

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

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON	:	
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Plaintiff,	:	
v.	:	Civ. No. 1:18-cv-00007-TSC
	:	
UNITED STATES DEPARTMENT OF JUSTICE	:	
	:	
	:	
Defendant.	:	
	:	

**DEFENDANT’S STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), Defendant U.S. Department of Justice (“DOJ”) respectfully submits that the following material facts are not in genuine dispute:

1. On December 13, 2017, Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) sent a Freedom of Information Act (“FOIA”) request to the Department of Justice’s Office of Information Policy (“OIP”). That request sought “all communications concerning the decision to invite reporters to DOJ on December 12, 2017, for the purpose of sharing with them private text messages sent during the 2016 presidential campaign by two former FBI investigators on Special Counsel Robert Mueller’s team,” as well as “documents reflecting who made the decision to release this material to reporters on the evening of December 12, 2017.” Declaration of Vanessa R. Brinkmann ¶ 3 and Ex. A.
2. The request included, but was not limited to, “(1) communications with reporters regarding this meeting; (2) communications within DOJ about whether, when, and how to share the text messages with reporters including, *inter alia*, the Office of the Inspector General, the Attorney General, the Office of Legislative Affairs, the Deputy Attorney General, the Associate Attorney General, the Office of Public

Affairs, and any individual within the senior leadership offices of DOJ; and (3) communications with any member of Congress and/or their staff regarding this matter.” Brinkmann Decl. ¶ 3 and Ex. A.

3. The request sought expedited processing. Brinkmann Decl. ¶ 4 and Ex. A.
4. OIP acknowledged receipt of CREW’s request. Brinkmann Decl. ¶ 4 and Ex. B.
5. OIP granted CREW’s request for expedited processing, Brinkmann Decl. ¶ 6, and began its search that same day. *Id.* ¶ 18.
6. On December 13, 2017, CREW submitted a FOIA request to the Department of Justice’s Office of the Inspector General. That request also sought “all communications concerning the decision to invite reporters to DOJ on December 12, 2017, for the purpose of sharing with them private text messages sent during the 2016 presidential campaign by two former FBI investigators on Special Counsel Robert Mueller’s team,” as well as “documents reflecting who made the decision to release this material to reporters on the evening of December 12, 2017.” Declaration of Deborah M. Waller ¶ 2 and Ex. 1.
7. The request included, but was not limited to, “(1) communications with reporters regarding this meeting; (2) communications within DOJ about whether, when, and how to share the text messages with reporters including, *inter alia*, the Office of the Inspector General, the Attorney General, the Office of Legislative Affairs, the Deputy Attorney General, the Associate Attorney General, the Office of Public Affairs, and any individual within the senior leadership offices of DOJ; and (3) communications with any member of Congress and/or their staff regarding this matter.” Waller Decl. Ex. A.

8. The request sought expedited processing. Waller Decl. ¶ 3 and Ex. A.
9. On December 15, 2017, OIG acknowledged receipt of and responded to CREW's request. Waller Decl. ¶ 3.
10. On January 3, 2018, CREW brought this lawsuit, seeking release of the requested records. Compl., ECF No. 1; Brinkmann Decl. ¶ 5.

OIG's Search and Production

11. Deborah M. Waller is a Government Information Specialist for the OIG. Waller Decl. ¶1. Ms. Waller is familiar with the procedures that OIG follows in processing FOIA requests directed to the OIG, and in particular with OIG's response to CREW's FOIA request. Waller Decl. ¶ 1.
12. Upon reviewing CREW's FOIA request, OIG realized that it was already aware of one responsive document from prior FOIA record searches: a letter that OIG's Inspector General sent in response to a Congressional inquiry about whether OIG had been consulted before DOJ decided to release the text messages in question to the media. Waller Decl. ¶ 4. OIG released this responsive record to Plaintiff two days after having received CREW's request. *Id.*
13. OIG then undertook a thorough search for any additional responsive records. OIG contacted its Inspector General, Michael Horowitz, and then-Deputy Inspector General, Robert Storch, to determine who from OIG would be reasonably likely to have responsive records. *See id.* ¶ 5. According to Mr. Storch and Mr. Horowitz, Mr. Storch was the only individual to communicate with DOJ leadership about its decision to release the text messages at issue to the media, and then-Associate Deputy Attorney General Scott Schools was the only

individual in DOJ leadership with whom he communicated about this issue. *Id.* ¶

6. Mr. Storch and Mr. Horowitz, meanwhile, were the only individuals who communicated within OIG about the issue. *Id.* ¶ 10. Mr. Horowitz and Mr. Storch further indicated that OIG had no advance knowledge of DOJ's decision to invite reporters to DOJ on December 12, 2017, and did not learn of the decision until December 13. Waller Decl. ¶ 10.

