

DEPARTMENT OF DEFENSE OFFICE OF GENERAL COUNSEL

1600 DEFENSE PENTAGON WASHINGTON, DC 20301-1600

Ref: 21-F-0408

Case: 1:21-cv-00572-RC

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, Attn: Nikhel S. Sus 1101 K Street, NW, Suite 201 Washington, DC 20005

Via Email: nsus@citizensforethics.org

October 7, 2022

Dear Mr. Sus:

The Department of Defense ("DoD"), Office of Information Counsel, is providing a fourteenth response to your January 10, 2021 Freedom of Information Act ("FOIA") request to DoD. You requested, in part, "All records reflecting the parameters for the National Guard's deployment to D.C. on January 6, 2021, including any limitations imposed on the number of personnel deployed, their movement within the District, or their use of force."

Eighty (80) pages are enclosed, of which 7 pages are released in full. The remaining records contain information that has been withheld from release in part or in full under Title 5 U.S.C. § 552 (b)(5), which pertains to certain inter- or intra-agency communications protected by the deliberative process and/or attorney-client or attorney work product privileges; and (b)(6), which allows for withholding information, that if disclosed, would result in a clearly unwarranted invasion of the personal privacy of individuals.

In addition, we have conducted a foreseeable harm analysis under the FOIA Improvement Act of 2016 and, after consulting with appropriate subject matter experts, 1) we do not reasonably foresee that disclosure of some of this information would harm an interest that the FOIA's exemptions were designed to protect and/or 2) disclosure would not be prohibited by law. Therefore, we are releasing this information in part. Please be aware that our decision to release this information does not mean that we have waived our ability to invoke applicable FOIA exemptions for similar or related information in the future. For the remainder of this material, we reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure and/or disclosure would be prohibited by law.

Additional monthly productions will be made as we continue to coordinate the review of the remaining responsive documents DoD has in its possession. If you have any questions, please contact Lee Reeves at 202-616-0773 or lee.reeves2@usdoj.gov.

