

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CITIZENS FOR RESPONSIBILITY	)	
AND ETHICS IN WASHINGTON,	)	Civil Action No. 1:20-cv-02044-CRC
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF STATE,	)	
	)	
Defendant.	)	
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**DEFENDANT’S COMBINED REPLY BRIEF IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT, AND OPPOSITION BRIEF  
TO PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW” or “Plaintiff”) has failed to rebut the U.S. Department of State’s (“State” or “the Department”) demonstration that it properly applied Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), in its responses to Plaintiff’s two FOIA requests. In its opposition, Plaintiff challenges the Department’s assertions of the deliberative process privilege to protect draft documents and other information that is predecisional and deliberative in nature. Contrary to Plaintiff’s arguments, State’s original declaration is sufficient to support its assertion of this privilege. But to avoid any doubt on this question, the Department has submitted a second declaration providing additional information regarding the withheld information. As discussed below, this additional information, together with the declaration and Vaughn Index previously submitted, make clear that State has properly applied FOIA Exemption 5 to withhold information protected from public disclosure. Furthermore, the Department has articulated the foreseeable harm that would result from the release of this withheld information, and has provided Plaintiff with all non-exempt, segregable portions of the materials at issue. Accordingly, the Department respectfully requests the Court to enter summary judgment in its favor.

## ARGUMENT

### **I. State Properly Withheld Information Exempt From Disclosure Because It Is Predecisional and Deliberative in Nature.**

As explained in its opening brief, State appropriately invoked Exemption 5 to withhold in full three documents and to withhold limited and discrete portions of nine other documents because the withheld information fell within the protections of the deliberative process privilege. Mem. in Supp. of Def.’s Mot. for Summ. J. at 3-12, ECF No. 16-1 (“Def. MSJ”). These 12 documents may be divided into three categories: (1) draft letters to members of Congress and

deliberative communications regarding edits to these draft letters; (2) deliberative information related to the numbers of pages preliminarily considered by subcomponents within State to be potentially responsive to congressional inquiries; and (3) deliberative communications discussing proposed agency strategy in responding to congressional inquiries, and regarding a proposed plan for a State subcomponent to resume activities following a government shutdown. Because all of the withheld information is either predecisional and deliberative in nature, or constitutes predecisional factual information that would necessarily reveal State’s deliberative processes, the Department correctly withheld this information under Exemption 5.

**A. Draft Letters to Members of Congress and Portions of Related Communications**

The first category of withheld information—draft letters to members of Congress and deliberative portions of related communications—can be divided into two parts. First, State withheld in large part two drafts of a three-page letter from Mary Elizabeth Taylor, the then-Assistant Secretary of the Bureau of Legislative Affairs, responding to a January 14, 2019 letter from House Representative Elijah Cummings, the Chair of the House Committee on Oversight and Reform. *See* Vaughn Index at 1, ECF No. 16-3; Second Declaration of Eric F. Stein ¶ 15, attached as Ex. 1 (“Second Stein Decl.”). Second, the Department redacted three lines from five pages of email communications reflecting, transmitting, and discussing proposed edits to these two drafts. *See* Vaughn Index at 1; Second Stein Decl. ¶ 17.<sup>1</sup>

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<sup>1</sup> State also withheld 22 lines from a five-page email exchange reflecting proposed edits and seeking clearance on a draft letter to House Representative Trey Gowdy. *See* Vaughn Index at 4. Because Plaintiff’s brief does not mention this withholding, Pl.’s Opp. to Def. MSJ and Mem. in Supp. of Pl.’s Cross-Mot. for Summ. J. at 10-12, ECF No. 17 (“Pl. Opp.”), State will treat the issue as having been conceded. *See Shapiro v. U.S. Dep’t of Justice*, 239 F. Supp. 3d 100, 106 n.1 (D.D.C. 2017) (“Where the FOIA requester responds to the government’s motion for summary judgment without taking issue with the government’s decision to withhold or to redact specific documents, the Court can reasonably infer that the FOIA requester does not seek those specific records or information and that, as to those records or information, there is no case or controversy sufficient to sustain the Court’s jurisdiction.”).

The deliberative process privilege protects from disclosure the two drafts of this letter and deliberative portions of communications relating to them. *See* Def. MSJ at 5-6. Plaintiff raises two counterarguments, neither of which has merit. *See* Pl.’s Opp. to Def. MSJ and Mem. in Supp. of Pl.’s Cross-Mot. for Summ. J. at 10-12, ECF No. 17 (“Pl. Opp.”). First, Plaintiff contends that State has not explained whether the withheld drafts were, in fact, drafts. *Id.* at 11. But the Second Stein Declaration makes clear that to the best of the Department’s knowledge, following a reasonable inquiry, a records search, and a review of Representative Cummings’s website, the Department neither finalized this letter nor transmitted it outside of the Department. Second Stein Decl. ¶ 16. A letter that was neither finalized nor sent to its addressee remains a draft letter. *See U.S. Fish & Wildlife Serv. v. Sierra Club*, 141 S. Ct. 777, 786 (2021) (“A draft is, by definition, a preliminary version of a piece of writing subject to feedback and change.”)

Second, Plaintiff contends that the Department has not shown that Exemption 5 protects these two drafts, and deliberative portions of communications reflecting and discussing proposed edits to them, from disclosure. Pl. Opp. at 11-12. In so contending, Plaintiff erroneously relies on opinions from a different Circuit. *See id.* at 11. But decisions from this Circuit make clear that “[d]raft documents, by their very nature, are typically predecisional and deliberative.” *Blank Rome LLP v. Dep’t of the Air Force*, No. 15-1200, 2016 WL 5108016, at \*5 (D.D.C. Sept. 20, 2016). Indeed, the D.C. Circuit has held that drafts “reflect advisory opinions that are important to the deliberative process.” *Krikorian v. Dep’t of State*, 984 F.2d 461, 466 (D.C. Cir. 1993). Draft documents “often fall within the protection of the deliberative process privilege because a draft is, by definition, a preliminary version of a piece of writing subject to feedback and change.” *CREW v. Gen. Servs. Admin.*, No. CV 18-2071, 2021 WL 1177797, at \*10 (D.D.C. Mar. 29, 2021) (citation omitted). In affirming the application of the deliberative process

privilege to a draft letter, one court in this District explained that the draft was “precisely the type of document that would come within this privilege.” *Brown v. Dep’t of State*, 317 F. Supp. 3d 370, 376-77 (D.D.C. 2018). Accordingly, “[a]s a general rule, draft documents likely are to be protected under the deliberative process,” *Radiation Sterilizers v. U.S. Dep’t of Energy*, No. 90-880, 1991 U.S. Dist. LEXIS 4669, at \*10 (D.D.C. Apr. 9, 1991), and in fact, “courts in this District have held, in many instances, that drafts are protected by the deliberative process privilege.” *Competitive Enter. Inst. v. Office of Sci. & Tech. Pol’y*, 161 F. Supp. 3d 120, 129-30 (D.D.C. 2016) (citing cases). The draft letters in this case are likewise protected from disclosure under Exemption 5.