14. Mr. Storch provided potentially responsive materials consisting of handwritten notes, *id.* ¶ 7.

15. Thereafter, OIG's Cyber Investigations Office conducted an email search of Mr. Storch's and Mr. Horowitz's email accounts for the time frame between December 13, 2018, and December 15, 2018, using Mr. School's email address as a search term. *Id.* ¶ 9. OIG chose that time frame because Mr. Horowitz and Mr. Storch indicated that OIG was not informed about DOJ's decision until December 13, 2017, and OIG's involvement in communications concerning DOJ's decision to share the text messages in question with the media ended on December 15. *See* Waller Decl. ¶ 10. Further, OIG determined that the only communications that OIG had with DOJ regarding the decision occurred between Mr. Schools, Mr. Storch, and the only internal OIG communications about the decision occurred between Mr. Storch and Mr. Horowitz. Waller Decl. ¶ 10. OIG then conducted a manual review of Mr. Storch's emails during this time period to locate responsive records. Waller Decl. ¶ 11. OIG ultimately produced 10 pages of responsive records. Waller Decl. ¶ 16.

16. On February 5, 2018, OIG informed CREW that it had referred two pages of documents to OIP for consultation and that it was continuing its search for responsive records. Waller Decl. ¶ 14 and Ex. 4.
17. On February 12, 2018, OIG informed CREW that it had completed its search for records, that it had referred eight additional pages of email records to OIP for consultation, that it withheld six pages of email records in full and identified several pages of duplicate records. Waller Decl. ¶ 15 and Ex. 5.
18. On April 17, 2018, OIG produced to CREW nine of the ten pages of records it had referred to OIP. Certain portions of those records were withheld under the deliberative process privilege and certain other portions of the record were withheld by OIP under Exemptions (b)(5) and (b)(6) of the FOIA. Waller Decl. ¶ 16 and Ex. 7.
19. On April 23, 2018, OIG provided CREW with a final response. OIG produced an additional page of email records. One email record had been withheld as non-responsive, and the other email records were redacted by OIP on the basis of Exemption (b)(6). Waller Decl. ¶ 17 and Ex. 8.
20. OIG treated individual emails and text messages as distinct records when processing CREW's FOIA request, and accordingly generally did not produce non-responsive or duplicative records. Waller Decl. ¶ 12.
21. OIG withheld a limited number of pre-decisional, deliberative communications from five records. *See* Waller Decl. ¶¶ 20–23. The withheld material regarded how to respond to inquiries about the DOJ's decision to invite reporters to view the text messages at issue. *See id.*

22. In the first record, OIG withheld lines of an email consisting of internal discussion in which Mr. Horowitz and Mr. Storch discuss how to gather information and communicate the information related to DOJ's decision to invite reporters to view the text messages at issue. OIG Vaughn Index at 1; *see also* Waller Decl. ¶ 21. In the second and fifth records, OIG withheld lines of an email consisting of internal discussion, in which Mr. Storch updates Mr. Horowitz on the status of a response from DOJ's Office of the Deputy Inspector General related to DOJ's decision to invite reporters to view the text messages at issue. OIG Vaughn Index at 1; *see also* Waller Decl. ¶ 22.
23. In the third and fourth records, OIG withheld handwritten notes containing Mr. Storch's thoughts regarding matters unrelated to the subject of this FOIA request, taken while Mr. Storch was listening to the Deputy Attorney General's testimony during an oversight hearing before the House Judiciary Committee on December 13, 2017. Waller Decl. ¶ 23; *see also id.* ¶ 7.
24. OIG asserted the deliberative process privilege over these limited communications because their disclosure "would prevent the OIG's staff from engaging in meaningful documented discussion about policy matters in the future, which could have a negative effect on [OIG's] decisionmaking, and would potentially confuse the public about the reasons for the OIG's actions in this matter." Waller Decl. ¶ 25.
25. OIG conducted a "line-by-line review" and "carefully examined the information it withheld under Exemption 5" before determining that "the internal OIG

information withheld, if disclosed, would violate the internal deliberative process privilege of the OIG.” Waller Decl. ¶ 27.