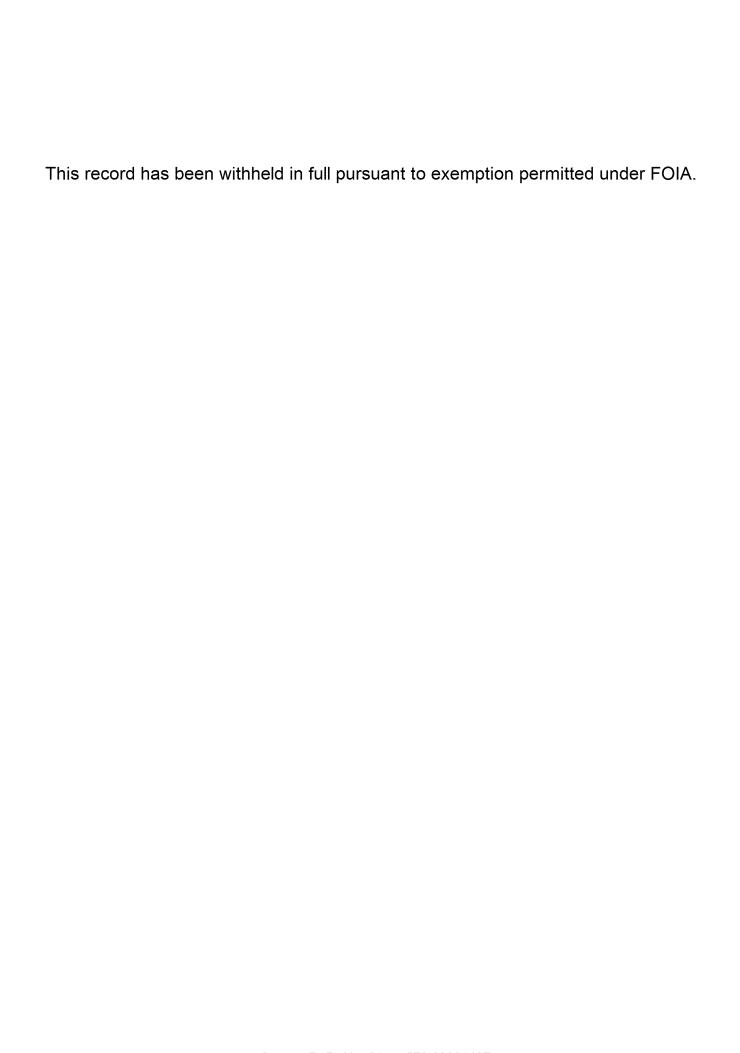


Sincerely,

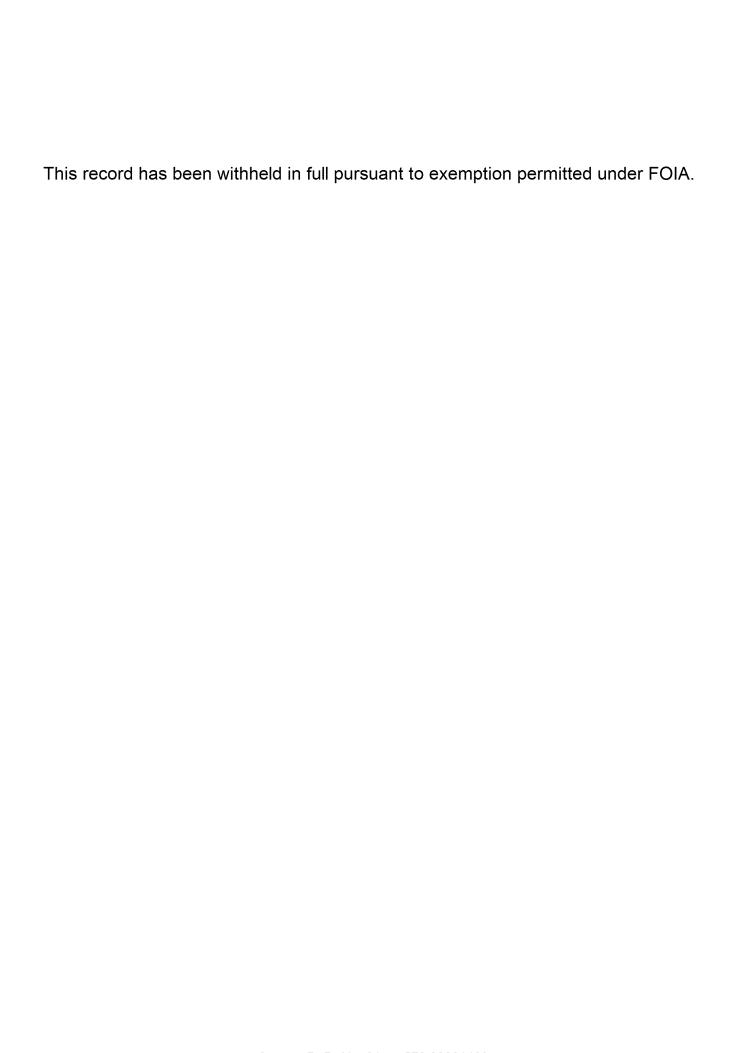
Ben Irwin

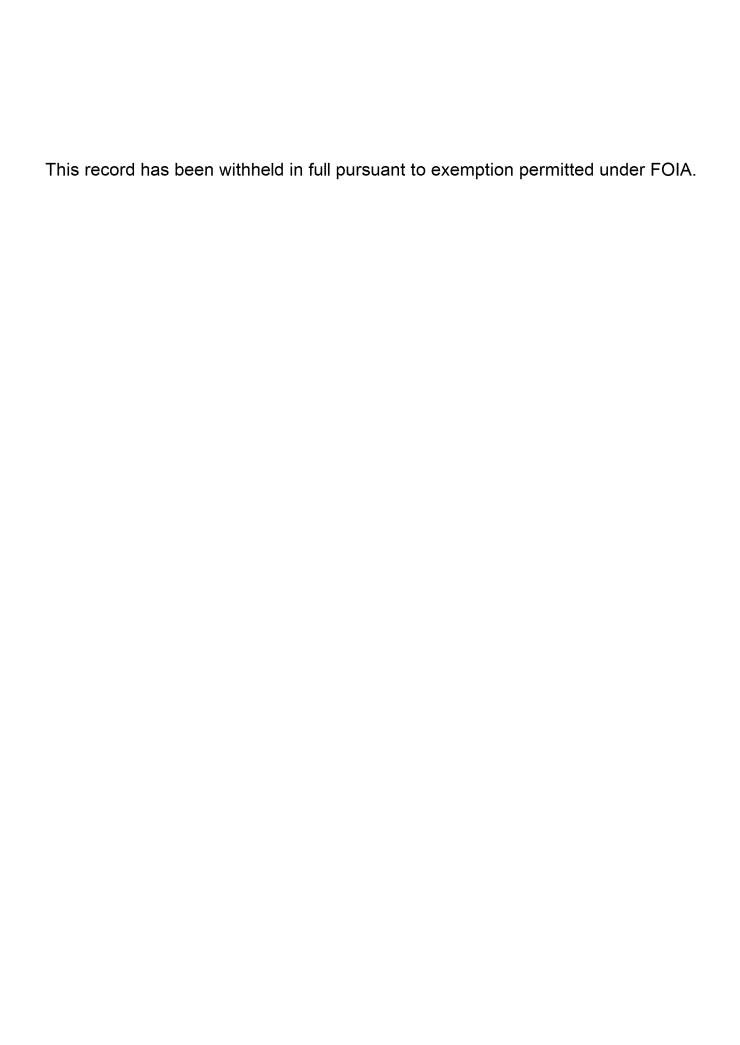
Enclosure: As stated

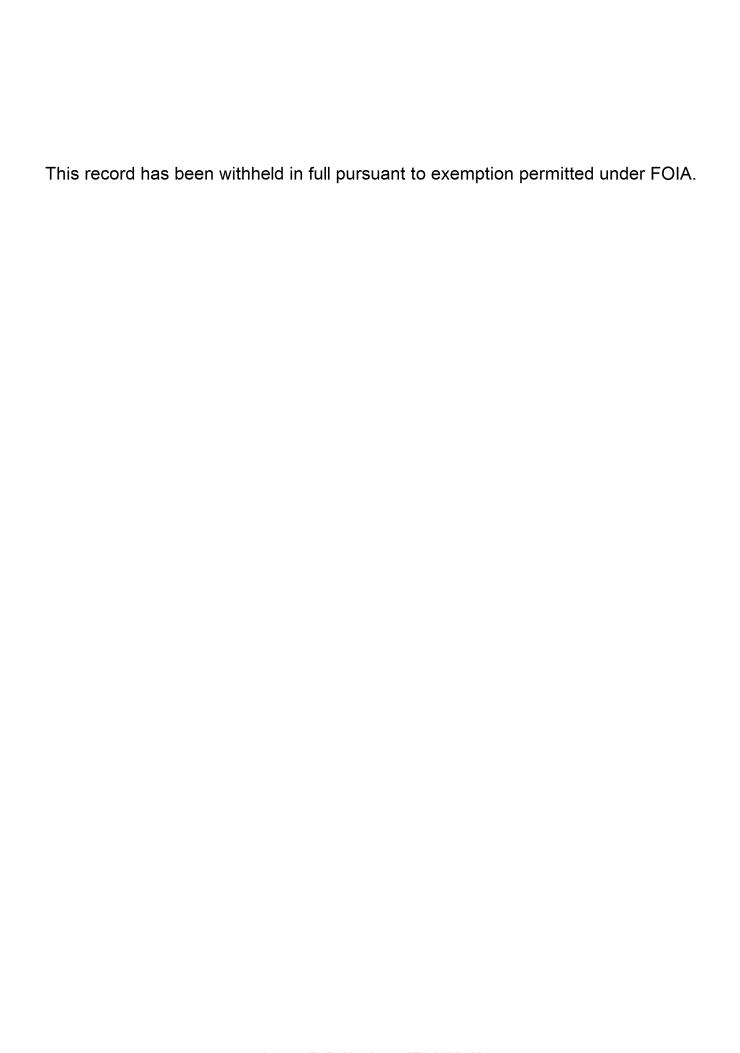
Associate Deputy General Counsel

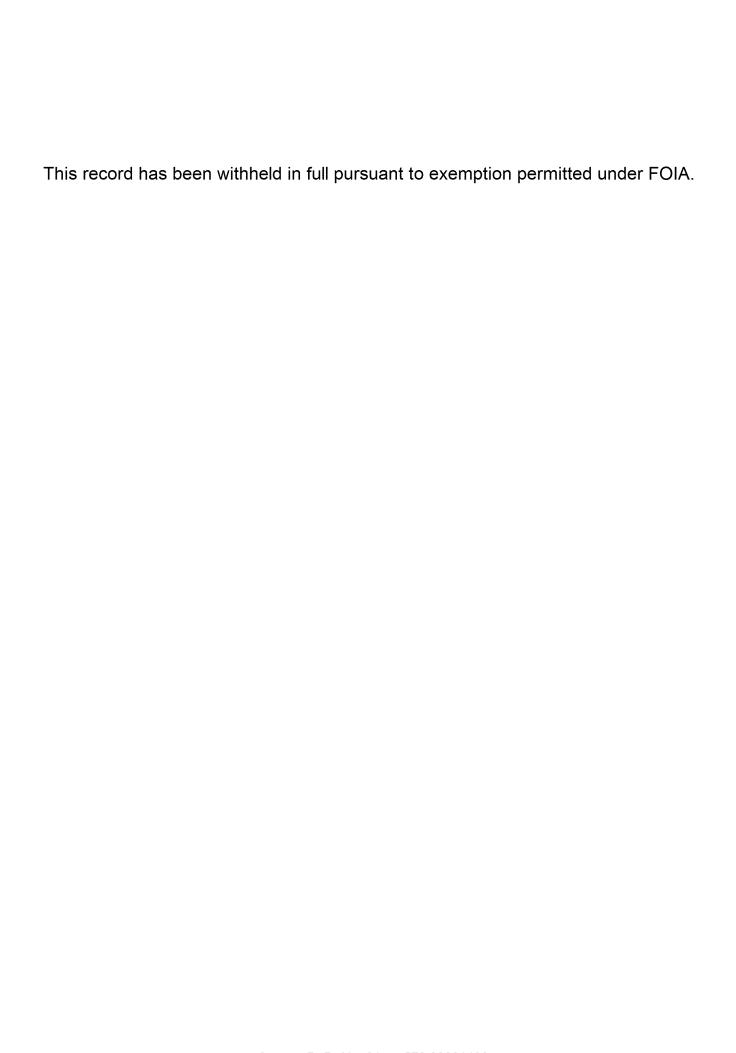


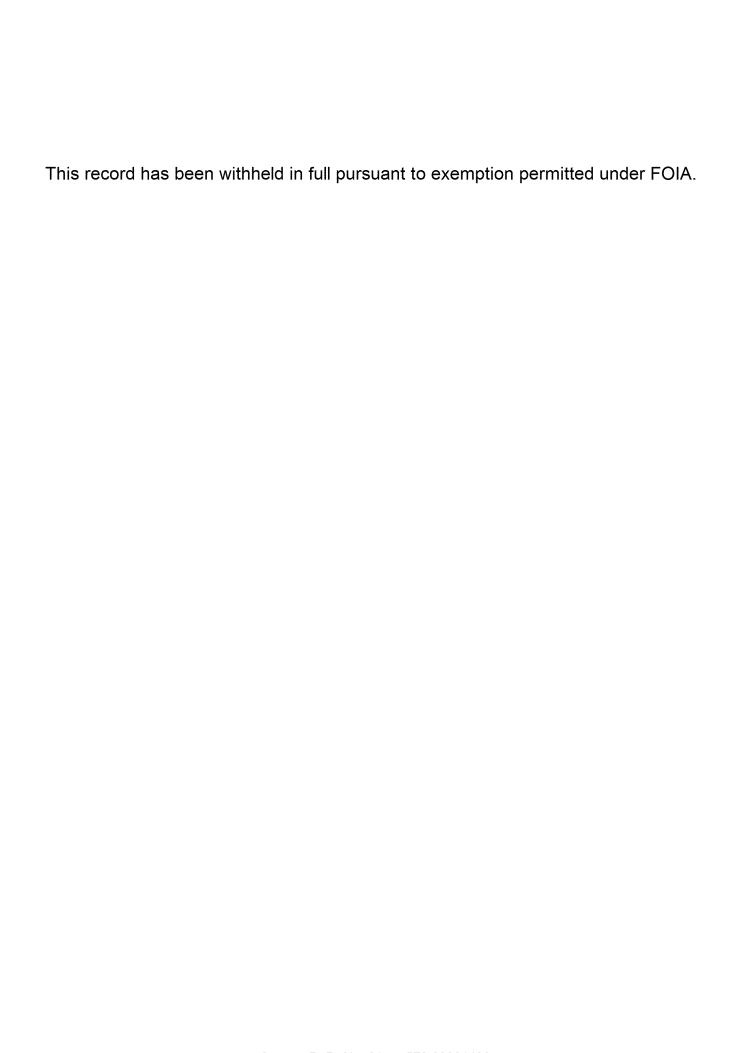


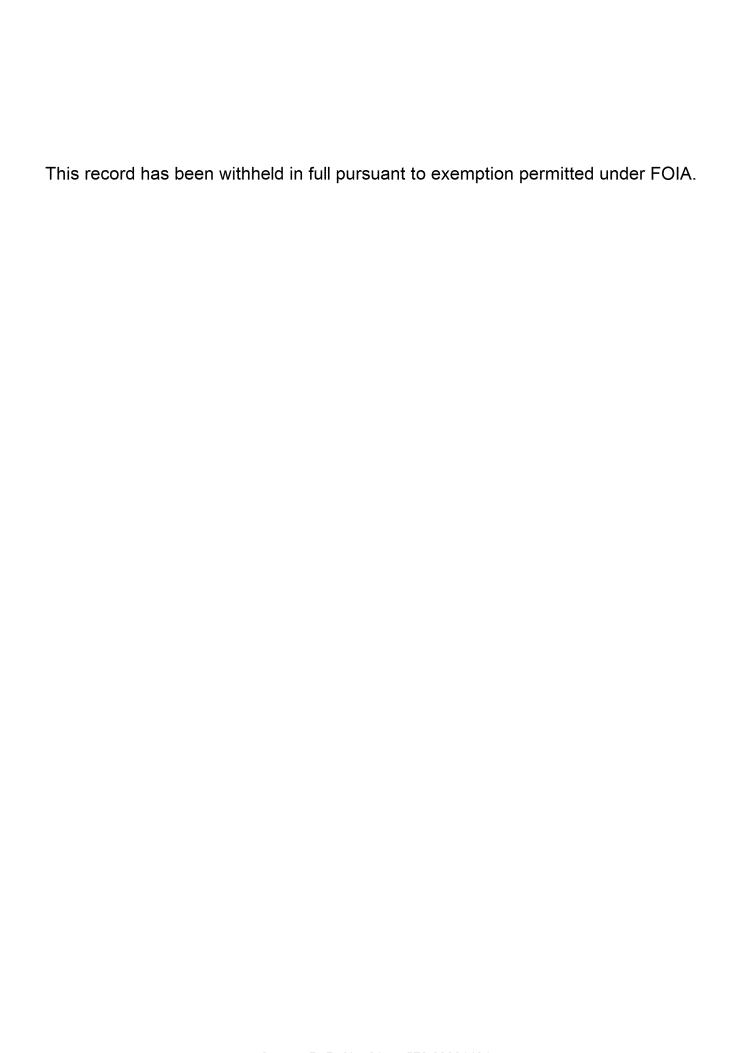


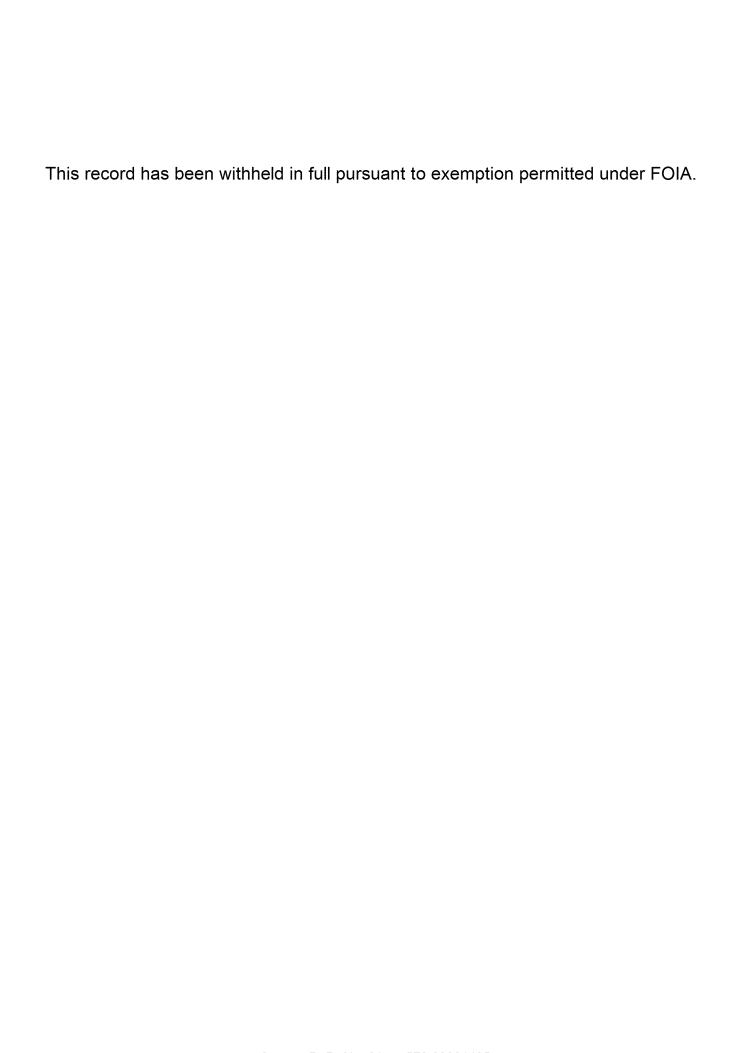


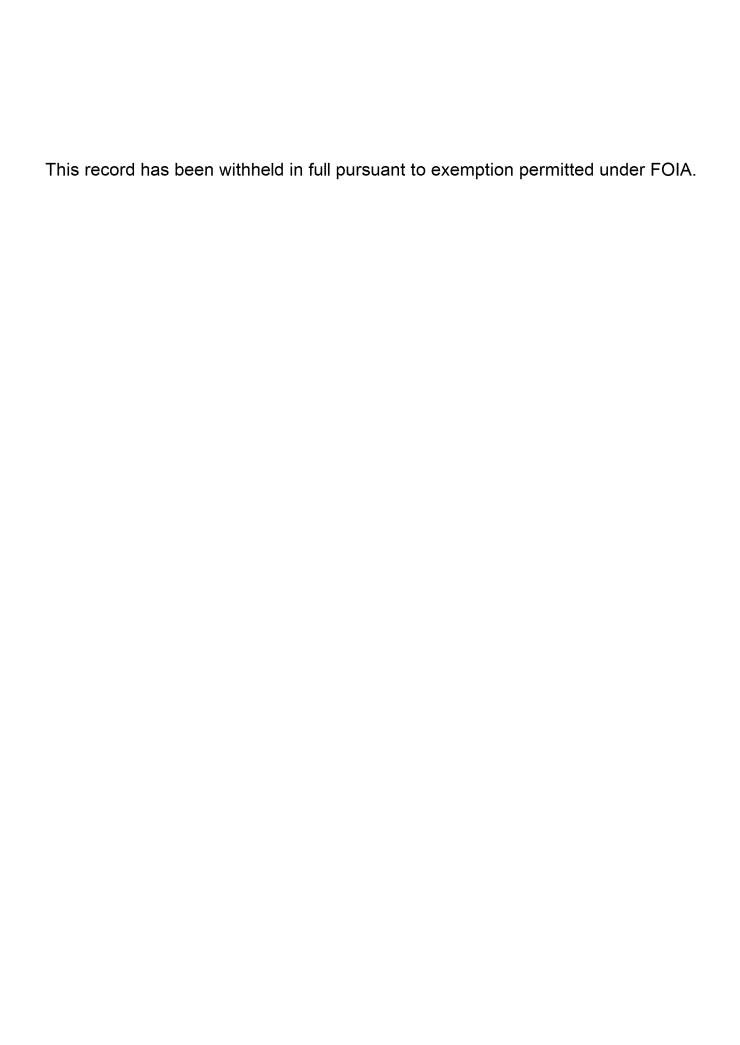








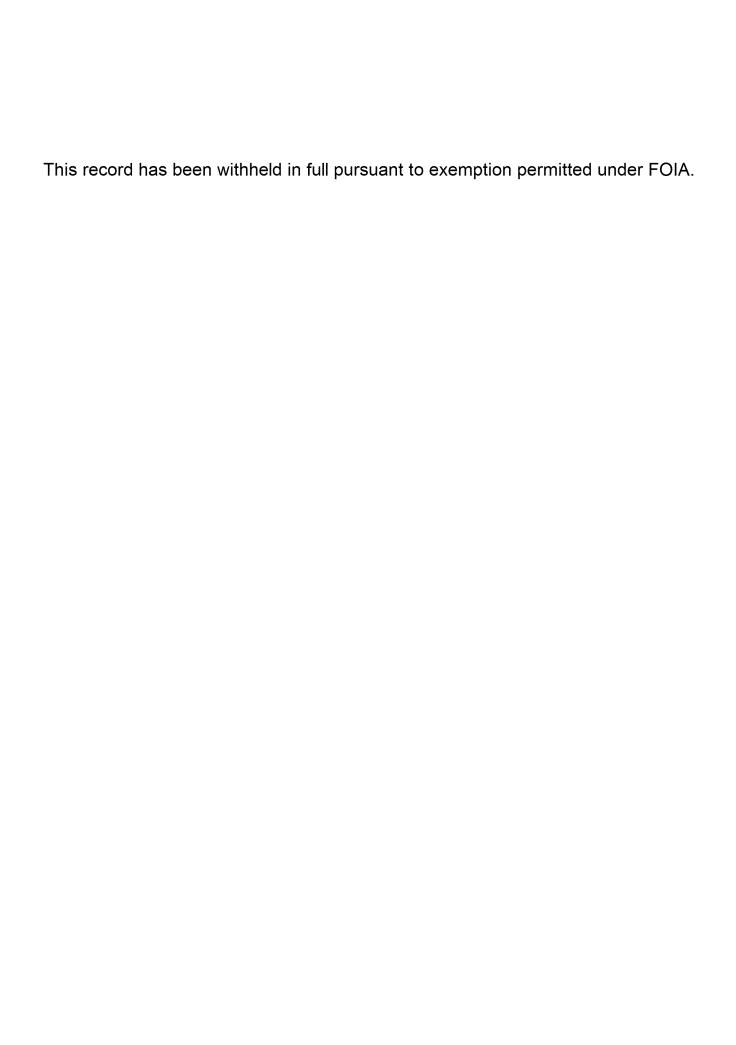


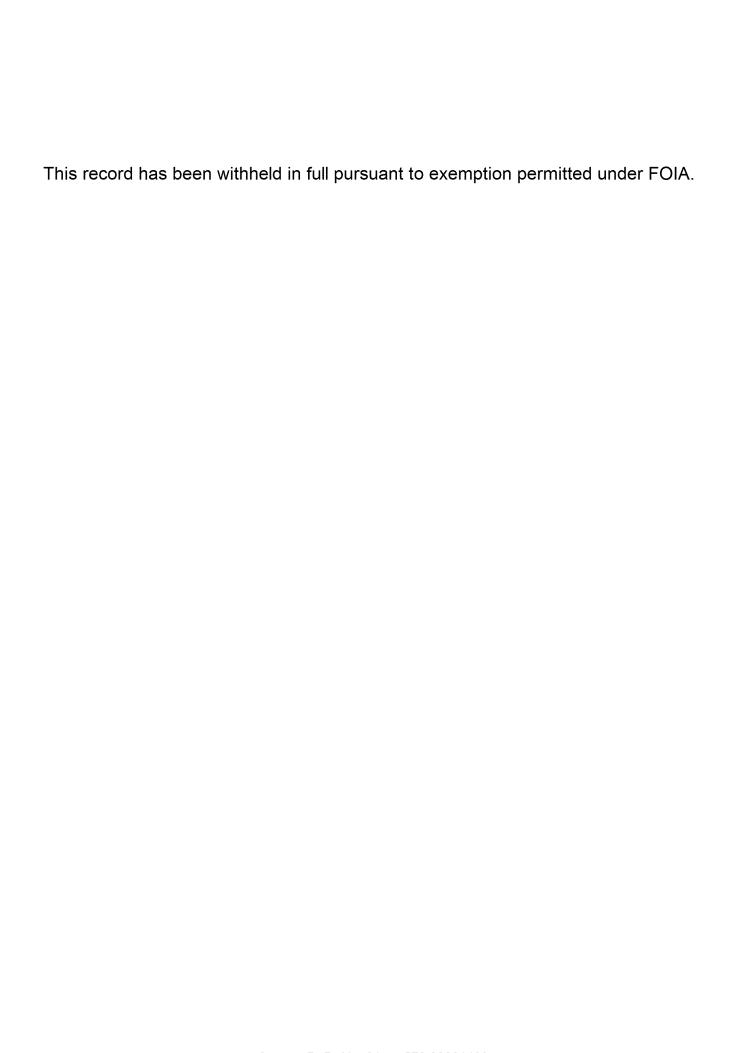


Message

From:	Rapuano, Kenneth P HON OSD OUSD POLICY (USA) [/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP							
	(FYDIBOHF23SPDLT)/CN=REC	IPIENTS/CN=	В6					
Sent:	1/18/2021 6:07:55 PM	•						
To:	Norquist, David HON SD	B6						
CC:	Henke, Robert J SES (USA)	B6	Verga, Peter SES SD	B6	LTC			
	SD B6		CIV OSD OUSD POLICY (USA)	B6				
Subject:	Pelosi and USCP letters				· :			
Attachments:	smime.p7m							
Importance:	High							

DSD – attached are the edits we discussed. Please review, and let me know you're good, or pass edits – and let me know how you'd like me to characterize your approval of these drafts. Thanks, Ken