The few cases Plaintiff cites from this Circuit are inapplicable to the facts of this case. *Arthur Anderson & Co. v. IRS*, 679 F.2d 254 (D.C. Cir. 1982), did not involve a draft letter but drafts of an IRS revenue ruling. *See id.* at 255-56. In that case, the D.C. Circuit concluded that the withheld drafts were in fact predecisional and deliberative after assessing whether the drafts “serve[d] as agency ‘working law,’ providing substantive guidance in future decisions.” *Id.* at 259. Unlike the drafts of the IRS revenue ruling in *Arthur Anderson*, there is no assertion or concern that the draft letters at issue here serve as a source of State agency law. Plaintiff’s reliance on *Judicial Watch v. U.S. Postal Service*, 297 F. Supp. 2d 252 (D.D.C. 2004), is likewise misplaced. The portion to which Plaintiff cites has nothing to do with draft letters but instead concerns “drafts of procedures related to environmental sampling of anthrax.” *Id.* at 260. In this case, State has identified the function and significance of the draft letters. The draft letter to Representative Cummings concerned the status of six inquiries of the House Oversight and Government Reform Committee and the withheld portions of the emails concerning the drafts

reflected, transmitted, and discussed proposed edits to the letter. Second Stein Decl. ¶¶ 15, 17-18. These documents are quintessentially predecisional and deliberative in nature.

Accordingly, State has demonstrated that the two draft letters and withheld deliberative portions of related communications are exempted from disclosure under Exemption 5.

**B. Deliberative Information Related to the Numbers of Pages Internally Considered by a Department Subcomponent Before a Final Agency Release Decision**

The second category of withheld information under Exemption 5 consists of deliberative information related to the numbers of pages and of documents internally considered by State's office that processes FOIA and Congressional document requests to be potentially responsive to external document requests. The processing office considered this deliberative information prior to the Department making a final determination as to whether the pages were, in fact, responsive. State redacted portions of 12 lines from a six-page internal Department memorandum relating to these deliberations. Vaughn Index at 2; Second Stein Decl. ¶ 21. The memorandum, entitled "IPS Quick Stats, May 24 – May 30," is a weekly activities report prepared by employees of State's Office of Information Programs and Services ("Office") and is distributed within that office. Second Stein Decl. ¶ 22. The memorandum provides an update of the continually evolving status of ongoing document requests being processed by that Office under FOIA and in response to congressional oversight inquiries, as well as other Office business. *Id.* The withheld 12 lines include the numbers of pages and of documents that had been preliminarily considered to be potentially responsive to congressional oversight inquiries and that have been shared between various offices within the Department prior to a final release determination. *Id.* ¶ 23. They also include a one-sentence description (with heading) of the preliminary status of the Office's processing of a document request prior to a final release determination. *Id.*

As explained in the Department's opening brief, Exemption 5 protects the redacted 12 lines from disclosure. Def. MSJ at 7-10. The withheld information is predecisional because it relates to preliminary assessments made by the Office of the numbers of pages potentially responsive to external document requests that precede the final release decisions made by the Department as a whole. Second Stein Decl. ¶ 25. Furthermore, these preliminary assessments are representative of draft production determinations by the Office that are subject to revision by the Department. *Id.* Releasing information related to what are in effect "draft," preliminary assessments would allow for comparisons between these assessments and the actual numbers of released pages, as well as the form in which those pages were produced. *Id.* Therefore, releasing this information would necessarily disclose internal agency deliberations regarding the actual number of pages that should be determined to be responsive to congressional inquiries, as well as the form in which those pages should be produced to Congress. *Id.* The deliberative process privilege thus protects this information from disclosure.

Plaintiff contends that State has failed to provide sufficient detail to determine whether the withheld 12 lines fall within the protections of Exemption 5. Pl. Opp. at 13-15. Though the declaration and Vaughn Index submitted with the Department's opening brief provided enough detail to render such a determination, in an abundance of caution, the Second Stein Declaration provides a fuller description of the withheld lines. *See* Second Stein Decl. ¶¶ 20-24. The declaration makes clear that the withheld information includes the numbers of pages and of documents that have only been preliminarily assessed to be responsive to congressional document requests, and a description of the preliminary status of the Office's processing of those requests. *See id.* ¶ 23. And contrary to Plaintiff's characterization, the declaration makes clear how the disclosure of these 12 lines would necessarily reveal the Department's deliberative

process leading up to final release determinations. Specifically, releasing this information would expose initial or “draft” considerations made by the Office prior to the agency’s final release determinations. These deliberations include preliminary assessments of the number of documents that may be responsive to congressional inquiries and the form in which those documents should be released. *Id.* ¶¶ 25-26. Such information “reflects the give-and-take of the consultative process” because these preliminary assessments constitute “proposals [and] suggestions” that “would inaccurately reflect or prematurely disclose the views of the agency.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Indeed, the preliminary assessments at issue here are akin to the preliminary cost estimates prepared by agency officials in *Quarles v. Department of Navy*, 893 F.2d 390 (D.C. Cir. 1990), because they are “far from fixed,” “partak[ing] of just that elasticity that has persuaded courts to provide shelter for opinions generally,” and their disclosure “could chill discussion at a time when agency opinions are fluid and tentative.” *Id.* at 392, 393. Though constituting “factual material,” these assessments “reflect[] [State’s] preliminary positions or ruminations about how to exercise discretion regarding whether and how to” release documents to Congress. *Heffernan v. Azar*, 417 F. Supp. 3d 1, 18 (D.D.C. 2019). And although “expressed in quantitative terms,” they “are nonetheless opinions rather than facts”—namely, the Office’s initial opinion as to how many documents should be released in response to a congressional request. *SMS Data Prod. Grp. v. U.S. Dep’t of Air Force*, No. 88-0481, 1989 WL 201031, at \*2 (D.D.C. Mar. 31, 1989). Exemption 5 protects these 12 withheld lines from disclosure.

**C. Deliberative Communications Discussing Proposed Agency Strategy in Responding to Congressional Inquiries, and Proposed Plan to Resume Government Activities**

Finally, State withheld deliberative communications discussing proposed agency strategy from two sets of agency email exchanges. The documents, which were released in part to Plaintiff, consisted of (1) fifteen pages of email exchanges regarding a meeting among agency subcomponents to discuss agency strategy in responding to congressional inquiries, with 16 lines and a table column redacted, and (2) four pages of an email exchange among agency employees discussing whether and how to resume an agency subcomponent's activities following a government shutdown (with six lines redacted), and an attached two-page proposed plan for resuming activities (which was withheld in full). Vaughn Index at 3, 5, Second Stein Decl. ¶¶ 29-31. As demonstrated in the Department's opening brief, because these email communications (and the proposed plan) consist of deliberations preceding two agency decisions—namely, how to respond to congressional inquiries and how to resume official activities following a shutdown—Exemption 5 protects them from disclosure. Def. MSJ at 11-12.

