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INTRODUCTION

Defendants the Office of Management and Budget (“OMB”), the U.S. Department of Defense (“DoD”), and the U.S. Department of State (“State”) have fully and properly responded to Plaintiff’s Freedom of Information Act (“FOIA”) requests dated October 2, 2019, for documents related to the pause on Ukraine security and military assistance in the summer of 2019. Specifically, Plaintiff Citizens for Ethics and Responsibility in Washington (“CREW”) sought all records related to interagency meetings on July 18, 2019, July 23, 2019, and July 26, 2019, related to security or military aid to Ukraine,” as well as all communications between OMB and DoD and OMB and State on those three dates on that same topic. CREW also sought from OMB all communications to and from then-White House Chief of Staff Mick Mulvaney and Acting OMB Director Russell Vought between June 1, 2019 and September 11, 2019. Following extensive searches (which included each agency’s classified systems), Defendants produced all responsive, non-exempt information in rolling productions between February and October 2020.

Plaintiff is challenging only Defendants’ searches and their withholdings pursuant to FOIA Exemptions 5 and 6. The attached agency declarations and *Vaughn* indices establish that Defendants’ searches were adequate, that their Exemption 5 and 6 withholdings are proper, and that they released all segregable, non-exempt material. *See* Declaration of Heather V. Walsh (“Walsh Decl.”) & OMB *Vaughn* Index, Ex. 1; Declaration of Mark H. Herrington (“Herrington Decl.”) & DoD *Vaughn* Index, Ex. 2; Declaration of Eric F. Stein (“Stein Decl.”) & State *Vaughn* Index, Ex. 3. As explained further below, OMB, DoD, and State properly withheld draft documents and figures, prep memos, talking points, and deliberative portions of email communications subject to the deliberative process privilege. All three Defendants also properly withheld, pursuant to the presidential communications privilege, emails with immediate White

House advisors as well as handwritten notes, readouts, and memos regarding a Deputies Small Group meeting and other high-level meetings of the National Security Council (“NSC”) on Ukraine. Finally, DoD and State properly withheld the names of low-level agency employees in email communications and OMB properly withheld an employee’s personal information pursuant to Exemption 6 in order to protect their personal privacy. Accordingly, Defendants are now entitled to summary judgment on their processing of Plaintiff’s October 2, 2019 FOIA requests.¹

BACKGROUND

I. Plaintiff’s FOIA Requests

This case primarily arises from similar FOIA requests Plaintiff submitted to OMB, DoD, and State on October 2, 2019. *See* Walsh Decl. ¶ 3; Herrington Decl. ¶ 4; Stein Decl.

¶ 5. Plaintiff’s request to OMB sought five categories of records:

- “[A]ll communications to or from Director Mick Mulvaney between June 1, 2019 and September 11, 2019 related to withholding security assistance or military aid for Ukraine.”
- “[A]ll communications to or from Acting Director Russell Vought June 1, 2019 and September 11, 2019 related to withholding security assistance or military aid for Ukraine.”
- “[A]ll communications between OMB and the State Department on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.”

¹ As explained further below, Plaintiff submitted an additional FOIA request to OMB dated October 22, 2019, *see* Amended Compl. ¶ 22, ECF No. 6, but agreed that the processing of this request could be stayed pending OMB’s processing of its October 2 request. JSR at 2, ECF No. 8. After the parties submitted, and the Court adopted, a briefing schedule in this case, Plaintiff’s counsel clarified that Plaintiff is not withdrawing its October 22, 2019 request. Because Plaintiff is continuing to litigate its claims based on CREW’s October 22, 2019 request to OMB, OMB is moving only for partial summary judgment at this time. The other two Defendants in this case, DoD and State, have fully responded to Plaintiff’s requests and are thus entitled to summary judgment.

- “[A]ll communications between OMB and the Department of Defense on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.”
- “[A]ll records related to interagency meetings on July 18, 2019, July 23, 2019, and July 26, 201[9] in which security assistance or military aid for Ukraine was discussed.”

Walsh Decl. ¶ 5 & Ex. A. Plaintiff’s requests to DoD and State similarly sought records related to interagency meetings and communications with OMB on July 18, July 23, and July 26, 2019, related to security assistance or military aid to Ukraine. *See* Herrington Decl. ¶ 4 & Ex. A; Stein Decl. ¶ 5 & Ex. B. On October 22, 2019, Plaintiff submitted an additional FOIA request to OMB, seeking “all records supporting Director Mick Mulvaney’s October 17, 2019 claim that security assistance to Ukraine was temporarily withheld in part due to whether or not the government of Ukraine was cooperating in an investigation by the U.S. Department of Justice.” Oct. 22, 2019 Request, Ex. 4.

II. Defendants’ Responses to Plaintiff’s FOIA Requests

When Plaintiff filed suit on November 20, 2019, each agency had acknowledged Plaintiff’s FOIA requests but had not yet issued a final determination. *See* Walsh Decl. ¶ 3 & Ex. B; Herrington Decl. ¶ 5 & Ex. B; Stein Decl. ¶ 6 & Ex. C; Compl., ECF No. 1. After Defendants answered Plaintiff’s Amended Complaint, ECF No. 6, counsel for the parties conferred about the scope of the requests and proposed processing schedules to the Court. *See generally* JSR, ECF No. 8 (Jan. 24, 2020). In particular, Plaintiff agreed that Defendants could prioritize the processing of records sought in its October 2 requests and “defer the processing of the remainder of its FOIA requests until these priority productions are complete.” JSR at 2, ECF No. 8. To “expedite” the processing, Plaintiff further agreed that OMB could conduct its search within a set of documents that the agency had already collected “after reviewing multiple

Ukraine-related FOIA requests.” *Id.* at 2. The parties reached agreement on a processing and production schedule for OMB and DoD, *Id.* at 4–5. With respect to State, the Court imposed a monthly production schedule after the parties proposed competing schedules. *See* Minute Order (Mar. 3, 2020).

Over the next several months, Defendants completed their searches and produced all non-exempt portions of responsive records to Plaintiff.² Walsh Decl. ¶¶ 8–10; Herrington Decl. ¶ 12; Stein Decl. ¶ 7. In response to Plaintiff’s October 2 request, OMB identified 105 responsive records. Walsh Decl. ¶¶ 8, 10. OMB released in full or in part 62 records, with redactions pursuant to FOIA Exemptions 1, 5, and 6, *see* 5 U.S.C. §§ 552b(1), b(5), & b(6), and withheld in full 36 records pursuant Exemption 1 and seven records pursuant to Exemption 5. Walsh Decl. ¶¶ 8, 10. For its part, DoD identified 96 pages of responsive records. Herrington Decl. ¶ 12. DoD released in full or in part 61 pages with redactions pursuant to FOIA Exemptions 1, 3, 5, and 6, and withheld in full 35 pages of handwritten notes pursuant to Exemptions 1 and 5. *Id.* Finally, State identified 21 responsive records. Stein Decl. ¶ 7. State released in full or in part 13 records, with redactions pursuant to FOIA Exemptions 1, 5, and 6, and withheld in full five records pursuant Exemption 1 and three records pursuant to Exemptions 1, 5, and 6. *Id.*

III. Scope of Plaintiff’s Challenges

Following the completion of processing and productions in response to Plaintiff’s October 2, 2019 requests, counsel for the parties met and conferred to narrow the issues in dispute. In a Joint Status Report on October 15, 2020, the parties informed the Court that “CREW agreed not to challenge any of Defendants’ redactions of personal email addresses or

² Defendants’ processing and productions were temporarily paused during the COVID-19 pandemic. *See* State Mot. to Stay, ECF No. 10; JSR at 4 (Apr. 20, 2020), ECF No. 11.

telephone numbers pursuant to FOIA Exemption 6.” ECF No. 19 at 1. The parties further noted that “OMB, DoD, and State . . . agreed to provide . . . additional information about the basis for Defendants’ b(1) and b(3) withholdings” upon Plaintiff’s representation that it would use that information to further consider “narrowing or dropping its challenges” to those withholdings. *Id.* at 1–2. “Pursuant to the parties’ conferral, CREW agreed to withdraw its challenge to Defendants’ withholdings pursuant to FOIA Exemptions b(1) and b(3).” JSR at 1, ECF No. 20 (Oct. 20, 2020). The parties then jointly proposed a briefing schedule to the Court. *See id.*

In light of Plaintiff’s agreement to only challenge certain Exemption 6 withholdings and Defendants’ Exemption 5 withholdings, Defendants’ brief and the attached declarations and *Vaughn* indices only address those withholdings at issue. Defendants’ papers, moreover, do not address Plaintiff’s October 22, 2019 request to OMB, which remains pending and is not the subject of the instant Motion.

LEGAL STANDARD

“FOIA cases typically and appropriately are decided on motions for summary judgment.” *Defs. of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009) (citation omitted); *see also Brayton v. Office of the U.S. Trade Representative*, 641 F.3d 521, 527 (D.C. Cir. 2011). Summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “An agency may be entitled to summary judgment in a FOIA case if it demonstrates that no material facts are in dispute, it has conducted an adequate search for responsive records, and each responsive record that it has located has either been produced to the plaintiff or is exempt from disclosure.” *Miller v. U.S. Dep’t of Justice*, 872 F. Supp. 2d 12, 18 (D.D.C. 2012) (citing *Weisberg v. U.S. Dep’t of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980)).

The Court may award summary judgment in a FOIA action solely on the basis of information provided by the agency through declarations that describe “the documents and the justifications for nondisclosure with reasonably specific detail,” that “demonstrate that the information withheld logically falls within the claimed exemption[s],” and that are “not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981) (footnote omitted).

ARGUMENT

I. Defendants Conducted an Adequate Search for Responsive Records

An agency is entitled to summary judgment with respect to the adequacy of its search if the agency shows “that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990), *superseded by statute on other grounds* by Electronic FOIA Amendments Act of 1996, Pub. L. No. 104-231, 110 Stat. 3048 (Oct. 2, 1996). “[T]he issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the *search* for those documents was *adequate*.” *Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). An agency may fulfill its burden of demonstrating that it conducted an adequate search by “providing ‘a reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials . . . were searched.’” *Reep v. U.S. Dep’t of Justice*, 302 F. Supp. 3d 174, 180 (D.D.C. 2018) (alteration in original) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 313–14 (D.C. Cir. 2003)). Furthermore, “[a]gency affidavits are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.” *SafeCard Servs.*,

Inc. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (internal quotation marks and citation omitted).

The attached declarations of OMB Deputy General Counsel Heather V. Walsh, DoD Associate Deputy General Counsel Mark H. Herrington, and the Director of State's Office of Information Programs and Services ("IPS") Eric F. Stein demonstrate that Defendants have fully satisfied their obligation of conducting an adequate search for records responsive to Plaintiff's requests.

A. The Walsh Declaration Clearly Establishes that OMB's Searches Were Reasonably Calculated to Capture All Responsive Records

As noted above, the parties agreed that, to expedite the search for responsive records, OMB could conduct its search within the set of Ukraine documents that OMB had already compiled after receiving and reviewing multiple Ukraine-related FOIA requests. JSR at 2, ECF No. 8; Walsh Decl. ¶ 6. OMB had previously carried out the initial collection of records in October 2019 by transmitting a search order to the White House Office of Administration (OA), which "is a component of the Executive Office of the President (EOP)" that "provides enterprise email hosting services, cloud-based shared archives, and individual hard drive backup services for all EOP employees, including all OMB employees." *Id.* OMB requested OA to conduct "an agency-wide search of email, work folders, and calendar entries dated May 1, 2019 to September 30, 2019 for the following disjunctive terms: Ukraine, Ukraine Security Assistance Initiative, USAI, or Zelensk*." *Id.*

In response to Plaintiff's request, "OMB design[ed] a search within the existing Ukraine-related records collection" to "isolate[] groups of records corresponding to the five parts of the request." *Id.* Specifically, to reasonably capture all communications to then-White House Chief of Staff Mick Mulvaney and Acting OMB Director Russell Vought from June 1, 2019 to

September 11, 2019, OMB “collected all records dated June 1, 2019 to September 11, 2019” in which “Mulvaney” appeared in the to, from, cc, or bcc fields and all of Acting Director’s emails from that time period. *Id.* ¶¶ 7a–b. Next, to reasonably capture all communications with DoD and State on July 18, 2019, July 23, 2019, and July 26, 2019 regarding Ukraine, OMB “collected all records of communications that included email addresses containing the State Department’s email domain (“state.gov”)” and “the Defense Department’s email domain (“MIL.gov”)” on those three dates. *Id.* ¶¶ 7c–d. Finally, “OMB collected all records of communications or calendar invitation or appointments that included email addresses containing email domains other than OMB’s . . . dated on July 18, 2019, July 23, 2019, and July 26, 2019,” to reasonably capture any other records related to interagency meetings on those three dates. *Id.* ¶ 7e. These search parameters resulted in the collection of “approximately 1,400 potentially responsive documents,” which “OMB OGC attorneys reviewed . . . for responsiveness.” *Id.* ¶ 8.

Additionally, OMB conducted a search of its records “located in secure, classified (‘high-side’) records systems operated by the National Security Council. *Id.* ¶ 9. This search consisted of two parts. First, OMB requested a search of “all OMB custodians for records dated from July 11, 2019 to August 2, 2019 containing either of the terms ‘USAI’ OR ‘Ukraine’ and also containing any of the terms “‘meet*’ or ‘call’ or ‘agenda’ or ‘notes’” to reasonably capture any communications about or any records regarding the interagency meetings on July 18, July 23, and July 26, 2019. *Id.* Second, OMB requested a search of “all OMB custodians, for records dated between June 1, 2019 and September 11, 2019 where the text of the email address fields (i.e., to/from/cc/bcc) includes either ‘Mulvaney’ or ‘Vought’ and where the content of the email includes either ‘Ukraine’ or ‘USAI’” to reasonably capture any communications to then-White House Chief of Staff Mick Mulvaney and Acting OMB Director Russell Vought. *Id.* OMB then

reviewed each of the 248 potentially responsive records and determined that 36 of these high-side records were actually responsive to Plaintiff's request. *Id.*

The searches detailed in the Walsh Declaration more than satisfy OMB's obligation under the FOIA to make a "good faith effort . . . using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68. Accordingly, OMB is entitled to summary judgment on the adequacy of its search.

B. The Herrington Declaration Clearly Establishes That DoD's Searches Were Reasonably Calculated to Capture All Responsive Records

As explained in the Herrington Declaration, DoD also performed its search within a set of records the agency collected "[i]n light of heightened interest in the Ukraine Security Assistance Initiative ("USAI")" to ensure "efficient, thorough, and consistent responses to congressional requests, press inquiries, internal reviews, and FOIA requests from the public regarding USAI." Herrington Decl. ¶¶ 8, 9. On October 3, 2020, the DoD General Counsel issued a memorandum across DoD requesting all relevant custodians to "identify[], preserv[e], and collect[] documents and other records regarding the USAI" and to provide "such materials and information to the DoD Office of Information Counsel ("OIC")." *Id.* ¶ 8. OIC collected records from all relevant personnel within the offices that worked on USAI.³ *Id.* ¶ 9. OIC also "identified relevant custodians in each pertinent office" and requested IT specialists to conduct a search of their "email folders," "folders of electronically stored information on the custodians' individual 'H drives,'" and "their emails" at all classification levels, using the following search terms: "'USAI' OR (('Ukraine' or 'Ukrainian') AND ('security' OR '1250' OR ('FMF' OR 'Foreign Military

³ These included the Office of the Secretary of Defense, the Under Secretary Of Defense for Policy, the General Counsel's office, the DoD Comptroller's Office, the Joint Staff, European Command, the Defense Security Cooperation Agency, and Office of Legislative Affairs. Herrington Decl. ¶ 9.

Financing’) OR ‘impound’ OR ‘obligation’)).” *Id.* ¶ 10. The initial search was for records between May 1 and September 30, 2019, and was later supplemented with records dated June 1 through April 30, 2019. *Id.* All unclassified records were compiled “within an E-discovery tool,” and all classified records were stored “in PST files in Microsoft Outlook on a classified system.” *Id.*

To respond to Plaintiff’s FOIA request, DoD FOIA personnel performed an electronic search of “the set of potentially responsive records” described above “for any communications between all custodians within DoD and all persons with the email domain used by personnel at OMB on the dates of July 18, 23, or 26, 2019.” *Id.* ¶ 11. Those results were then manually reviewed by the declarant for responsiveness. *Id.* The Herrington Declaration further attests that “all records in the E-discovery software regarding USAI funding were reviewed for records related to interagency meetings on those dates that involved OMB” by reviewing the titles of emails during the relevant time frame for indication that they were regarding the interagency meetings. *Id.* Additionally, the declarant “searched all emails on the classified system on those dates” for communications with OMB personnel and “during the time frame of 15-31 July for discussions of interagency meetings.” *Id.* Using terms in responsive emails “found on the classified system, [the declarant] then searched the USAI e-discovery set for the same terms.” *Id.* Finally, at Plaintiff’s request, DoD agreed to conduct a supplemental search for paper records. *Id.* ¶ 12. The declarant, Mr. Herrington, asked those “DoD personnel [who] attend[ed] the meetings referenced in Plaintiff’s FOIA request” to “provide any paper records from those meetings,” which totaled 35 scanned pages of handwritten notes. *Id.*

In light of the detailed description in the Herrington Declaration of the “search terms and the type of search performed,” *Reep*, 302 F. Supp. 3d at 180, the declaration more than

establishes that DoD's search of its USAI documents and its supplemental search of physical records were "reasonably calculated to uncover all relevant documents," *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Accordingly, DoD has satisfied its obligation under the FOIA to conduct an adequate search for records responsive to Plaintiff's request. *See* Herrington Decl. ¶¶ 7–12.

C. The Stein Declaration Clearly Establishes That State's Searches Were Reasonably Calculated to Capture All Responsive Records

In response to Plaintiff's request, State conducted multiple searches within the relevant offices and bureaus to reasonably capture all responsive documents. *See* Stein Decl. ¶¶ 8–20. As explained in the Stein Declaration, "[e]ach office within the Department, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission." *Id.* ¶ 9. In this case, IPS, upon "consulting with several offices and bureaus within the Department," identified three offices that "were reasonably likely to have documents responsive to Plaintiff's request": the Bureau of European and Eurasian Affairs [("EUR")], the Executive Secretariat, and the Department's consolidated email records archive." *Id.* ¶ 10.

First, upon the parties' agreement, State requested former Acting Ambassador to Ukraine, William B. Taylor, Jr., and Deputy Assistant Secretary ("DAS") of EUR, George Kent, to conduct a "manual search for non-email records related to the July 18, 2019, July 23, 2019, and July 26, 2019 interagency meetings." *Id.* ¶¶ 13, 14. Both located "a personal notebook containing handwritten notes from the relevant time period." *Id.* ¶¶ 13–14. A Department attorney in the Office of Management "manually reviewed each page of notes" of Acting Ambassador Taylor's notebook and "determined that none were responsive to Plaintiff's request;" DAS Kent did the same for his own notebook, finding no responsive records. *Id.*

“DAS Kent also located a file of hard-copy papers from the relevant time period that yielded two responsive records.” *Id.* ¶ 14.

Second, State conducted searches within its Executive Secretariat Staff (“S/ES-S”), which is “responsible for coordinating search responses” for multiple offices, including the Office of the Secretary of State (“S”) and the Office of the Under Secretary for Political Affairs (“P”). *Id.* ¶ 15. The Stein Declaration attests that an “S/ES-S Government Information Specialist, who was knowledgeable of both the FOIA request at issue and relevant S/ES records systems,” determined that the electronic records systems “that were reasonably likely to contain responsive records were Everest,” which archives “documents containing substantive foreign policy information passing to, from, and through the offices of the Secretary of State, the Deputy Secretaries of State, and other Department principal officers,” and the “S/ES email archives.” *Id.* ¶ 16 & n.2. The declaration further explains the search strings used and the date range for the searches: June 1, 2019 to August 31, 2019.⁴ *Id.* In addition, a “Special Assistant in P” was tasked with conducting “a search of the P unclassified and classified share drives and the electronic calendar of Under Secretary David Hale,” as well as “P paper files,” using the search terms “OMB, Ukraine, and Mulvaney,” and date range from January 1, 2018 to February 20, 2020. *Id.* ¶ 17.

Third, State searched its eRecords Archive, which is the “Department’s central repository for storing electronic records,” including “all emails sent and received on the state.gov network since January 1, 2017.” *Id.* ¶ 18. The Stein Declaration attests that an “IPS analyst, who was

⁴ Specifically, the Government Information Specialist searched Everest using the search terms “Ukraine; Ukrainian; DSG; ‘Deputies Small Group,’ OMB; ‘military Assistance’; and ‘security Assistance.’” Stein Decl. ¶ 16. The specialist also searched the unclassified and classified email archives of Under Secretary David Hale using the search terms “(Ukraine OR Ukrainian) AND (OMB OR NSC OR USAI OR interagency OR ‘military aid’ OR ‘security assistance’).” *Id.*

knowledgeable of both the FOIA request at issue and the eRecords system, conducted two searches for electronic records using the eRecords system.” *Id.* ¶ 19. The analyst first searched the emails of former Acting Ambassador to Ukraine William B. Taylor Jr., Deputy Assistant Secretary George Kent, and Under Secretary David Hale, and the documents from four Department bureaus—EUR, the Office of U.S. Foreign Assistance (“F”), P, and S—for all records dated between July 1, 2019 to August 31, 2019, and containing the terms “(Ukraine AND OMB).” *Id.* The second search sought records containing the term “(‘Ukraine FMF’)” of five Department custodians—Acting Assistant Secretary for Legislative Affairs Ryan Kaldahl, former Deputy Assistant Secretary for Senate Affairs Colleen Donnelly, Strategic Adviser for the Assistant Secretary for EUR Tyler Brace, and two below-DAS officials within the Bureau of Political-Military Affairs (“PM”)—from July 1, 2019 to August 31, 2019. *Id.*

In light of the comprehensive searches described in Stein Declaration, and given the declarant’s attestation that, “IPS determined that no other components or records systems were reasonably likely to maintain documents responsive to Plaintiff’s requests, and that the tasked components searched all files reasonably likely to contain relevant documents,” *id.* ¶ 20, State is entitled to summary judgment with respect to the adequacy of its search.

II. Defendants Properly Withheld Exempt Information Pursuant to Well-Established FOIA Exemptions

Although FOIA “strongly favors prompt disclosure, its nine enumerated exemptions are designed to protect those ‘legitimate governmental and private interests’ that might be ‘harmed by release of certain types of information.’” *August v. FBI*, 328 F.3d 697, 699 (D.C. Cir. 2003) (quoting *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989)). An agency that withholds responsive material pursuant to one of the enumerated exemptions bears the burden to show that the asserted exemption applies. *ACLU v. U.S. Dep’t of Def.*, 628 F.3d 612, 619 (D.C.

Cir. 2011). “Ultimately, an agency’s justification for invoking a FOIA exemption is sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374–75 (D.C. Cir. 2007) (citations omitted).

In this case, Defendants properly withheld information pursuant to FOIA Exemptions 5 and 6. The attached declarations and *Vaughn* indices amply demonstrate that OMB, DoD, and State have met their burden of providing logical and plausible justifications for their withholdings and are thus entitled to summary judgment with respect to their processing of Plaintiff’s October 2 FOIA requests.

A. Defendants Properly Withheld Information Pursuant to FOIA Exemption 5

FOIA Exemption 5 generally exempts from disclosure “inter-agency or intra-agency memorandums or letters that would not be available by law to a party . . . in litigation with the agency.” 5 U.S.C. § 552(b)(5). This exemption “encompass[es] the protections traditionally afforded certain documents pursuant to evidentiary privileges in the civil discovery context.” *Rockwell Int’l Corp. v. U.S. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001) (quoting *Formaldehyde Inst. v. U.S. Dep’t of Health and Human Servs.*, 889 F.2d 1118, 1121 (D.C. Cir. 1989)). Exemption 5 incorporates two privileges that are relevant here: the deliberative process privilege and the presidential communications privilege. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008). The attached declarations and *Vaughn* indices clearly establish that OMB, DoD, and State have met their burden of providing logical and plausible justifications that the withheld information falls under either privilege. *See* Walsh Decl. & OMB *Vaughn* Index; Herrington Decl. & DoD *Vaughn* Index; Stein Decl. & State *Vaughn* Index.

1. Deliberative Process Privilege

All three Defendant agencies withheld documents involving intra- or inter-agency communications pursuant to the deliberative process privilege. *See* 5 U.S.C. § 552(b)(6). In fact,

Plaintiff's FOIA requests call for precisely such communications, making it entirely reasonable and foreseeable that a significant percentage of responsive records would contain information protected by the deliberative process privilege, which is intended "to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8–9 (2001) (citation omitted). The deliberative process privilege rests on the "obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery" *Id.* The privilege further "protects the public from confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon." *Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. U.S. Dep't of Justice*, 591 F.2d 753, 772–73 (D.C. Cir. 1978)).