From:		neth P HON OSD O PDLT)/CN=RECIPIE		A) [/O=EASF/ B6	OU=EXCHANG	GE ADMINISTRA	ATIVE GROUP	
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Attachments:	•	·	·					
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Best,								

Kenneth P. Rapuano Assistant Secretary of Defense for Homeland Defense & Global Security

Ken

Main: B6
Direct: B6



Message

Rapuano, Kenneth P HON OSD OUSD POLICY (USA) [/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP From:

(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6

1/18/2021 12:50:48 PM Sent:

В6 B6 CIV OSD OUSD POLICY (USA)
SA Approval of USCP RFA V. 1.8 w-OSD Policy Edits_kr To:

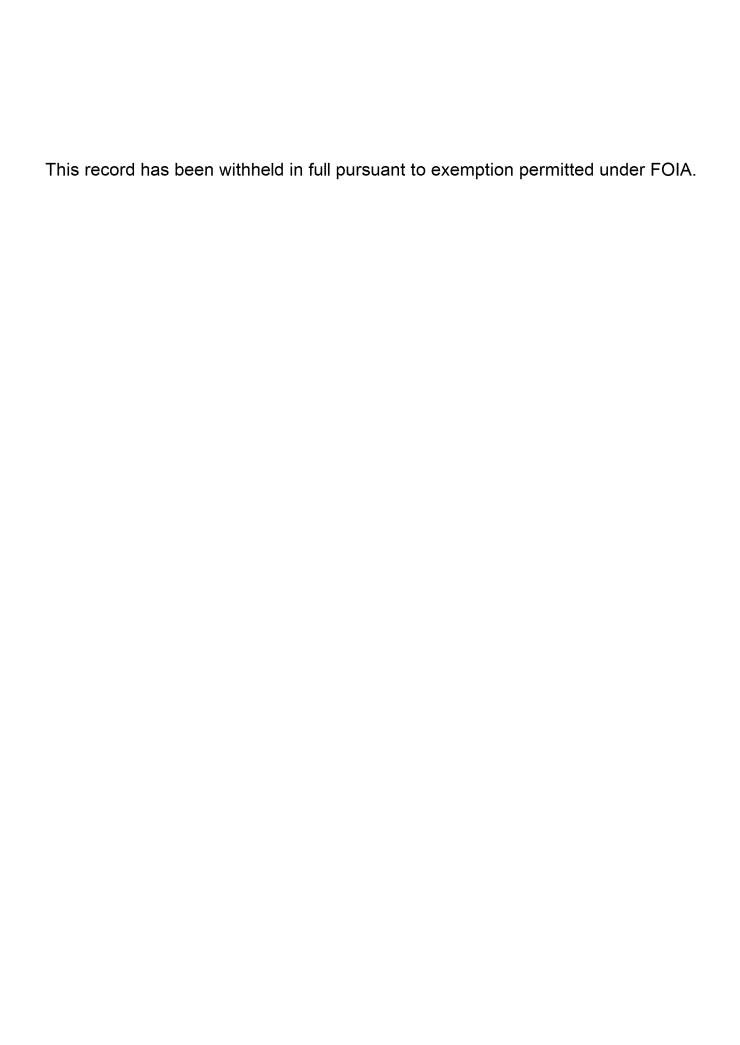
Subject:

Attachments: smime.p7m

Final



From: Sent:	Rapuano, Kenneth P HON OSD OUSD POLICY (USA) [/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= B6 1/18/2021 12:01:59 PM
To: Subject: Attachments:	1/18/2021 12:01:59 PM B6 CIV OSD OUSD POLICY (USA) B6 FW: Version 2 smime.p7m
Recommend	you send the following to the Army.
	nk you for the opportunity to review and comment on the following draft espondence:
	List docs
	B5



Message

From:	B6 COL USARMY NG NGB ARNG (USA) [/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP
	(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN╡ B6