In an attempt to rebut the Department's demonstration, Plaintiff observes that in filings with this Court (and other courts), the Department has explained that the COVID-19 pandemic has reduced its capacity to respond to FOIA requests. Pl. Opp. at 15-16. Plaintiff's observation is correct, but in none of its filings has State disclosed information relating to deliberative communications among its employees that preceded a final agency decision. Moreover, even if State had exercised its discretion to release different deliberative information in a different context, that would have no legal bearing on the applicability of a FOIA exemption to the information at issue here. Therefore, Plaintiff's contention that the Department has somehow acted inconsistently in invoking Exemption 5 to protect predecisional, deliberative information is

without merit. Moreover, Plaintiff fails to cite any authority in support of its argument that Exemption 5 does not protect from disclosure the information withheld under this rubric. The Court should therefore enter summary judgment for the Department with respect to these documents.

**II. The Department Has Adequately Demonstrated Foreseeable Harm Resulting From the Release of the Withheld Predecisional, Deliberative Information.**

State has articulated foreseeable harm that would flow from disclosure of the material withheld under Exemption 5. The pertinent statutory provision requires only that the agency “reasonably foresee[] that disclosure would harm an interest protected by [a FOIA] exemption.” 5 U.S.C. § 552(a)(8)(A)(i). As discussed below, State (1) has identified interests protected by Exemption 5 and (2) reasonably foresees harm to those interests if the withheld material were disclosed. Nothing more is required by Section 552(a)(8)(A)(i).

First, State plainly has identified “an interest protected by [Exemption 5.]” 5 U.S.C. § 552(a)(8)(A)(i). The Second Stein Declaration makes clear that the disclosure of any of the information withheld under the three enumerated categories would inhibit the frank communications and free exchange of ideas. *See* Second Stein Decl. ¶¶ 18 (explaining that the release of the drafts of the letters to Representative Cummings and deliberative portions of related communications “could reasonably be expected to have a chilling effect on the open and frank discussion of ideas, recommendations, and opinions that occurs when U.S. Government officials are drafting letters to be transmitted to members of Congress”), 26 (stating that releasing information related to the numbers of pages preliminarily considered by a Department subcomponent to be potentially responsive to external document requests “could reasonably be expected to chill the open and frank discussion between Department subcomponents regarding how to process potentially responsive documents in response to congressional inquiries, and in

what form and quantity such documents should ultimately be released by the Department”), 33 (explaining that the release of deliberative agency communications preceding two final agency decisions “could reasonably be expected to chill intra-Department discussions regarding how the Department should respond to outside congressional inquiries, and in what manner a Department subcomponent should resume government activities following a shutdown”). These are the exact interests that the privilege serves to protect. *See Dep’t of the Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8-9 (2001) (observing that the deliberative process privilege serves “to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”); *see also Coastal States*, 617 F.2d at 866 (the “deliberative process privilege . . . serves to assure that subordinates within an agency will feel free to provide the decisionmaker with their uninhibited opinions and recommendations without fear of later being subject to public ridicule or criticism”). As the Second Stein Declaration makes clear, the Department’s interests in preventing the disclosure of the withheld information is protected by Exemption 5.

Second, State “reasonably foresees that disclosure would harm” those interests. 5 U.S.C. § 552(a)(8)(A)(i). The Second Stein Declaration articulates the nature of the foreseeable harm that would result from the disclosure of any of the withheld materials. *See id.* ¶¶ 18 (explaining that if the drafts of the letter to Representative Cummings were to be released, “then Department employees may hesitate to offer their candid opinions to supervisors or coworkers about how to draft such letters, and such self-censorship would tend to degrade the quality of Department decisions”); 26 (stating, with respect to preliminary assessments of the numbers of pages that are potentially responsive to external document requests, that “[i]f Department officials believed that the results of such a preliminary determination were to be made public under a FOIA request

such as this, it is reasonably foreseeable that they would refuse to allow employees to provide such information in reports apprising IPS of the status of ongoing document requests” and that “[s]temming the flow of this information will be harmful because it is reasonably foreseeable that backlogs will be created, and that it will take much longer for the Office to complete its processing and production of document requests to Congress and under the FOIA”); 33 (explaining that revealing deliberative information related to the two sets of email communications preceding agency decisions “could reasonably be expected to chill the open and frank exchange of information and proposals during such discussions by exposing publicly the evolution from initial proposals to final, fully-informed decisions,” thereby “inhibit[ing] candid discussion and the frank expression of views and recommendations during such discussions,” and that “the Department’s internal discussion process would become more cumbersome, and the Department would be at increased risk of its future policy decisions being made with incomplete or incorrect information”).

These statements made by the Director of the Office in his Declaration identify multiple interests protected by Exemption 5 and articulate the foreseeable harm that disclosure of these materials would cause to those interests. In *Machado Amadis v. U.S. Department of State*, 971 F.3d 364 (D.C. Cir. 2020), the D.C. Circuit ruled that an agency had satisfied the foreseeable harm requirement based on similar representations by State. The Department’s affidavit in *Machado Amadis* “adequately explained that full disclosure of the [records at issue] would discourage line attorneys from ‘candidly discuss[ing] their ideas, strategies, and recommendations,’ thus impairing ‘the forthright internal discussions necessary for efficient and proper adjudication of administrative appeals.’” *Id.* at 371. The D.C. Circuit held that “[s]uch chilling of candid advice is exactly what the privilege seeks to prevent.” *Id.* The court further

explained that an agency will satisfy the “governing legal requirement,” if it explains that it has “specifically focused on ‘the information at issue’ in the [records] under review, and . . . concluded that disclosure of that information ‘would’ chill future internal discussions.” *Id.* As discussed above, the Second Stein Declaration specifically focuses on the withheld information at issue and concludes that disclosure would chill future internal discussions.