To properly fall within the ambit of the deliberative process privilege, withheld material must be "both 'predecisional' and 'deliberative.'" *Boyd v. Exec. Off. For the U.S. Attys*, 87 F. Supp. 3d 58, 84 (D.D.C. 2015) (Hogan, J.) (quoting *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006)). Material is "predecisional" if it was "generated before the adoption of an agency policy." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). An agency need not, however, "identify a *specific* decision" to which withheld materials contributed, as the exemption is "aimed at protecting [an agency's] decisional *process*." *Access Reports v. DOJ*, 926 F.2d 1192, 1196 (D.C. Cir. 1991) (first emphasis added). Material is "deliberative" if it "reflects the give-and-take of the consultative process." *Coastal States*, 617 F.2d at 854, 866. Critically, "the legitimacy of withholding does not turn on whether the material is purely factual in nature or whether it is already in the public domain, but rather whether the selection or organization of facts is part of the agency's deliberative process." *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 641 F.3d 504, 513 (D.C. Cir. 2011).

Of particular relevance here, courts in this Circuit have routinely upheld the withholding of “factual summaries . . . culled . . . from the much larger universe of facts,” *id.*; “drafts, recommendations, proposals, and suggestions that reflect the personal opinions of the author,” *Bloomberg, L.P. v. SEC*, 357 F. Supp. 2d 156, 168 (D.D.C. 2004), and briefing materials intended to advise and inform senior agency officials, *Access Reports*, 926 F.2d at 1196–97. Below, Defendants summarize their deliberative process withholdings, which are further justified, on a document-by-document basis, in the attached *Vaughn* indices.

a. OMB Properly Applied the Deliberative Process Privilege to Withhold Information and Draft Documents Reflecting Intra- and Inter-Agency Deliberations on Ukraine Assistance

In this case, OMB applied the deliberative process privilege to withhold information in a total of 53 documents. *See* Walsh Decl. ¶ 22 & OMB Vaughn Index Docs. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 52, 53, 54, 65, 66, 67, 68, 69. Generally speaking, “OMB withheld information that reflects discussions, deliberations, and recommendations between and amongst OMB and other Executive Branch personnel regarding ongoing deliberations over the central decision to be made by the President of how best to spend Ukraine security assistance funds.” Walsh Decl. ¶ 23. “[T]o preserve the status quo until an overall decision was reached . . . OMB officials periodically deliberated on, and then issued time-limited ‘holds’ . . . executed through a series of OMB-issued footnotes[.]” *Id.* ¶ 24; *see also, e.g.*, OMB *Vaughn* Index, Doc. 2 (July 26, 2019 footnote). Because OMB’s role centered on “the creation and proper execution of the . . . spending holds,” much of the withheld information comprises discussion with “staff of the Department of Defense (DOD) and the Department of State” to “collect[] and synthesiz[e] information about the Ukraine Security Assistance Program.” *Id.* Additionally, much of the deliberative information in the responsive records also comprise

“more immediate decisions, such as exactly how to implement a course of action (e.g., [Docs.] 36, 39, 54), how to interpret a decision (e.g., [Docs.] 10, 11, 38), or when to raise an issue at a meeting (e.g., [Docs.] 51, 62), all of which are distinct decisions necessary for the conduct of normal agency operations.” *Id.* ¶ 25. These “intermediate decisions regarding the scope, nature, and duration of the hold on Ukraine aid were necessary steps to make decisions on how to implement the pause on Ukraine aid.” *Id.* As such, “the force disclosure of information regarding any of these deliberations would harm OMB’s future ability to conduct frank and open deliberations regarding execution of Federal funds.” *Id.*

More specifically, OMB appropriately withheld under the deliberative process privilege discussions between OMB officials (e.g., Docs. 6, 17, 25) and between OMB and other Executive branch officials (e.g., 11, 12, 13, 14, 36, 38, 52) in email communications, memoranda (e.g., Doc. 10), and drafts (e.g., Docs. 15, 33, 57) that were “created as part a decision-making process conducted among OMB staff pursuant to OMB’s authority to oversee the execution of spending policy,” in particular, how to implement the pause on Ukraine aid. *Id.* ¶ 26. As the Walsh Declaration attests, and as OMB’s *Vaughn* further explains on a document-by-document basis, the redacted information is “pre-decisional because, in each case of redacted information, officials were discussing matters intended to be subsequently decided based on these deliberations.” *Id.*; *see also* OMB *Vaughn* Index. The information is also deliberative because “it reflects the weighing of options, queries, opinions, and arguments as part of confidential discussions and deliberations that informed the Executive Branch’s internal policy formulation process regarding how best to spend Ukraine Security assistance funds,” the disclosure of which would result in future “frank discussions being chilled by the effects of public scrutiny.” Walsh Decl. ¶ 26. Courts routinely uphold the withholding of such give-and-take deliberations, not

only in memoranda and formal policy recommendations, but also in email communications.⁵

See, e.g., Ctr. for Biological Diversity v. EPA, 369 F. Supp. 3d 128, 135 (D.D.C. 2019) (holding that material in email chains constitute deliberative communications exempt from disclosure); *Pub. Citizen, Inc. v. U.S. Dep't of Educ.*, 388 F. Supp. 3d 29, 42 (D.D.C. 2019) (same); *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 9 (D.D.C. 2014) (same).

The deliberative process privilege also covers deliberative exchanges and talking points regarding how to respond to inquiries from the press and Congress because “[r]evealing their contents would expose the process by which agency officials crafted a strategy for responding.” *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 320 F. Supp. 3d 162, 177 (D.D.C. 2018) (explaining that “these sorts of documents” are pre-decisional and deliberative). Here, OMB applied the deliberative process privilege to withhold portions of email chains reflecting advice and recommendations about how to respond to requests for information from Congress or the media, including the development of talking points (e.g., Docs. 7, 8, 25, 29). Protecting this information from disclosure is essential to ensuring that agency employees can continue to engage in the frank and honest exchanges of their analysis and recommendations, and to avoid public confusion regarding the agency’s official position. *See* Walsh Decl. ¶ 27. Accordingly, this information was also properly withheld under the deliberative process privilege.

Moreover, OMB withheld deliberative information from Acting Director Vought’s briefing materials (e.g., Docs. 4, 9, 22, 30) and daily and weekly memos “compiling readouts from events, meetings, and other matters for his consideration” (e.g., 23, 24, 32) that were

⁵ As explained below, six of these documents also comprise or memorialize Presidential communications and were thus withheld in full. *See* Walsh Decl. ¶ 15; OMB *Vaughn* Index Docs. 41, 42, 48, 54, 66, 69. The Court need not analyze whether the discussions in these documents is also deliberative unless it concludes that they are not protected by the presidential communications privilege.

unrelated to the subject of Plaintiff’s request. *Id.* ¶ 29. These briefing materials and memos reflect OMB officials’ analysis of the issues requiring the Acting Director’s attention and recommended action items. *Id.* As the D.C. Circuit noted, when “factual summaries” are “culled . . . from [a] much larger universe of facts . . . and reflect an ‘exercise of judgment as to what issues are most relevant to the pre-decisional findings and recommendations,’” they reflect the agency’s “pre-decisional deliberative process.” *Ancient Coin Collectors Guild*, 641 F.3d at 514–15 (citation omitted). Disclosure of this information, moreover, would “reveal [the] timing and scope of OMB’s deliberations on these topics as well as the agency’s internal deliberation processes,” Walsh Decl. ¶ 29. These withholdings are thus logical and plausible under the deliberative process privilege.

Finally, OMB withheld in full a draft document (Doc. 57) “discussing Ukraine security assistance” which contain “edits, marginal suggestions and comments, and/or embedded questions regarding content.” Walsh Decl. ¶ 28. This rough draft is clearly pre-decisional (it precedes the agency’s final views or recommendations on the matter) and deliberative (it reflects the author’s personal opinions and views). *Id.*; *see also Coastal States*, 617 F.2d at 866 (finding the deliberative process privilege “covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency”); *Nat’l Security Counselors v. CIA*, 320 F. Supp. 3d 200, 217 (D.D.C. 2018) (upholding CIA’s withholding of draft document containing, *inter alia*, “comments, recommendations, and edits” that “do not convey final Agency viewpoints on a particular matter, but rather reflect different considerations, opinions, options, and approaches that preceded an ultimate decision or are part of a policy-making process”); *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007) (concluding that drafts are commonly protected by the deliberative process privilege). As the Walsh Declaration attests, “[d]isclosure of

such material could mislead the public as the comments and text of the draft documents often differ, sometimes significantly, from final agency positions.” Walsh Decl. ¶ 28. Accordingly, OMB properly withheld this rough draft in full.

b. DoD Properly Applied the Deliberative Process Privilege to Withhold Intra- and Inter-Agency Deliberations on Ukraine Assistance, Including Deliberations at High-Level NSC Meetings

DoD applied the deliberative process privilege to a total of 19 documents. *See* DoD Vaughn Index Docs. 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21. As explained in the Herrington Declaration, “[t]hese records memorialize the advice and recommendations of both DoD and other Executive branch agencies, advice on how best to proceed[,] and requests for additional analysis from relevant agencies.” Herrington Decl. ¶ 19. In particular, the withheld information comprises email discussions about how to respond to the hold on DoD’s obligation of funds under USAI (Doc. 1), DoD’s communications with NSC regarding a matter unrelated to USAI funding (Doc. 4); materials prepared in advance of interagency meetings on the dates referenced in Plaintiff’s FOIA request regarding Ukraine and the USAI funding (Docs. 5, 15); emails relaying discussions that occurred at those meetings and actions that should be taken in furtherance of ongoing interagency deliberations to advise the President (Docs. 6, 7, 8, 16); the handwritten notes of DoD attendees that were taken at those meetings in order to produce emails to senior DoD leadership (Docs. 17, 18, 19, 20, 21); and follow-up discussions analyzing information from those meetings and advising how DoD should proceed or relaying further deliberations to the NSC (Docs. 9, 10, 11, 12, 13, 14). *Id.* ¶¶ 16–21.

To start, DoD properly withheld information in a prep memo for a July 26, 2019 NSC Deputies Small Group (“DSG”) meeting on Ukraine (Doc. 5) and a deliberative email chain in advance of the July 23, 2019 NSC Policy Coordination Committee (“PCC”) (Doc. 15). The prep

memo contains “[a]dvice and recommendations about what issues to raise for DoD” at the DSG, *see* DoD *Vaughn* Index, Doc. 5, and the email chain reflects “questions from the Deputy National Security Advisor to the Undersecretary of Defense regarding USAI funding and asking the opinions of DoD for [the] upcoming PCC,” *see* DoD *Vaughn* Index, Doc. 15. It is well-established that information reflecting advice and recommendations being sent up to senior officials as part of an agency’s decisionmaking process is protected. *See, e.g., Access Reports*, 926 F.2d at 1196–97. Accordingly, Defendants have properly withheld under the deliberative process privilege such inquiries, advice, and recommendations.

In addition, DoD applied the privilege to protect information in emails reflecting DoD officials’ internal discussions of how to respond to the hold on Ukraine aid, DoD’s discussions with the NSC regarding an unrelated matter, and DoD’s analysis of the deliberations that occurred at the above NSC meetings and advice on how DoD should proceed. *See* Herrington Decl. ¶¶ 16–19 & DoD *Vaughn* Index Docs. 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16. Such information is clearly pre-decisional (it pertains to DoD’s ongoing decisionmaking process of how to respond to and advise the President on Ukraine funding) and deliberative (it reflects the opinions and recommendations of individual DoD officials). As argued above, courts routinely uphold such deliberations, even in email communications. *See supra* at 18.

Finally, DoD properly withheld in full five documents comprising 35-pages of handwritten notes taken by DoD attendees at the July 18, 2019 sub-PCC, July 23, 2018 PCC, and July 26, 2019 DSG meetings on Ukraine. *See* DoD *Vaughn* Index Docs. 17–21. These notes reflect “the impressions of the attendee on what is important to relate to senior DoD leadership for further deliberations in advance of advising the President on national security matters,” *id.*, and also “advice and recommendations of DoD and other federal agencies and a list of due outs

for those agencies to accomplish, all in furtherance of advising the President,” DoD *Vaughn* Index, Doc. 18. Courts routinely hold that such notes and analysis of meetings are properly protected under the deliberative process privilege. *See, e.g., Bloomberg*, 357 F. Supp. 2d at 169 (handwritten meeting notes and memo; *Nat’l Right to Work Legal Def. and Educ. Found. v. U.S. Dep’t of Labor*, 828 F. Supp. 2d 183, 190 (D.D.C. 2011) (handwritten notes and meeting minutes); *Judicial Watch of Fla., Inc. v. U.S. Dep’t of Justice*, 102 F. Supp. 2d 6, 14 (D.D.C. 2000) (handwritten meeting notes).

All of the above documents clearly “reflect[] the give-and-take of the consultative process.” *Coastal States*, 617 F.2d at 854, 866. And DoD expressly attests that the release of the withheld information “could chill such candid advice in the future on sensitive matters, including how to engage with other federal agencies.” Herrington Decl. ¶¶ 16, 19. Accordingly, DoD properly applied the deliberative process privilege to the documents at issue.

c. State Properly Applied the Deliberative Process Privilege to Withhold Intra- and Inter-Agency Deliberations on Ukraine Assistance, Including Deliberations at High-Level NSC Meetings

State applied the deliberative process privilege to withhold—in full or in part—protected information in 11 documents, consisting of threaded email chains between State, OMB, and DoD officials and documents, including a page of handwritten notes, a readout, and memos in preparation for, or summarizing, NSC meetings on Ukraine. *See* Stein Decl. ¶ 24 & State *Vaughn* Index Docs. 1, 2, 3, 4, 5, 6, 7, 9, 10, 13, 16. As explained in the Stein Declaration, the withheld information squarely falls under the protection of the deliberative process privilege because it reflects “the internal exchange of ideas and recommendations . . . pertaining to certain prominent policy decisions,” including three interagency meetings specified in Plaintiff’s request, in which Ukraine Foreign Military Financing (“FMF”) funds were discussed.” Stein Decl. ¶ 24.

More specifically, State has withheld information in email communications among State officials and with officials in OMB and DoD about funding allocations, including Ukraine FMF funding, such as draft figures (e.g., Doc. 3), discussions surrounding a potential delay in the allocation of funding, (e.g., Doc. 1), and views regarding the impact such a delay may have on the agencies' draft guidance documents and internal processes and procedures, including State's "procedures for processing and calculating foreign assistance allocations" (e.g., Doc. 4). State's *Vaughn* Index further identifies, on a document-by-document basis, the specific decision or on-going decisionmaking process to which the claimed redactions apply, and also specifies the types of calculations, inquiries, opinions, and recommendations offered. In light of these detailed justifications, and for the reasons stated above, *see supra* at 18, State properly applied the deliberative process privilege to withhold this information.

In addition, State properly withheld information in three documents that memorialize and analyze the substance of the discussions that occurred at the same high-level NSC meetings discussed above, which were part of an ongoing interagency process to advise the President about a hold on Ukraine assistance. These documents include DAS Kent's handwritten notes from the July 23, 2019 NSC PCC meeting (Doc. 5), a readout of the July 26, 2019 NSC DSG meeting (Doc. 10), and a cover email chain transmitting that readout which analyzes the meeting and its implications for State (Doc. 9). As argued above, handwritten meeting notes and readouts not only reveal the mental impressions of the author about the meeting, but also expose the underlying deliberations themselves. *See supra* at 21–22. Disclosure of these documents would "severely undermine" the ability of "meeting participants [to] . . . feel at liberty to engage in an open discussion." *Bloomberg*, 357 F. Supp. 2d at 169. Furthermore, the redacted information in the cover email chain reflects the analysis of State officials about "the possible effect of [these]

interagency discussions on Department procedures” prior to “any decisions about whether the assistance allocations would be processed and on what timeline.” *See State Vaughn Index*, Doc.

9. Disclosure of this analysis would similarly chill officials’ willingness to offer their frank assessments of sensitive foreign policy issues in the future.

Finally, for the same reasons stated above, State, like DoD, properly withheld a prep memo for the July 26 DSG meeting (Doc. 13). *See supra* at 20–21. As described in State’s *Vaughn Index*, this prep memo contains “guidance provided to a senior Department official” about what to expect and say at the meeting, and contains information that was eventually conveyed during the meeting, which was “solicited, attended, and led by immediate White House advisers in the course of preparing advice to the President regarding Ukraine aid.” *See State Vaughn Index*, Doc. 13.

Because State has adequately established that each of these documents is both pre-decisional and deliberative and the disclosure of information contained therein would result in “substantial harm” by “chilling the open and frank exchange of comments and opinions,” “revealing the internal development and implementation of Department and Executive branch policies and procedures surrounding the provision and processing of foreign aid,” and “risking public confusion” about the agency’s final decisions, Stein Decl. ¶ 25, State properly applied the deliberative process privilege throughout its productions to Plaintiff.

2. Presidential Communications Privilege

All three Defendant agencies also withheld information protected by the presidential communications privilege. It is well-established that Exemption 5 protects from disclosure communications between the President and his advisors. *See Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004). The presidential communications privilege is

“fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” *United States v. Nixon*, 418 U.S. 683, 708 (1974). The privilege is intended to “preserve[] the President’s ability to obtain candid and informed opinions from his advisors and to make decisions confidentially.” *Loving*, 550 F.3d at 37. As the Supreme Court recognized, “[t]he President’s need for complete candor and objectivity from advisers calls for great deference from the courts,” *Nixon*, 418 U.S. at 706, and judicial negation of the privilege “is subject to greater scrutiny than denial of the deliberative privilege,” *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

The presidential communications privilege is also broader than the deliberative process privilege. *See id.* Not only does it apply to “documents in their entirety;” it also “covers final and post-decisional materials as well as pre-deliberative ones.” *Id.* Nor is the presidential communications privilege limited to communications made directly to the President; it also applies to “communications made by presidential advisers in the course of preparing advice for the President.” *Id.* at 752. That is, although the privilege does not independently extend to Executive branch agencies, it encompasses communications “solicited and received” by close White House advisers and their staff in the course of “investigating and formulating the advice to be given the President” as well as the communications “they authored themselves.” *Id.* “Courts in this district have also found that the privilege extends to internal agency documents that memorialize privileged communications between the agency and President or immediate White House advisers.” *Property of the People, Inc. v. Office of Mgmt. and Budget*, 330 F. Supp. 3d 373, 387 (D.D.C. 2018) (citing *Citizens for Resp. and Ethics in Wash. v. DHS*, No. 06-0173, 2008 WL 2872183 (D.D.C. Jul. 22, 2008)).

Below, Defendants summarize their withholdings subject to the presidential communications privilege, which are further justified on a document-by-document basis in the attached *Vaughn* indices.

a. OMB Properly Withheld Communications and Information Protected by the Presidential Communications Privilege

OMB withheld in full six documents pursuant to the presidential communications privilege. Portions of these documents are also protected from disclosure under the deliberative process privilege because, as explained below, they “contain privileged information about then-ongoing deliberations regarding Ukraine security assistance funds.” Walsh Decl. ¶ 25; OMB *Vaughn* Index, Docs. 41, 42, 48, 54, 66, 69. These six documents fall into two categories: (1) “communications made by presidential advisers in the course of preparing advice for the President,” *In re Sealed Case*, 121 F.3d at 752; or (2) “documents that memorialize privileged communications,” *Property of the People, Inc.*, 330 F. Supp. 3d at 387 (citation omitted).

First, OMB properly withheld four email chains (Docs. 41, 48, 54, 66) and an attachment (Doc. 42 (attachment to Doc. 41)) containing communications between immediate White House advisors and OMB officials for the purpose of advising the President on Ukraine funding. As described in the Walsh Declaration, each of the four withheld email chains and attachment contain communications to or from senior White House Advisor Robert Blair or White House Chief of Staff Mick Mulvaney, both of whom qualify as close White House advisors for purposes of the privilege. *See* Walsh Decl. ¶ 15.

The inquiry for whether an official is entitled to the presidential communications privilege turns on the advisor’s proximity to the President and the relationship between the nature of that advisor’s responsibilities and the subject of the communications at issue. *See In re Sealed Case*, 121 F.3d at 752. In this case, the Walsh Declaration establishes that Mr. Blair had

“broad and significant responsibility” in the area of national security—in particular, assistance to Ukraine. *Id.*; *see* Walsh Decl. ¶¶ 16–17. As an Assistant to the President, Mr. Blair was among “the most senior class of Presidential aides” who “work in close proximity to the President and, and meet and travel with the President frequently.” *Id.* ¶ 16. Specifically, Mr. Blair, who was “one of the senior-most White House policy officials who advised the President on aid to other countries, including Ukraine,” “sought and obtained information from OMB related to government aid to Ukraine for the purpose of advising the President.” *Id.* Based on these attestations, another court in this District expressly held that Mr. Blair qualified as a close Presidential advisor on Ukraine assistance in a FOIA case seeking related Ukraine documents. *See Ctr. for Pub. Integrity v. U.S. Dep’t of Def.*, —F. Supp. 3d—, 2020 WL 5095520, at *17 (D.D.C. Aug. 28, 2020) (Kollar-Kotelly, J.). Moreover, the Walsh Declaration establishes that Mr. Mulvaney was also responsible for “advising the President on matters of national security, including security assistance to Ukraine.” *Id.* ¶ 19. The D.C. Circuit has long recognized that the President’s Chief of Staff, due to his proximity to the President and his duties, constitutes an immediate presidential advisor. *See In re Sealed Case*, 121 F.3d at 758.

The Walsh declaration further establishes that the withheld communications were for the purpose of soliciting and receiving information from OMB in furtherance of providing advice to the President on Ukraine. *See* Walsh Decl. ¶ 17 (“[T]o formulate his advice to the President regarding national security funding, including Ukraine security assistance, Mr. Blair engaged in an ongoing dialogue with OMB officials during the summer of 2019 to solicit information from OMB about Ukraine funding.”); *see also id.* ¶ 19. Each email and attachment authored by Mr. Blair or Mr. Mulvaney either conveyed information to OMB officials that reflected the advisor’s involvement in presidential decisionmaking (Docs. 41, 42, 54), or solicited information from OMB on Ukraine aid, to which an OMB official responded in the same chain (Docs. 48, 66). *Id.* ¶¶ 18, 19.

Disclosing these emails and attachment would therefore directly reveal the information that these immediate White House advisors authored or solicited and received to formulate advice in support of presidential decisionmaking regarding the nature, scope, and duration of the hold on aid to Ukraine. OMB thus properly withheld these email chains as presidential communications.

Second, OMB properly withheld one email chain (Doc. 69), which “memorializes the President’s communications about his decisionmaking on Ukraine funding, the disclosure of which would directly reveal the President’s deliberations.” Walsh Decl. ¶ 20. This clearly falls within the scope of the privilege. *See Nixon*, 418 U.S. at 708 (holding that there is “a presumptive privilege for Presidential communications”).

Accordingly, the descriptions in the Walsh Declaration and in OMB’s *Vaughn* Index are sufficient to establish that the agency properly withheld information and communications protected by the presidential communications privilege.

b. DoD Properly Withheld Information Protected by the Presidential Communications Privilege

DoD also withheld information in 14 documents (Docs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16), and withheld in full 35 pages of handwritten notes (Docs. 17, 18, 19, 20, 21), pursuant to Exemption 1 and the presidential communications privilege. *See Herrington Decl.* ¶¶ 18, 21 & DoD *Vaughn* Index. Because the withheld information is also protected from disclosure under the deliberative process privilege, the Court need not decide whether the presidential communications privilege exempts this information from disclosure unless the Court concludes that DoD misapplied the deliberative process privilege. Should the Court reach this issue, however, DoD’s declaration and attached *Vaughn* index clearly establish that the presidential communications privilege applies.

As noted above, “[t]he meetings referenced in [Plaintiff’s] request were Deputies Committee (“DC”), Policy Coordination Committees (“PCCs”), and sub PCCs” of the NSC, which are high-level interagency meetings held for the purpose of advising the President on national security issues. Herrington Decl. ¶ 20. “The DC,” in particular, “is chaired by the Deputy National Security Advisor.” *Id.* Accordingly, DoD withheld “records memorializ[ing] the advice and recommendations of both DoD and other Executive branch agencies” at these meetings. *Id.* ¶ 19. More specifically, DoD withheld (1) DoD’s advice and recommendations about what to relay at those meetings in furtherance of advising the President on national security matters, including Ukraine assistance (Docs. 4, 5, 15); (2) emails relaying discussions that occurred at those meetings and follow-up actions to be taken “in furtherance . . . of advising the President on Ukraine security assistance, particularly the timing scope, and impact of any hold on funding” (e.g., Docs. 6, 7, 8, 16); (3) handwritten notes memorializing discussions at the meetings, including “advice and recommendations of DoD and other federal agencies . . . all in furtherance of advising the President” (Docs. 17, 18, 19, 20, 21); and further deliberations regarding the NSC meetings, including questions from the Deputy National Security Advisor to the Undersecretary of Defense regarding USAI funding, which reveal information solicited and conveyed to NSC (e.g., Docs. 9, 10, 11, 12, 13, 14). *See id.* ¶ 18. The disclosure of this information would reveal “the process by which the President receives national security advice from close advisors” as well as “the actual advice provided to the President and his senior advisors.” *Id.* ¶ 21.