Sent:	1/13/2021 1:32:01 PM
To:	B6 CAPT USN OSD OUSD POLICY (USA) B6
Subject:	Requests
Attachments:	smime.p7m

B6

Good morning. The attached seems to have gone full circle in my organization. Can you give me a read if this is a restaff by your office and if we have given you a thumbs up.

Respectfully

	B6	
COL	В6	
Chief, NG	i J55	
Office-	B6	
Mobile	БО	
Email-	В6	
SIPR-	В6	
JWICS-	В6	

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CAUTION: In	formation cor	ntained in this me	ssage may be p	rotected by the attorney/cliei	nt, attorney work product,
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Counsel.		, 0		c c	
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Sent: Sunday, To B6 Cc: B6 HQDA OTJAG B6 LT B6 Subject: RE: F B6 DoD OGC coo subsequent s Thanks much B6	January 17, 2 TC US. MAJ (USA) B6 B0 C USARMY OF B6 J FOR REVIEW:	2021 11:56 AM ARMY HQDA OTJA USARMY HQDA O B6 'Charles A SE 6 SD OGC (USA) OSD Pentag DRAFT SA Letter A y Mr. Ney, as revi anges.	AG (USA) OTJAG (USA) S OSD OGC Alle CAPT L on OGC Mailbo	COL USARMY HQDA OT en (USA) B6 USN OSD OGC (USA) B6 x IA Admin Team	B6 CIV OSD OGC (USA) B6

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the DoD Office of General Counsel.