Following *Machado Amadis*, district courts have found that agencies satisfied the foreseeable harm requirement based on declarations like those that State has provided here. For example, in *National Immigration Project of the National Lawyers Guild v. Immigration and Customs Enforcement*, No. 17-2448, 2020 WL 5798429, at \*4-5 (D.D.C. Sep. 29, 2020), a government agency determined that “[t]he release of this non-final internal information . . . would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel,” which, in turn, “would result in a chilling effect on intra- and inter-agency communications.” The court held that the agency “declarations are at least as detailed as those in *Machado Amadis*,” given that they “specifically explained that disclosure of the withheld information, which includes editorial judgments and significant changes between the draft and final versions, ‘would discourage the expression of candid opinions’ and ‘would result in a chilling effect on intra- and inter-agency communications.’” *Id.* at \*5. Similarly, the court in *Emuwa v. Department of Homeland Security*, No. 1:20-CV-01756 (TNM), 2021 WL 2255305, (D.D.C. June 3, 2021), held that a government agency had sufficiently articulated foreseeable harm with respect to assessment documents containing asylum officers’ impressions after asylum interviews and recommendations as to whether asylum should be granted. *See id.* at \*1, 8. The court explained that the agency’s declarant had “state[d] that, because the Assessments ‘did not represent the Agency’s final decisions and . . . reflect the analysis,

opinions, deliberations and recommendations of the asylum officer,’ the agency ‘determined that releasing the information that was redacted would chill or deter USCIS employees from engaging in the candid and frank discussions that are so important and necessary to the full and proper analysis and fair consideration of these asylum requests on the merits.’” *Id.* at \*8.

Notably, *Machado Amadis* is the only D.C. Circuit decision to address the foreseeable harm requirement. Significantly, Plaintiff barely mentions it. Plaintiff instead relies primarily on two district court decisions, both of which predate *Machado Amadis*. Pl. Opp. at 16-19. Even assuming those decisions are still good law, neither suggests that State has failed to satisfy the foreseeable harm requirement. The court in *Center for Investigative Reporting v. U.S. Customs & Border Protection*, 436 F. Supp. 3d 90 (D.D.C. 2019), required the agency to provide “context or insight into the specific decision-making processes or deliberations at issue, and how they in particular would be harmed by disclosure.” *Id.* at 107. State has provided that context here by identifying the nature of the agency decisions at issue and explaining why the withheld materials are deliberative in nature and how State would be harmed by their disclosure. *See* Second Stein Decl. ¶¶ 15, 18-19, 22-26, 29-33. Similarly, the court in *Judicial Watch v. Department of Commerce*, 375 F. Supp. 3d 93 (D.D.C. 2019), noted that the “mere possibility that disclosure discourages a frank and open dialogue,” was insufficient to show that the agency reasonably foresees harm. *Id.* at 101. “In other words, the [FOIA Improvement Act] requires more than speculation,” which the Court found was “all that [the agency had] provided through its declarations and *Vaughn* indexes.” *Id.* *Machado Amadis* makes clear, however, that an agency satisfies the applicable standard where it concludes, as State did here, “that disclosure of that information ‘would’ chill future internal discussions.” *Machado Amadis*, 971 F.3d at 371.

Finally, Plaintiff cannot overcome the Department’s showing of foreseeable harm merely by speculatively “suggest[ing]” that “a far more sinister reason” motivated State’s assertion of the deliberative process privilege. Pl. Opp. at 18. “Agency affidavits are accorded a presumption of good faith,” *SafeCard Servs. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991), and “[m]ere speculation as to the content of [withheld] records cannot overcome the presumption of good faith accorded to the [agency’s] declaration or defendant’s showing on summary judgment.” *Accurso v. FBI*, No. CV 19-2540 (CKK), 2021 WL 411152, at \*8 (D.D.C. Feb. 5, 2021); *see also Hastie v. Henderson*, 121 F. Supp. 2d 72, 77 (D.D.C. 2000), *aff’d*, No. 00-5423, 2001 WL 793715 (D.C. Cir. June 28, 2001) (“To defeat a motion for summary judgment, a plaintiff cannot create a factual issue of pretext with mere allegations or personal speculation, but rather must point to ‘genuine issues of material fact in the record.’”). Otherwise, a FOIA plaintiff could always overcome an agency’s articulation of foreseeable harm simply by imagining that some ulterior motive lay behind the withholdings at issue. That is not the law, and State has appropriately demonstrated that it would suffer foreseeable harm if the materials withheld here were to be disclosed.

### **III. State Has Released All Reasonably Segregable Information Not Exempt From Disclosure.**

Finally, State has released to Plaintiff all reasonably segregable, non-exempt information. *See* Second Stein Decl. ¶¶ 19, 27, 34-35; Vaughn Index at 1-5. An agency is “entitled to a presumption that [it] complied with the obligation to disclose reasonably segregable material.” *Hodge v. FBI*, 703 F.3d 575, 582 (D.C. Cir. 2013) (internal punctuation omitted). Plaintiff fails to rebut that presumption in this case. *See* Pl. Opp. at 19-20. Plaintiff relies on *Mead Data Central v. U.S. Department of Air Force*, 566 F.2d 242 (D.C. Cir. 1977), to argue that State has failed to demonstrate that it released all non-exempt segregable information, but “more recent

decisions from the D.C. Circuit have indicated that the standard first articulated in *Mead Data* has been relaxed.” *Nat’l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 207 (D.D.C. 2013) (discussing *Loving v. Dep’t of Def.*, 550 F.3d 32, 41 (D.C. Cir. 2008), and *Johnson v. EOUSA*, 310 F.3d 771, 776 (D.C. Cir. 2002)). Specifically, the D.C. Circuit has held that a Vaughn Index that adequately describes the information withheld and the applicable exemptions, in conjunction with a declaration that the agency “released all segregable material,” is sufficient for the court’s segregability determination. *Loving*, 550 F.3d at 41; accord *Johnson*, 310 F.3d at 776.

Here, State’s declarant has explained that for each of the three categories of information withheld under Exemption 5, the Department has reviewed for segregability, and has determined that all reasonably segregable non-exempt information has been released. See Second Stein Decl. ¶¶ 19 (explaining that with respect to the two drafts of the proposed letter to Representative Cummings, “no portion of the two drafts could be reasonably segregated because all of the draft letter necessarily reflects the agency’s preliminary thought processes regarding the content of a letter to a member of Congress,” but that “the Department determined that all but three lines from the five pages of email communications reflecting proposed edits to the drafts were segregable, and could be released”); 27 (stating that with respect to the six-page memorandum entitled “IPS Quick Stats, May 24 – May 30,” State “decided that all of this six-page memorandum except for portions of twelve lines were segregable, and could be released”); 34 (explaining that as to the fifteen pages of email exchanges relating to a meeting among Department subcomponents, State “determined that all of the 15 pages except for 16 lines and a column in a table were segregable and could be released”); 35 (stating that with respect to a two-page draft proposed plan for resuming activities following a government shutdown, and four pages of email communications discussing and attaching the draft plan, “the Department

determined that no portion of the draft plan could be reasonably segregated because as a draft proposal, it necessarily reflects the agency's preliminary thoughts as to whether and how to resume activities" but also "determined that all but six lines from the four pages of email communications were segregable, and could be released"). State has also provided a detailed Vaughn Index explaining its withholdings. As the Second Stein Declaration and Vaughn Index make clear, the Department only withheld a relatively small number of lines comprising information that is predecisional and deliberative in nature, and it withheld in full only three short draft documents. State has therefore produced all non-exempt, "reasonably segregable portion[s]" of the responsive records. 5 U.S.C. § 552(b).