DoD’s withholdings are both logical and plausible. In *Property of the People, Inc. v. Office of Management and Budget*, 394 F. Supp. 3d 39 (D.D.C. 2019), another court in this District expressly held that “the structure and composition of the NSC leave little doubt that the

meetings fall within the ambit of the presidential communications privilege,” as the NSC is tasked, by statute, to advise the President. *Id.* at 44–45 (citing 50 U.S.C. § 3021(b)); *accord Protect Democracy Project, Inc.*, 320 F. Supp. 3d at 174. The court thus upheld OMB’s withholding of eight calendar entries corresponding to high-level NSC meetings, reasoning that, although “[e]ach calendar entry at issue may contain a minimal *amount* of information,” “[w]ith the benefit of hindsight, observers could potentially use the timing and attendees of a given meeting to infer the specific issues that were discussed and possibly even the substance of these conversations.” *Property of the People, Inc.*, 394 F. Supp. 3d at 41, 48.

Like in *Property of the People, Inc.*, so too here are the DC and PCC meetings at issue “intimately connected to . . . presidential decisionmaking.” *Id.* at 45; *see also* Herrington Decl. ¶ 20. In fact, the information DoD seeks to protect here is far more “revelatory” of the President’s decisionmaking. *Property of the People, Inc.*, 394 F. Supp. 3d at 48. As the Herrington Declaration and DoD’s *Vaughn* Index establish, the withheld information precisely memorializes “the substance of the[] conversations” that took place at these NSC meetings, *id.* at 48, which were held for the purpose of advising the President on Ukraine aid, and also comprises preparatory materials for, and follow-up discussions from, these meetings containing information that was conveyed to the NSC. *See* Herrington Decl. ¶¶ 18, 21. Protecting this information is plainly consistent with the purpose of the presidential communications privilege: the need “for confidentiality to ensure that presidential decisionmaking is of the highest caliber, informed by honest advice and full knowledge.” *In re Sealed Case*, 121 F.3d at 750.

Accordingly, should the Court conclude that the information in Documents 3–21 are not protected by the deliberative process privilege, they are nevertheless exempt from disclosure because they fall within the ambit of the presidential communications privilege.

c. State Properly Withheld Information Protected by the Presidential Communications Privilege

Finally, State properly asserted the presidential communications privilege with respect to six documents. Stein Decl. ¶ 27; State *Vaughn* Index Docs. 5, 10, 13, 14, 15, 16. Although the presidential communications privilege permits an entire record to be withheld in full, State has withheld in full only three documents, (Docs. 10, 13, 16), and otherwise segregated and released information non-exempt information, where possible (Docs. 5, 14, 15). As noted above, several of these documents also contain information protected from disclosure by the deliberative process privilege as well.

The Stein Declaration attests that State withheld certain information and documents in full “in order to protect information that was solicited and received by the President’s close advisors from executive branch officials at [the] interagency meetings on Ukraine” that are the subject of Plaintiff’s request, including the same Deputies Small Group and PCC meetings of the NSC mentioned above. *Id.* ¶ 27. Specifically, the documents from which information has been withheld comprise an email chain (Docs. 14, 15), prep memo advising what to convey at the DSG (Doc. 13), readout of the DSG (Doc. 10), and memo circulated to several Executive branch agencies and components that also memorializes the deliberations that took place at the DSG (Doc. 16). *Id.* Disclosure of this information would “reveal the process by which the President receives national security advice from close advisors regarding foreign assistance and would reveal information about the advice itself regarding the timing and amount of assistance to Ukraine.” *Id.* These withholdings are thus consistent with those taken by DoD, protect the same information, and are properly exempt for the same reasons explained above. *See supra* at 28–30.

B. Defendants Properly Withheld Information Pursuant to FOIA Exemption 6

Exemption 6 “protects information about individuals in ‘personnel and medical files and similar files’ when its disclosure ‘would constitute a clearly unwarranted invasion of personal privacy.’” *Shapiro v. Dep’t of Justice*, 153 F. Supp. 3d 253, 257 (D.D.C. 2016) (quoting 5 U.S.C. § 552(b)(6)). “The Supreme Court has read Exemption 6 broadly, concluding the propriety of an agency’s decision to withhold information does not ‘turn upon the label of the file which contains the damaging information.’” *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 152 (D.C. Cir. 2006) (quoting *U.S. Dep’t of State v. Wash. Post*, 456 U.S. 595, 601 (1982)). Courts in this Circuit have interpreted “similar files” to encompass email communications. *See, e.g., Prechtel v. FCC*, 330 F. Supp. 3d 320, 239 (D.D.C. 2018). The D.C. Circuit has also explained that Exemption 6 can embrace “bits of personal information, such as names.” *Judicial Watch*, 449 F.3d at 152.

The mere fact that an agency record contains personal, identifying information, however, is not enough; the information must also be “of such a nature that its disclosure would constitute a clearly unwarranted privacy invasion,” *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002). To make that determination, the Court must first determine whether “disclosure would compromise a substantial, as opposed to a de minimis, privacy interest,” *Nat’l Ass’n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989), before “balanc[ing] the privacy interest in non-disclosure against the public interest” in disclosure, *Consumers’ Checkbook Ctr. for the Study of Servs. v. U.S. Dep’t of Health & Human Servs.*, 554 F.3d 1046, 1050 (D.C. Cir. 2009).

Because Plaintiff has agreed not to challenge Defendants’ withholdings of the contact information of agency employees in the responsive records, *see* JSR at 1, ECF No. 19, only DoD

and State's Exemption 6 withholdings of low-ranking employees' names and OMB's single redaction of a personal detail about an employee are at issue. Those withholdings are proper.

1. DoD and State Properly Withheld the Names of Low-Ranking Employees

Engaging in the balancing required by Exemption 6, DoD and State have redacted only the names of lower-level employees, as is their standard practice. *See* Herrington Decl. ¶ 22 (noting that DoD withheld the names of those who “are at a military rank of Colonel or below and at the rank GS-15 and below”); Stein Decl. ¶ 33 (noting that State withheld the names of those ranking below the level of Deputy Assistant Secretary, or for U.S. missions overseas, Counselor). The attached declarations establish that the release of the identities of these employees would compromise a substantial privacy interest: It would subject those who are line-level workers to a serious risk of unwarranted harassment. Herrington Decl. ¶ 23; Stein Decl. ¶ 33; *accord Fed. Labor Relations Auth. v. U.S. Dep’t of Treasury, Fin. Mgmt. Serv.*, 884 F.2d 1446, 1452, 1453 (D.C. Cir. 1989) (holding that “federal employees[] have privacy interests in their names and home addresses that must be protected” and that, “[i]n analysing [their] privacy interest,” the court should “consider[] the nature and scope of the privacy invasions that would flow from disclosure”). The risk is especially acute in a high-profile matter such as this one. *Id.* For instance, the Stein Declaration attests that there has already been an instance “in which a working-level Department employee was contacted directly by counsel for an opposing party in litigation against the Department concerning a high-profile policy matter” where “the counsel obtained the employee’s name from a document released in the FOIA process.” Stein Decl. ¶ 34. “This contact is the very type of privacy invasion Exemption 6 is designed to prevent.” *Elec. Privacy Info. Ctr. (“EPIC”) v. Dep’t Homeland Sec.*, 384 F. Supp. 2d 100, 117 (D.D.C. 2005).

On the other hand, disclosing the names of these working-level or lower-ranking employees would not advance FOIA's purpose of shedding light on governmental decisionmaking. Because "these individuals were not the decision makers who are typically held accountable by the public, their identities are not typically relevant or of interest to the public," especially when many personnel involved in the discussions contained in the responsive records are senior officials, whose identities Defendants have not withheld. Herrington Decl. ¶ 24; *see also* Stein Decl. ¶ 35. Nor could any minimal interest in the line-level employees' identities outweigh their substantial privacy interest in nondisclosure. In fact, courts have routinely upheld such withholdings under Exemption 6 to protect agency personnel from annoyance or harassment. *See Long v. U.S. Office of Pers. Mgmt.*, 692 F.3d 185, 192 (2d Cir. 2012) ("Plaintiffs have identified no appreciable public interest militating in favor of the wholesale disclosure of names of employees in sensitive agencies and sensitive occupations."); *see also Walston v. U.S. Dep't of Def.*, 238 F. Supp. 3d 57, 67 (D.D.C. 2017); *EPIC*, 384 F. Supp. 2d at 117; *Ctr. for Pub. Integrity v. U.S. Office of Pers. Mgmt.*, No. 04-1274 GK, 2006 WL 3498089, at *6 (D.D.C. Dec. 4, 2006).

2. OMB Properly Withheld Personal Information

As noted in the Walsh Declaration, only one of OMB's Exemption 6 withholdings is at issue. Walsh Decl. ¶ 31. In Document 42, OMB redacted information about an employee's personal life, which is wholly unrelated to the subject matter of the request. Disclosure of this information—which reveals "a private family circumstance and its impact on the person's schedule"—would certainly compromise a "substantial privacy interest." *Id.*; *Nat'l Ass'n of Retired Fed. Emps.*, 879 F.2d at 874. On the other side of the balance, there is no public interest in knowing such personal details about agency employees that are completely unrelated to the

agency's work. *Cf. Walston*, 238 F. Supp. 3d at 67 (noting that the "core purpose of FOIA" is "to contribute to greater general understanding of agency practice and procedure"). OMB's withholding was thus proper under the Exemption 6 balancing test.

Accordingly, all three Defendants are entitled to summary judgment on their Exemption 6 withholdings.

III. Defendants Complied with Their Obligation to Disclose Reasonably Segregable Material

Under FOIA, "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552(b)(9). An agency has no obligation, however, to segregate "where the 'exempt and nonexempt information are inextricably intertwined, such that the excision of exempt information would impose significant costs on the agency and produce an edited document with little informational value.'" *Judicial Watch, Inc. v. U.S., Dep't of State*, 282 F. Supp. 3d 36, 47 (D.D.C. 2017). Nor is any segregability analysis required for records subject to the presidential communications privilege, which applies to records in their entirety. *See In re Sealed Case*, 121 F.3d at 745; *see also Judicial Watch, Inc. v. U.S. Dep't of Def.*, 913 F.3d 1106, 1113 (D.C. Cir. 2019) ("[B]ecause the presidential communications privilege applies to the totality of the five memoranda . . . the question of segregability of non-exempt material is therefore not presented[.]").

To determine whether an agency has satisfied its duty to segregate under FOIA, a reviewing court "may rely on government affidavits that show with reasonable specificity why documents withheld pursuant to a valid exemption cannot be further segregated." *Juarez v. Dep't of Justice*, 518 F.3d 54, 61 (D.C. Cir. 2008). Courts have found sufficient, for example, agency declarations that attest an agency official "conducted a line-by-line review . . . and

determined that no reasonably segregable, non-exempt material could be released.” *Judicial Watch*, 282 F. Supp. 3d at 46. Agencies are, moreover, “entitled to a presumption that they complied with the obligation to disclose reasonably segregable material.” *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007).

Here, Defendants’ declarations amply establish that they complied with their obligation to release all reasonably segregable material. *See* Walsh Decl. ¶ 32; Herrington Decl. ¶ 25; Stein Decl. ¶ 37. The declarations indicate that each agency conducted a line-by-line review of all documents to ensure that all reasonably segregable, non-exempt information was released. *Id.* That is sufficient. *See Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776–77 (D.C. Cir. 2002) (holding that the agency had demonstrated there was no reasonably segregable non-deliberative material when it had submitted an affidavit by an agency official confirming that “a line-by-line review of each document withheld in full [had] determined that ‘no documents contained releasable information which could be reasonably segregated from the nonreleasable portions’”). And Defendants’ productions bear out this conclusion: with the exception to a small number of documents—most of which are protected from disclosure by the presidential communications privilege—no documents have been withheld in full and all redactions have only been narrowly taken to protect specific information subject to the exemptions at issue.

Defendants have further satisfied their burden to show reasonably foreseeable harm, should the information withheld pursuant to FOIA Exemptions 5 and 6 be released. *See* 5 U.S.C. § 552(a)(8)(A)(i)(I). The Walsh, Herrington, and Stein Declarations explain, in detail, the how disclosure of the deliberations at issue would chill the frank and honest exchange of analysis and recommendations within and between the agencies and also reveal the process by which the President receives national security advice. *See* Walsh Decl. ¶¶ 14–16, 25–29; Herrington Decl. ¶ 16, 19, 21; Stein Decl. ¶ 25, 29. As Defendants’ declarations attest, the protected deliberations are

critical to OMB's ability to perform its core responsibilities with respect to the apportionment of funds, *see* Walsh Decl. ¶ 24, 25, and also crucial to the agencies' ability to advise the President on important national security matters, such as foreign military assistance, *see id.* ¶ 16, 17, Herrington Decl. ¶ 20, 21, Stein Decl. ¶ 29. State and DoD have also established that their Exemption 6 redactions of lower-level employees' names are to protect those employees from a reasonably foreseeable risk of harassment. *See* Herrington Decl. ¶ 23; Stein Decl. ¶¶ 33–34.

Accordingly, there can be no genuine dispute that Defendants have complied with their obligation to demonstrate foreseeable harm and to produce all reasonably segregable information.

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' Motion for Summary Judgment.

Dated: November 17, 2020

Respectfully submitted,

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Exhibit 1

Walsh Declaration &
OMB *Vaughn* Index

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

CITIZENS FOR RESPONSIBILITY)	
AND ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
v.)	Civ. A. No. 19-3488 (ABJ)
)	
OFFICE OF MANAGEMENT)	
AND BUDGET,)	
)	
Defendant.)	
_____)	

DECLARATION OF HEATHER V. WALSH

I, Heather V. Walsh, make the following declaration based on personal knowledge and information made available to me in the course of my official duties:

1. I am the Deputy General Counsel in the Office of Management and Budget's ("OMB") Office of the General Counsel ("OGC"). Previously, I was an Assistant General Counsel in this office, and I have worked at OMB since 2009.

2. My office handles all requests submitted to OMB under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. One of my responsibilities is to supervise the staff responsible for handling FOIA requests. Due to my official duties, I am familiar with the procedures followed by OMB OGC in responding to FOIA requests. Additionally, I regularly work with OMB staff across multiple components of the agency, and am familiar with OMB's involvement in a variety of issues across the Federal Government.

3. I am aware of OMB's handling of the FOIA request at issue in this case, which was submitted to OMB by Plaintiffs on October 2, 2019 (the "Request"). *See* Exhibit A. OMB acknowledged the Request by email dated October 3, 2019. *See* Exhibit B.

4. The purpose of this declaration is to describe OMB's search for responsive records in response to the Request, and application of FOIA exemptions to records that OMB processed under FOIA Exemptions 5 and 6, 5 U.S.C. § 552(b)(5), (6). With regard to withholdings pursuant to § 552(b)(5), OMB has identified information that is privileged under the deliberative process privilege and the presidential communications privilege. *See Vaughn* index, Exhibit C.

ADEQUACY OF OMB'S SEARCH FOR RESPONSIVE RECORDS

5. The Request sought five categories of records:

- “[A]ll communications to or from Director Mick Mulvaney between June 1, 2019 and September 11, 2019 related to withholding security assistance or military aid for Ukraine.”
- “[A]ll communications to or from Acting Director Russell Vought June 1, 2019 and September 11, 2019 related to withholding security assistance or military aid for Ukraine.
- “[A]ll communications between OMB and the State Department on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.”
- “[A]ll communications between OMB and the Department of Defense on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.”
- “[A]ll records related to interagency meetings on July 18, 2019, July 23, 2019, and July 26, 201[9] in which security assistance or military aid for Ukraine was discussed.”

6. To expedite processing, Plaintiff further agreed that OMB could conduct its search within a set of records that the agency had already collected in response to multiple Ukraine-related FOIA requests. OMB had previously carried out the initial collection of records in October 2019 by transmitting a search order to the White House Office of Administration (OA) specifying

technical search parameters, which included an agency-wide search of records in the form of email, digital work folders, and calendar entries dated May 1, 2019, to September 30, 2019, for the following disjunctive terms: “Ukraine,” “Ukraine Security Assistance Initiative,” “USAI,” or “Zelensk*.” OA is the component of the Executive Office of the President (EOP) that provides administrative and business services to each of the components within the EOP, including OMB. OA provides enterprise email hosting services, cloud-based shared archives, and individual hard drive backup services for all EOP employees, including all OMB employees. OA is responsible for capturing and preserving all of OMB’s email. Therefore, OA has “back-end” access to all of OMB’s email account files and conducts technical searches of the email files of OMB employees for purposes of compliance with FOIA requests.

7. OMB OGC initiated its search efforts for this case by designing a search within the existing Ukraine-related records collection in response to the Request. Within the records collection described above, OMB isolated groups of records corresponding to the five parts of the request detailed above.

- a. First, OMB collected all OMB records dated from June 1, 2019, to September 11, 2019, that were either sent or received by White House Chief of Staff Mick Mulvaney on any email account associated with his name by collecting all records containing the name “Mulvaney” in any email address field (i.e., to, from, cc, bcc).
- b. Second, OMB collected all records dated from June 1, 2019, to September 11, 2019, that were either sent or received by Acting OMB Director Russell Vought (i.e., contained in OMB’s custodial archive of all of Mr. Vought’s emails).

- c. Third, OMB collected all records of communications that included email addresses containing the State Department's email domain ("state.gov") dated July 18, 2019, July 23, 2019, and July 26, 2019.
 - d. Fourth, OMB collected all records of communications that included email addresses containing the Defense Department's email domain (".mil") dated July 18, 2019, July 23, 2019, and July 26, 2019.
 - e. Finally, OMB collected all records of communications or calendar invitations or appointments that included email addresses containing email domains other than OMB's domain ("omb.eop.gov") dated on July 18, 2019, July 23, 2019, and July 26, 2019.
8. OMB's search resulted in the collection of approximately 1,400 potentially responsive records. OMB OGC attorneys reviewed each of these records for responsiveness to the Request. As a result of this review, OMB identified 69 responsive documents.
9. OMB carried out an additional search and collection of records in agency custody located in secure, classified records systems operated by the National Security Council (NSC). This search consisted of two parts. The first part was a search of all OMB custodians for records dated from July 11, 2019, to August 2, 2019, for records containing either of the terms "USAI" OR "Ukraine" and also containing any of the terms "meet*" or "call" or "agenda" or "notes." This search produced 248 results. The second part of the search was for all OMB custodians, for records dated between June 1, 2019, and September 11, 2019, in which the email address fields (i.e., to, from, cc, bcc) include either "Mulvaney" or "Vought" and where the content of the email includes either "Ukraine" or "USAI." This search produced no results. OMB reviewed

the 248 potentially responsive records identified in this search and determined that 36 of these records were responsive to the Request.

10. OMB determined that each of these 36 classified records should be withheld in full pursuant to FOIA Exemption 1 because they were properly classified. I have been made aware that Plaintiff is not challenging OMB's Exemption 1 withholdings in this case.

THE APPLICATION OF FOIA EXEMPTIONS

11. I understand that Plaintiff is challenging only Defendants' withholdings pursuant to FOIA Exemptions 5 and 6 (limited to any withholdings of non-contact information).

12. I have personally reviewed the 69 responsive records at issue in this case and I am familiar with the contents of the records.¹ These records are accurately described in the attached *Vaughn* index. *See* Exhibit C. Further, I have reviewed each of the documents listed in the *Vaughn* index for the appropriateness of the withholdings, harm to agency interests, and segregability.

FOIA EXEMPTION 5

13. FOIA Exemption 5 protects from disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party . . . in litigation with the agency...." 5 U.S.C. § 552(b)(5). Exemption 5 has been construed to exempt documents or information normally privileged in the civil discovery context, and incorporates the attorney work product, attorney-client, deliberative process, and presidential communications privileges.

¹ Seven of these 69 records were released in full (items no. 2, 26, 44, 45, 46, 47, 60). In addition, eight records contained only redactions of contact information of government employees, which Plaintiff has agreed not to challenge (items no. 1, 3, 15, 18, 10, 20, 21, 50). Therefore, only OMB's withholdings in the remaining 54 records are at issue.

THE PRESIDENTIAL COMMUNICATIONS PRIVILEGE

14. The presidential communications privilege applies to documents reflecting the conversations that take place in the President's performance of his official duties, as well as information that is solicited and received by the President or an immediate White House advisor to the President or their staff who has broad and significant responsibility for investigating and formulating the advice to be given to the President.

15. OMB withheld in full six records (counting items no. 41 and 42, an email and its attachment as separate records) under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the presidential communications privilege. *See Vaughn* index, Exhibit C, items no. 41, 42, 48, 54, 66, 69. Each of the six records is protected by the presidential communications privilege because it is either (a) a communication by Assistant to the President Robert Blair or White House Chief of Staff Mick Mulvaney soliciting, receiving, or communicating information about Ukraine in the course of their duties as an immediate advisor to the President on matters of national security; or (b) a communication that memorializes the President's communications about his decision-making process on Ukraine funding.

16. Mr. Blair was an immediate advisor to the President with responsibilities over foreign assistance programs including those for Ukraine. Assistants to the President such as Mr. Blair are the most senior presidential aides in the White House. Each of them work in close proximity to the President, and meet and travel with the President frequently. In my experience working in the EOP, individuals with this title are frequently tasked with obtaining information from Executive Branch agencies to inform the President's decision-making process. Consistent with this experience, I understand that Mr. Blair carried out such tasks and interacted with the President in the manner described above during the period when these records were created. I

also understand that Mr. Blair worked closely with the President on national security matters, including appropriations matters. In particular, Mr. Blair was one of the senior-most White House policy officials who advised the President on aid to other countries, including Ukraine. Mr. Blair sought and obtained information from OMB related to government aid to Ukraine for the purpose of advising the President.

17. In particular, to formulate his advice to the President regarding national security funding, including Ukraine security assistance, Mr. Blair engaged in an ongoing dialogue with OMB officials during the summer of 2019 to solicit information from OMB about Ukraine funding. OMB was and is likely to be the best source of information for White House officials regarding the status of Ukraine funding and national security funding matters generally. OMB regularly provides information to White House advisors regarding appropriations, such as amount and timing considerations regarding when funds must be committed before they expire.

18. As reflected in the *Vaughn* index, four of the six responsive records that are protected by the presidential communications privilege are email chains and attachment between Mr. Vought or OMB's Program Associate Director for National Security Programs Michael Duffey and senior White House advisor Robert Blair regarding the decision to pause funding for Ukraine. *See Vaughn* index, Exhibit C, items no. 41, 42, 54, 66. Specifically, item no. 66 reflects, on its face, information that Mr. Blair solicited and received from Mr. Vought concerning Ukraine security assistance. Items no. 41, 42, and 54 comprise two email chains and an attachment from Mr. Blair conveying information about Ukraine Security assistance and the President's decision-making as part of Mr. Blair's ongoing dialogue with OMB officials for the purpose of advising the President about Ukraine funding. Items no. 41 and 42 are an email and its attachment from Mr. Blair to White House Chief of Staff Mick Mulvaney and then-Acting OMB Director Russell

Vought conveying information about Ukraine Security assistance, the disclosure of which would reveal information about Mr. Blair's formulation of advice to the President. Item no. 54 contains a question from Mr. Vought to Mr. Blair regarding the nature and extent of a presidential decision regarding Ukraine funding, and a response from Mr. Blair that reveals the underlying presidential decisionmaking.

19. Item no. 48 of the *Vaughn* index is an email from Mr. Mulvaney soliciting information from OMB's Acting Director about Ukraine funding for the purpose of advising the President on the issue. As the President's Chief of Staff at the time, Mr. Mulvaney was an immediate presidential advisor responsible for advising the President on an array of national security matters, including Ukraine security assistance. Because the inquiry references information about previous deliberations in furtherance of advising the President, disclosure of this information would reveal protected information. The subsequent receipt by Mr. Mulvaney of the information that he solicited here appears separately in item no. 41.

20. The sixth and final record that is protected by the presidential communications privilege is the item listed in the *Vaughn* index as item no. 69. Item no. 69 of the *Vaughn* index is an email chain that memorializes the President's communications about his decision-making on Ukraine funding, the disclosure of which would directly reveal the President's deliberations.

21. Prior to making a determination to release or withhold a responsive record, in accordance with 5 U.S.C. § 552(a)(6)(B)(iii)(III) and 5 C.F.R. § 1303.30(c)(1), OMB staff consults with other agencies having a substantial interest in the determination of the request. Prior to applying Exemption 5 for the presidential communications privilege in connection with the six responsive documents described in this section, my staff consulted with the White House Counsel's Office. The consultation included reviewing the information necessary to determine that the documents

are protected by the presidential communications privilege. This consultation was consistent with OMB's FOIA regulations and OMB OGC's longstanding practice of conferring with the White House Counsel's Office before asserting Exemption 5 for the presidential communications privilege in a FOIA case.