From		,	' HQDA OTJAG (USA	N B6		
To	B6	January 16, 2021 6: OL USARMY HQ		B6		CIV OSD OGC (USA)
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Team,

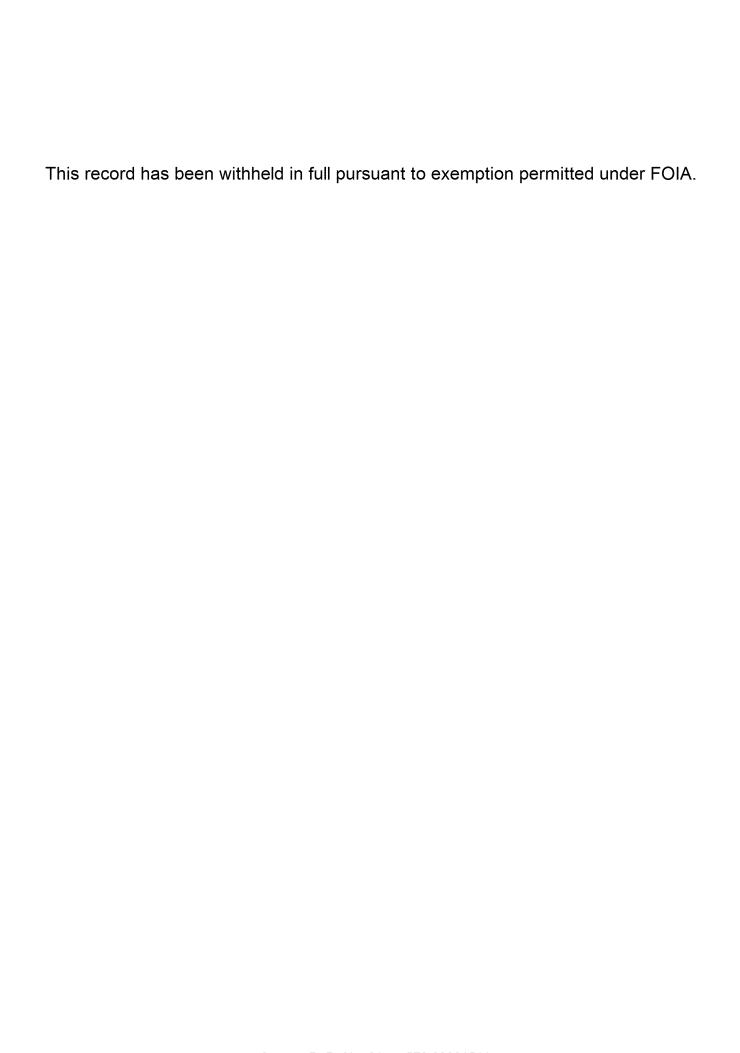
Attached is another draft letter for review and comment: **Approval Letter from the Secretary of the Army to the Acting Chief, U.S. Capitol Police**.

We request your feedback NLT 1200 tomorrow, Sunday, 17 January 2021.

B5, B6

The DOO former for the state	D.C			
The POC for your feedback is potential confusion, please use numbers draft memo as well).	B6 B6		B6 OC for feedbac	To clarify any k on the VOCO on NG
B6 intent remains to have	∕e SA to s	ign these letters o	on Monday mor	ning.
Thank you for your continued team	work and	assistance!		
Respectfully,				
B6				
B6				
•				
Office of The Judge Advocate Gen	eral			
2200 Army Pentagon, Room B6				
R6				
B6 COL, JA Deputy Chief National Security Law Division Office of The Judge Advocate Gen				

OTJAG COVID-19 Portal: https://www.milsuite.mil/book/community/spaces/armyjag/covid-19



From:	Salesses, Robert G SES O (FYDIBOHF23SPDLT)/CN			DU=EXCHANGE A	DMINISTRATIVE GRO	DUP
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Subject:	FW: REQUEST: Coordina	tion of Proposed		· ·	* \	CP Requests for
Subject.	Assistance	don on rroposed r	Approvats by the s	secretary or the A	army or 0555 and 05	rer riequests for
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i	UEST: Coordination of P	*		tary of the Arm	y of USSS and USC	P Requests for
Gentlemen						
RLUF: HQ	DA requests your or	<u>'ganızatıon's r</u>	eview of the	attached doc	<u>uments:</u>	
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<u>REQUESTED SUSPENSE</u>: **2200 tonight, Sunday 17 January 2021.** We intend to have Secretary McCarthy sign these documents tomorrow morning.

DISCUSSION:



Please let me know if you have any questions. Thank you.

B6
COL, JA
Chief, National Security Law Division
OTJAG, HQDA

JAG COVID-19 Portal: https://www.milsuite.mil/book/community/spaces/armyjag/covid-19

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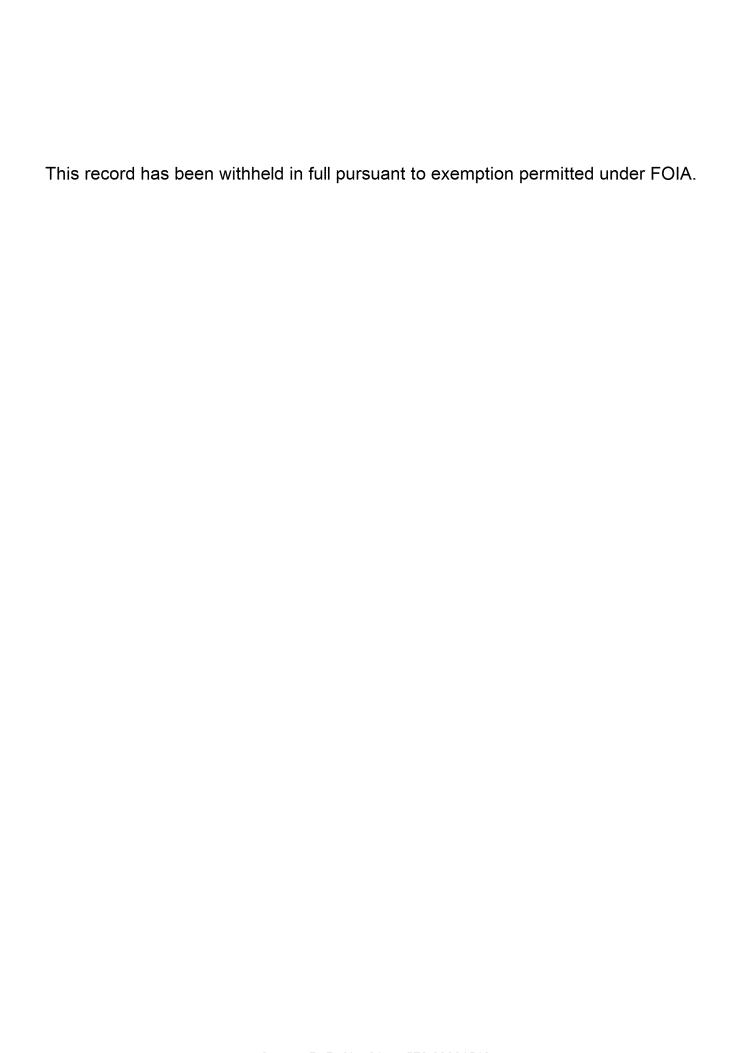
Sir - Attached are our recommended edits to the Army's draft correspondence.

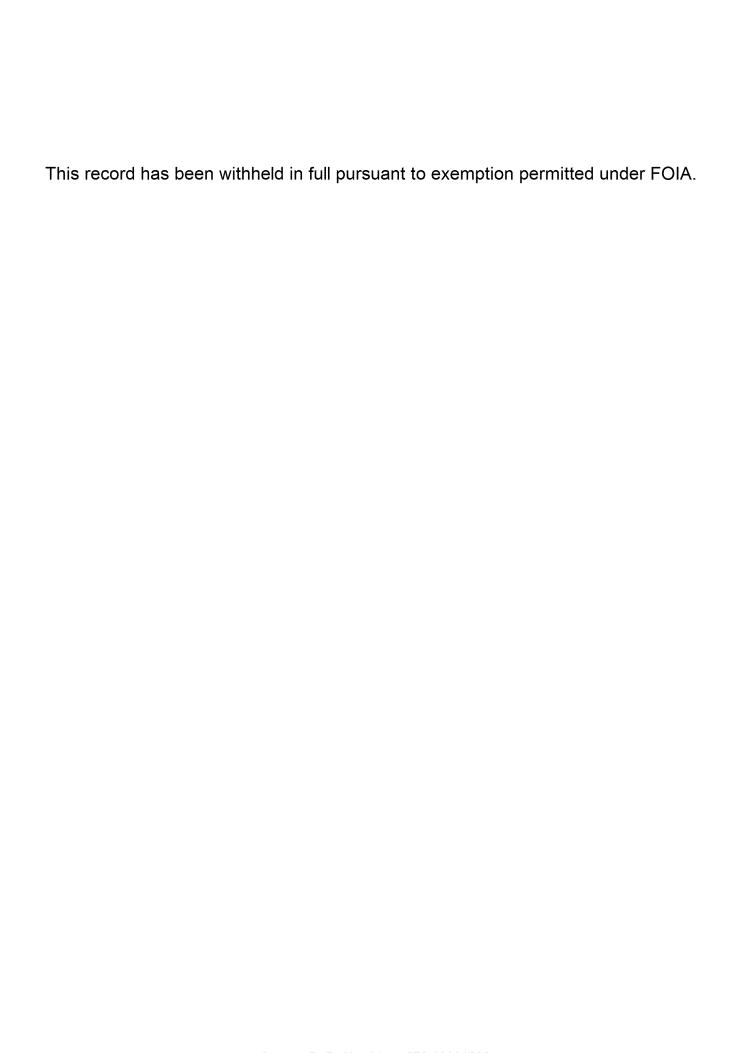
With your concurrence, we will provide to Army on your behalf.