Plaintiff's arguments on segregability disregard well-settled law on the issue. With respect to the drafts of the proposed letter to Representative Cummings, Plaintiff ignores the fact that these documents are drafts and that settled law protects the entirety of the drafts from disclosure. *See Charles v. Office of the Armed Forces Med. Exam'r*, 979 F. Supp. 2d 35, 43 (D.D.C. 2013) (discussing *Russell v. Dep't of Air Force*, 682 F.2d 1045 (D.C. Cir. 1982) and observing that, following *Russell*, "judges in this circuit have found that similar draft documents do not contain reasonably segregable material, and thus are properly withheld in their entirety."). "[E]ven though preliminary drafts may indeed contain 'factual' information, the ultimate decision to include or exclude facts and information in the final product reflects the deliberations of agency decisionmakers, which would be improperly exposed upon comparison of the preliminary and final versions." *Id.*; *see also Competitive Enter. Inst.*, 161 F. Supp. 3d at 132 ("Any effort to segregate the 'factual' portions of the drafts, as distinct from their 'deliberative' portions, would run the risk of revealing 'editorial judgments[.]'"). Furthermore, Plaintiff's characterization of State's segregability statements as "broad" and "generalized," Pl. Opp. at 20,

is likewise misplaced, as shown by the fact that courts routinely find segregability obligations satisfied based on similar statements. *See, e.g., ACLU v. CIA*, 109 F. Supp. 3d 220, 244 (D.D.C. 2015) (agency demonstrated compliance with segregability requirement based on similar statements); *Rosenberg v. Dep't of Def.*, 442 F. Supp. 3d 240, 265-66 (D.D.C. 2020) (same); *Heartland All. for Human Needs & Human Rights v. U.S. Immigration & Customs Enf't*, 406 F. Supp. 3d 90, 128-29 (D.D.C. 2019) (same); *Touarsi v. Dep't of Justice*, 78 F. Supp. 3d 332, 350 (D.D.C. 2015) (same); *Dillon v. Dep't of Justice*, 102 F. Supp. 3d 272, 298 (D.D.C. 2015) (same); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 96 (D.D.C. 2010) (same); *Adionser v. Dep't of Justice*, 811 F. Supp. 2d 284, 295 (D.D.C. 2011) (same).

Lastly, given the sufficiency of State's declarations and Vaughn Index, *in camera* review is neither necessary nor appropriate here. *See* Pl. Opp. at 20. Courts generally conduct *in camera* review in exceptional, rather than routine, cases like the present matter. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978); *PHE, Inc. v. Dep't of Justice*, 983 F.2d 248, 252-53 (D.C. Cir. 1993) (noting that *in camera* review is generally disfavored); *Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec.*, 384 F. Supp. 2d 100, 119 (D.D.C. 2005) (“[C]ourts disfavor *in camera* inspection and it is more appropriate in only the exceptional cases.”). FOIA cases are typically decided on motions for summary judgment, based on an agency's supporting affidavits, which are entitled to a presumption of good faith. *Meeropol v. Meese*, 790 F.2d 942, 952 (D.C. Cir. 1986). As courts in this Circuit have recognized, *in camera* review is a “last resort,” *Hayden v. Nat'l Sec. Agency*, 608 F.2d 1381, 1387 (D.C. Cir. 1979) (internal quotations omitted), and should not be “resorted to as a matter of course, simply on the theory that ‘it can't hurt.’” *Quinon v. FBI*, 86 F.3d 1222, 1228 (D.C. Cir. 1996); *see also Hayden*, 608 F.2d at 1387 (reliance on agency submissions in lieu of *in camera* review “is in accordance with congressional

intent that courts give agency affidavits ‘substantial weight,’ in recognition of the agency’s expertise”). Plaintiff fails to show that this is the exceptional case that would warrant such review. Because State has provided declarations and a Vaughn Index that are sufficiently detailed to inform the Court of the specific information that has been withheld, and the bases for State’s withholdings, “in camera review is neither necessary nor appropriate.” *Hayden*, 608 F.2d at 1387.

### CONCLUSION

In response to Plaintiff’s FOIA requests, State properly withheld information falling within the scope of the deliberative process privilege under Exemption 5. The Department has articulated foreseeable harm that would result from the release of the withheld materials and has released all reasonably segregable information to Plaintiff. For these reasons, State respectfully requests that summary judgment be entered in its favor.

Dated: July 9, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

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/s/ Daniel Riess  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>CITIZENS FOR RESPONSIBILITY</b>	)	
<b>AND ETHICS IN WASHINGTON,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>U.S. DEPARTMENT OF STATE,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**Civil Action No. 1:20-cv-02044-CRC**

**SECOND DECLARATION OF ERIC F. STEIN**

Pursuant to 28 U.S.C. § 1746, I, Eric F. Stein, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department” or “State”) and have served in this capacity since January 22, 2017. Previously, I served as the Acting Director since October 16, 2016, and as the Acting Co-Director since March 21, 2016. I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other records access provisions. As the Director of IPS, I have original classification authority and am authorized to classify and declassify national security information. Prior to serving in this capacity, I worked directly for the Department’s Deputy Assistant Secretary (“DAS”) for Global Information Services (“GIS”) and served as a senior advisor and deputy to the DAS on all issues related to GIS offices and programs, which include IPS.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the FOIA, the Privacy Act, and the mandatory

declassification review requirements of Executive Order No. 13526 of December 29, 2009, governing classified national security information), by Members of Congress, by other government agencies, and those made pursuant to judicial process, such as subpoenas, court orders, and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. This Second Declaration responds to Plaintiff's Memorandum of Law in Support of Plaintiff's Cross-Motion for Summary Judgment and complements the Declaration dated May 7, 2021 ("First Declaration"), previously filed herein.

4. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject requests, and I am in charge of coordinating the agency's search and recovery efforts with respect to those requests.

**I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S FOIA REQUESTS**

5. On June 26, 2020, Plaintiff submitted two FOIA requests (Exhibit 1) to the Department. In the first request, Plaintiff 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."

6. In the second request, Plaintiff 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, Plaintiff requested the following:

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

Plaintiff asked that the Department “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, Plaintiff requested “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 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 CREW’s [June 18, 2020] complaint to the Department’s Office of Inspector General to review Department practices related to congressional oversight responses.”