DELIBERATIVE PROCESS PRIVILEGE

22. OMB identified FOIA-exempt deliberative information in 53 of the 69 responsive records that are at issue in this case. *See Vaughn* index, Exhibit C, items no. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 52, 53, 54, 65, 66, 67, 68, 69.

23. With respect to the threshold requirement of Exemption 5, OMB determined that each of the 53 records that OMB identified as containing FOIA-exempt deliberative information consist only of inter-agency or intra-agency communications. As explained on a document-by-document basis in the attached *Vaughn* Index, OMB withheld information that reflects discussions, deliberations, and recommendations between and amongst OMB and other Executive Branch personnel regarding ongoing deliberations over the central decision to be made by the President of how best to spend Ukraine security assistance funds. *See Id.*

24. Relatedly, to preserve the status quo until an overall decision was reached regarding the best way to spend funds on Ukraine security assistance, OMB officials periodically deliberated on, and then issued time-limited "holds" on the spending of the funds by the agencies. These short-term decisions were executed through a series of OMB-issued apportionment footnotes, which paused spending until successive definite dates. *See Vaughn* index, Exhibit C, item no. 2. During the course of the deliberations regarding Ukraine security assistance funds in the White House and the Executive Branch, OMB's role centered on the creation and proper execution of

the above-described spending holds in coordination with staff of the Department of Defense (DOD) and the Department of State and, collecting and synthesizing information about the Ukraine Security Assistance Program at the request of Mr. Blair, whose specific role is described above with regard to the presidential communications privilege. *See* ¶¶ 12-13. Each of the six records identified above as containing presidential communications also contain privileged information about then-ongoing deliberations regarding Ukraine security assistance funds (*see* items no. 41, 42, 48, 52, 54, 66, 69).

25. Additionally, much of the deliberative information in these records represents deliberations on a continuous series of other, more immediate decisions, such as exactly how to implement a course of action (e.g., items no. 36, 39, 54), how to interpret a decision (e.g., items no. 10, 11, 38), or when to raise an issue at a meeting (e.g., items no. 51, 62), all of which are distinct decisions necessary for the conduct of normal agency operations. All of these intermediate deliberations were necessary to make decisions regarding how to implement the pause on Ukraine aid. They were also part of the process to inform the presidential deliberations regarding the release of the Ukraine aid funds. The forced disclosure of information regarding any of these deliberations would harm OMB's future ability to conduct frank and open deliberations regarding execution of Federal funds.

26. The withholdings described in the preceding paragraph comprise memoranda (e.g., items no. 10, 34, 42), discussions (e.g., items no. 11, 12, 13, 14), and drafts (e.g., items no. 15, 34, 57) that were created as part of a decision-making process conducted pursuant to OMB's authority to oversee agency spending. This information is pre-decisional because, in each case of redacted information, officials were discussing matters intended to be subsequently decided based on these deliberations. The redacted information is deliberative in that it reflects the weighing of

options, queries, opinions, and arguments as part of confidential discussions and deliberations that informed the Executive Branch's internal policy formulation process regarding how best to spend Ukraine security assistance funds. OMB redacted such information from these records to protect frank discussions from being chilled by the effects of public scrutiny of the deliberative process.

27. The deliberative process privilege was also applied to withhold deliberative exchanges and talking points regarding how to respond to inquiries from the press and Congress (e.g., items no. 7, 8, 25, 29). In particular, OMB applied the privilege to withhold portions of email chains reflecting advice and recommendations about how to respond to requests for information from Congress or the media, including the development of talking points. Withholding of this information is essential to ensure that agency employees can continue to engage in the frank and honest exchanges of their analysis and recommendations, and to avoid public confusion regarding the agency's official position.

28. The deliberative process privilege was also applied to withhold in full, one draft document that discussed Ukraine security assistance. *See Vaughn* index, Exhibit C, item no. 57. By their very nature, draft documents are pre-decisional, preliminary versions of what may later become a final document in whole or in part, or they remain drafts that never matured into final form as the material may be withdrawn or discarded during the decision-making process. The draft document that was withheld in full from OMB's productions contains edits, marginal suggestions, comments, and embedded questions regarding content. If this draft document were released, the public could become confused regarding OMB's activities. Further, disclosure of such material could mislead the public as the comments and text of draft documents often differ, sometimes significantly, from final agency positions.

29. Additionally, OMB withheld deliberative information regarding funding and policy decisions that were not the subject of Plaintiff's request. For example, OMB redacted deliberative information in Mr. Vought's briefing materials (items no. 4, 9, 22, 30), and daily and weekly memos compiling readouts from events, meetings, and other matters for his consideration (items no. 23, 24, 32). Release of this information would reveal timing and scope of OMB's deliberations on these topics as well as the agency's internal deliberation processes.

EXEMPTION 6

30. OMB withheld information from 44 documents under FOIA Exemption 6. Exemption 6 applies to matters that are located in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

31. I understand that Plaintiff is not challenging OMB's withholdings of email addresses or phone numbers of OMB employees under Exemption 6. After reviewing each of the documents containing Exemption 6 redactions, OMB determined that all but one redaction consists of email addresses and phone numbers of OMB employees. The sole redaction at issue withholds a comment by a member of OMB staff discussing a private family circumstance and its impact on that person's schedule. *See Vaughn* index, Exhibit C, item no. 44. OMB has determined that the withheld information qualifies for protection under Exemption 6, because disclosure of that personal detail would compromise a substantial privacy interest, and, further, that the employee's privacy interests greatly outweighs the public's interest (if any) in disclosure of the information.

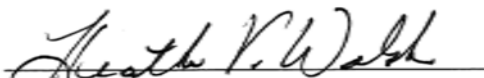
SEGREGABILITY ANALYSIS

32. In conducting a line-by-line review of all the records that are responsive to the FOIA requests, OMB assessed whether any factual or otherwise nonexempt information could be

segregated and disclosed pursuant to 5 U.S.C. § 552(b). Based on this assessment, OMB has determined that all nonexempt, segregable information has been released. In particular, OMB determined, with respect to each portion of information withheld under Exemption 5 that the information redacted consists of discussions involving deliberations in which facts are inextricably intertwined with deliberative discussion, opinions, and policy recommendations, such that disclosing any facts, and how they are presented, would reveal the thought processes of OMB during deliberations. Thus, OMB determined that disclosure of such factual material would reveal the nature and substance of the agency deliberations.

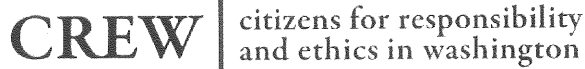
33. In accordance with 28 U.S.C. § 1746, I hereby declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed in Washington, District of Columbia, this 17th day of November, 2020.

A handwritten signature in dark ink, appearing to read "Heather V. Walsh", is written over a horizontal line.

Heather V. Walsh
Deputy General Counsel
Office of the General Counsel
Office of Management and Budget

EXHIBIT A – CREW FOIA Request



20-005

October 2, 2019

BY EMAIL: OMBFOIA@omb.eop.gov

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street, N.W., Suite 9204
Washington, D.C. 20503

Re: Freedom of Information Act Request

Dear Ms. Hardy:

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 Office of Management and Budget ("OMB") regulations.

First, CREW requests records of all communications to or from Director Mick Mulvaney between June 1, 2019 and September 11, 2019 related to withholding security assistance or military aid for Ukraine. This request includes, but is not limited to, records tied to any email address Mr. Mulvaney has used to conduct OMB business, not just email addresses with the domain @omb.eop.gov.

Second, CREW requests records of all communications to or from Acting Director Russell Vought between June 1, 2019 and September 11, 2019 related to withholding security assistance or military aid for Ukraine. This request includes, but is not limited to, records tied to any email address Mr. Vought has used to conduct OMB business, not just email addresses with the domain @omb.eop.gov.

Third, CREW requests all communications between OMB and the State Department on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.

Fourth, CREW requests all communications between OMB and the Department of Defense on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.

Fifth, CREW requests all records related to interagency meetings on July 18, 2019, July 23, 2019, and July 26, 2019 in which security assistance or military aid for Ukraine was discussed.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages,

Dionne Hardy
 October 2, 2019
 Page 2

voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

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 OGE 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).

On August 12, 2019, a whistleblower who works within the intelligence community filed a complaint with the Office of the Inspector General of the Intelligence Community, reporting an "urgent concern" that "the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election."¹ According to a declassified version of the complaint released by the House Permanent Select Committee on Intelligence, the whistleblower described President Trump's July 25, 2019 telephone call with Ukrainian President Volodymyr Zelensky, in which "after an initial exchange of pleasantries, the President used the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid."²

In a section on circumstances leading up to the July 25 phone call, the whistleblower noted that he or she learned in mid-July "of a sudden change of policy with respect to U.S. assistance," which was described in more detail in an appendix.³ Specifically, the whistleblower wrote, "On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President 'earlier that month' had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated

¹ Press Release, House Intelligence Committee Releases Whistleblower Complaint, House Permanent Select Committee on Intelligence, Sept. 26, 2019, available at <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=708>; See https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf

² *Id.*

³ *Id.*

Dionne Hardy
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explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.”⁴

The whistleblower’s observations about a change in policy during that time period regarding assistance to Ukraine have been confirmed by public documents and press reporting. President Trump and his advisers reportedly began discussing the idea of putting a hold on the funds for Ukraine in June 2019 and President Trump ordered his acting chief of staff, Mick Mulvaney, to put a hold on the money at least a week before his July 25 phone call with Ukrainian President Zelensky.⁵ Defense and State Department officials were informed by OMB of the decision during an interagency meeting on July 18, 2019.⁶ OMB officials reportedly explained that President Trump had “concerns” about the aid funding and wanted to examine the need for the money.⁷ According to the *Washington Post*, “Administration officials were instructed to tell lawmakers that the delays were part of an ‘interagency process’ but to give them no additional information — a pattern that continued for nearly two months, until the White House released the funds on the night of Sept. 11.”⁸

On September 25, 2019, following news reports that President Trump repeatedly pressured President Zelensky during the July 25 phone call to investigate former Vice President Biden’s son, the White House released a rough transcript of the call.⁹ The transcript revealed that President Trump framed the conversation by saying, “we do a lot for Ukraine” and “I wouldn’t say that it’s reciprocal necessarily.”¹⁰ Then, when President Zelensky stated that Ukraine was ready for “next steps” and specifically raised his desire to buy weapons from the United States, President Trump immediately replied by saying, “I would like you to do us a favor though” before asking for Ukraine to pursue investigations into several subjects, including one related to former Vice President Biden and his son.¹¹ President Trump told President Zelensky that he would tell both Giuliani and Attorney General William Barr to contact him about the investigations.¹²

⁴ *Id.*

⁵ Karoun Demirjian, Josh Dawsey, Ellen Nakashima and Carol D. Leonig, Trump ordered hold on military aid days before calling Ukrainian president, officials say, *Washington Post*, Sept. 23, 2019, available at https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html?arc404=true; Rebecca Ballhaus, Andrew Restuccia and Siobhan Hughes, Trump Put Hold on Military Aid Ahead of Phone Call With Ukraine’s President, *Wall Street Journal*, Sept. 24, 2019, available at <https://www.wsj.com/articles/president-trump-repeats-criticism-of-biden-in-impromptu-u-n-appearance-11569254230>.

⁶ *Id.*

⁷ Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019.

⁸ *Id.*

⁹ Alan Cullison, Rebecca Ballhaus and Dustin Volz, Trump Repeatedly Pressed Ukraine President to Investigate Biden’s Son, *Wall Street Journal*, Sept 21, 2019, available at <https://www.wsj.com/articles/trump-defends-conversation-with-ukraine-leader-11568993176>; Rebecca Ballhaus, Sadie Gurman and Dustin Volz, Rough Transcript Shows Trump Asked Ukrainian Counterpart to Look Into Joe Biden, *Wall Street Journal*, Sept. 25, 2019, available at <https://www.wsj.com/articles/white-house-to-release-transcript-of-trumps-ukraine-call-as-impeachment-efforts-begin-11569403803>.

¹⁰ See <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

¹¹ *Id.*

¹² *Id.*

Dionne Hardy
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 Page 4

President Trump's request to President Zelensky for a politically beneficial investigation into a political rival is now at the center of a formal impeachment inquiry being conducted by the House of Representatives.¹³ According to Speaker of the House Nancy Pelosi, the "sequencing of events," including President Trump's decision to withhold aid days before his phone call with President Zelensky, is a part of the investigation.¹⁴

The requested records would shed light on the reasoning behind the multi-month freeze on military aid to Ukraine and how that policy decision was communicated to both the Department of Defense and the Department of State. Given the varying explanations the Trump administration has given for the decision to withhold the funds over the summer, the records would also help clarify the rationale for the decision. The records would also provide insight on the sequence of events surrounding the hold on the aid to Ukraine and how it relates to President Trump's July 25 phone call with the president of Ukraine. In these ways, they would reveal important information about the functioning and decisions of OMB.

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

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

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze 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 documents it receives under the FOIA on 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.

¹³ Nicholas Fandos, *Nancy Pelosi Announces Formal Impeachment Inquiry of Trump*, *New York Times*, Sept. 24, 2019, available at <https://www.nytimes.com/2019/09/24/us/politics/democrats-impeachment-trump.html>.

¹⁴ Scott Pelley, *The Impeachment Inquiry: "We Could Not Ignore What the President Did"*, *CBS News*, Sept. 30, 2019, available at <https://www.cbsnews.com/news/nancy-pelosi-on-trump-impeachment-inquiry-ukraine-president-phone-call-and-the-whistleblower-in-60-minutes-interview/>.

Dionne Hardy
October 2, 2019
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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 mcorley@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 me either at mcorley@citizensforethics.org or at Matthew Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Corley', with a stylized flourish at the end.

Matthew Corley
Chief Investigator

Hardy, Dionne M. EOP/OMB

From: Eden Tadesse <etadesse@citizensforethics.org>
Sent: Wednesday, October 2, 2019 3:49 PM
To: MBX OMB FOIA
Cc: Matthew Corley
Subject: [EXTERNAL] FOIA request
Attachments: OMB Ukraine FOIA 10-2-19.pdf

Good afternoon,

Enclosed please find a FOIA request.

Best,
Eden

--

Eden Tadesse
Paralegal
CREW | Citizens For Responsibility and Ethics in Washington
etadesse@citizensforethics.org | (202) 897-2402

CREW | Citizens for Responsibility and Ethics in Washington
Main: (202) 408-5565 | Fax: (202) 588-5020 | www.citizensforethics.org

EXHIBIT B – OMB Acknowledgement of the FOIA Request

From: [MBX OMB FOIA](#)
To: ["Eden Tadesse"](#)
Subject: RE: [EXTERNAL] FOIA request
Date: Thursday, October 3, 2019 2:52:00 PM

Greetings: This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated and received in the office on October 2, 2019. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 2020-005.

Sincerely,
Dionne Hardy

From: Eden Tadesse <etadesse@citizensforethics.org>
Sent: Wednesday, October 2, 2019 3:49 PM
To: MBX OMB FOIA <MBX.OMB.FOIA@OMB.eop.gov>
Cc: Matthew Corley <mcorley@citizensforethics.org>
Subject: [EXTERNAL] FOIA request

Good afternoon,

Enclosed please find a FOIA request.

Best,
Eden

--

Eden Tadesse
Paralegal
CREW | Citizens For Responsibility and Ethics in Washington
etadesse@citizensforethics.org | (202) 897-2402

CREW | Citizens for Responsibility and Ethics in Washington
Main: (202) 408-5565 | Fax: (202) 588-5020 |
[>www.citizensforethics.org<](http://www.citizensforethics.org)

EXHIBIT C – Vaughn Index

Item no.	Production	Document ID	Title	Document Date	Page Count	People/Organizations From	People/Organizations To	People/Organizations CC	Production Status	Privilege General Description - Deliberative Process/Presidential Communication	Description of the information containing identified deliberations.
1	No. 1 - 2/28/2019	OMB402OV19OGCOversight_000015663	FW: O&M Defense Wide 97-0100 OMB signed apportionment [Apportionment sent to Agency after Approval from katherine_b_whitman@omb.eop.gov]	7/26/2019	2	"Denaro, Paul J. EOP/OMB"	"Relyea, William J SES OSD OUSD C (USA)"		Produced in part		
2	No. 1 - 2/28/2019	OMB402OV19OGCOversight_000015664	Copy of INC 2019-19-23-24-25 IR-19-05 PA_97-0100 2019-complete 07.25.2019v2.xlsx	7/26/2019	1				Produced in full		Attachment to item no. 1.
3	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000028128	Pentagon to send \$250M in weapons to Ukraine	6/19/2019	2	"Duffey, Michael P. EOP/OMB"	"Vought, Russell T. EOP/OMB"		Produced in part		
4	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000011415	Acting Director's Materials for 6/21/2019	6/20/2019	1	"Reeves, Nicole E. EOP/OMB (Intern)"	"Denton, Wesley M. EOP/OMB" "Frazier, Ashley N. EOP/OMB" "Hill, Amanda M. EOP/OMB" "Vought, Russell T. EOP/OMB" "Yaworske, Jason A. EOP/OMB"	DL OMB ExecSec MBX OMB Directorsbook	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email transmitting briefing materials for the Acting Director of OMB summarizing recommended actions and subject areas including readouts from events, meetings, and other matters.
5	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000011418	NSD Summary - FY 2020 SASC NDAA.docx	6/20/2019	7				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no. 4. Portions of a memorandum containing analysis and discussion among senior OMB staff regarding OMB's plans to advise Congress on the development of defense spending legislation.
6	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000015766	NSD Rescissions: Updates due COB Tomorrow	7/31/2019	1	"Kinneen, Kelly A. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Sandy, Mark S. EOP/OMB"	"Hill, Amanda M. EOP/OMB" "Kan, Derek T. EOP/OMB" "McKiver, Charlie E. EOP/OMB" "Paoletta, Mark R. EOP/OMB" "Shaughnessy, Dianne M. EOP/OMB" "Vought, Russell T. EOP/OMB" "Walsh, Heather V. EOP/OMB" "West, Max W. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains deliberations among OMB staff regarding how best to implement a continuation of the hold on funding for Ukraine security assistance.

7	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021965	Re: "Talking Points" on these accounts	8/2/2019	2	"Denton, Wesley M. EOP/OMB"	"Semmel, Rachel K. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Frazier, Ashley N. EOP/OMB" "Kan, Derek T. EOP/OMB" "Paoletta, Mark R. EOP/OMB" "Vought, Russell T. EOP/OMB" "Yaworske, Jason A. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains draft talking points used in deliberations regarding the making of subsequent public statements about Ukraine security assistance funding.
8	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021966	"Talking Points" on these accounts	8/2/2019	2	"Semmel, Rachel K. EOP/OMB"	"Denton, Wesley M. EOP/OMB" "Duffey, Michael P. EOP/OMB" "Kan, Derek T. EOP/OMB" "Paoletta, Mark R. EOP/OMB" "Vought, Russell T. EOP/OMB" "Yaworske, Jason A. EOP/OMB"	"Frazier, Ashley N. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains draft talking points used in deliberations regarding subsequent public statements about Ukraine security assistance funding.
9	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000015996	Acting Director's Materials for 8/8/2019	8/7/2019	2	"Hoffman, Jason M. EOP/OMB"	"Denton, Wesley M. EOP/OMB" "Frazier, Ashley N. EOP/OMB" "Hill, Amanda M. EOP/OMB" "Kan, Derek T. EOP/OMB" "Vought, Russell T. EOP/OMB" "Yaworske, Jason A. EOP/OMB"	DL OMB ExecSec MBX OMB Directorsbook	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email transmitting briefing materials for the Acting Director of OMB summarizing recommended actions and subject areas including readouts from events, meetings, and other matters.
10	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000016001	Ukraine Funding Meeting.pdf	8/7/2019	10				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no 9. Memorandum from Michael Duffey to Acting OMB Director containing deliberations regarding how to interpret a decision, specifically the objectives, duration, and scope of the hold on Ukraine security assistance. The memorandum also contains analysis and recommendations regarding OMB's position on the hold, in furtherance of advising the President.

11	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021945	Fwd: USAI	8/11/2019	4	"Duffey, Michael P. EOP/OMB"	"Paoletta, Mark R. EOP/OMB" "Vought, Russell T. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	- Contains discussions between Mike Duffey (OMB) and Elaine McCusker (DoD Comptroller) regarding how to interpret a decision regarding the hold on Ukraine security assistance funds and how to implement the hold on those funds, and subsequent deliberations between OMB officials on how to engage with DoD on this topic.
12	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000019286	Re: Apportionment	8/12/2019	2	"Vought, Russell T. EOP/OMB"	"Paoletta, Mark R. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Kan, Derek T. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	- Contains discussion among senior OMB officials of how to implement a continuation of the hold on funding for Ukraine security assistance, including draft language for how to respond to inquiries from DoD regarding the impact of the hold.
13	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000019287	RE: Apportionment	8/12/2019	2	"Paoletta, Mark R. EOP/OMB"	"Vought, Russell T. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Kan, Derek T. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	- Contains discussion among senior OMB officials of how to implement a continuation of the hold on funding for Ukraine security assistance, including draft language for how to respond to inquiries from DoD regarding the impact of the hold.
14	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000019288	Re: Apportionment	8/12/2019	2	"Paoletta, Mark R. EOP/OMB"	"Vought, Russell T. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Kan, Derek T. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	- Contains discussion among senior OMB officials of how to implement a continuation of the hold on funding for Ukraine security assistance, including draft language for how to respond to inquiries from DoD regarding the impact of the hold.
15	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021916	UKRAINE TPs - DRAFT DELIBERATIVE	8/12/2019	1	"Paoletta, Mark R. EOP/OMB"	"Vought, Russell T. EOP/OMB"	"Duffey, Michael P. EOP/OMB"	Produced in part		

16	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021917	UKRAINE TPs - DRAFT DELIBERATIVE.docx	8/12/2019	2				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no.15. Contains drafts of public communications in response to inquiries regarding Ukraine security assistance funds. Portions of the draft document are not final and disclosure could risk chilling the drafting process of similar documents and communications.
17	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000038461	Re: Ukraine	8/17/2019	1	"Paoletta, Mark R. EOP/OMB"	"Vought, Russell T. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Kan, Derek T. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion among senior OMB officials and their staff of how to implement a continuation of the hold on funding for Ukraine security assistance.
18	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000037206	Huddle	8/20/2019	1	"Vought, Russell T. EOP/OMB"	"Balch, Michelle B. EOP/OMB" "Bigley, Mark C. EOP/OMB"		Produced in part		
19	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000037653	Huddle	8/20/2019	1	"Vought, Russell T. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Paoletta, Mark R. EOP/OMB" "Vought, Russell T. EOP/OMB"	"Balch, Michelle B. EOP/OMB"	Produced in part		
20	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000038433	Huddle	8/20/2019	1	"Vought, Russell T. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Paoletta, Mark R. EOP/OMB"	"Balch, Michelle B. EOP/OMB"	Produced in part		
21	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000019628	Huddle	8/21/2019	1	"Vought, Russell T. EOP/OMB"	"Dennehy, Laura C. EOP/OMB"		Produced in part		
22	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000014749	Acting Director's Materials for 8/26/2019	8/23/2019	2	"Hoffman, Jason M. EOP/OMB"	"Denton, Wesley M. EOP/OMB" "Frazier, Ashley N. EOP/OMB" "Kan, Derek T. EOP/OMB" "Marston, Michelle C. EOP/OMB" "Vought, Russell T. EOP/OMB" "Yaworske, Jason A. EOP/OMB"	DL OMB ExecSec MBX OMB Directorsbook	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email transmitting briefing materials for the Acting Director of OMB summarizing recommended actions and subject areas including readouts from events, meetings, and other matters.
23	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000014751	OMBLA Weekly wrap-up.docx	8/23/2019	6				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no 22. Portions of a weekly memo to the Acting Director of OMB from the Legislative Affairs office compiling upcoming decisions, potential meetings, and other matters for his consideration.