Very Respectfully,

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Best, Bob





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Subject: REQUEST: Coordination of Proposed Approvals by the Secretary of the Army of USSS and USCP Requests for Assistance

Gentlemen:

BLUF: HQDA requests your organization's review of the attached documents:

REQUESTED SUSPENSE: 2200 tonight, Sunday 17 January 2021. We intend to have Secretary McCarthy sign these documents tomorrow morning.

DISCUSSION:

B5, B6

Please let me know if you have any questions. Thank you.

v/r, **B6 B6** COL, JA Chief, National Security Law Division OTJAG, HQDA Office: **B6 B6** Cell: SVOIP: **B6** NIPR: В6

SIPR:

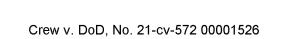
JAG COVID-19 Portal: https://www.milsuite.mil/book/community/spaces/armyjag/covid-19

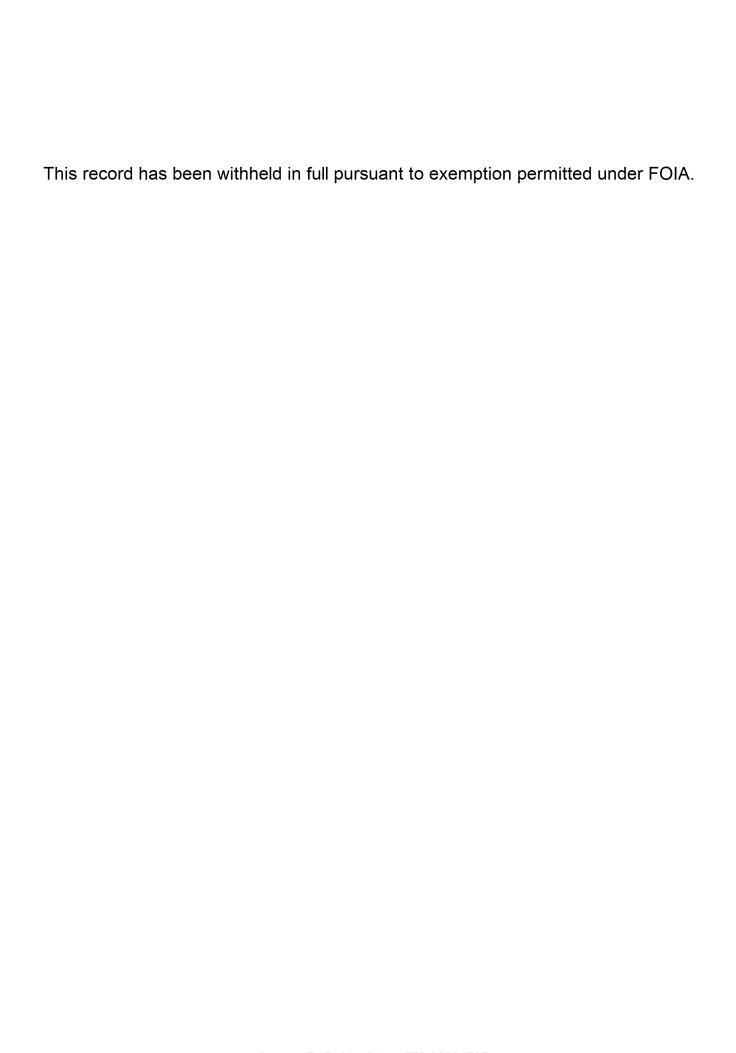
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Nyan - attach	ed is my coordinad	on on Army s rour t	documents re	garuing support t	to the mauguration	•
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Best,						
Ken						
Kenneth P. Rapu	ano					
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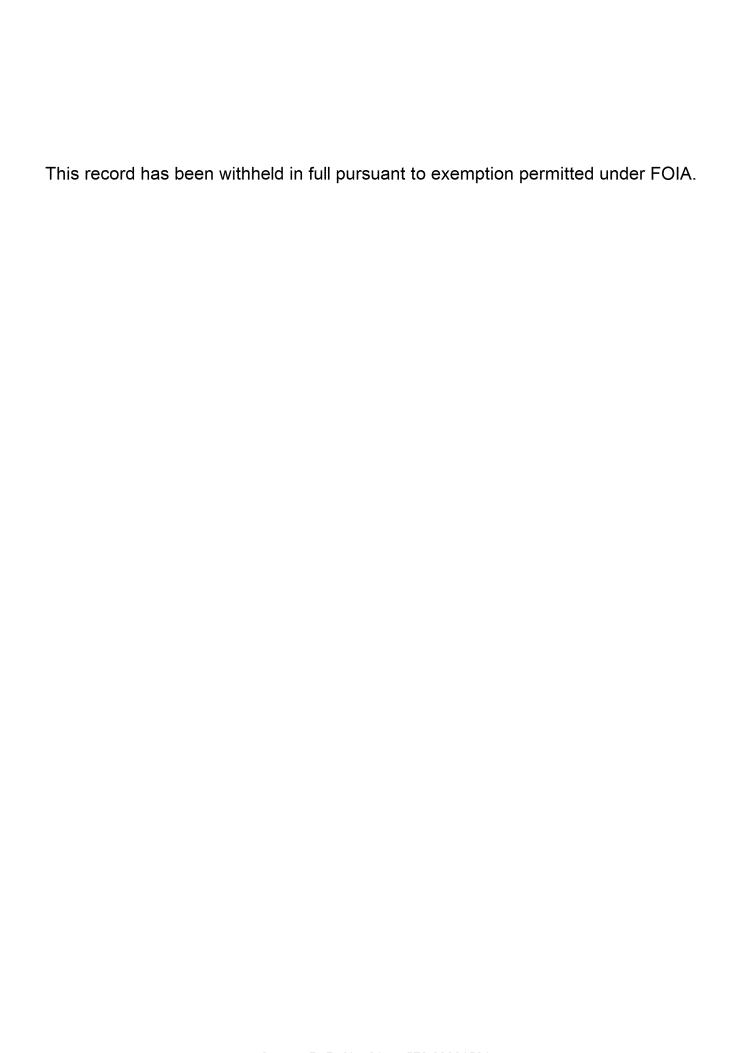


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Best,						
Desc,						
Ken						
Kenneth P. Rapu						
	ary of Defense for					
r	ense & Global Sed	curity				
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Attachments:

- A Draft Letter to Speaker Pelosi
- B SecArmy Response to the USCP (clean)
- C SecArmy Response to the USCP (track changes)





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Subject: FOR REVIEW: DRAFT SA Letter Approving U.S.	S. Capitol Police (USCP) F	RFAs
Team,		
Attached is another draft letter for review and Army to the Acting Chief, U.S. Capitol Pol		al Letter from the Secretary of the
We request your feedback NLT 1200 tomo	orrow, Sunday, 17 J	anuary 2021.
D F	DC	
DJ	6, B6	
The POC for your feedback is B6 potential confusion, please use B6 numbers draft memo as well).	please cc as the primary POC	B6 (To clarify any for feedback on the VOCO on NG
B6 intent remains to have SA to si	ign these letters on N	Monday morning.
Thank you for your continued teamwork and	assistance!	
Respectfully,		
B6		
B6 COL, JA		
Deputy Chief		
National Security Law Division Office of The Judge Advocate General		
2200 Army Pentagon, Room B6		
Office: B6 SVOIP: B6		
Gov't Cell: B6		
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As always, th	nank you for your assi	stance!				
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SECRETARY OF DEFENSE 1000 DEFENSE PENTAGON WASHINGTON, DC 20301-1000

JAN - 6 2021

MEMORANDUM FOR CHIEF OF THE NATIONAL GUARD BUREAU

SUBJECT: National Guard Units in the District of Columbia

In light of recent domestic civil unrest in the District of Columbia and the potential demand for use of National Guard personnel to conduct civil disturbance operations, and in order to prepare for potential requests for use of National Guard personnel to conduct domestic civil disturbance operations, I direct the following actions:

- The Chief of the National Guard Bureau will work with appropriate State authorities in the vicinity of the District of Columbia to identify National Guard units that could be called upon to conduct civil disturbance/support to law enforcement operations.
- I authorize additional training under title 32, U.S.C., section 502(f) for the identified units to ensure those units are most effectively prepared to conduct civil disturbance operations, including incorporating lessons learned from recent events, as appropriate. I also authorize movement of these units to an appropriate DoD or National Guard training site if local training sites are inadequate to complete this training. This training is authorized through January 30, 2021.