7. By letters dated October 30, 2020 (Exhibit 2), November 30, 2020 (Exhibit 3), and January 6, 2021 (Exhibit 4), the Department informed Plaintiff that after reviewing in excess of 300 documents across both requests that no responsive records had yet been identified.

8. By letter dated February 26, 2021 (Exhibit 5), the Department informed Plaintiff that the Department had located seven responsive documents. The Department released all seven documents in part.

9. By letter dated March 15, 2021 (Exhibit 6), the Department informed Plaintiff that the Department had located five responsive documents. The Department released all five documents in part.

## **II. DESCRIPTION OF FOIA EXEMPTION CLAIMED**

### **FOIA Exemption 5 - Privileged Information**

10. 5 U.S.C. § 552(b)(5) provides in relevant part that the FOIA does not apply to “inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.”

11. Exemption 5 thereby protects from disclosure information that is normally privileged in the civil discovery context, including information that is protected by the deliberative process privilege.

12. As detailed below and in the Vaughn Index provided with the First Declaration, the Department withheld certain information in this case pursuant to the deliberative process privilege.

13. The withheld information included: (1) draft letters to House Representative Cummings and deliberative communications regarding edits to these draft letters; (2) deliberative information related to the numbers of pages preliminarily considered by subcomponents within the Department to be potentially responsive to congressional inquiries; and (3) deliberative communications discussing proposed agency strategy in responding to congressional inquiries, and regarding a proposed plan for a Department subcomponent to resume activities following a government shutdown.

14. As explained below, because all of the withheld information is either pre-decisional and deliberative in nature or constitutes pre-decisional factual information that would necessarily reveal the Department's deliberative process, the Department correctly withheld this information from disclosure under Exemption 5.

**A. Draft Letters to House Representative Elijah Cummings and Deliberative Portions of Related Communications**

15. The Department withheld in large part two drafts of a three-page letter from Mary Elizabeth Taylor, the then-Assistant Secretary of the Bureau of Legislative Affairs, responding to a January 14, 2019, letter from House Representative Elijah Cummings, Chair of the House Committee on Oversight and Reform. *See* Vaughn Index at 1. The draft letter concerns the status of six inquiries of the House Oversight and Government Reform Committee. The two drafts are numbered FL-2020-000132 02/26/2021 3-5, and FL-2020-000132 02/26/2021 7-9. *See id.*

16. To the best of my knowledge, the Department neither finalized this letter nor transmitted it outside the Department. This conclusion is based on (1) a reasonable inquiry and formal request made to the Congressional Correspondence Unit within the Department's Bureau of Legislative Affairs, which coordinates all congressional correspondence for the Department,

maintains a comprehensive database of incoming and outgoing congressional correspondence, and is responsible for facilitating formal, official communications between the Department and Congress; (2) a search of the Department's eRecords system for documents responsive to the relevant FOIA request; and (3) a review of Representative Cummings's website to see whether the Congressman had published or referenced the letter or a written Department response on his website.

17. The Department also redacted three lines from five pages of email communications reflecting, transmitting, and discussing proposed edits to these two drafts. These five pages are numbered FL-2020-00132 02/26/2021 1-2, FL-2020-00132 02/26/2021 6, and FL-2020-00132 03/15/2021 4-5.

18. Deciding how to phrase a letter to a member of Congress, as well as debating what to include or remove during the drafting process, forms part of the deliberative process preceding the final decision by the Department to transmit a finalized letter to that member. The draft letters here, and editing suggestions related to those draft letters, are both predecisional (because they predate any final version of the letter transmitted by Department officials, which was ultimately never transmitted to the best of the Department's knowledge) and deliberative (they reveal the drafters' and editors' preliminary, non-final thoughts about what information should be included in the letter). Therefore, the release of this information could reasonably be expected to have a chilling effect on the open and frank discussion of ideas, recommendations, and opinions that occurs when U.S. Government officials are drafting letters to be transmitted to members of Congress. If the withheld information were released, then Department employees may hesitate to offer their candid opinions to supervisors or coworkers about how to draft such letters, and such self-censorship would tend to degrade the quality of Department decisions.

19. The Department carefully reviewed the two drafts of the letter to Representative Cummings and the five pages of email communications reflecting proposed edits to the drafts to determine whether any non-exempt information could be released. Following this review, the Department determined that no portion of the two drafts could be reasonably segregated because all of the draft letter necessarily reflects the agency's preliminary thought processes regarding the content of a letter to a member of Congress. However, the Department determined that all but three lines from the five pages of email communications reflecting proposed edits to the drafts were segregable, and could be released.

**B. Deliberative Information Related to the Numbers of Pages Internally Considered by a Department Subcomponent Before a Final Agency Release Decision**

20. The Department withheld deliberative information related to the numbers of pages and of documents internally considered by a subcomponent of the Department to be potentially responsive to external document requests prior to a final agency determination as to whether the pages and documents were, in fact, responsive.

21. The Department redacted portions of twelve lines from a six-page internal Department memorandum dated May 30, 2019.

22. The six-page memorandum is entitled "IPS Quick Stats, May 24 – May 30." *See* Vaughn Index at 2. The memorandum is a weekly activities report prepared by employees of IPS and is distributed within that Office. The memorandum summarizes the status of ongoing document requests being processed by that Office under the FOIA and in response to congressional oversight inquiries, as well as other Office business. This memorandum is numbered FL-2020-000132 02/26/2021 12-17.

23. The Department withheld portions of twelve lines from this memorandum. These withheld twelve lines include the numbers of pages and of documents preliminarily considered to be potentially responsive to congressional oversight inquiries, and that have been shared between Department subcomponents prior to a final release determination. They also include 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.

24. The text surrounding the redacted twelve lines of the memorandum is as follows:

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, [number of documents/number of pages redacted] for production to the House Committee on Oversight and Reform.

(U) STATE-2019-08 Documents Related to Christopher Steele (SJC): On May 23, 2019, CDP provided H with two identical discs, [number of documents/number of pages redacted] for production to the Senate Judiciary Committee.

(U) CDP Production Statistics:

- Number of Documents/Pages produced to H in calendar year 2019: [number of documents/number of pages redacted]
- Number of Documents/Pages produced to H in calendar year 2018: [number of documents/number of pages redacted]
- Number of Documents/Pages produced to H in calendar year 2017: [number of documents/number of pages redacted]

Information Access Branch: [redacted]

25. The withheld information is predecisional, as it relates to preliminary assessments made by Department subcomponents of the numbers of pages and of documents potentially responsive to external document requests that precede the final release decisions made by the Department. Moreover, information related to these preliminary assessments are representative of draft production determinations by a Department subcomponent that are subject to revision by the Department. Releasing information related to these preliminary assessments would allow for

comparisons with the actual numbers of released pages, as well as the form in which those pages were produced. Releasing this information would therefore necessarily disclose internal Department deliberations regarding the actual number of pages that should be determined to be responsive to a congressional inquiry, as well as the form in which those pages should be produced to Congress.

