reaffirming the requests for the 116th Congress)

Regards,

(b)(6)

-----Original Appointment-----

From: (b)(6)

Sent: Wednesday, December 12, 2018 9:38 AM

To: (b)(6)

(b)(6)

Subject: Investigations Meeting

When: Wednesday, January 9, 2019 9:30 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: HST 4835

We'll pick these meetings back up starting on January 2. Enjoy the end of the quiet days of Congressional investigations!

Official

UNCLASSIFIED

Sender:	(b)(6)	
Recipient:		

From:	(b)(6)
To:	(b)(6)
Subject:	RE: IPS Papers: Resuming Operations
Date:	Fri, 25 Jan 2019 21:52:23 +0000

Attached is the paper for Programs and Policies. This may be OBE now that we're funded for 3 weeks, but maybe not!

(b)(6)

Official - SBU
UNCLASSIFIED

From: (b)(6)
Sent: Friday, January 25, 2019 9:51 AM
To: (b)(6)
(b)(6)
Cc: (b)(6)
Subject: IPS Papers: Resuming Operations

Good morning,

For your awareness, attached are your papers on resuming operations. (b)(5)
(b)(5) (b)(6) (b)(5)
(b)(5)

Next steps: I will send everyone my comments and feedback by replying all to this email. Please review the papers in the meantime and reply all with any feedback or ideas (b)(5)
(b)(5) I plan to get you this feedback by COB today along with the FOIA paper.

Please keep these papers among us for now while we work through how to proceed.

Thanks,
(b)(6)

(b)(6)
Director
Office of Information Programs and Services (A/GIS/IPS)*
U.S. Department of State

(b)(6)

*Link only works on State Department Intranet

Official - SBU
UNCLASSIFIED

Sender:	(b)(6)
Recipient:	(b)(6)

(b)(5)

FL-2020-000132 02/26/2021 30

of the Freedom of Information and Privacy Act

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CITIZENS FOR RESPONSIBILITY AND)	
ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 20-2044 (CRC)
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	
_____)	

**PLAINTIFF’S RESPONSE TO DEFENDANT’S STATEMENT OF
UNDISPUTED MATERIAL FACTS AND PLAINTIFF’S STATEMENT
OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFF’S
CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h), Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) hereby responds to Defendant U.S. Department of State’s (“State”) Statement of Undisputed Material Facts (Dkt. # 16-4), and submits its Statement of Undisputed Material Facts in Support Of Plaintiff’s Cross-Motion for Summary Judgment.

I. Plaintiff’s Response to Defendant’s Statement of Undisputed Material Facts

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

8. Deny that this is a statement of material fact but otherwise admit.

II. Plaintiff's Statement of Undisputed Material Facts

1. The Stein Declaration provides only the following description of the material State withheld under Exemption 5:

The information the Department withheld pursuant to the deliberative process privilege reflects the internal exchange of ideas and recommendations that occurred while U.S. Government officials were formulating strategy and directing executive branch action relating to FOIA litigation and the production of records to Congress.

Stein Decl. ¶ 12.

2. As to harm from disclosing the withheld material, the Stein Declaration makes only the following general statement that disclosure

would reasonably be expected to chill the open and frank exchange of comments, recommendations, and opinions that occurred among U.S. Government officials, reveal the internal development and implementation of Department policies and procedures, and harm the intra-agency exchange of candid information. In addition, disclosure of these details would hamper the ability of responsible Department officials to formulate and carry out executive branch programs.

Id.

3. On the issue of segregation, the Stein Declaration avers only that the Department “has implemented segregation when possible” and further that “[o]therwise, the Department determined that no segregation of meaningful information in the documents could be made without disclosing information warranting protection under the law.” *Id.* ¶ 13.

4. On the issue of segregation, State's Vaughn Index states only that “[t]he Department conducted a line-by-line review . . . and determined that there is no

additional, meaningful, non-exempt information that can be reasonably segregated and released.” Vaughn Index at 1-5.

Dated: June 18, 2021

Respectfully submitted,

/s/ Anne L. Weismann
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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON,)

Plaintiff,)

v.)

U.S. DEPARTMENT OF STATE,)

Defendant.)
_____)

Civil Action No. 20-2044 (CRC)

[PROPOSED] ORDER

The Court having considered Defendant’s motion for summary judgment, Plaintiff’s opposition and cross-motion for summary judgment and reply, and Defendant’s opposition and reply thereto, and the entire record herein, it is hereby

ORDERED that Defendant’s motion is DENIED, Plaintiff’s motion is GRANTED, and summary judgment is entered for Defendant.

Dated: _____

CHRISTOPHER R. COOPER
UNITED STATES DISTRICT JUDGE