OIP’s Search and Production

26. Vanessa R. Brinkmann is Senior Counsel at OIP. Brinkmann Decl. ¶ 1. In this capacity, Ms. Brinkmann is responsible for supervising handling of FOIA requests processed by OIP’s initial request staff, which is responsible for processing FOIA requests seeking records from within OIP and from six senior leadership offices of the DOJ, specifically the Offices of the Attorney General (“OAG”), Deputy Attorney General (“ODAG”), Associate Attorney General (“OASG”), Legal Policy (“OLP”), Legislative Affairs (“OLA”), and Public Affairs (“PAO”).
27. The Brinkmann Declaration explains the searches that OIP conducted in responding to CREW’s FOIA request, OIP’s determination of agency records, its withholdings of responsive information pursuant to FOIA exemptions, and the segregability of documents partially withheld or withheld in full. *See generally* Brinkmann Decl.
28. OIP initially determined that it was appropriate to search for responsive records the five senior leadership offices identified in CREW’s request: the Office of the Attorney General (“OAG”), the Office of the Deputy Attorney General (“ODAG”), the Office of the Associate Attorney General (“OASG”), the Public Affairs Office (“PAO”), and the Office of Legislative Affairs (“OLA”). *Id.* ¶ 22.
29. As its search progressed, OIP determined that an additional office, the Office of Privacy and Civil Liberties (“OPCL”), which provides legal advice and guidance

to DOJ components regarding privacy issues, may also have potentially responsive records, and accordingly conducted an additional search within that office. *Id.*

30. In performing its search, OIP conducted a remote electronic search of the unclassified email records and computer files of 71 custodians in the six DOJ offices mentioned above. *Id.* ¶ 23. OIP selected those custodians because they included every staff member employed in OAG, ODAG, OASG, PAO, OLA, and OPCL, at the time of OIP's search for records, as well certain senior officials who were employed at DOJ during the relevant time period but had since left the Department. *Id.* ¶ 23.
31. OIP initially conducted a broad search of these custodians' email accounts using the following search terms: (1) "Strzok," (2) "Lisa Page," (3) "text" (and any variation thereof) in combination with the terms "FBI," "Federal Bureau of Investigation," "OSC," or "Special Counsel," and (4) "message" (and any variation thereof) in combination with the terms "FBI," "Federal Bureau of Investigation," "OSC," or "Special Counsel." Brinkmann Decl. ¶ 24. OIP also used an initial time frame of January 20, 2017 to January 4, 2018. *Id.*
32. OIP's search for OPCL records occurred after it had finished its search for OAG, ODAG, OASG, PAO, and OLA email records, OIP had only later determined that it was appropriate to search for records in that office. *See* Brinkmann Decl. ¶ 22.
33. After reviewing the results of the initial search for OAG, ODAG, OASG, PAO, and OLA records and after consulting with PAO personnel, OIP used a more

targeted search terms and a narrower time frame to search for responsive email and hard drive records within OPCL. *Id.* ¶ 25.

34. Regarding the appropriate search terms, OIP determined that searching for the term “message” was not reasonably likely to capture any additional responsive records because each responsive record including the term “message” also included the term “text.” *Id.* Further, searching for the term “message” captured a substantial number of nonresponsive records. *Id.* Therefore, OIP only used the following search terms for OPCL: the terms “Strzok,” “Lisa Page,” and the term combinations: (1) “text” (and any variation thereof) in combination with the terms “FBI,” “Federal Bureau of Investigation,” “OSC,” or “Special Counsel.” *Id.*
35. Regarding the appropriate time frame, OIP determined that responsive records were not reasonably likely to surface from records dated before December 12, 2017, the date the text messages were released to the media. This determination was based upon OIP’s initial review of potentially responsive records from its initial search. *Id.* Accordingly, OIP searched OPCL records from December 12, 2017 to January 4, 2018. *Id.*
36. After OIP’s email searches were completed, OIP became aware of a problem with the data on which some of its searches were run, *see* Brinkmann Decl. ¶ 27, stemming from the migration of DOJ email onto new servers. *See* Aug. 10, 2018 Decl. of Vanessa R. Brinkmann, ECF No. 15-1. OIP worked with DOJ’s Justice Management Division’s Office of the Chief Information Officer to re-run the

search for responsive email records in OAG, ODAG, OASG, PAO, and OLA.¹

Brinkmann Decl. ¶ 27. OIP processed the additional records returned from the re-run search and produced the records to CREW. *Id.* ¶ 12.

37. OIP also sent search notifications to the six offices that it searched, with instructions to identify any additional records that would not be captured by this remote electronic search, including text and voice messages and material maintained in a classified system. *Id.* ¶ 18. In the course of searching for text messages in response to another FOIA request, OIP located potentially responsive text messages belonging to a custodian at PAO. *Id.* ¶ 19.