26. Releasing this withheld information could reasonably be expected to chill the open and frank discussion between Department subcomponents regarding how to process potentially responsive documents in response to congressional inquiries, and in what form and quantity such documents should ultimately be released by the Department. It would expose “draft” considerations made by the Department: namely, preliminary assessments of the number of documents considered to be responsive to congressional inquiries, and of the form in which those documents should be released. If Department officials believed that the results of such a preliminary determination were to be made public under a FOIA request such as this, it is reasonably foreseeable that they would refuse to allow employees to provide such information in reports apprising IPS of the status of ongoing document requests. Given the considerable amount of time and resources necessary for the Office to process requests under the FOIA and congressional document requests, tracking the status of such requests is vital so that the Office can determine how best to implement its resources. Stemming the flow of this information will be harmful because it is reasonably foreseeable that backlogs will be created, and that it will take much longer for the Office to complete its processing and production of document requests to Congress and under the FOIA.

27. The Department carefully reviewed the six-page memorandum to determine whether it contained any non-exempt information that could be released. Following this review,

the Department decided that all of this six-page memorandum except for portions of twelve lines were segregable, and could be released.

**C. Deliberative Communications Discussing Proposed Agency Strategy in Responding to Congressional Inquiries, and a Proposed Plan to Resume Government Activities**

28. The Department withheld two sets of deliberative agency email communications preceding final agency decisions.

29. First, the Department withheld 16 lines and a column in a table with the heading “Status” in 15 pages of email exchanges. These email exchanges relate to a meeting between three Department subcomponents (Bureau of Legislative Affairs, Office of the Legal Adviser, and the Bureau of Administration’s Office of Information Programs and Services) to discuss Department strategy in responding to congressional inquiries. *See* Vaughn Index at 3. The fifteen pages of email exchanges are numbered FL-2020-00132 02/26/2021 18-20, FL-2020-00132 02/26/2021 26-27, FL-2020-00132 03/15/2021 1-3, FL-2020-00132 03/15/2021 6-7, FL-2020-00132 03/15/2021 8-10, FL-2020-00132 03/15/2021 11-12.

30. The withheld 16 lines and column include discussions of internal Department processes involved in formulating responses to congressional inquiries, together with suggested edits and status updates of these proposed responses.

31. Second, the Department withheld in full a two-page draft paper, and six lines from a four-page email exchange among Department employees discussing and attaching the draft paper. Vaughn Index at 5. The two-page draft paper consists of a proposed plan by IPS for resuming activities—including FOIA litigation and congressional document processing operations—following a Federal Government shutdown. The four-page email exchange attaches the proposed plan, and discusses whether and how to resume the Office’s activities. The four-

page email exchange is numbered FL-2020-000132 02/26/2021 26-29, and the two-page proposed plan is numbered FL-2020-000132 02/26/2021 30-31.

32. Both sets of email communications, and the draft plan, are predecisional and deliberative in nature. The first set of email communications is predecisional, as it precedes final Department determinations regarding how to respond to congressional inquiries, and deliberative, as it reflects the preliminary views of three Department subcomponents on this matter of agency policy. The second set of email communications and proposed plan are predecisional because they precede a final Department determination regarding whether and how IPS should resume activities following a government shutdown, including with respect to FOIA activities concerning cases in ongoing litigation. They are deliberative because they reflect the give-and-take of preliminary views as to whether and how IPS should resume its activities.

33. Releasing the withheld portions of these two sets of email communications and proposed plan could reasonably be expected to chill intra-Department discussions regarding how the Department should respond to outside congressional inquiries, and in what manner a Department subcomponent should resume government activities following a shutdown. Information and ideas exchanged in the course of these discussions enable Department officials to make informed decisions regarding how to direct scarce agency resources in pursuing Department policy goals. Revealing this information could reasonably be expected to chill the open and frank exchange of information and proposals during such discussions by exposing publicly the evolution from initial proposals to final, fully-informed decisions. Such disclosure would inhibit candid discussion and the frank expression of views and recommendations during such discussions. As a result, the Department's internal discussion process would become more

cumbersome, and the Department would be at increased risk of its future policy decisions being made with incomplete or incorrect information.

34. The Department carefully reviewed the 15 pages of email exchanges relating to the meeting between Department subcomponents to determine whether they contained any non-exempt information that could be released. Following this review, the Department determined that all of the 15 pages except for 16 lines and a column in a table were segregable and could be released.

35. The Department also carefully reviewed the two-page draft proposed plan for resuming activities following a shutdown, and the four-page email exchange discussing and attaching the draft paper. Following its review, the Department determined that no portion of the draft plan could be reasonably segregated because as a draft proposal, it necessarily reflects the agency's preliminary thoughts as to whether and how to resume activities. However, the Department determined that all but six lines from the four pages of email communications were segregable, and could be released.

### **III. CONCLUSION**

36. In summary, the information withheld by the Department under Exemption 5 included: (1) draft letters to Representative Cummings, together with deliberative communications regarding edits to these draft letters; (2) deliberative information related to the numbers of pages preliminarily considered by subcomponents within the Department to be potentially responsive to congressional inquiries; and (3) deliberative communications discussing proposed agency strategy in responding to congressional inquiries, and regarding a proposed plan for a Department subcomponent to resume activities following a government shutdown.

37. The Department has explained that the withheld information is both predecisional and deliberative in nature, and that the release of the withheld information could reasonably be expected to result in harm to the Department.

38. The Department has carefully reviewed all of the documents addressed herein for reasonable segregation of non-exempt information and has implemented segregation whenever possible. Otherwise, the Department determined that no segregation of meaningful information could be made without disclosing information warranting protection under the FOIA.

\* \* \*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of July 2021, in Washington, D.C.

A handwritten signature in blue ink, appearing to read "Eric F. Stein", is written over a horizontal line.

Eric F. Stein

# EXHIBIT

1



June 26, 2020

**BY EMAIL:** [foiarequest@state.gov](mailto: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

FOIA Officer

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June 26, 2020

- 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).

FOIA Officer  
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The President first demanded partisan cooperation with congressional oversight requests in 2017.<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup>

The Department continually cooperates with oversight requests from Senate Republican committee chairs, and continually ignores requests from House Democratic chairs.<sup>4</sup> 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.<sup>5</sup> 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%.<sup>6</sup> 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.<sup>7</sup>

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<sup>1</sup> 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>.

<sup>2</sup> 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/>.

<sup>3</sup> *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>.

<sup>4</sup> Engel Letter.

<sup>5</sup> 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.

<sup>6</sup> 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>

<sup>7</sup> 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

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](http://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](mailto: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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June 26, 2020

records to [dsherman@citizensforethics.org](mailto: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', with a long horizontal flourish extending to the right.