24	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000014755	OMB Daily Updates.pdf	8/23/2019	2				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no 22. Memo for senior OMB leadership compiling upcoming decisions, meetings, and other matters for OMB leadership consideration.
25	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021850	Fwd: Ukraine Security Assistance	8/23/2019	3	"Duffey, Michael P. EOP/OMB"	"Frazier, Ashley N. EOP/OMB" "Paoletta, Mark R. EOP/OMB" "Vought, Russell T. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email chain between OMB officials containing discussion of how to respond to an inquiry from Congress regarding Ukraine security assistance funding
26	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021851	8-23-19 Ukraine Security Assistance.pdf	8/23/2019	1				Produced in full		Attachment to item no. 25.
27	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000021847	Re: Ukraine	8/25/2019	1	"Paoletta, Mark R. EOP/OMB"	"Duffey, Michael P. EOP/OMB"	"Vought, Russell T. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion among senior OMB officials and their staff of how to implement a continuation of the hold on funding for Ukraine security assistance.
28	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000034910	Re: Ukraine	8/25/2019	1	"Paoletta, Mark R. EOP/OMB"	"Duffey, Michael P. EOP/OMB"	"Vought, Russell T. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion among senior OMB officials and their staff of how to implement a continuation of the hold on funding for Ukraine security assistance.
29	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000006732	FW: [EXTERNAL] Trump slow-walks Ukraine military aid meant to contain Russia	8/28/2019	4	"Semmel, Rachel K. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Marston, Michelle C. EOP/OMB" "Paoletta, Mark R. EOP/OMB" "Vought, Russell T. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion of whether and how to respond to a media report about Ukraine security assistance funding.
30	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000007319	Acting Director's Materials for 9/4/2019	9/3/2019	2	"Hoffman, Jason M. EOP/OMB"	"Denton, Wesley M. EOP/OMB" "Frazier, Ashley N. EOP/OMB" "Kan, Derek T. EOP/OMB" "Marston, Michelle C. EOP/OMB" "Vought, Russell T. EOP/OMB" "Yaworske, Jason A. EOP/OMB"	DL OMB ExecSec MBX OMB Directorsbook	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email transmitting briefing materials for the Acting Director of OMB summarizing recommended actions and subject areas including readouts from events, meetings, and other matters.

31	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000007320	OMB Daily Updates.pdf	9/3/2019	6				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no. 30. Memo for senior OMB leadership compiling upcoming decisions, meetings, and other matters for OMB leadership consideration.
32	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000007326	OMBLA Wrap Up.docx	9/3/2019	7				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no 30. Portions of a weekly memo to the Acting Director of OMB from the Legislative Affairs office compiling upcoming decisions, potential meetings, and other matters for his consideration.
33	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000006661	apportionment "decision memo"	9/11/2019	1	"Yaworske, Jason A. EOP/OMB"	"Vought, Russell T. EOP/OMB"	"Braid, James C. EOP/OMB" "Conant, Ann M. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion of how to respond to inquiries about Ukraine security assistance funding. Contains a redaction labeled under Exemption 6 regarding a family obligation that is of no public interest value.
34	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000006662	CR apportionment decision memo.docx	9/11/2019	1				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no 33. Draft decision memorandum summarizing legislative developments regarding several topics including Ukraine security assistance funds. The memorandum also contains recommendations about OMB's continued engagement in the process. Portions of the draft document are not final and disclosure could risk chilling the drafting process of similar documents and confusing the public regarding this document.
35	No. 2 - 05/29/2020	OMB402OV19OGCOversight_000009179	Fwd: Ukraine funds	9/11/2019	1	"Paoletta, Mark R. EOP/OMB"	"Duffey, Michael P. EOP/OMB" "Vought, Russell T. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion among senior OMB officials and their staff of how to implement a continuation of the hold on funding for Ukraine security assistance.

36	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000027481	RE: Request for Ukraine Info from DOD	6/20/2019	4		"Falk Curtin, Edna T. EOP/OMB" "Sandy, Mark S. EOP/OMB"	"Broomell, Katie W. EOP/OMB" "Cahill, Steve E. EOP/OMB" "Fairweather, Rob S. EOP/OMB" "Falk Curtin, Edna T. EOP/OMB" "Ladyga, Jon W. EOP/OMB" "Metzger, William L. EOP/OMB" "Nassif, Rob J. EOP/OMB" "O'Kane, Matt J. EOP/OMB" "Ryan, Erika H. EOP/OMB" "Saad, Fouad P. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email chain containing discussions between OMB and DoD officials, in particular DoD Comptroller Elaine McCusker, soliciting information from DoD regarding the status of USAI funding, and subsequent OMB deliberations discussing that information. Disclosure of this information would reveal the process by which OMB engaged with other Executive branch agencies in furtherance of its apportionment duties and also would reveal inter- and intra-agency deliberations about funding that was yet to be finalized.
37	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000027482	SFRC testimony for SR Volker Ukraine June 2019 draft.docx	6/20/2019	3				Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment to item no 36. Draft testimony of Paul Volker for a hearing of the Senate Foreign Relations Committee. This draft document was not final and disclosure could risk chilling the drafting process of similar documents and confusing the public regarding this document.
38	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000027737	RE: Request for Ukraine Info from DOD	6/20/2019	6	"Falk Curtin, Edna T. EOP/OMB"	"Ladyga, Jon W. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email chain containing discussions between OMB and DoD officials, in particular DoD Comptroller Elaine McCusker, soliciting information from DoD regarding the status of USAI funding, and subsequent OMB deliberations discussing that information. Disclosure of this information would reveal the process by which OMB engaged with other Executive branch agencies in furtherance of its apportionment duties and also would reveal inter- and intra-agency deliberations about funding that was yet to be finalized.
39	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000026166	RE: Ukraine info next week	6/24/2019	4	"Duffey, Michael P. EOP/OMB"	"Glazer, Josh S. EOP/OMB"	"Falk Curtin, Edna T. EOP/OMB" "Sandy, Mark S. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email communications between OMB officials discussing the status of Ukraine funding and how OMB should engage with DoD and State, including what information to solicit from those agencies, in furtherance of OMB's apportionment function. Disclosure of this information would reveal the processes by which OMB engages with other Executive branch agencies and chill officials' frank recommendations for how to engage in this important interagency process.

40	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000012730	RE: Ukraine info next week	6/25/2019	4		"Glazer, Josh S. EOP/OMB"	"Falk Curtin, Edna T. EOP/OMB" "Sandy, Mark S. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains intra-agency deliberations as part of a continuous series of immediate decisions, specifically the scope and duration of the hold on Ukraine security assistance funds.
41	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000019407	Re: Ukraine	6/27/2019	1	"Blair, Robert"	"Mulvaney, Mick M. EOP/WHO"	"Vought, Russell T. EOP/OMB"	Withheld in full	Presidential Communications - Information that was solicited and received by Robert Blair regarding the decision to hold funds for Ukraine. Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Email from White House Advisor Robert Blair to White House Chief of Staff Mick Mulvaney and OMB Acting Director Russell Vought containing information about deliberations regarding Ukraine Security assistance, and the President's decisionmaking, as part of ongoing dialogue between Mr. Blair and Mr. Vought for the purpose of advising the President about Ukraine funding.
42	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000019409	attachment 1.docx	6/27/2019	1				Withheld in full	Presidential Communications - Information that was solicited and received by Robert Blair regarding the decision to hold funds for Ukraine. Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Attachment item no. 41. Withheld as part of the Presidential communication from Robert Blair to White House Chief of Staff Mick Mulvaney, and Acting OMB Director Russell Vought, in doc no. 41, which conveyed information to Mr. Mulvaney and Mr. Vought in furtherance of their on-going dialogue for the purpose of advising the President on Ukraine funding. The attachment contains information about Ukraine Security assistance, the disclosure of which would reveal information about Mr. Blair's formulation of advice to the President.
43	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000021219	FW: Ukraine info next week	6/27/2019	7	"Falk Curtin, Edna T. EOP/OMB"	"Broomell, Katie W. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains intra-agency deliberations as part of a continuous series of immediate decisions, specifically the scope and duration of the hold on Ukraine security assistance funds.
44	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000021221	PB20 USAI request.pdf	6/27/2019	1				Produced in full		Attachment to item no. 40.

45	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000021222	FY19 USAI Enacted Approps.pdf	6/27/2019	2				Produced in full		Attachment to item no. 40.
46	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000021223	FY19 USAI Enacted Authorization.pdf	6/27/2019	3				Produced in full		Attachment to item no. 40.
47	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000021224	DOD Russia-Ukraine Dashboard_20190625.pdf	6/27/2019	1				Produced in full		Attachment to item no. 40.
48	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000022011	Ukraine	6/27/2019	1	"Mulvaney, Mick M. EOP/WHO"	"Blair, Robert" "Vought, Russell T. EOP/OMB"		Withheld in full	Presidential Communications - Information that was solicited and received by Robert Blair regarding the decision to hold funds for Ukraine. Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Includes a communication by an immediate advisor to the President soliciting information from OMB's Acting Director about Ukraine funding for the purpose of advising the President on the issue. Because the inquiry references information about previous deliberations in furtherance of advising the President, disclosure of this information would reveal protected information. The subsequent receipt by Mr. Mulvaney of the information that he solicited here appears separately in item no. 41. This record also contains exempt deliberative information that informed decisions about how to implement the initial hold on funding for Ukraine security assistance.
49	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000013826	Re: NSD Staff Meeting Minutes - July 2, 2019	7/6/2019	3	"McNavage, William EOP/OMB"	"Nassif, Rob J. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains summaries of deliberations on multiple topics in a division meeting, including discussion of how to execute a decision to implement the initial hold on funding for Ukraine security assistance.
50	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000022207	Meeting Forward Notification: Loop on Ukraine CN	7/18/2019	1	"Lilac, Kristina E. EOP/OMB"	"Fuller, Jake E. EOP/OMB"		Produced in part		
51	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000009376	RE: Ukraine security assistance	7/19/2019	3	"Lilac, Kristina E. EOP/OMB"	"Denaro, Paul J. EOP/OMB" "Ryan, Erika H. EOP/OMB" "Saad, Fouad P. EOP/OMB"	"Lopez, Kimberly A. EOP/OMB" "Sandy, Mark S. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains deliberations about when and how to raise an issue at a meeting of the National Security Council regarding how best to spend Ukraine security assistance funds.
52	Supplemental - 11/17/2020 (originally declared withheld in full in production no. 3 - 06/29/2020)	OMB402OV19OGCOversight_000012916	Re: The next meeting	7/22/2019	2	"Saad, Fouad P. EOP/OMB"	"Fuller, Jake E. EOP/OMB" "Vindman, Alexander S. EOP/NSC"	"Lilac, Kristina E. EOP/OMB" "Lopez, Kimberly A. EOP/OMB" "Murphy, Grant S. EOP/NSC" "Pipan, Joseph G. EOP/OMB" "Ryan, Erika H. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains detailed information about the deliberations taking place during an interagency meeting conducted by the NSC, the disclosure of which would reveal the processes by which the President receives national security advice.

53	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000012920	FW: Ukraine info next week	7/22/2019	7	"Ryan, Erika H. EOP/OMB"	"Lopez, Kimberly A. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains intra-agency discussions of how to execute a decision, specifically how to implement the initial hold on funding for Ukraine security assistance.
54	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000012921	FW: Ukraine CN	7/22/2019	3	"Ryan, Erika H. EOP/OMB"	"Lopez, Kimberly A. EOP/OMB"		Withheld in full	Presidential Communications - reflectss preparations to supply requested information to a meeting of the NSC attended by NSC's staff of immediate advisors to the President regarding the decision to hold funds for Ukraine. Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains an email message from Robert Blair to Mike Duffey conveying information about Ukraine Security assistance, and the President's decisionmaking, as part of their ongoing dialogue for the purpose of advising the President about Ukraine funding. In particular, the email chain contains a question regarding the nature and extent of a Presidential decision regarding Ukraine funding, and a response that reveals the underlying Presidential deliberations leading up to that decision. This record also contains exempt deliberative information that informed decisions about how to implement the initial hold on funding for Ukraine security assistance.
55	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000015169	RE: TIME SHIFT: DSG on 7/26, 1:30 - 2:30 PM	7/23/2019	3	"Lopez, Kimberly A. EOP/OMB"	"Saad, Fouad P. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains detailed information about a meeting conducted by the NSC, the disclosure of which would reveal deliberations about how President receives national security advice.
56	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000015724	FW: Assistance Freezes Memo	7/23/2019	1	"Lilac, Kristina E. EOP/OMB"	"Pipan, Joseph G. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Cover email transmitting draft memo (Doc. 57) about OMB's position on several foreign assistance items, including the initial hold on Ukraine funding. The redacted language contains the author's analysis and characterization of the attached memo, the disclosure of which would chill agency officials' ability to communicate frank advice.

57	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000015725	Assistance Freezes Memo for RV v1.docx	7/23/2019	4				Withheld in full	Deliberative Process Privilege - Draft document not relied upon and kept internal to the Executive Branch.	Attachment to item no. 56. Draft memo to Acting OMB director analyzing several foreign assistance items, including the initial hold on Ukraine funding, with recommendations for OMB engagement. The disclosure of this information would chill agency officials' ability to communicate frank advice to their superiors. The draft document also contains edits, marginal suggestions and comments, and/or embedded questions regarding content. The disclosure of such a document could chill the drafting process in the future and confuse the public about agency activity.
58	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000017066	NSD Leadership Meeting Minutes - July 22, 2019	7/23/2019	2		"Sandy, Mark S. EOP/OMB"	"Cahill, Steve E. EOP/OMB" "Evans, Gillian A. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains intra-agency discussions of how to execute a decision, specifically how to implement the initial hold on funding for Ukraine security assistance.
59	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000021409	FW: Ukraine info next week	7/24/2019	6	"Glazer, Josh S. EOP/OMB"	"Lopez, Kimberly A. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains intra-agency discussions of how to execute a decision, specifically how to implement the initial hold on funding for Ukraine security assistance.
60	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000021410	Ukraine Post-2014 Security Tracker (from State).xlsx	7/24/2019	29				Produced in full		Attachment to item no 59.
61	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000015849	Re: Ukraine Prep Memo quick review	7/25/2019	2	Walsh, Heather V. EOP/OMB	"Spittell, Jack H. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains deliberations about what information to include in briefings to senior OMB officials in preparation for an interagency meeting and whether or how to raise an issue at such a meeting.
62	No. 3 - 06/29/2020	OMB402OV19OGCOversight_000015666	RE: Ukraine Prep Memo quick review	7/26/2019	2	"Broomell, Katie W. EOP/OMB"	"Denaro, Paul J. EOP/OMB" "Glazer, Josh S. EOP/OMB" "Spittell, Jack H. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains deliberations about what information to include in briefings to senior OMB officials in preparation for an interagency meeting (the July 26, 2019 NSC Deputies Small Group meeting) and whether or how to raise an issue about the hold on Ukraine funding at the meeting.
63	No. 4 - 7/24/2020	OMB402OV19OGCOversight_000016757	RE: Bullets for Rob - From Jack and Kim	7/26/2019	3	"Pipan, Joseph G. EOP/OMB"	"Lopez, Kimberly A. EOP/OMB" "Rice, Keri A. EOP/OMB" "Saad, Fouad P. EOP/OMB"	"Callanan, Greg J. EOP/OMB" "Hoskins, Jack A. EOP/OMB"	Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains a summary of interagency deliberations conducted by NSC regarding how best to spend Ukraine Security Assistance funds, and OMB intra-agency discussions about the characterization of those deliberations.

64	No. 4 - 7/24/2020	OMB402OV19OGCOversight _000019173	RE: Bullets for Rob - From Jack and Kim	7/26/2019	3	"Hoskins, Jack A. EOP/OMB"	"Lopez, Kimberly A. EOP/OMB" "Rice, Keri A. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains a summary of interagency deliberations conducted by NSC regarding how best to spend Ukraine Security Assistance funds, and OMB intra-agency discussions about the characterization of those deliberations.
65	No. 4 - 7/24/2020	OMB402OV19OGCOversight _000036986	RE: Bullets for Rob - Additional info on W-GDP	7/26/2019	3		"Rice, Keri A. EOP/OMB" "Saad, Fouad P. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains a summary of interagency deliberations conducted by NSC regarding how best to spend Ukraine Security Assistance funds, and OMB intra-agency discussions about the characterization of those deliberations.
66	No. 4 - 7/24/2020	OMB402OV19OGCOversight _000021899	Re: 330 PM call	8/13/2019	2	"Blair, Robert"	"Vought, Russell T. EOP/OMB"		Withheld in full	Presidential Communications - Information that was solicited and received by Robert Blair regarding the decision to hold funds for Ukraine. Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Reflects, on its face, information that Mr. Blair solicited and received from Mr. Vought concerning Ukraine security assistance. Contains discussion of the status of deliberations regarding the best use of funds allocated to Ukraine security assistance.
67	No. 4 - 7/24/2020	OMB402OV19OGCOversight _000006715	RE: [EXTERNAL] Pentagon wants Ukraine military aid to continue	8/29/2019	3	"Duffey, Michael P. EOP/OMB"	"Marston, Michelle C. EOP/OMB" "Paoletta, Mark R. EOP/OMB" "Sammel, Rachel K. EOP/OMB" "Vought, Russell T. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion of the status of deliberations regarding the best use of funds allocated to Ukraine security assistance.
68	No. 4 - 7/24/2020	OMB402OV19OGCOversight _000006682	Fwd: Extension of footnote	9/4/2019	1	"Paoletta, Mark R. EOP/OMB"	"Vought, Russell T. EOP/OMB"		Produced in part	Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Contains discussion among senior OMB officials and their staff of how to implement a continuation of the hold on funding for Ukraine security assistance.
69	No. 4 - 7/24/2020	OMB402OV19OGCOversight _000003566	FW: Ukraine	9/11/2019	1	"Vought, Russell T. EOP/OMB"	"Bigley, Mark C. EOP/OMB" "Conant, Ann M. EOP/OMB" "Fuller, Jake E. EOP/OMB" "Hoffman, Jason M. EOP/OMB" "Miller, Julie L. EOP/OMB"		Withheld in full	Presidential Communications - Information that was solicited and received by Robert Blair regarding the decision to hold funds for Ukraine. Deliberative Process Privilege - This record was kept internal to the Executive Branch, reflects pre-decisional deliberations, and release would harm future deliberations.	Memorializes the President's communications about his decisionmaking on Ukraine funding, the disclosure of which would directly reveal the President's deliberations. Contains discussion of the status of deliberations regarding the best use of funds allocated to Ukraine security assistance.

Exhibit 2

Herrington Declaration &
DoD *Vaughn* Index

Defendants.

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3. This declaration is submitted in support of Defendants' Motion for a Summary Judgment. The purpose of this declaration is to provide the Court with information concerning the search conducted by DoD and the basis for redactions, which Plaintiff has indicated it is challenging.

ADMINISTRATIVE PROCESSING OF PLAINTIFF'S FOIA REQUEST

4. I am familiar with Plaintiff's FOIA request to DoD dated October 2, 2019, seeking (1) "all communications between the Defense Department and the Office of Management and Budget ('OMB') on July 18, 2019, July 23, 2019, and July 26, 2019, related to security assistance or military aid for Ukraine," and (2) "all records related to interagency meetings that involved OMB on July 18, 2019, July 23, 2019, and July 26, 2013 in which security assistance or military aid for Ukraine was discussed." *See* Exhibit A.

5. On October 4, 2019, DoD issued an interim response, acknowledging Plaintiff's request and assigning it case number 20-F-0012. *See* Exhibit B.

6. In response to Plaintiff's FOIA request, DoD produced 61 pages of electronic records on February 28, 2020, with some redactions pursuant to FOIA exemptions 1, 3, 5, and 6. DoD agreed to conduct an additional search for paper records and withheld in full 35 pages of scanned paper records on May 6, 2020, pursuant to FOIA exemptions 1 and 5.

7. I understand that Plaintiff is not challenging the withholding of information pursuant to Exemptions 1 or 3. Thus, the basis for those redactions will not be addressed in this declaration.

SEARCH CONDUCTED BY DOD

8. In light of heightened interest in the Ukraine Security Assistance Initiative ("USAI"), on October 3, 2019, the DoD General Counsel issued a memorandum across DoD requesting cooperation in identifying, preserving, and collecting documents and other records regarding the USAI and in responding to anticipated requests for such materials. He further requested that

relevant custodians continue to provide such materials and information to the DoD Office of Information Counsel ("OIC"), a subcomponent of DoD, OGC.

9. This effort was intended to ensure efficient, thorough, and consistent responses to congressional requests, press inquiries, internal reviews, and FOIA requests from the public regarding the USAI. To that end, OIC compiled a set of records from relevant custodians within an E-discovery tool, from which focused searches could be conducted and documents can be reviewed to respond to an individual requests without repeatedly conducting such searches of DoD components' files. The custodians from which records were collected included relevant personnel within the office of the Secretary of Defense, the Under Secretary Of Defense for Policy, the General Counsel's office, the DoD Comptroller's Office, the Joint Staff, European Command, the Defense Security Cooperation Agency, and Office of Legislative Affairs.

10. OIC identified relevant custodians in each pertinent office and requested that the information technology specialists conduct a search of the email folders and folders of electronically stored information on the custodians' individual "H drives" and their emails at all classification levels. The search terms used for this initial collection of potentially relevant material were: "'USAI" OR (('Ukraine' or 'Ukrainian') AND ('security' OR '1250' OR ('FMF' OR 'Foreign Military Financing') OR 'impound' OR 'obligation')))." For records located on the unclassified system, the set of records was placed into E-discovery software. For records located on classified systems, the records were stored in PST files in Microsoft Outlook on the classified system. The initial search was conducted for records between May 1, 2019, and September 30, 2019. The search was later supplemented with records dated January 1, 2019 through April 30, 2019, using the same terms.

11. To respond to Plaintiff's FOIA requests, I searched the set of potentially responsive unclassified records for any communications between all custodians within DoD and all persons with the email domain used by personnel at OMB on the dates of July 18, 23, or 26, 2019. I also reviewed all emails on the classified system on those dates to see if they contained communications with OMB personnel. Those records were then reviewed for responsiveness. Additionally, I searched all emails on the classified system during the time frame of 15-31 July for discussions of interagency meetings. I found some responsive email chains and processed those chains. Using the terms found on the classified system, I searched the USAI e-discovery set for the terms contained in the email chains, including – "Readout", "DSG," "Deputies Small Group," "Deputy Small Group" and "PCC" between 15-30 July.

12. After the initial production of 61 pages of electronic records on February 28, 2020, DoD agreed to conduct an additional search for paper records. Documents within the first production indicated which DoD personnel attending the meetings referenced in Plaintiff's FOIA request. I asked the relevant personnel to provide any paper records from those meetings. Those personnel provided scanned copies of their notes from the meetings, which totaled 35 scanned pages.

FOIA EXEMPTIONS

Exemption 5

13. Exemption 5, 5 U.S.C. § 552(b)(5), permits the withholding of "inter-agency or intra-agency memorandums or letters which would not be available by law to party other than an agency in litigation with the agency." Exemption 5 allows an agency to exempt information that is normally privileged in the civil discovery context. As relevant to withholding of information in the responsive records, these privileges include the deliberative process privilege and the presidential communications privilege.

14. The deliberative process privilege protects pre-decisional, deliberative communications that are part of a process by which agency decisions are made. It protects opinions, advice, evaluations, deliberations, proposals, or recommendations that form part of an agency decision-making process, as well as the selection and sorting of factual information relied upon as part of the decision-making process.

15. The presidential communications privilege applies to communications of the President that take place in connection with the performance of his official duties, as well as information that is solicited and received by the President or an immediate White House advisor to the President in connection with presidential decision-making.

16. Document 1, bates numbered 1-2, (see Vaughn Index attached as Exhibit C) is an email exchange dated between July 25-26, 2019, following an email from Mike Duffey of OMB to senior DoD officials directing that DoD hold off on any additional DoD obligation of funds under the USAI. The portions withheld from those emails detail opinions regarding the notice and recommendations on how to respond, including recommendations of what to communicate at an upcoming Deputies meeting at the National Security Council. The release of this information could chill such candid advice in the future on sensitive matters, including how to engage with other federal agencies. Therefore, such information is pre-decisional and deliberative and was thus appropriately withheld.

17. The only information withheld from the document 2, bates numbered 3-17, was redacted pursuant to exemption 6, which is addressed later in this declaration. No information was withheld on pages bates numbered 4-17. The only exemption 5 redaction on document 4 was a minor redaction referencing a communication between DoD and NSC on a matter unrelated to USAI funding, which was included in an email preparing for an interagency meeting regarding

Ukraine. Release of that information would reveal discussions on an unrelated topic involving another foreign government and is exempt from disclosure under the deliberative process privilege.

18. The remaining documents listed in the attached Vaughn Index are either materials prepared in advance of interagency meetings on the dates referenced in Plaintiff's FOIA request regarding Ukraine and the USAI funding (Documents 5, 15); emails relaying discussions that occurred at those meetings and actions that should be taken in furtherance of the interagency deliberations for the purpose of advising the President on Ukraine security assistance, particularly the timing, scope, and impact of any hold on funding (Documents 6, 7, 8, 16); the handwritten notes of DoD attendees at those meetings taken in order to produce the emails to senior DoD leadership (Documents 17, 18, 19, 20, 21); or follow up discussions analyzing the information and advising how DoD should proceed or relaying further deliberations to the National Security Council (Documents 9, 10, 11, 12, 13, 14).

19. These records memorialize the advice and recommendations of both DoD and other Executive branch agencies, advice on how best to proceed, and requests for additional analysis from the relevant agencies. The release of this information could similarly chill frank and candid deliberations on vital executive branch decision making. They are therefore properly withheld pursuant to the pre-decisional deliberative process privilege.