If these units are requested by DC Government authorities for support under the Emergency Management Assistance Compact process while in this training status, training activities will be terminated upon arrival in the District of Columbia and any response would be conducted in State active duty status. The Air National Guard will identify airlift units that have otherwise required training to conduct which could be used to transport National Guard units to the District of Columbia. This is not an authorization for additional funds to be provided to these units; the aircrews will complete required training events during the missions used to position the National Guard units.

If I request that a governor order these units to support a request for assistance from a Federal Department or Agency or to support DoD should the President direct the DoD to protect Federal functions, persons, or property, and the Governor agrees, any training activities would be terminated, and any response would be conducted as "other duty" under title 32, U.S. C., section 502(f).

Christopher C. Miller Acting

cc:

Secretaries of the Military Departments Chairman of the Joint Chiefs of Staff Under Secretaries of Defense Commander, U.S. Northern Command

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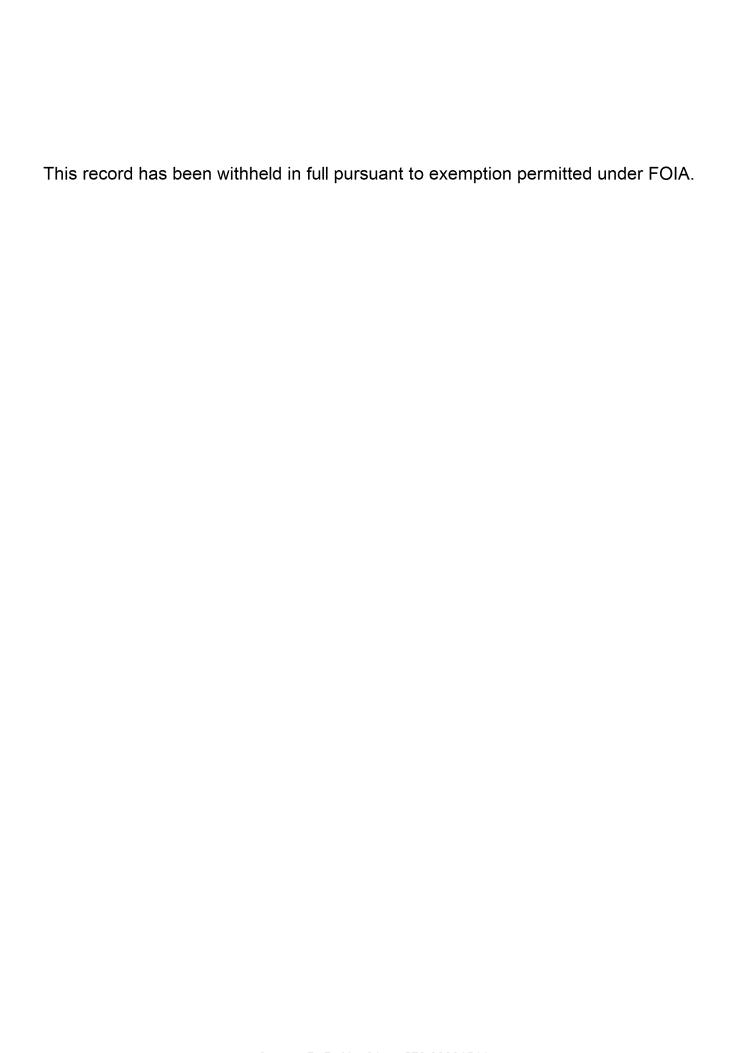
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Thank you for your continued teamwork and assistance!

Respectfully,

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National Security Law Division Office of The Judge Advocate General 2200 Army Pentagon, Room B6
Office: B6
Gov't Cell: B6
Personal Cell: B6
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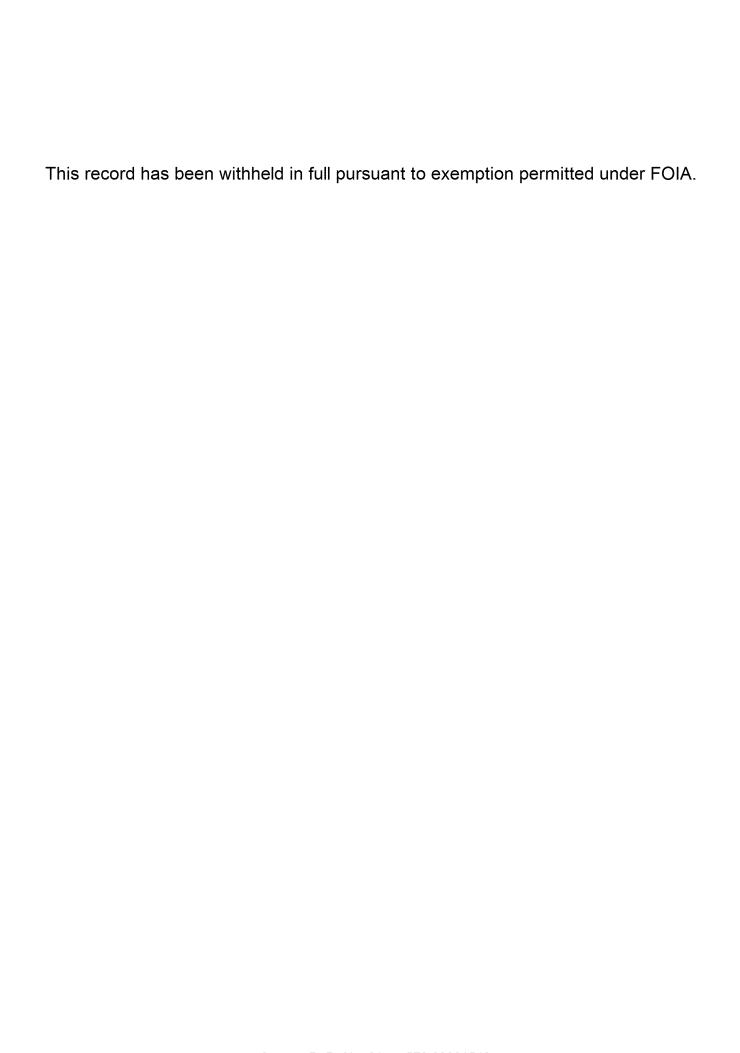
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V/R,
LTC B6 Chief, Strategic Engagements
National Security Law Division Office of The Judge Advocate General 2200 Army Pentagon, Room B6
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NSLD Milsuite: https://www.milsuite.mil/book/groups/national-security-law



SECRETARY OF DEFENSE 1000 DEFENSE PENTAGON WASHINGTON, DC 20301-1000

JAN - 6 2021

MEMORANDUM FOR CHIEF OF THE NATIONAL GUARD BUREAU

SUBJECT: National Guard Units in the District of Columbia

In light of recent domestic civil unrest in the District of Columbia and the potential demand for use of National Guard personnel to conduct civil disturbance operations, and in order to prepare for potential requests for use of National Guard personnel to conduct domestic civil disturbance operations, I direct the following actions:

- The Chief of the National Guard Bureau will work with appropriate State authorities in the vicinity of the District of Columbia to identify National Guard units that could be called upon to conduct civil disturbance/support to law enforcement operations.
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If I request that a governor order these units to support a request for assistance from a Federal Department or Agency or to support DoD should the President direct the DoD to protect Federal functions, persons, or property, and the Governor agrees, any training activities would be terminated, and any response would be conducted as "other duty" under title 32, U.S. C., section 502(f).