Donald K. Sherman  
Deputy Director



June 26, 2020

**BY EMAIL: [foiarequest@state.gov](mailto: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.

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**

FOIA Officer  
Page 2  
June 26, 2020

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).

The President first demanded partisan cooperation with congressional oversight requests in 2017.<sup>1</sup> 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.”<sup>2</sup> 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 the President’s directive to only cooperate with Republican oversight.<sup>3</sup>

The Department continually cooperates with oversight requests from Senate Republican committee chairs, and continually ignores requests from House Democratic chairs.<sup>4</sup> In response to Sen. Ron Johnson and Sen. Chuck 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.<sup>5</sup> These responses were made—voluntarily—amidst the Department’s response to the coronavirus pandemic, which IPS Director Stein declared, reduced the Department’s FOIA processing capability by 96%.<sup>6</sup> 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

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<sup>1</sup> 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>.

<sup>2</sup> 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/>.

<sup>3</sup> *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/2Uhq1g3>.

<sup>4</sup> Engel Letter.

<sup>5</sup> 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.

<sup>6</sup> 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>

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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.<sup>7</sup>

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.

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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").

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<sup>7</sup> 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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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](mailto: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](mailto: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', with a long horizontal flourish extending to the right.

Donald K. Sherman  
Deputy Director

# EXHIBIT

## 2



United States Department of State

Washington, D.C. 20520

October 30, 2020

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:

We refer to your letter dated June 26, 2020, regarding the release of certain Department of State under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552. The Department has reviewed in excess of 300 documents across both of your requests and has not identified any responsive records.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. To the extent another agency asserts that it can neither confirm nor deny the existence of certain records, the Department of State will similarly take the position that it neither confirms nor denies the existence of those records.

The processing of your request is ongoing. If you have any questions, you may contact Trial Attorney, Daniel Riess at [Daniel.Riess@usdoj.gov](mailto:Daniel.Riess@usdoj.gov). Please refer to case numbers, F-2020-06482/FL-2020-00132 and F-2020-06483/FL-2020-00133 and the civil action number, 20-cv-02044, in all correspondence about this case.

Sincerely,

A handwritten signature in blue ink that reads "Susan C. Weetman".

Susan C. Weetman  
Deputy Director  
Office of Information Program and Services

# EXHIBIT

3



United States Department of State

Washington, D.C. 20520

November 30, 2020

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:

We refer to our letter dated October 30, 2020, regarding the release of certain Department of State (“Department”) records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552. The Department has reviewed in excess of 300 documents across both of your requests and has not identified any responsive records.

The processing of your request is ongoing. If you have any questions, you may contact Trial Attorney, Daniel Riess at [Daniel.Riess@usdoj.gov](mailto:Daniel.Riess@usdoj.gov). Please refer to case numbers, F-2020-06482/FL-2020-00132 and F-2020-06483/FL-2020-00133 and the civil action number, 20-cv-02044, in all correspondence about this case.

Sincerely,

A handwritten signature in blue ink that reads "Susan C. Weetman".

Susan C. Weetman  
Deputy Director  
Office of Information Program and Services

# EXHIBIT

4



United States Department of State

Washington, D.C. 20520

January 6, 2020

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:

We refer to our letter dated November 30, 2020, regarding the release of certain Department of State (“Department”) records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552. The Department has reviewed in excess of 300 documents across both of your requests and has not identified any responsive records.

The processing of your request is ongoing. If you have any questions, you may contact Trial Attorney, Daniel Riess at [Daniel.Riess@usdoj.gov](mailto:Daniel.Riess@usdoj.gov). Please refer to case numbers, F-2020-06482/FL-2020-00132 and F-2020-06483/FL-2020-00133 and the civil action number, 20-cv-02044, in all correspondence about this case.

Sincerely,

A handwritten signature in black ink that reads "Jeanne Miller". The signature is written in a cursive style with a large, stylized 'J' and 'M'.

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

# EXHIBIT

5



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](mailto: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

# EXHIBIT

6



United States Department of State

Washington, D.C. 20520

March 15, 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 February 26, 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 five documents responsive to your request. Upon review, we have determined that all five records may be released in part. The processing of your request is now complete.

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 now complete. If you have any questions, you may contact Trial Attorney, Daniel Riess at [Daniel.Riess@usdoj.gov](mailto: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 black ink that reads "Jeanne Miller". The signature is written in a cursive, flowing style.

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

Enclosures:  
As stated

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,	)	
	)	Civil Action No. 1:20-cv-02044-CRC
Plaintiff,	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF STATE,	)	
	)	
Defendant.	)	
	)	

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

Pursuant to Local Civil Rule 7(h), Defendant submits this response to Plaintiff’s statement of undisputed material facts submitted with Plaintiff’s cross-motion for summary judgment [ECF No. No. 18-4].

Preliminarily, Defendant notes that it has filed its own motion for summary judgment in this action. This Statement is solely designed to respond to Plaintiff’s Statement of Material Facts by identifying which of the factual grounds for Plaintiff’s motion are disputed. In light of Defendant’s separate motion for summary judgment, the use of the word “disputed” or similar references herein should not be construed to mean that Defendant believes that there are genuine issues of fact that would necessitate a trial. Rather, such language simply means that Defendant disputes Plaintiff’s statement regarding that matter. Defendant maintains its position that there are no genuine issues of material fact with respect to the grounds entitling *Defendant* to summary judgment.

1. Disputed. This paragraph does not consist of a statement of material fact, but instead of Plaintiff’s characterization of the First Stein Declaration, ECF No. 16-2. Defendant

respectfully refers the Court to that declaration for a true and accurate statement of its contents, and to the Second Stein Declaration filed with Defendant's closing merits brief.

2. Disputed. This paragraph does not consist of a statement of material fact, but instead of Plaintiff's characterization of the First Stein Declaration. Defendant respectfully refers the Court to that declaration for a true and accurate statement of its contents, and to the Second Stein Declaration filed with Defendant's closing merits brief.

3. Disputed. This paragraph does not consist of a statement of material fact, but instead of Plaintiff's characterization of the First Stein Declaration. Defendant respectfully refers the Court to that declaration for a true and accurate statement of its contents, and to the Second Stein Declaration filed with Defendant's closing merits brief.

4. Disputed. This paragraph does not consist of a statement of material fact, but instead of Plaintiff's characterization of State's Vaughn Index, ECF No. 16-3. Defendant respectfully refers the Court to that Index for a true and accurate statement of its contents.

Dated: July 9, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO  
Deputy Director  
U.S. Department of Justice  
Civil Division, Federal Programs Branch

/s/ Daniel Riess  
DANIEL RIESS  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 353-3098  
Daniel.Riess@usdoj.gov  
*Attorneys for Defendant*