20. The meetings referenced in the request were Deputies Committee ("DC"), Policy Coordination Committees ("PCCs"), and sub PCCs meetings of the National Security Council. The DC serves as the senior sub-Cabinet interagency forum for consideration of, and, where appropriate, decision-making on, policy issues that affect the national security interests of the United States. The DC is chaired by the Deputy National Security Advisor. The DC reviews and

monitors the work of the interagency national security process, including the interagency groups. The DC helps to ensure that issues brought before the National Security Council, Homeland Security Council, and Principals Committee have been properly analyzed and prepared for decision. The DC focuses significant attention on monitoring the implementation of policies and decisions and conducts periodic reviews of the Administration's major national security and foreign policy initiatives. The DC is responsible for establishing PCCs and for providing objectives and clear guidance. The PCC manages the development and implementation of national security policies by multiple Executive departments and agencies, with participation primarily occurring at the Assistant Secretary level. As the main day-to-day fora for interagency coordination of national security policies, the PCCs provides policy analysis for consideration by the more senior committees of the national security system and ensure timely responses to the President's decisions.

21. As materials in preparation for these meetings, notes from these meetings, and readout from the meetings reflect the process by which the President receives national security advice from close advisors and contain the actual advice provided to the President and his senior advisors, the information was also appropriately withheld pursuant to the presidential communications privilege.

Exemption 6

22. Exemption 6, 5 U.S.C. § 552(b)(6), permits the Government to withhold information about individuals when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." DoD has a practice to withhold personally identifying information of those members of DoD who are at the military rank of Colonel or below and at the rank of GS-15 or below. *See O'Keefe v. DoD*, 463 F. Supp. 2d 317, (E.D.N.Y.

2006) (holding that “the probative value of this personally identifying information is nominal and does not overcome the privacy interest of the employees involved. The employees who conducted the investigation are of relatively low rank”).

23. The rationale for this practice is that disclosing the names of the individuals involved could subject such individuals to annoyance or harassment in their private lives. Given the public interest in this matter as it related to the President’s impeachment proceedings, the potential for harassment is further elevated in this case. Thus, this policy protects significant personal privacy interests.

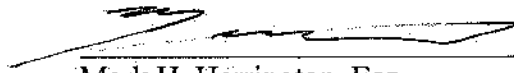
24. DoD attempted to consistently redact any contact information of DoD and other federal agencies personnel, which Plaintiff has indicated it does not challenge. Plaintiff does however challenge the withholding of names of junior personnel. The release of these low-level individuals’ names would not serve the “core purpose” of the FOIA, as it would not show “what the government is up to.” As these individuals were not the decision makers who are typically held accountable by the public, their identities are not typically relevant or of interest to the public. Thus, there is no public interest outweighing the significant personal privacy interests involved.

Segregability Analysis

25. DoD has conducted a page-by-page and line-by-line review of the documents at issue in this Declaration for reasonable segregation of non-exempt information and no further segregation of meaningful information in the redacted documents can be made without disclosing information entitled to protection under the FOIA.

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

Executed this 17th day of November 2020, at Arlington, Virginia.



Mark H. Herrington, Esq.
Associate Deputy General Counsel

Exhibit A

CREW | citizens for responsibility
and ethics in washington

October 2, 2019

BY EMAIL: whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

U.S. Department of Defense
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: Freedom of Information Act Request

Dear FOIA Officer,

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 Defense ("DOD") regulations.

Specifically, CREW requests the following:

First, CREW requests all communications between the Defense Department and the Office of Management and Budget ("OMB") on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.

Second, CREW requests all records related to interagency meetings that involved OMB on July 18, 2019, July 23, 2019, and July 26, 2013 in which security assistance or military aid for Ukraine was discussed.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our 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. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

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).

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 Page 2

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DOD 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).

On August 12, 2019, a whistleblower who works within the intelligence community filed a complaint with the Office of the Inspector General of the Intelligence Community, reporting an “urgent concern” that “the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election.”¹ According to a declassified version of the complaint released by the House Permanent Select Committee on Intelligence, the whistleblower described President Trump’s July 25, 2019 telephone call with Ukrainian President Volodymyr Zelensky, in which “after an initial exchange of pleasantries, the President used the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.”²

In a section on circumstances leading up to the July 25 phone call, the whistleblower noted that he or she learned in mid-July “of a sudden change of policy with respect to U.S. assistance,” which was described in more detail in an appendix.³ Specifically, the whistleblower wrote, “On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President ‘earlier that month’ had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.”⁴

The whistleblower’s observations about a change in policy during that time period regarding assistance to Ukraine have been confirmed by public documents and press reporting. President Trump and his advisers reportedly began discussing the idea of putting a hold on the funds for Ukraine in June 2019 and President Trump ordered his acting chief of staff, Mick Mulvaney, to put a hold on the money at least a week before his July 25 phone call with Ukrainian President Zelensky.⁵ Defense and State Department officials were informed by OMB

¹ Press Release, House Intelligence Committee Releases Whistleblower Complaint, House Permanent Select Committee on Intelligence, Sept. 26, 2019, available at <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=708>; See https://intelligence.house.gov/uploadedfiles/20190812_-whistleblower_complaint_unclass.pdf

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Karoun Demirjian, Josh Dawsey, Ellen Nakashima and Carol D. Leonig, Trump ordered hold on military aid days

FOIA Officer
 October 2, 2019
 Page 3

of the decision during an interagency meeting on July 18, 2019.⁶ OMB officials reportedly explained that President Trump had “concerns” about the aid funding and wanted to examine the need for the money.⁷ According to the *Washington Post*, “Administration officials were instructed to tell lawmakers that the delays were part of an ‘interagency process’ but to give them no additional information — a pattern that continued for nearly two months, until the White House released the funds on the night of Sept. 11.”⁸

On September 25, 2019, following news reports that President Trump repeatedly pressured President Zelensky during the July 25 phone call to investigate former Vice President Biden’s son, the White House released a rough transcript of the call.⁹ The transcript revealed that President Trump framed the conversation by saying, “we do a lot for Ukraine” and “I wouldn’t say that it’s reciprocal necessarily.”¹⁰ Then, when President Zelensky stated that Ukraine was ready for “next steps” and specifically raised his desire to buy weapons from the United States, President Trump immediately replied by saying, “I would like you to do us a favor though” before asking for Ukraine to pursue investigations into several subjects, including one related to former Vice President Biden and his son.¹¹ President Trump told President Zelensky that he would tell both Giuliani and Attorney General William Barr to contact him about the investigations.¹²

President Trump’s request to President Zelensky for a politically beneficial investigation into a political rival is now at the center of a formal impeachment inquiry being conducted by the House of Representatives.¹³ According to Speaker of the House Nancy Pelosi, the “sequencing of events,” including President Trump’s decision to withhold aid days before his phone call with President Zelensky, is a part of the investigation.¹⁴

before calling Ukrainian president, officials say, Washington Post, Sept. 23, 2019, available at https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html?arc404=true; Rebecca Ballhaus, Andrew Restuccia and Siobhan Hughes, Trump Put Hold on Military Aid Ahead of Phone Call With Ukraine’s President, Wall Street Journal, Sept. 24, 2019, available at <https://www.wsj.com/articles/president-trump-repeats-criticism-of-biden-in-impromptu-u-n-appearance-11569254230>.

⁶ *Id.*

⁷ Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019.

⁸ *Id.*

⁹ Alan Cullison, Rebecca Ballhaus and Dustin Volz, Trump Repeatedly Pressed Ukraine President to Investigate Biden’s Son, Wall Street Journal, Sept. 21, 2019, available at <https://www.wsj.com/articles/trump-defends-conversation-with-ukraine-leader-11568993176>; Rebecca Ballhaus, Sadie Gurman, and Dustin Volz, Rough Transcript Shows Trump Asked Ukrainian Counterpart to Look Into Joe Biden, Wall Street Journal, Sept. 25, 2019, available at <https://www.wsj.com/articles/white-house-to-release-transcript-of-trumps-ukraine-call-as-impeachment-efforts-begin-11569403803>.

¹⁰ See <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

¹¹ *Id.*

¹² *Id.*

¹³ Nicholas Fandos, Nancy Pelosi Announces Formal Impeachment Inquiry of Trump, New York Times, Sept. 24, 2019, available at <https://www.nytimes.com/2019/09/24/us/politics/democrats-impeachment-trump.html>.

¹⁴ Scott Pelley, The Impeachment Inquiry: “We Could Not Ignore What the President Did”, CBS News, Sept. 30, 2019, available at <https://www.cbsnews.com/news/nancy-pelosi-on-trump-impeachment-inquiry-ukraine-president-phone-call-and-the-whistleblower-in-60-minutes-interview/>.

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Page 4

The requested records would shed light on the reasoning behind the multi-month freeze on military aid to Ukraine and how that policy decision was communicated by OMB to the Defense Department. Given the varying explanations the Trump administration has given for the decision to withhold the funds over the summer, the records would also help clarify the rationale for the decision. The records would also provide insight on the sequence of events surrounding the hold on the aid to Ukraine and how it relates to President Trump's July 25 phone call with the president of Ukraine. In these ways, they would reveal important information about the functioning and decisions of the Defense Department.

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

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

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze 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 documents it receives under the FOIA on 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 mcorley@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 me either at mcorley@citizensforethics.org or at Matthew Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C.

FOIA Officer
October 2, 2019
Page 5

20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Corley', with a stylized flourish at the end.

Matthew Corley
Chief Investigator

Exhibit B



**DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

OCT 04 2019

Ref: 20-F-0012

Matthew Corley
CREW
1101 K Street, N.W., Suite 201
Washington, DC 20005

Dear Mr. Corley:

This is an interim response to your October 2, 2019 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on the same day and assigned it case number 20-F-0012. We ask that you use this number when referring to your request.

Although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances that impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more, of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for the Office of the Secretary of Defense (OSD), the Joint Staff (JS), and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required records searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination.

In your FOIA request, you ask for "a fee waiver." Decisions to waive or reduce fees are made on a case-by-case basis and we will make a determination concerning your fee waiver request at the conclusion of the search and assessment of responsive records, should they exist. However, please know that this office will only assess fees if we provide the final response to your FOIA request within the statutory time allotted by the FOIA or the responsive records total more than 5,000 pages, even after a good faith effort on our part to limit the scope of your request.

Your request has been placed in our complex processing queue and is being worked based on the order in which the request was received. Our current administrative workload is approximately 2,997 open requests.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests.

The OSD/JS FOIA Public Liaison, Darrell Williams, is available at 571-372-0462 or by email at OSD.FOIALiaison@mail.mil to answer any concerns about the foregoing.

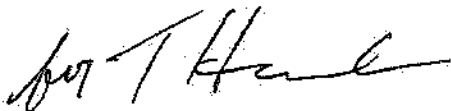
Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to OCMO Office of the Chief Management Officer, 4800 Mark Center Drive, ATTN: DPCLTD, Privacy/FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700. Your appeal must be postmarked within 90 calendar days of the date of this response. Alternatively, you may email your appeal to osd.foia-appeal@mail.mil. If you use email, please include the words "Privacy/FOIA Appeal" in the subject of the email. Please also reference case number 20-F-0012 in any appeal correspondence.

We regret the delay in responding to your request and appreciate your patience. If you have any questions or wish to discuss the reformulation of your request or an alternative time frame for the processing of your request, you may contact, Ms. Tanya Guimont, at (571) 372-0416 or tanya.a.guimont.civ@mail.mil.

Sincerely,



Stephanie L. Carr
Chief

Enclosure:
As stated

Exhibit C

CREW v OMB, et al., No. 19-3488 (D.D.C.)**DoD Vaughn Index**

Doc #	Bates #	Document Type	Date	Subject	Exemptions	Basis
1	1-2	Email	7/26/19	Ukraine Foreign Assistance	5, 6	5 - Opinions regarding the notice to hold USAI funding and recommendations on how to respond, including recommendations of what to communicate at an upcoming Deputies meeting at the National Security Council. Deliberative process privileged. 6 - Contact information of DoD and OMB personnel.
2	3-17	Email with attachment	7/26/19	Copy of Apportionment Schedule	6	6 - Contact information of DoD and OMB personnel and names of junior personnel.
3	18-20	Email	7/22/19	Review: Slides on Us Security Assistance	3, 5, 6	3 - Not challenged 5 - Advice and recommendation regarding upcoming interagency meeting about specific topics of deliberation in furtherance of advising the President. Deliberative process privilege and presidential communications privilege. 6 - Contact information of DoD and State personnel and names of junior personnel.
4	21	Email	7/19/19	Waves	5, 6	5 - Reference to discussion of subject matter unrelated to FOIA request from DoD to NSC. Deliberative process privilege. 6 - Contact information of DoD personnel and names of junior personnel.

5	22-23	Email	7/25/19	Deputy Small Group on Ukraine security assistance	1, 5, 6	<p>1- Not challenged</p> <p>5- Advice and recommendations about what issues to raise for DoD at a Deputy Small Group meeting information about specific topics of deliberation in furtherance of advising the President. The Deputy Committee ("DC") helps to ensure that national security issues have been properly analyzed and prepared for decision by the President. Deliberative process privilege and presidential communications privilege.</p> <p>6 - Contact information of DoD personnel and names of junior personnel.</p>
6	24-26	Email	7/23/19	Readout: Ukraine PCC	1, 5, 6	<p>1- Not challenged</p> <p>5- Read out of Policy Coordination Committee ("PCC") meeting regarding Ukraine on July 23, 2019. The PCC is used for management of the development and implementation of national security policies by multiple executive departments and agencies, and provides policy analysis for consideration by the more senior committees of the national security system and ensure timely responses to the President's decisions. The communication includes advice and recommendations of DoD and other federal agencies and lists of due outs for those agencies to accomplish, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege.</p> <p>6 - Contact information of DoD personnel and names of junior personnel.</p>

7	27-29	Email	7/18/19	Readout: Ukraine sub-PCC	1, 5, 6	<p>1- Not challenged</p> <p>5- Read out of Sub-PCC meeting regarding Ukraine on July 18, 2019. The PCC is used for management of the development and implementation of national security policies by multiple executive departments and agencies, and provides policy analysis for consideration by the more senior committees of the national security system and ensure timely responses to the President's decisions. The communication includes advice and recommendations of DoD and other federal agencies and lists of due outs for those agencies to accomplish, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege.</p> <p>6 - Contact information of DoD personnel and names of junior personnel.</p>
8	30-31	Email	7/26/19	Ukraine Deputies Small Group Readout	1, 5, 6	<p>1- Not challenged</p> <p>5- Readout from a DC Small Group meeting about specific topics of deliberation in furtherance of advising the President. The DC helps to ensure that national security issues have been properly analyzed and prepared for decision by the President. Deliberative process privilege and presidential communications privilege.</p> <p>6 - Contact information of DoD personnel and names of junior personnel.</p>
9	32	Email	8/2/19	Ukraine DSG follow-up	5, 6	<p>5- Follow up from a DC Small Group meeting about specific topics of deliberation in furtherance of advising the President. Email from the</p>

						Undersecretary of Defense for Policy to the Deputy National Security Advisor following up on discussions regarding USAI funding and providing the opinions of DoD. Deliberative process privilege and presidential communications privilege. 6 - Contact information of DoD personnel and names of junior personnel.
10	33-36	Email	7/29/19	Ukraine DSG Follow-Up	1, 5, 6	1- Not challenged 5- Recommendations to the Undersecretary of Defense for Policy on how best to respond to DoD due outs from DSG meeting regarding USAI funding, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege. 6 - Contact information of DoD personnel and names of junior personnel.
11	37	Email	7/18/19	Ukraine Security Assistance	5, 6	5- Read out of Sub-PCC meeting regarding Ukraine on July 18, 2019. The communication relates the interagency discussions and the opinions of DoD regarding USAI funding to those directly involved in its execution. It reflects the substance of deliberations about how best to advise the President. Deliberative process privilege and presidential communications privilege. 6 - Contact information of DoD personnel and names of junior personnel.
12	38-47	Email	7/19/19	For Review: Draft sub-PCC SOC	1, 5, 6	1- Not challenged

						<p>5- Discussion of summary of conclusions from Sub-PCC meeting regarding Ukraine on July 18, 2019. The communication relates the interagency discussions and the opinions of DoD and other federal agencies regarding USAI funding. It reflects the topics of deliberations regarding matters to advise the President. Deliberative process privilege and presidential communications privilege.</p> <p>6 - Contact information of DoD and other federal agency personnel and names of junior personnel.</p>
13	48-53	Email	7/24/19	Readout Ukraine PCC	1, 5, 6	<p>1- Not challenged</p> <p>5- Further discussion regarding responding to due outs and the read from a PCC meeting regarding Ukraine on July 23, 2019. The communication includes advice and recommendations of DoD and other federal agencies and lists of due outs for those agencies to accomplish, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege.</p> <p>6 - Contact information of DoD personnel and names of junior personnel.</p>
14	54-57	Email	7/30/19	Ukraine DSG Follow-Up	1, 5, 6	<p>1- Not challenged</p> <p>5- Further deliberations after recommendations to the Undersecretary of Defense for Policy on how best to respond to DoD due outs from DSG meeting regarding USAI funding, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege.</p>

						6 - Contact information of DoD personnel and names of junior personnel.
15	58-59	Email	7/23/19	Ukraine	5, 6	5 – Reflects questions from the Deputy National Security Advisor to the Undersecretary of Defense for Policy regarding USAI funding and asking for the opinions of DoD for an upcoming PCC, all in developing advice for the President. Deliberative process privilege and presidential communications privilege. 6 - Contact information of DoD personnel and names of junior personnel.
16	60-61	Email	7/26/19	READOUT – Ukraine DSG	1, 5, 6	1- Not challenged 5- Readout to the Chairman of the Joint Chiefs of Staff from a DC Small Group meeting about specific topics of deliberation in furtherance of advising the President regarding Ukraine funding. The DC helps to ensure that national security issues have been properly analyzed and prepared for decision by the President. Deliberative process privilege and presidential communications privilege. 6 - Contact information of DoD personnel and names of junior personnel.
17	62-64	Handwritten notes	7/18/19	Sub-PCC	1, 5	1- Not challenged 5-Notes taken by DoD attendee at Sub-PCC meeting on July 18, 2019 regarding Ukraine. These notes reflect the impressions of the attendee on what is important to relate to senior DoD leadership for further deliberations in advance of advising the President on national security

						matters. The communication includes advice and recommendations of DoD and other federal agencies and lists of due outs for those agencies to accomplish, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege.
18	65-77	Handwritten notes	7/23/19	PCC	1, 5	1- Not challenged 5-Notes taken by DoD attendee at PCC meeting on July 18, 2019 regarding USAI funding. These notes reflect the impressions of the attendee on what is important to relate to senior DoD leadership for further deliberations in advance of advising the President on national security matters. The communication includes advice and recommendations of DoD and other federal agencies and lists of due outs for those agencies to accomplish, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege.
19	78	Handwritten notes	7/23/19	PCC	5	5-Notes taken by DoD attendee at PCC meeting on July 18, 2019 regarding USAI funding. These notes reflect the impressions of the attendee on what is important to relate to senior DoD leadership for further deliberations in advance of advising the President on national security matters. Deliberative process privilege and presidential communications privilege.
20	79	Handwritten notes	7/26/19	Ukraine DC	1, 5	1- Not challenged 5-Notes taken by Undersecretary of Defense for Policy at DC meeting on July 26, 2019 regarding

						USAI funding. These notes reflect the impressions of the attendee on what is important to relate to the Secretary of Defense for further deliberations in advance of advising the President on national security matters. The communication includes advice and recommendations of DoD and other federal agencies, all in furtherance advising the President. Deliberative process privilege and presidential communications privilege.
21	80-96	Handwritten notes	7/23/19	Ukraine PCC	1, 5	1- Not challenged 5-Notes taken by DoD attendee at PCC meeting on July 18, 2019 regarding USAI funding. These notes reflect the impressions of the attendee on what is important to relate to senior DoD leadership for further deliberations in advance of advising the President on national security matters. Deliberative process privilege and presidential communications privilege.

Exhibit 3

Stein Declaration &
State *Vaughn* Index

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON

Plaintiff,

v.

OFFICE OF MANAGEMENT AND BUDGET,
et al.,

Defendants.

Case No. 19-cv-3488 (TFH)

THIRD 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 State 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 my current capacity, I worked directly for State’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 the Executive Order 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. I am familiar with the efforts of Department personnel to process the FOIA request that is the subject of this litigation, and I am in charge of coordinating the agency's search and processing efforts with respect to this request. 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.

4. This declaration explains the Department's search for records responsive to Plaintiff's FOIA request and the FOIA exemptions applied in processing the responsive records produced to Plaintiff. Additionally, the Plaintiff in this matter identified to the Department the withholdings in records responsive to its request that it is challenging. A *Vaughn* index provides a detailed description of that withheld information and the justifications for those withholdings. *See Exhibit A.*

I. ADMINISTRATIVE PROCESSING OF PLAINTIFFS' FOIA REQUESTS

5. On October 2, 2019, Citizens for Responsibility and Ethics in Washington (“Plaintiff”), submitted a FOIA request by email to the Department of State (the “Department” or “State”) seeking access to the following records:

[A]ll communications between the State Department and the Office of Management and Budget (“OMB”) on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine [and] all records related to interagency meetings that involved OMB on July 18, 2019, July 26, 2019, and July 26, 201[9] in which security assistance or military aid for Ukraine was discussed.

Plaintiff did not specify a timeframe in its request. *See* Exhibit B.

6. By letter dated October 16, 2019, IPS formally acknowledged receipt of Plaintiff’s FOIA request and initially assigned it Case Control Number F-2020-00110. *See* Exhibit C. After Plaintiff filed its initial Complaint on November 20, 2019, the Department reassigned it Case Control Number FL-2020-00010.

7. The Department located 21 records responsive to Plaintiffs’ request, 13 of which have been released in part to Plaintiff and 8 of which have been denied in full. The Department made two productions of responsive documents to Plaintiff by letters dated June 19, 2020 and July 28, 2020, which resulted in the release in part of eight records. The Department then made a third production to Plaintiff by letter dated October 6, 2020, which resulted initially in the denial in full of thirteen records. However, the Department later made a supplemental release to Plaintiff on November 13, 2020, which released in part five of the documents that were initially withheld in full as part of the Department’s October 6, 2020 release.¹

¹ The Department’s November 13, 2020 supplemental release also contained renumbered versions of the eight documents released in part on June 19, 2020 and July 28, 2020.

II. THE SEARCH PROCESS

8. When the Department receives a FOIA request, IPS evaluates the request to determine which offices, overseas posts, or other records systems within the Department may reasonably be expected to contain the records requested. This determination is based on the description of the records requested and requires a familiarity with the holdings of the Department's records systems, applicable records disposition schedules, and the substantive and functional mandates of numerous Department offices and Foreign Service posts and missions.

9. Each office within the Department, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission. These files consist generally of working copies of documents, information copies of documents maintained in the Central Foreign Policy Records collection, and other documents prepared by or furnished to the office in connection with the performance of its official duties, as well as electronic copies of documents and e-mail messages.

10. After reviewing Plaintiff's request and consulting with several offices and bureaus within the Department, IPS determined that the following offices were reasonably likely to have documents responsive to Plaintiffs' request: the Bureau of European and Eurasian Affairs, the Executive Secretariat, and the Department's consolidated email records archive. In particular, the Department agreed to search for the non-email records of three custodians: the former Acting Ambassador to Ukraine, William B. Taylor Jr.; the Deputy Assistant Secretary of EUR, George Kent; and the Under Secretary for Political Affairs, David Hale, upon conferring with Plaintiff. *See* Joint Status Rpt. at 4, ECF No. 8. A detailed description of the searches each office performed is below.

11. When conducting a search in response to a FOIA request, the Department relies on the knowledge and expertise of the employees of each bureau/office/post to determine the files and locations reasonably likely to house responsive records and the best means of locating such records, as those employees are in the best position to know how their files are organized. Likewise, those employees are also in the best position to determine which search terms would yield potentially responsive records because they are most knowledgeable about the organization of the records systems in use.

A. Bureau of European and Eurasian Affairs

12. The Bureau of European and Eurasian Affairs (“EUR”) is charged with implementing U.S. foreign policy and promoting U.S. interests in Europe and Eurasia, as well as advising the Under Secretary for Political Affairs.

13. The former Acting Ambassador to Ukraine, William B. Taylor Jr., who was knowledgeable of both the request and the EUR records systems, conducted a manual search for non-email records related to the July 18, 2019, July 23, 2019, and July 26, 2019 interagency meetings. He located a personal notebook containing handwritten notes from the relevant time period, which he turned over to a Department attorney in the Office of Management (“L/M”). The L/M attorney manually reviewed each page of notes and determined that none were responsive to Plaintiff’s request.

14. The Deputy Assistant Secretary (“DAS”) of EUR, George Kent, who was knowledgeable of both the FOIA request and the EUR records systems, conducted a manual search for non-email records related to the July 18, 2019, July 23, 2019, and July 26, 2019 interagency meetings. DAS Kent located a personal notebook containing handwritten notes from the relevant time period, which he manually reviewed and found to contain no records

responsive to Plaintiff's request. DAS Kent also located a file of hard-copy papers from the relevant time period that yielded two responsive records.