Christopher C. Miller Acting

cc:

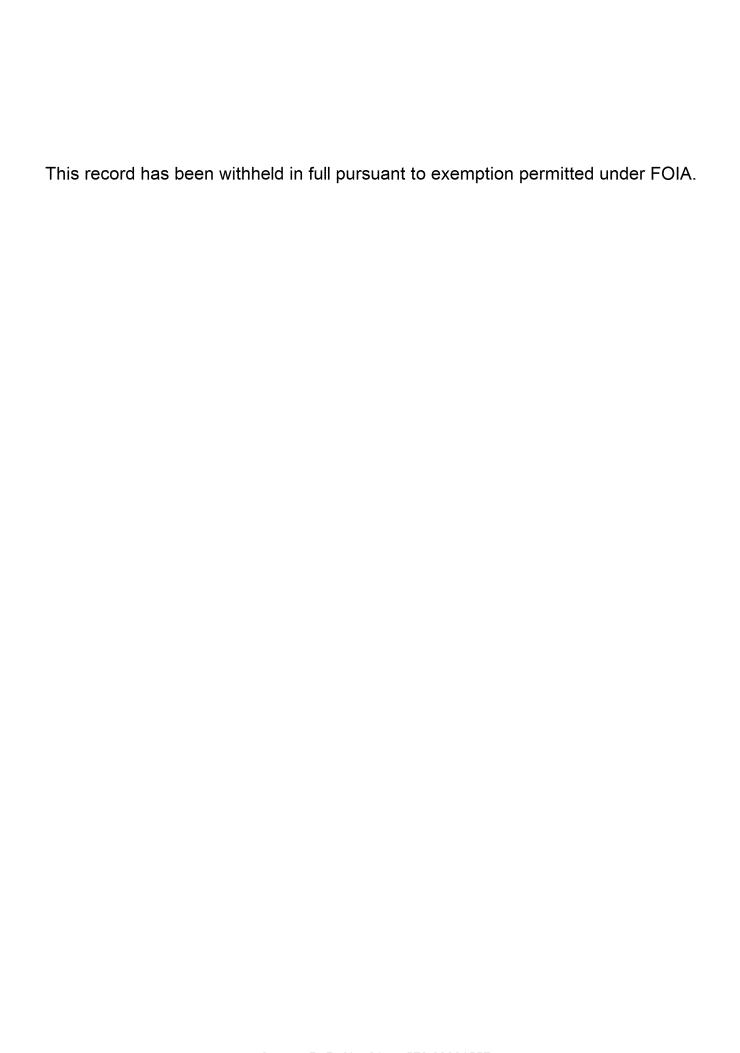
Secretaries of the Military Departments Chairman of the Joint Chiefs of Staff Under Secretaries of Defense Commander, U.S. Northern Command

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CC:	!	HQDA OTJAG (UŠĀ)į	B(-	COL USARM
	HQDA OTJAG (USA)	B6		/ HQDA OTJAG (USA	<u>()</u>
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From	E	36 COL	USARMY HQDA OT	JAG (USA)	В6			
Sent: Saturday, January 16, 2021 6:35 PM								
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	B6 JSA)	COL USAI	RMY NG DCARNG (B6	CO	B6 LTC USARMY L USARMY NG NGB (USA)	Mcmahoi NG NGB (U ; Youn	n, Erin K Bo ISA) B6	Lee SES NG NGB
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Subject: FOR R	EVIEW: DRAFT SA Letter Appr	oving U.S. Capitol Pol	ce (USCP) RFAs		
					
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	another draft letter for rev		Approval Letter fr	om the Secreta	ary of t
Army to the	Acting Chief, U.S. Cap	itol Police.			
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<i>Ne</i> request	your feedback NLT 120	io tomorrow, Sun	day, 17 January 20	21.	
) <i>C</i>			
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	fusion, please use LTC	B6 as the prin	nary POC for feedba	ck on the VOC	O on N
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COL B6	intent remains to have	SA to sign these le	etters on Monday mo	rning.	
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Γhank you fo	or your continued teamwo	ork and assistance	!		
Respectfully,					
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COL, JA					
Deputy Chief	f				
National Sec	urity Law Division				
Office of The	Judge Advocate Genera	al			
2200 Army F	Pentagon, Room B6				
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OTJAG COVID-19 Portal: https://www.milsuite.mil/book/community/spaces/armyjag/covid-19



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Sent:	1/17/2021 8	:04:38 PM					
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CC:	ļ	B6	B6	<u></u>	De		OSD Pentagon OGC Mailbox I
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From:	B6 COL	USARMY	' HQDA OTJAG (USA)		B6		
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(USA)	B6 SGT USARMY USAR LE		COL USARMY HQDA OTJ		В6 ИАЈ
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L	REVIEW: DRAFT Memoran	da Extending De	elegation and Providing E	mplovment Gui	dance Limitations
Please revi	ew and provide com	ments/edits	NLT 1600 this after	noon (Sunda	y, 17 Jan).
Please send	l your feedback to LT0	C B 6	cc MAJ B6		
COL B6	intent remains to ha	ıve SA sign tl	nese memos tomorro	w (Monday) r	norning.
As always, t	hank you for your ass	istance!			
Respectfully	′,				
B6					
B6 COL, JA Deputy Chie	ef				
Office of The	curity Law Division e Judge Advocate Ge Pentagon, Room B o				
	B6				

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SECRETARY OF DEFENSE 1000 DEFENSE PENTAGON WASHINGTON, DC 20301-1000

JAN - 6 2021

MEMORANDUM FOR CHIEF OF THE NATIONAL GUARD BUREAU

SUBJECT: National Guard Units in the District of Columbia

In light of recent domestic civil unrest in the District of Columbia and the potential demand for use of National Guard personnel to conduct civil disturbance operations, and in order to prepare for potential requests for use of National Guard personnel to conduct domestic civil disturbance operations, I direct the following actions:

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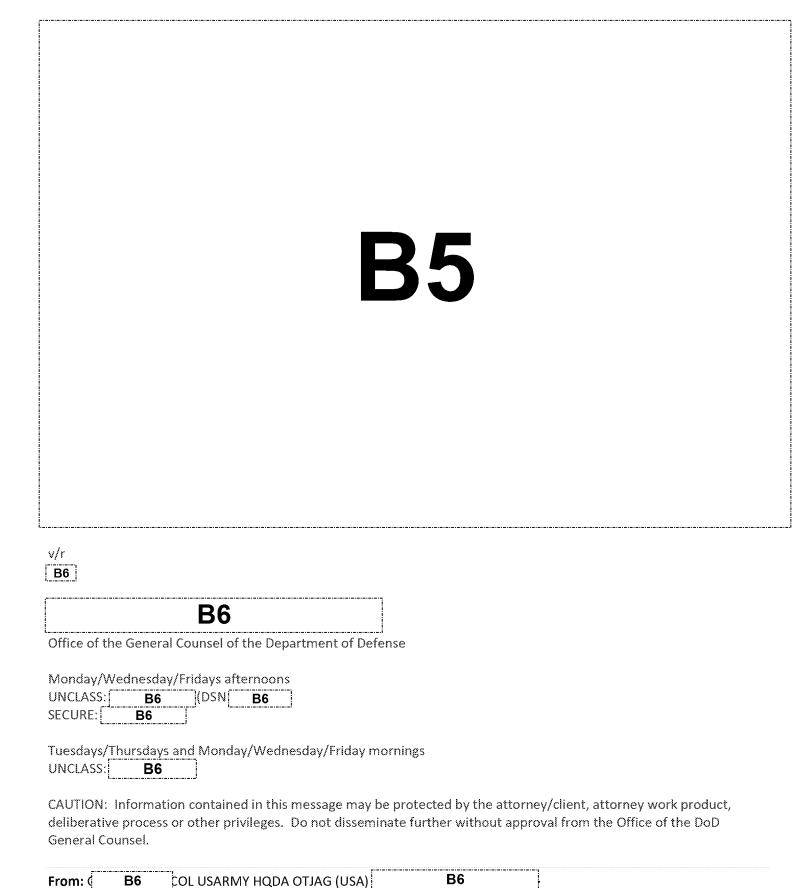
Christopher C. Miller Acting

cc:

Secretaries of the Military Departments Chairman of the Joint Chiefs of Staff Under Secretaries of Defense Commander, U.S. Northern Command

Message					
From:	B6 COL USA	RMY HQDA OTJAG (USA) [/O=EASF/OU=EXCH	ANGE ADMINISTR	AATIVE GROUP
Sent:	1/18/2021 6:17:37 PM	· '			
To:		SD OGC (USA)	В6		
CC:	Allen, Charles A SES OS		B6		CAPT USN OSD OGC (USA)
		B6	COL USARMY HQDA	OTJAG (USA)	В6
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	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	B6	MAJ USARMY	HQDA OTJAG (U	SA)
	В6				
Subject:	RE: Crew Served Weap				
Attachments:	SA Approval of USCP R	FA v.4.2b.docx			
В6					
Thank you ve further edits.	ry much. I'm enclosir	g the revised draft SA	memo to USCP. Ple	ease review and	let us know if you have any
Thanks, v/r, B6					
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Subject: RE: Crew Served Weapons



Crew v. DoD, No. 21-cv-572 00001564

B6

LTC USARMY HQDA OTJAG (USA)

CIV DLSA (USA)

COL USARMY HQDA

From:

Cc:

OTJAG (USA)

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Sent: Monday, January 18, 2021 11:00 AM

CIV OSD OGC (USA)

CAPT USN OSD OGC (USA)

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B6	MAJ USARMY HQDA OTJAG (USA)	B6
Subject: Crew Served Weapons	<u> </u>	j
B6		
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v/r, B6		
B6 COL, JA		
Chief, National Security Law Division OTJAG, HQDA	·;	
DC		
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JAG COVID-19 Portal: https://www.milsuite.mil/book/community/spaces/armyjag/covid-19

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