38. After learning of the potentially responsive PAO text messages, OIP initiated an additional search for text messages within PAO for that custodian's responsive text messages and further conferred with its PAO contact to confirm that no other custodians in the office possessed additionally responsive records. *Id.* OIP had no indication that the other DOJ offices for which it was responsible had any responsive text messages, *Id.* OIP's PAO contact conducted a manual review of the custodian's text message conversations during a period of time leading up to and following DOJ's meeting with reporters on December 12, 2017. *Id.* ¶ 29.

39. Finally, OIP conducted a search of the Departmental Executive Secretariat ("DES"), the official records repository of all formal correspondence for the

¹ OIP determined that its search for OPCL email records did not need to be re-run. OIP determined, based on its discussions with JMD's OCIO, that the technical issue did not affect the search for OPCL email records. Brinkmann Decl. ¶ 28. Further, given OPCL's limited size, and the limited scope of their work, OIP had previously had direct conversations with OPCL to ensure that it located all records, including email and electronic files. *Id.* OIP was therefore confident it had already taken all steps reasonably necessary to capture responsive OPCL records. *Id.*

following offices: OAG, ODAG, OASG, and OLA. *Id.* ¶ 30. OIP set appropriate parameters on its DES search to locate responsive records: it used the search terms “text message” and “text messages,” because it determined that formal correspondence regarding the released text messages were reasonably expected to include those phrases. *Id.*

40. As a result of its various searches, OIP initially identified 343 pages containing records responsive to CREW’s request. *Id.* ¶ 31. After its search for OAG, OASG, ODAG, PAO, and OLA email records was re-run, OIP located an additional 46 pages of responsive records, although multiple records contained in those pages were duplicates of records located and produced earlier. *Id.* OIP also produced forty-nine pages containing text message responsive to CREW’s request. *Id.* ¶ 31.
41. On April 30, 2018, OIP provided its first interim response to CREW’s FOIA request. OIP informed CREW that searches had been conducted in OAG, ODAG, OASG, OLA, and PAO and that fourteen pages containing records responsive to CREW’s request were appropriate for release with excisions made pursuant to Exemptions 5 and 6 of the FOIA, 5 U.S.C. § 552(b)(5) and (b)(6). Brinkmann Decl. ¶ 7 and Ex. D.
42. On June 1, 2018, OIP provided its second interim response to CREW’s FOIA request, in which it provided CREW an additional twenty-eight pages containing records responsive CREW’s request, some with excisions made pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Brinkmann Decl. ¶ 8 and Ex. E.
43. On June 29, 2018, OIP provided its third interim response to CREW’s FOIA request, in which it provided CREW an additional 143 pages containing records

responsive CREW's request, some with excisions made pursuant to Exemptions 5 and 6 of the FOIA, 5 U.S.C. § 552(b)(5) and (b)(6). Furthermore, OIP withheld 124 pages in full pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). Brinkmann Decl. ¶ 9 and Ex. F.

44. On July 2, 2018, OIP provided a response to CREW's FOIA request, in which it provided CREW an additional twenty-seven pages containing records responsive CREW's request, some with excisions made pursuant to Exemptions 5, 6, and 7(C) of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6) and (b)(7)(C). Furthermore, OIP withheld an additional seven pages in full pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). Brinkmann Decl. ¶ 10 and Ex. G.
45. On August 24, 2018, counsel for Defendant provided CREW with two pages containing records responsive CREW's request, which OIP previously withheld in full. Brinkmann Decl. ¶ 11 and Ex. H.
46. On September 14, 2018, OIP provided a supplemental response to CREW's request, which contained records located by OIP as part of a re-run search subsequent to a technical issue. Brinkmann Decl. ¶ 12 and Ex. I.
47. On September 21, 2018, OIP provided a supplemental response to CREW, in which it produced duplicative email records that had been withheld from the September 14 production. Brinkmann Decl. ¶ 12 and Ex. J.
48. On October 12, 2018, OIP provided its final supplemental response to CREW's FOIA request, in which it provided CREW an additional forty-nine pages containing records responsive to CREW's request, some with excisions made

pursuant to Exemptions 6 of the FOIA, 5 U.S.C. § 552(b)(6). Brinkmann Decl. ¶ 13 and Ex. K.