B. The Executive Secretariat

15. The Executive Secretariat Staff ("S/ES-S") is responsible for coordination of the work of the Department internally, serving as the liaison between the Department's bureaus and the offices of the Secretary, the Deputy Secretary, and the Under Secretaries. It is responsible for coordinating search responses for the Office of the Secretary of State ("S"), the Office of the Deputy Secretary of State ("D"), the Office of Policy Planning ("S/P"), the Office of the Under Secretary for Political Affairs ("P"), and the Counselor of the Department ("C").

16. An S/ES-S Government Information Specialist, who was knowledgeable of both the FOIA request at issue and relevant S/ES records systems, determined that the S/ES-S electronic record systems that were reasonably likely to contain responsive records were Everest² and the S/ES email archives. The Government Information Specialist conducted searches of Everest using the following search terms: Ukraine; Ukrainian; DSG; "Deputies Small Group"; OMB; "military Assistance"; and "security Assistance." The Government Information Specialist conducted searches of the S/ES unclassified and classified email and calendar archives of Under Secretary David Hale using the following search terms: (Ukraine OR Ukrainian) AND (OMB OR NSC OR USAI OR interagency OR "military aid" OR "security assistance"). The date range of these searches was June 1, 2019, to August 31, 2019.

² Everest is a Microsoft SharePoint based enterprise system used to task, track, control, and archive documents containing substantive foreign policy information passing to, from, and through the offices of the Secretary of State, the Deputy Secretaries of State, and other Department principal officers. The documents in Everest are full-text searchable.

17. The S/ES-S Government Information Specialist also tasked P to perform a search. In response, a Special Assistant in P, who was knowledgeable of both the FOIA request at issue and P records systems, conducted a search of the P unclassified and classified shared drives and the electronic calendar of Under Secretary David Hale using the following search terms: OMB, Ukraine, or Mulvaney. The Special Assistant also searched P paper files. The date range of these searches was January 1, 2018 to February 20, 2020.

C. eRecords Archive

18. The eRecords Archive is the Department's central repository for storing permanent electronic records transferred to the Bureau of Administration, such as correspondence, diplomatic notes, and cables. Additionally, all emails sent and received on the state.gov network since January 1, 2017, are automatically journaled and stored within eRecords. The eRecords Archive also provides the capability to query records within its archive through a search interface. The system further allows users to export copies of records into the Department's case management system for review and processing.

19. An IPS analyst, who was knowledgeable of both the FOIA request at issue and the eRecords Archive, conducted two searches for electronic records using the eRecords Archive. Those searches covered records from all of the Department custodians reasonably likely to have responsive records. The first search, which covered the time period from July 1, 2019, to August 31, 2019, sought records containing the terms (Ukraine AND OMB) and was limited to three custodians – former Acting Ambassador to Ukraine William B. Taylor Jr., Deputy Assistant Secretary George Kent, and Under Secretary David Hale – and to documents from four Department bureaus – EUR, the Office of U.S. Foreign Assistance (“F”), P, and S. The second search sought records containing the term (“Ukraine FMF”) and was limited to the

records of five Department custodians – Acting Assistant Secretary for Legislative Affairs Ryan Kaldahl, former Deputy Assistant Secretary for Senate Affairs Colleen Donnelly, Strategic Adviser for the Assistant Secretary for EUR Tyler Brace, and two below-DAS officials within the Bureau of Political-Military Affairs (“PM”) – and to the time period from July 1, 2019, to August 31, 2019.

20. IPS determined that no other components or records systems were reasonably likely to maintain documents responsive to Plaintiff’s requests, and that the tasked components searched all files reasonably likely to contain relevant documents.

III. FOIA EXEMPTIONS CLAIMED

21. I have been informed that, prior to briefing, Plaintiff agreed not to challenge either the Department’s withholdings of classified information pursuant to FOIA Exemption 1, 5 U.S.C. § 552(b)(1), or the Department’s withholdings of contact information pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6). The discussion in this section is therefore limited to only those 17 documents³ and withholdings that remain in dispute between the Parties.

A. FOIA Exemption 5 – Litigation Privileges

22. 5 U.S.C. § 552(b)(5) states 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

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

³ State withheld in full five documents solely pursuant to Exemption 1, 5 U.S.C. § 552(b)(1). Because Plaintiff has agreed not to challenge State’s Exemption 1 withholdings, these documents are not included in this declaration or in the attached *Vaughn* Index.

deliberative process, attorney-client, attorney work product, and presidential communications privileges.

1. The Deliberative Process Privilege

24. As detailed in the attached *Vaughn* Index, the Department withheld information in 11 of the documents at issue under FOIA Exemption 5 pursuant to the deliberative process privilege. The deliberative process privilege protects the confidentiality of candid views and advice of U.S. Government officials in their internal deliberations related to policy formulation and administrative direction. The information the Department withheld pursuant to the deliberative process privilege reflects the internal exchange of ideas and recommendations that occurred when government officials were formulating strategies for official action pertaining to certain prominent policy decisions. For example, certain of the withheld information relates to the three interagency meetings specified in Plaintiff's request, in which Ukraine Foreign Military Financing ("FMF") funds were discussed. Those materials include email chains among Department officials as well as officials in the Department of Defense ("DoD") and Office of Management of Budget ("OMB") that discuss the substantive content of the interagency deliberations (Docs. 2, 9, 10, 16) and their impact on the component agencies' draft guidance documents and internal processes and procedures, including the Department's internal procedures for processing and calculating foreign assistance allocations (Docs. 1, 2, 3, 4, 6, 7, 9, 10, 16). Other withheld information includes handwritten notes from Deputy Assistant Secretary George Kent (Doc. 5) and a prep memo drafted for the Under Secretary for Political Affairs (Doc. 13).

25. The information contained in these materials includes details of internal Department and interagency discussions held in the course of formulating U.S. Government

policy and directing executive branch action. Those discussions involve highly sensitive subject matters implicating complex legal and policy issues and are both predecisional and deliberative. The highly sensitive nature of these issues and communications underscores the likelihood that substantial harm would result from disclosure of the withheld information, including by chilling the open and frank exchange of comments and opinions that occurs between both Department and executive branch officials at these critical times; revealing the internal development and implementation of Department and executive branch policies and procedures surrounding the provision and processing of foreign aid; harming the interagency exchange of candid information and advice during critical decision-making processes; risking public confusion to the extent these deliberations constituted in-process exchanges held prior to any final decision-making occurred; and severely hampering the ability of responsible Department officials to formulate and carry out executive branch programmatic objectives. The withheld information is, accordingly, exempt from release under Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege.

2. The Presidential Communications Privilege

26. The presidential communications privilege applies to documents reflecting the conversations that take place in the President's performance of his official duties, as well as information that is solicited and received by the President and his immediate advisors who have broad and significant responsibility over the issues discussed in the document.

27. The Department withheld information in six of the documents at issue under Exemption 5 pursuant to the presidential communications privilege in order to protect information that was solicited and received by the President's close advisors from executive branch officials at Deputies Committee ("DC") Small Group ("DSG"), Policy Coordination

Committee (“PCC”), and sub-PCC interagency meetings on Ukraine. The communications provide summaries and readouts from those meetings, in which officials from multiple executive agencies considered and provided guidance to the President’s close advisors on issues affecting foreign policy and national security (Docs. 5, 10, 13, 14, 15, 16).

28. The meetings referenced in Plaintiff’s request were held at the DSG, PCC, and sub-PCC level. The DC, which is chaired by the Deputy National Security Advisor, acts as the senior sub-Cabinet interagency forum for the discussion and formulation of policies affecting the national security interests of the United States. It helps to ensure that issues brought before the National Security Council, Homeland Security Council, and Principals Committee have been properly analyzed and prepared for decision. The DC is also responsible for establishing PCCs, which manage the development and implementation of national security policies by various executive departments and agencies. The PCCs provide policy analysis for consideration by more senior officials within the national security system and ensure timely responses to the President’s decisions. In consultation with the National Security Council Executive Secretary, sub-PCCs may also be established as working groups to assist PCCs in the performance of their duties.

29. In this case, disclosure of the information subject to the presidential communications privilege would reveal the process by which the President receives national security advice from close advisors regarding foreign assistance and would reveal information about the advice itself regarding the timing and amount of assistance to Ukraine. For these reasons, the withheld information is exempt from release under Exemption 5 pursuant to the presidential communications privilege.

B. FOIA Exemption 6 – Personal Privacy

30. 5 U.S.C. § 552(b)(6) states that the FOIA does not apply to

. . . personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

31. Courts have interpreted the language of Exemption 6 broadly to encompass all information that applies to an individual without regard to whether it was located in a particular type of file. Inasmuch as information withheld under FOIA Exemption 6 identifies a specific individual, a personal privacy interest exists in the information. I am required, therefore, to determine whether there exists any public interest in disclosure and, if a public interest is implicated, to weigh any such interest against the privacy interest to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy.

32. In this case, the Department withheld information in challenged documents pursuant to Exemption 6, as detailed in the attached *Vaughn* Index, in order to protect the personal privacy interest of individuals. More specifically, the Department withheld the contact information of various U.S. Government officials, both within and outside the Department. It is my understanding that Plaintiff has agreed not to challenge these withholdings.

33. The Department further withheld information that would reveal the identities of Department employees who occupy positions below the rank of Deputy Assistant Secretary or, for U.S. missions overseas, Counselor. In light of the impeachment proceedings held late last year and early this year, the high-profile nature of Ukraine-related policy matters, and the intensive and frequently hostile nature of the discussion of these matters online and in other forums, there is a substantial risk that the working-level employees who appear in the responsive documents could face harassment and unwanted attention if their identities were released. Such

release would therefore harm the individuals' privacy interests, including their privacy interest in conducting official duties free from harassment.

34. Indeed, as one example, I have been made aware of an instance in which a working-level Department employee was contacted directly by counsel for an opposing party in litigation against the Department concerning a high-profile policy matter. It appears that the counsel obtained the employee's name from a document released through the FOIA process. This type of contact, made outside of existing, appropriate channels for such requests, impedes Department employees' ability to perform their functions and seeks engagement beyond the scope of those functions. The release of the names of working-level employees ostensibly connected to controversial policy matters opens them up to further inappropriate contact and harassment.

35. The privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information. There is limited public interest in knowing the exact identity of the working-level Department employees involved in a communication because that detail reveals little to no additional information about the activities of the U.S. Government. Moreover, the Department has provided Plaintiff with information about the employees whose identities are withheld that does shed light on U.S. Government operations. In particular, the Department has released the employees' non-identifying titles where they appear in the documents in dispute and has indicated the Department and, if applicable, interagency component with which the employees are affiliated in the attached *Vaughn* Index. In addition, the Department has released the names of more senior employees who have primary responsibility over policy-making (i.e., those at the Deputy Assistant Secretary or Counselor level and above).

36. As to all of the information withheld pursuant to FOIA Exemption 6, I have concluded that (1) an individual has a privacy interest in the information withheld; and (2) disclosure of the information would not serve the “core purpose” of the FOIA, *i.e.*, it would not disclose information about “what the government is up to.” Accordingly, I have determined that the privacy interests in the withheld information clearly outweigh any public interest in disclosure of such personal information.

IV. SEGREGABILITY ANALYSIS

37. State has conducted a line-by-line review of the 16 documents at issue and has segregated and released all reasonably segregable, non-exempt information. State otherwise determined that no segregation of meaningful information in the documents could be made without disclosing information warranting protection under the law. In particular, State determined, with respect to each portion of information withheld under Exemption 5, that the information redacted consists of discussions involving deliberations in which facts are inextricably intertwined with deliberative discussion, opinions, and policy recommendations, such that disclosing any such information, and how they are presented, would reveal the thought processes of State or presidential deliberations. Thus, I have determined that the disclosure of such information would reveal the nature and substance of agency and presidential deliberations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that the accompanying *Vaughn* index is true and correct.

Executed this 17th day of November 2020, Washington, D.C.

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

Eric F. Stein

EXHIBIT A

Citizens for Responsibility and Ethics in Washington v. Office of Management and Budget, et al. (19-cv-03488)¹

November 17, 2020

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Doc. (1)							
FL-2020-00010 7/28/2020 1	FL-2020-00010 7/28/2020 9	Email chain	9	7/2/2019 – 7/15/2019	Department of State and Department of Defense Officials	Release in Part ("RIP")	(b)(5) (Deliberative Process Privilege ("DPP")); (b)(6)
<p>DESCRIPTION: This document is an interagency email exchange among officials in the Department of State's (the "Department" or "State") Bureau of Political-Military Affairs ("PM") and Office of Foreign Assistance ("F"), as well as the Department of Defense's ("DoD") Defense Security Cooperation Agency ("DSCA"). In the first (bottom) email in the exchange, a PM official reached out to DSCA with questions about certain non-Ukraine related assistance allocations and asked what programmatic challenges may result if settlement of those allocations were delayed. In the next six emails in the chain, the PM and DSCA officials discussed the implications of a delay in the funding allocations and the effect such a delay may have had on the funding for planned projects. In the seventh email in the chain (sent at 2:36pm on July 10, 2019), the PM official forwarded the conversation to Kevin P. O'Keefe ("O'Keefe") – then the Acting Deputy Assistant Secretary ("DAS") and Director of PM's Office of Security Assistance – to flag what could result from a delay in the allocation of funding and to convey his recommendations. In the eighth email in the chain (sent at 3:19pm on July 12, 2019), O'Keefe further forwarded the conversation to an F official, who over the course of the next three emails promised to provide a recommendation for next steps. In the twelfth email in the chain (sent at 10:54am on July 15, 2019), O'Keefe raised the separate issue of a hold-up of Foreign Military Financing ("FMF") for Ukraine and asked the F official to follow-up with the Office of</p>							

¹ Plaintiff has agreed not to challenge either the Department of State's withholding of information pursuant to **Exemption 1**, 5 U.S.C. § 552(b)(1), or the Department of State's withholding of contact information pursuant to **Exemption 6**, 5 U.S.C. § 552(b)(6). Therefore, to the extent such withholdings occur within the documents included in this index, the Department of State has omitted from the information contained below (1) descriptions of those withholdings; (2) descriptions of any additional withholdings asserted over the exact same passages; and (3) descriptions of the information underlying the withholdings.

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
<p>Management and Budget (“OMB”). The F official replied with details about the status of the Ukraine FMF discussions, which a PM official later forwarded to a broader team of officials within PM.</p> <p>In these various emails, certain deliberative information is redacted under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the deliberative process privilege. In particular, the redactions cover information about both the internal and interagency process by which foreign assistance allocations are processed, descriptions of the level of seniority at which those discussions occurred and at which certain holds on assistance were being imposed, as well as information about specific and non-finalized FMF and other foreign assistance allocations, the effect of a delay of those allocations on Department and DoD programmatic objectives, and internal deliberations about possible solutions for overcoming those delays. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of interagency decision-making) and deliberative (it reveals the nature of the Department’s internal process for making assistance allocation decisions, contains speculation about a possible hold on funding and how to respond to that hold, and includes recommendations about how to navigate the assistance allocation process generally). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department’s operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p> <p>State also withheld the names of certain Department employees under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals’ names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals’ privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government, particularly since the employees’ non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.</p> <p>State conducted a line-by-line review of this document and determined that no additional meaningful, non-exempt information can reasonably be segregated and released.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Doc. (2)							
FL-2020-00010 7/28/2020 10	FL-2020-00010 7/28/2020 11	Email chain	2	7/18/2019 – 7/25/2019	Department of State Officials	RIP	(b)(5) (DPP); (b)(6)
<p>DESCRIPTION: This document is an intra-agency email exchange among Department officials in F. In the first (bottom) email in the exchange, an F official described to colleagues the ongoing interagency deliberations around the delayed release of Ukraine FMF funds and provided details about interagency meetings in which those funds and clearance holdups were discussed. In the third (top) email, another F official provided more information about the status of the Ukraine FMF funds and their relevance to upcoming Congressional Notifications (“CN”), described future planned interagency meetings to discuss those funds and possible reasons why the funds might be held up.</p> <p>In these various emails, certain deliberative information is redacted under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the deliberative process privilege. In particular, the redactions cover information about the Department’s internal procedures for processing foreign assistance allocations, as well as descriptions of ongoing interagency discussions about whether or not to allocate funding and the policy positions of various agencies within the context of those discussions. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of interagency decision-making) and deliberative (it reveals the nature of both the Department’s internal procedure for processing assistance allocations and information about ongoing interagency discussions regarding assistance allocations). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department’s operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p> <p>State also withheld the names of certain Department employees and other U.S. Government agencies under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals’ names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals’ privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government, particularly since the employees’ non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
State conducted a line-by-line review of this document and determined that no additional meaningful, non-exempt information can reasonably be segregated and released.							
Doc. (3)							
FL-2020-00010 7/28/2020 12	FL-2020-00010 7/28/2020 22	Email chain	11	3/8/2019 – 7/18/2019	Department of State and Office of Management and Budget Officials	RIP	(b)(5) (DPP); (b)(6)
<p>DESCRIPTION: This document is an interagency email exchange extending over multiple months among Department officials in F, PM, and the Bureau of European and Eurasian Affairs (“EUR”). Certain emails in this chain also include officials from OMB. In the first (bottom) email in the exchange, an OMB official asked two F officials for input on the proper figures for certain European and Central Asian funding allocations. The next six emails in the chain all reflect March 2019 communications between the same three officials, in which they discussed possible discrepancies and calculation errors in those figures, asked questions about the assumptions used to calculate them, and provided support for the claimed figures. In the eighth, ninth, and tenth emails – which were all sent on June 24, 2019 – the OMB official restarted the conversation in advance of a DoD data call in order to ask a question about the State’s calculation and reporting of Ukrainian FMF funds. In the eleventh email in the chain (sent June 24, 2019, at 2:51pm), an F official shared OMB’s question among colleagues in F and EUR and discussed updates to an internal draft of a data table that contained the figures in question. In the next six emails, which span the one-month period from mid-June to mid-July, various Department officials from F, EUR, and PM weighed in on the proper calculation of the Ukraine FMF figure; debated whether to incorporate into that figure different sources of funding at various stages of approval, allocation, and publication; shared screenshots of marked-up versions of a chart reflecting State’s security assistance calculations; and commented on the Department’s internal procedures for calculating the Ukraine FMF figure. In the final (top) email in this chain, a Department official mentioned an interagency meeting dated July 18, 2019, related to Ukraine FMF funding and conveyed their impression of that meeting.</p> <p>In these various emails, certain deliberative information is redacted under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the deliberative process privilege. In particular, the redactions cover information about the Department’s internal procedures for processing and calculating foreign assistance allocations, as well as characterizations of interagency discussions related to those allocations. These emails also contain in-process drafts of official Department materials and descriptions of changes made to those materials. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates any decision about how to calculate the assistance figures, what version of the chart reflecting those calculations to use, and whether the assistance allocations would be processed and on what timeline, and was generated as part of a continuing process of interagency decision-making) and deliberative (it reveals the nature of both executive branch discussions about how to process and calculate assistance allocations as well as ongoing interagency deliberations regarding those calculations and assistance allocations</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
<p>more generally). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department's operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p> <p>State also withheld the names of certain Department employees under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals' names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals' privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government, particularly since the employees' non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.</p> <p>State conducted a line-by-line review of this document and determined that no additional meaningful, non-exempt information can reasonably be segregated and released.</p>							
Doc. (4)							
FL-2020-00010 7/28/2020 23	FL-2020-00010 7/28/2020 30	Email chain	8	7/19/2019 – 7/26/2019	Department of State Officials	RIP	(b)(5) (DPP); (b)(6)
<p>DESCRIPTION: This document is an intra-agency email exchange among a wide group of Department officials in the Office of the Deputy Secretary of State ("D"), the Office of the Under Secretary for Political Affairs ("P"), the Office of the Under Secretary for Arms Control and International Security Affairs ("T"), EUR, PM, F, the Bureau of Near Eastern Affairs ("NEA"), the Bureau of African Affairs ("AF"), and the Economic Affairs Office ("ECON"). In the first (bottom) and second emails in the exchange, a PM official sought clearances from the recipient offices/bureaus on a Congressional Notification outlining certain of PM's obligations for FY 2018 and FY 2019. In the third email (sent on July 25, 2019, at 3:58 pm), an official from D asked about the impact of an upcoming interagency meeting about Ukraine on the clearance process. In the fourth and sixth emails (sent on July 25, 2019, at 4:15pm and 4:36pm, respectively), PM and EUR officials answered the question from D about the</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
<p>impact of the interagency meeting on the clearance process. In all of the remaining emails in this chain, officials from different offices/bureaus within the Department provided edits to and/or cleared the CN.</p> <p>In these various emails, certain deliberative information is redacted under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the deliberative process privilege. In particular, the redactions cover information about the status of interagency discussions related to those allocations and deliberations about the possible effect those discussions can or should have on Department procedures. These emails also contain descriptions of changes made to draft versions of official Department documents. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates the finalization of the CNs that are the subject of the email chain) and deliberative (it reflects internal discussions about the content of the CNs and the propriety and timeliness of certain Department procedures). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department's operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p> <p>State also withheld the names of certain Department employees under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals' names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals' privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government, particularly since the employees' non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.</p> <p>State conducted a line-by-line review of this document and determined that no additional meaningful, non-exempt information can reasonably be segregated and released.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Doc. (5)							
FL-2020-00010 7/28/2020 31	FL-2020-00010 7/28/2020 31	Handwritten notes	1	7/23/2019	Deputy Assistant Secretary George Kent	RIP	(b)(5) (DPP, Presidential Communications Privilege ("PCP"))
<p>DESCRIPTION: This document consists of the handwritten notes taken by George Kent, DAS for EUR, during a July 23, 2019, Policy Coordination Committee ("PCC") interagency meeting. Because the notes are handwritten, their contents are somewhat difficult to decipher. However, the portions that are decipherable reflect positions taken and issues raised during the interagency meeting, as well as DAS Kent's own thoughts and personal reflections on those topics.</p> <p>State withheld the substantive portions of this document under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the deliberative process and presidential communications privileges. State's redactions protect from disclosure information about a PCC interagency meeting during which officials from various agencies deliberated what course of action to take with regard to Ukrainian FMF funds. DAS Kent's notes are not straightforward factual narrations of those proceedings; rather they describe DAS Kent's personal views and impressions of the issues raised during the meeting. The redacted information is therefore subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of interagency decision-making) and deliberative (it reveals the nature of both the interagency group's exchange of opinions and DAS Kent's reactions to that exchange). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to both the Department's and the interagency's operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action. Furthermore, State's redactions cover DAS Kent's reporting of certain matters discussed during the July 23, 2019, interagency meeting on Ukraine, a senior interagency forum for considering issues affecting foreign policy and national security. That meeting was solicited, attended, and led by immediate White House advisers in the course of preparing advice to the President regarding Ukraine aid, and all substantive portions of this readout conveying information solicited and received at that meeting are therefore exempt from disclosure pursuant to the presidential communications privilege.</p> <p>State conducted a line-by-line review of this document and determined that no additional meaningful, non-exempt information can reasonably be segregated and released.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Docs. (6) & (7)							
FL-2020-00010 7/28/2020 32	FL-2020-00010 7/28/2020 32	Email chain	1	7/18/2019	PM and Office of Management and Budget Officials	RIP	(b)(5) (DPP); (b)(6)
FL-2020-00010 6/19/2020 1	FL-2020-00010 6/19/2020 1						
<p>DESCRIPTION: These documents consist of two iterations of the same interagency email exchange between Department officials in PM and OMB officials. In the first (bottom) email in the exchange, an OMB official asked the PM officials to clarify whether certain Ukraine FMF funds constituted “one-year” or “two-year” money, and offered her views based on discussions during a July 18, 2019, interagency meeting. In subsequent emails, one of the PM officials answered the OMB official’s question and the OMB official invited that PM official to join a call.</p> <p>In these various emails, certain deliberative information is redacted under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the deliberative process privilege. In particular, the redactions cover a U.S. Government official’s speculation, based on separate sources of information, about the manner in which Ukraine FMF funds were being allocated. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of agency decision-making) and deliberative (it reveals the OMB official’s speculation about what the answer might be to the question posed and why). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department’s operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p> <p>State also withheld the names of certain Department employees under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals’ names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals’ privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government,</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
<p>particularly since the employees' non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.</p> <p>State conducted a line-by-line review of these documents and determined that no additional meaningful, non-exempt information can reasonably be segregated and released.</p>							
Doc. (8)							
FL-2020-00010 6/19/2020 2	FL-2020-00010 6/19/2020 3	Email chain	2	7/26/2019	Department of State, Executive Office of the President, National Security Council, Office of Management and Budget, and U.S. Senate Foreign Relations Committee Officials	RIP	(b)(6)
<p>DESCRIPTION: This document is an interagency email exchange among officials from the Executive Office of the President, several executive agencies, and the U.S. Senate Foreign Relations Committee. It begins with a question posed to an EUR official by two staff members of U.S. Senators James Risch and Robert Menendez related to the provision of Ukraine FMF funds. The EUR official passed that question along to a broader audience, which eventually included officials from State, the Executive Office of the President ("EOP"), the National Security Council ("NSC"), and OMB.</p> <p>In these emails, State withheld the names of certain Department employees under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals' names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals' privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Government, particularly since the employees' non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.							
State conducted a line-by-line review of this document and determined that no additional meaningful, non-exempt information can reasonably be segregated and released.							
Docs. (9) & (10)							
FL-2020-00010 10/6/2020 1	FL-2020-00010 10/6/2020 3	Email chain	3	7/29/2019 – 8/27/2019	Department of State Officials	RIP	(b)(5) (DPP); (b)(6)
FL-2020-00010 10/6/2020 4	FL-2020-00010 10/6/2020 6	Attachment	3	7/26/2019		Deny in Full ("DIF")	(b)(5) (DPP, PCP)
<p>DESCRIPTION: These documents are an intra-agency email chain and attachment among Department officials in PM and EUR. In the first (bottom) email in this chain, an EUR official forwarded to EUR and PM colleagues the attachment, a readout of a Deputies Small Group interagency meeting held on July 26, 2019, to discuss Ukraine FMF. In the second email, a PM official describes and analyzes that readout, then discusses what certain outcomes of those interagency discussions could mean for the Department and what actions PM officials may need to take in response. In the top email, the same PM official forwards the thread to another two PM officials that were meant to be copied on the earlier communications.</p> <p>In this chain, portions of the second email that discuss the readout were originally and are currently classified as SECRET//NOFORN, and are thus also being withheld pursuant to Exemption 1, 5 U.S.C. § 552(b)(1), which Plaintiff has agreed not to challenge. Certain deliberative information is redacted solely under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the deliberative process privilege. In particular, that redaction covers internal Department deliberations about the possible effect of certain interagency discussions on Department procedures. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of interagency decision-making) and deliberative (it reflects the nature of both executive branch discussions about how to process and calculate assistance allocations as well as internal Department deliberations about the possible effect of those discussions on Department procedures). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department's operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
<p>In addition, portions of the attachment were originally and are currently classified as SECRET//NOFORN, and are thus also being withheld pursuant to Exemption 1, 5 U.S.C. § 552(b)(1), which Plaintiff has agreed not to challenge. The attachment is also being withheld in full under Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the presidential communications and deliberative process privileges. Those redactions cover substantive passages in the readout of the July 26, 2019, Deputies Small Group interagency meeting on Ukraine, a senior interagency forum for considering issues affecting foreign policy and national security. That meeting was solicited, attended, and led by immediate White House advisers in the course of preparing advice to the President regarding Ukraine aid, and all substantive portions of this readout conveying information solicited and received at that meeting are therefore exempt from disclosure pursuant to the presidential communications privilege. Furthermore, State's redactions of this document pursuant to the deliberative process privilege cover a Department official's synopsis of the deliberations held during the interagency meeting in question as well as commentary about the possible effect those discussions might have on Department procedures. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of interagency decision-making) and deliberative (it reflects the nature of both executive branch discussions about how to process and calculate assistance allocations as well as internal Department deliberations about the possible effect of those discussions on Department procedures). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department's operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p> <p>State also withheld the names of certain Department employees included in both the email and the attachment under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals' names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals' privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government, particularly since the employees' non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.</p> <p>The Department conducted a line-by-line review of these documents and determined there is no additional meaningful, non-exempt information that can be reasonably segregated and released.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Docs. (11) & (12)							
FL-2020-00010 10/6/2020 7	FL-2020-00010 10/6/2020 8	Email chain	2	7/26/2019	Department of State Officials	RIP	(b)(6)
FL-2020-00010 10/6/2020 9	FL-2020-00010 10/6/2020 10						
<p>DESCRIPTION: These documents are iterations of the same intra-agency email chain among P, the Counselor of the Department (“C”), and Department officials in the Executive Secretariat (“S/ES”). In the first (bottom) email in this chain, P sends the S/ES officials a readout of the Deputies Small Group interagency meeting on Ukraine held on July 26, 2019, with instructions that it should be forwarded to the Secretary of State (“S”). Those portions of that email that discuss the interagency meeting were originally and are currently classified as SECRET, and are thus being withheld pursuant to Exemption 1, 5 U.S.C. § 552(b)(1), which Plaintiff has agreed not to challenge. Later emails in this chain were sent to thank P for sharing his thoughts.</p> <p>In these various emails, State withheld the names of certain Department employees under Exemption 6, 5 U.S.C. § 552(b)(6), because the public release of those individuals’ names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals’ privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government, particularly since the employees’ non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.</p> <p>The Department conducted a line-by-line review of these documents and determined there is no additional meaningful, non-exempt information that can be reasonably segregated and released.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Doc. (13)							
FL-2020-00010 10/6/2020 11	FL-2020-00010 10/6/2020 14	Prep memo	4	7/23/2019	Department of State Officials	DIF	(b)(5) (DPP, PCP)
<p>DESCRIPTION: This document is a memo drafted for a senior Department official's participation in an upcoming Deputies Small Group interagency meeting to be held on July 26, 2019, regarding Ukraine. Portions of this document were originally and are currently classified as SECRET//NOFORN, and are thus also being withheld pursuant to Exemption 1, 5 U.S.C. § 552(b)(1), which Plaintiff has agreed not to challenge. The non-classified portions of this document provide background information and advice to P in advance of the interagency meeting.</p> <p>State withheld this document in full under Exemption 5, 5 U.S.C. § 552(b)(5), as protected by the presidential communications and deliberative process privileges. Those redactions cover information and guidance provided to a senior Department official in preparation for the July 26, 2019, Deputies Small Group interagency meeting on Ukraine, a senior interagency forum for considering issues affecting foreign policy and national security. Information within this memorandum was conveyed during that meeting, which was solicited, attended, and led by immediate White House advisers in the course of preparing advice to the President regarding Ukraine aid, and all substantive portions of this memorandum are therefore exempt from disclosure pursuant to the presidential communications privilege. Furthermore, State's redactions protect from disclosure information provided to a high-level Department official in preparation for an interagency meeting during which officials from various agencies deliberated what course of action to take with regard to Ukrainian FMF funds. The redacted information is therefore subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of interagency decision-making) and deliberative (it reflects the state of ongoing interagency discussions and provides counsel to a high-ranking Department official about how to influence those deliberations). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to both the Department's and the interagency's operations by inhibiting the candid discussion necessary for efficient and proper preparation as well as the expression of recommendations and judgments regarding future courses of action.</p> <p>The Department conducted a line-by-line review of this document and determined there is no meaningful, non-exempt information that can be reasonably segregated and released.</p>							

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
Docs. (14) & (15)							
FL-2020-00010 10/6/2020 15	FL-2020-00010 10/6/2020 17	Email chain	3	7/18/19 – 7/24/19	Department of State Officials	RIP	(b)(5) (PCP); (b)(6)
FL-2020-00010 10/6/2020 18	FL-2020-00010 10/6/2020 21		4				

DESCRIPTION: These documents are iterations of the same intra-agency email chain among Department officials in EUR, PM, and ECON. In the first (bottom), second, and fifth emails in the chain, EUR, PM, and ECON officials provide and discuss their readouts of the July 18, 2019, sub-PCC interagency meeting and the July 21, 2019, PCC interagency meeting on Ukraine. Those emails were originally and are currently classified as SECRET//NOFORN, and are thus also being withheld pursuant to **Exemption 1**, 5 U.S.C. § 552(b)(1), which Plaintiff has agreed not to challenge. The third, fourth, and top emails in the chain contain brief affirmations sent in reply to the other emails, with occasional references back to the content of the interagency meeting readouts.

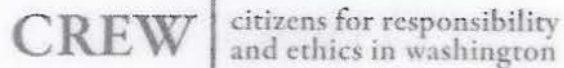
In these various emails, certain information is redacted solely under **Exemption 5**, 5 U.S.C. § 552(b)(5), as protected by the presidential communications privilege. Those passages refer back to the readouts of the July 18, 2019, and July 23, 2019, interagency meetings on Ukraine, which consisted of senior interagency forums for considering issues affecting foreign policy and national security. Those meetings were solicited, attended, and led by immediate White House advisers in the course of preparing advice to the President regarding Ukraine aid, and any references thereto which reveal the substance of information that was conveyed at the meeting are therefore exempt from disclosure.

State also withheld the names of certain Department employees under **Exemption 6**, 5 U.S.C. § 552(b)(6), because the public release of those individuals' names could reasonably be expected to harm their personal privacy. The Department employees whose names have been withheld occupy positions below the rank of DAS or, for U.S. missions overseas, Counselor. Working-level employees who appear in responsive documents could face harassment and unwanted attention if their identities were released. Such release would therefore harm the individuals' privacy interests, including their privacy interest in conducting official duties free from harassment. Among other consequences, such attention could interfere with their ability to perform their duties. Furthermore, the privacy interest of working-level employees in non-disclosure of their identities outweighs any public interest in the release of identifying information, since there is limited public interest in knowing the exact identity of the working-level employees involved in a communication. That detail reveals little to no additional information about the activities of the U.S. Government, particularly since the employees' non-identifying titles have been released to the extent they appear. Accordingly, the privacy interests in withholding the above information outweigh any public interest in disclosure of that information.

Beg. Bates	End Bates	Doc. Type	Pages	Date / Date Range	Author(s) / Recipient(s)	Review Result	Exemptions
The Department conducted a line-by-line review of these documents and determined there is no additional meaningful, non-exempt information that can be reasonably segregated and released.							
Doc. (16)							
FL-2020-00010 10/6/2020 22	FL-2020-00010 10/6/2020 25	Memo	6	7/30/2019	Officials from Various Executive Branch Agencies, including the Department of State	DIF	(b)(5) (DPP, PCP)
<p>DESCRIPTION: This document is a memorandum distributed among officials from various federal agencies, including the Department of State, relaying details about an interagency meeting about Ukraine held on July 26, 2019. Portions of this document were originally and are currently classified as SECRET//NOFORN.</p> <p>All of the non-classified information contained in this memorandum has been withheld pursuant to Exemption 5, 5 U.S.C. § 552(b)(5), as subject to the deliberative process and presidential communications privileges. This document was prepared to memorialize deliberations at the July 26, 2019, Deputies Small Group interagency meeting on Ukraine, a senior interagency forum for considering issues affecting foreign policy and national security. That meeting was solicited, attended, and led by immediate White House advisers in the course of preparing advice to the President regarding Ukraine aid, and all substantive portions of this readout conveying information solicited and received at that meeting are therefore exempt from disclosure. Furthermore, the non-classified portions of this document contain details about the deliberations held during the July 26, 2019, interagency meeting and commentary about the possible effect those discussions might have on executive branch procedures. The redacted information is subject to the deliberative process privilege because it is both predecisional (it predates any decision about whether the assistance allocations would be processed and on what timeline and was generated as part of a continuing process of interagency decision-making) and deliberative (it reflects the nature of both executive branch discussions about whether and how to process assistance allocations). Disclosure of the redacted information could reasonably be expected to chill the open and frank discussions that are necessary to the Department's operations by inhibiting candid discussion and the expression of recommendations and judgments regarding future courses of action.</p> <p>The Department conducted a line-by-line review of the document and determined there is no meaningful, non-exempt information that can be reasonably segregated and released.</p>							

EXHIBIT B

F-2020-00110



October 2, 2019

BY EMAIL: FOIArequest@state.gov

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D.C. 20522-8100

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

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

Specifically, CREW requests the following:

First, CREW requests all communications between the State Department and the Office of Management and Budget ("OMB") on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.

Second, CREW requests all records related to interagency meetings that involved OMB on July 18, 2019, July 23, 2019, and July 26, 2013 in which security assistance or military aid for Ukraine was discussed.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our 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. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

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). In the event 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
 October 2, 2019
 Page 2

In accordance with 5 U.S.C. § 552(a)(4)(A) and State 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).

On August 12, 2019, a whistleblower who works within the intelligence community filed a complaint with the Office of the Inspector General of the Intelligence Community, reporting an "urgent concern" that "the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election."¹ According to a declassified version of the complaint released by the House Permanent Select Committee on Intelligence, the whistleblower described President Trump's July 25, 2019 telephone call with Ukrainian President Volodymyr Zelensky, in which "after an initial exchange of pleasantries, the President used the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid."²

In a section on circumstances leading up to the July 25 phone call, the whistleblower noted that he or she learned in mid-July "of a sudden change of policy with respect to U.S. assistance," which was described in more detail in an appendix.³ Specifically, the whistleblower wrote, "On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President 'earlier that month' had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it."⁴

The whistleblower's observations about a change in policy during that time period regarding assistance to Ukraine have been confirmed by public documents and press reporting. President Trump and his advisers reportedly began discussing the idea of putting a hold on the funds for Ukraine in June 2019 and President Trump ordered his acting chief of staff, Mick Mulvaney, to put a hold on the money at least a week before his July 25 phone call with Ukrainian President Zelensky.⁵ Defense and State Department officials were informed by OMB

¹ Press Release, House Intelligence Committee Releases Whistleblower Complaint, House Permanent Select Committee on Intelligence, Sept. 26, 2019, available at <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=708>; See https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Karoun Demirjian, Josh Dawsey, Ellen Nakashima and Carol D. Leonig, *Trump ordered hold on military aid days before calling Ukrainian president, officials say*, *Washington Post*, Sept. 23, 2019, available at

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Page 3

of the decision during an interagency meeting on July 18, 2019.⁶ OMB officials reportedly explained that President Trump had “concerns” about the aid funding and wanted to examine the need for the money.⁷ According to the *Washington Post*, “Administration officials were instructed to tell lawmakers that the delays were part of an ‘interagency process’ but to give them no additional information — a pattern that continued for nearly two months, until the White House released the funds on the night of Sept. 11.”⁸

On September 25, 2019, following news reports that President Trump repeatedly pressured President Zelensky during the July 25 phone call to investigate former Vice President Biden’s son, the White House released a rough transcript of the call.⁹ The transcript revealed that President Trump framed the conversation by saying, “we do a lot for Ukraine” and “I wouldn’t say that it’s reciprocal necessarily.”¹⁰ Then, when President Zelensky stated that Ukraine was ready for “next steps” and specifically raised his desire to buy weapons from the United States, President Trump immediately replied by saying, “I would like you to do us a favor though” before asking for Ukraine to pursue investigations into several subjects, including one related to former Vice President Biden and his son.¹¹ President Trump told President Zelensky that he would tell both Giuliani and Attorney General William Barr to contact him about the investigations.¹²

President Trump’s request to President Zelensky for a politically beneficial investigation into a political rival is now at the center of a formal impeachment inquiry being conducted by the House of Representatives.¹³ According to Speaker of the House Nancy Pelosi, the “sequencing of events,” including President Trump’s decision to withhold aid days before his phone call with President Zelensky, is a part of the investigation.¹⁴

The requested records would shed light on the reasoning behind the multi-month freeze

https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/21/d93a6ca-de38-11e9-8dc8-498cabe129a0_story.html?arc404=true; Rebecca Ballhaus, Andrew Restuccia and Siobhan Hughes, *Trump Put Hold on Military Aid Ahead of Phone Call With Ukraine’s President*, *Wall Street Journal*, Sept. 24, 2019, available at <https://www.wsj.com/articles/president-trump-repeats-criticism-of-biden-in-impromptu-u-n-appearance-11569254230>.

⁶ *Id.*

⁷ Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019.

⁸ *Id.*

⁹ Alan Cullison, Rebecca Ballhaus and Dustin Volz, *Trump Repeatedly Pressed Ukraine President to Investigate Biden’s Son*, *Wall Street Journal*, Sept. 21, 2019, available at <https://www.wsj.com/articles/trump-defends-conversation-with-ukraine-leader-11568993176>; Rebecca Ballhaus, Sadie Gurman, and Dustin Volz, *Rough Transcript Shows Trump Asked Ukrainian Counterpart to Look Into Joe Biden*, *Wall Street Journal*, Sept. 25, 2019, available at <https://www.wsj.com/articles/white-house-to-release-transcript-of-trumps-ukraine-call-as-impeachment-efforts-begin-11569403803>.

¹⁰ See <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

¹¹ *Id.*

¹² *Id.*

¹³ Nicholas Fandos, *Nancy Pelosi Announces Formal Impeachment Inquiry of Trump*, *New York Times*, Sept. 24, 2019, available at <https://www.nytimes.com/2019/09/24/us/politics/democrats-impeachment-trump.html>.

¹⁴ Scott Pelley, *The Impeachment Inquiry: “We Could Not Ignore What the President Did”*, *CBS News*, Sept. 30, 2019, available at <https://www.cbsnews.com/news/nancy-pelosi-on-trump-impeachment-inquiry-ukraine-president-phone-call-and-the-whistleblower-in-60-minutes-interview/>.

FOIA Officer
October 2, 2019
Page 4

on military aid to Ukraine and how that policy decision was communicated by OMB to the Department of State. Given the varying explanations the Trump administration has given for the decision to withhold the funds over the summer, the records would also help clarify the rationale for the decision. The records would also provide insight on the sequence of events surrounding the hold on the aid to Ukraine and how it relates to President Trump's July 25 phone call with the president of Ukraine. In these ways, they would reveal important information about the functioning and decisions of Department of State.

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

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

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze 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 documents it receives under the FOIA on 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 mcorley@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 me either at mcorley@citizensforethics.org or at Matthew Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

FOIA Officer
October 2, 2019
Page 5

Sincerely,

A handwritten signature in dark ink, appearing to read "Matt Corley", is positioned above the printed name.

Matthew Corley
Chief Investigator

EXHIBIT C



United States Department of State

Washington, D.C. 20520

October 16, 2019

F-2020-00110

Matthew Corley
Citizens for Responsibility and Ethics in Washington
1101 K Street, N.W.
Suite 201
Washington, D.C. 20005

Dear Mr. Corley:

This letter is to acknowledge receipt of your request dated October 2, 2019, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to the Department of State, in which you requested the following records:

- 1) All communications between the State Department and the Office of Management and Budget (OMB) on July 18, 2019, July 23, 2019, and July 26, 2019, that refer to security assistance or military aid to Ukraine.
- 2) All records related to interagency meetings from July 18, 2019, July 23, 2019, and July 26, 2019, that included OMB and discussed security assistance or military aid to Ukraine.

The Office of Information Programs and Services (IPS) received your FOIA request on October 2, 2019. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. We have classified you as an “other-use” requester. Your request for a fee waiver has been granted.

The records you seek require the need to search in offices that are separate from the office processing your request, and the need to conduct consultations with other offices and/or agencies. Accordingly, your request falls within “unusual circumstances” as defined in the FOIA. See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.

The time needed to complete our work on your request will necessarily depend on a variety of factors including the number of locations that must be searched, the complexity of the search, the volume and complexity of any material located, and consultations with other U.S. Government agencies whose information is included in the material located. The time needed will also depend on the number of other requests ahead of it in the relevant processing track.

This Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same

track. Your request has been assigned to the complex track and will be handled as quickly as possible.

In an effort to speed the processing of your request, you may wish to narrow the scope of your request. Among the ways you can do so is by narrowing the date range of requested records, reducing the number of topics requested, excluding certain types of records (such as e-mails and/or paper records) from the request, identifying the particular office/bureau from which you are seeking records, and limiting the number of potentially responsive records you seek. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options.

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you wish to discuss or an alternative time frame for the processing of your request, or if you have any questions regarding the status of your request, you may contact our FOIA Requester Service Center or our FOIA Public Liaison via email at FOIAstatus@state.gov or telephone at (202) 261-8484.

Lastly, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email address: ogis@nara.gov; telephone: (202) 741-5770; toll free number: 1-877-684-6448; facsimile: (202) 741-5769.

Sincerely,

Nicholas J. Cormier
Chief, Requester Communications Branch
Office of Information Programs and Services

Exhibit 4

**CREW's October 22, 2019
FOIA Request to OMB**

October 22, 2019

BY EMAIL: OMBFOIA@omb.eop.gov

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street, N.W., Suite 9204
Washington, D.C. 20503

Re: Freedom of Information Act Request

Dear Ms. Hardy:

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 Office of Management and Budget (“OMB”) regulations.

Specifically, CREW requests all records supporting Director Mick Mulvaney’s October 17, 2019 claim that security assistance to Ukraine was temporarily withheld in part due to whether or not the government of Ukraine was cooperating in an investigation by the U.S. Department of Justice.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our 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. Our request also includes any attachments to emails and other records, as well as those who were cc’ed or bcc’ed on any emails.

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 OMB 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

Dionne Hardy
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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).

President Trump and his advisers reportedly began discussing the idea of putting a hold on security assistance funds for Ukraine in June 2019 and President Trump ordered Mr. Mulvaney, who also serves as acting White House chief of staff, to put a hold on the money at least a week before his July 25 phone call with Ukrainian President Zelensky.¹ Defense and State Department officials were informed by OMB of the decision during an interagency meeting on July 18, 2019.² OMB officials reportedly explained that President Trump had “concerns” about the aid funding and wanted to examine the need for the money.³ According to the *Washington Post*, “Administration officials were instructed to tell lawmakers that the delays were part of an ‘interagency process’ but to give them no additional information — a pattern that continued for nearly two months, until the White House released the funds on the night of Sept. 11.”⁴

During a press conference on October 17, 2019, Mr. Mulvaney acknowledged that the hold on releasing aid to Ukraine had been connected to the White House’s demands that Ukraine investigation issues related to the 2016 election.⁵ “Did he also mention to me in the past the corruption related to the DNC server? Absolutely, no question about that. But that’s it. And that’s why we held up the money,” Mr. Mulvaney said.⁶ “I was involved with the process by which the money was held up temporarily, okay? Three issues for that: the corruption of the country; whether or not other countries were participating in support of Ukraine; and whether or not they were cooperating in an ongoing investigation with our Department of Justice.”⁷

Department of Justice officials appeared to be confused by Mr. Mulvaney’s claims about aid to Ukraine being tied to cooperation with Justice Department investigation. “We have no idea what he’s talking about,” a Justice Department official told reporters.⁸ “If the White House was withholding aid in regards to the cooperation of any investigation at the Department of Justice, that is news to us,” said a senior Justice Department official in a statement provided to reporters.⁹

¹ Karoun Demirjian, Josh Dawsey, Ellen Nakashima and Carol D. Leonig, *Trump ordered hold on military aid days before calling Ukrainian president, officials say*, *Washington Post*, Sept. 23, 2019, available at https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html?arc404=true; Rebecca Ballhaus, Andrew Restuccia and Siobhan Hughes, *Trump Put Hold on Military Aid Ahead of Phone Call With Ukraine’s President*, *Wall Street Journal*, Sept. 24, 2019, available at <https://www.wsj.com/articles/president-trump-repeats-criticism-of-biden-in-impromptu-u-n-appearance-11569254230>.

² *Id.*

³ Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019.

⁴ *Id.*

⁵ Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019; John Hudson and Karoun Demirjian, *Mulvaney confirms Ukraine aid withheld in part to force probe of Democrats*, *Washington Post*, Oct. 17, 2019, available at https://www.washingtonpost.com/national-security/trumps-envoy-tells-congress-the-president-outsourced-ukraine-policy-to-giuliani/2019/10/17/484b30d0-f0ee-11e9-b648-76bcf86eb67e_story.html.

⁶ Press Briefing by Acting Chief of Staff Mick Mulvaney, White House, October 17, 2019, available at <https://www.whitehouse.gov/briefings-statements/press-briefing-acting-chief-staff-mick-mulvaney/>.

⁷ *Id.*

⁸ *See* https://twitter.com/alex_mallin/status/1184893825359187968.

⁹ *See* https://twitter.com/alex_mallin/status/1184906033183023106.

Mr. Mulvaney subsequently walked back his press conference comments, claiming “there was absolutely no quid pro quo between Ukrainian military aid and any investigation into the 2016 election. The president never told me to withhold any money until the Ukrainians did anything related to the server. The only reasons we were holding the money was because of concern about lack of support from other nations and concerns over corruption.”¹⁰

The requested records would help clarify Mr. Mulvaney’s assertion, which has been contradicted by Justice Department officials, subsequently walked back, and is likely to be a source of public confusion. The requested records would also shed light more generally on the reasoning behind the multi-month freeze on military aid to Ukraine. Given the varying explanations the Trump administration has given for the decision to withhold the funds over the summer, the records would also help inform the public about the rationale for the decision. The records would also provide insight on the sequence of events surrounding the hold on the aid to Ukraine and how it relates to President Trump’s July 25 phone call with the president of Ukraine. In these ways, they would reveal important information about the functioning and decisions of OMB.

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

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

CREW routinely and systematically disseminates information to the public in several ways. CREW’s website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze 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 documents it receives under the FOIA on 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

¹⁰ See <https://twitter.com/marshallcohen/status/1184953842045214720?s=12>.

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 mcorley@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 me either at mcorley@citizensforethics.org or at Matthew Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, 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 'Matthew Corley', with a stylized flourish at the end.

Matthew Corley
Chief Investigator