49. OIP treated individual emails and text messages as distinct records when processing CREW's FOIA request. Brinkmann Decl. ¶ 90–92.
50. OIP applied FOIA Exemptions 5, 6, 7(C), and 7(E) to the records produced to CREW. *See* Brinkmann Decl. ¶ 36 and note 14.
51. OIP withheld under Exemption 5 pre-decisional and deliberative materials contained in email communications, draft documents, and handwritten notes concerning. Brinkmann Decl. ¶ 37. OIP determined that disclosure of the protected portions of these records would severely hamper the efficient day-to-day workings of the Department, as individuals would no longer feel free to discuss their ideas, strategies, and advice by email or feel free to capture their ideas, impressions, or deliberative conversations within personal notes. *Id.* ¶ 65.
52. Those materials can be divided into five categories.
53. First, OIP redacted internal communications among OLA staff and between FBI and ODAG staff regarding how to respond to Congressional requests that sought the text messages at issue in this request, among other matters. The redacted information includes suggestions for how to respond to the request, and requests for information to aid deciding how to respond to the request. Brinkmann Decl. ¶ 42.
54. Second, OIP redacted information that relates to DOJ's deliberations regarding how to respond to press inquiries. Specifically, OIP redacted deliberations as to how best to respond to the following queries from the press: (1) a query asking

for DOJ's response to a statement from a Member of Congress, (2) a query regarding the reasoning for a particular redaction decision in the Strzok/Page texts themselves, and (3) a query asking for a clarification regarding a statement by DAG Rosenstein. Brinkmann Decl. ¶ 46. In that vein, OIP further redacted deliberations about how to generally handle an ongoing and quickly-developing story and discussions of how to provide additional information to the public regarding press inquiries. The redacted information is pre-decisional because it consists of discussions that predate DOJ's final responses to press inquiries regarding DOJ's decision to share the FBI text messages at issue with the media or predates DOJ's final decisions regarding the best course of action to take in response to press coverage. The withheld material is deliberative because it "contains evaluative discussion, preliminary opinions based on limited information, and requests for additional information to aid in the decision-making process." *Id.* ¶ 47.

55. OIP also redacted deliberations regarding how to respond to a reporter's statement on Twitter that discussed the fact that DOJ invited reporters to view the FBI text messages. *Id.* ¶ 49. The redacted information is pre-decisional because it is a discussion predating DOJ's final response to the reporter's statement. *Id.* ¶ 50. The withheld material is deliberative because it consists of "impressions and proposals" for DOJ's responses to this reporter's statements, as well as for DOJ's responses to similar statements in the future. *Id.*

56. OIP also redacted deliberations and draft language regarding how to respond to reporters' inquiries into the DOJ decisionmaking process about how and with

whom to share the text messages. *Id.* ¶ 50. The redacted information is pre-decisional because it consists of draft language and discussions predating DOJ's final press statement on its decision to share the FBI text messages at issue with the media, DOJ's final responses to press inquiries on the topic, and final decisions regarding the best course of action to take in response to press coverage. *Id.* ¶ 53. The withheld material is deliberative because it contains "suggested draft language, proposed changes to that language, evaluative discussion, and opinions." *Id.*

57. Third, OIP redacted deliberations regarding a legal memorandum drafted to memorialize OPCL's Privacy Act Assessment, to aid in an ODAG decisionmaking process regarding the sharing of texts with reporters. Brinkmann Decl. ¶ 55. The redacted communications include discussion between OPCL and ODAG about the steps being taken to prepare for the final memorialization of the memorandum. *Id.* This category of redactions contains pre-decisional information because the redacted email predates OPCL's final legal memorandum that provides advice to ODAG regarding the Privacy Act implications of sharing the text messages at issue with the media. *See id.* ¶ 56.

58. Fourth, OIP redacted a summary of FBI staff recommendations regarding how to process certain personal privacy information within the Page/Strzok texts that related to the text participants and third parties. Brinkmann Decl. ¶ 58. The communications originated as discussion between FBI and ODAG; ODAG subsequently forwarded the discussion to OPCL. *Id.* The redacted information is pre-decisional because it consists of the FBI's recommendations that precede

ODAG's final decision on how to release and redact the Page/Strzok text messages. *See* Brinkmann Decl. ¶ 59.

59. Fifth, OIP redacted handwritten notes written by the then-Deputy Inspector General, which contain his impressions and assessments while he watched the testimony of Deputy Attorney General Rosenstein as part of the December 13, 2017, oversight hearing before the House of Representatives Judiciary Committee and also reflect a discussion between the DIG and Scott Schools of ODAG, discussing proposed ideas for how to respond to potential reactions to DAG Rosenstein's testimony.² Brinkmann Decl. ¶ 61.
60. OIP also withheld in full a record containing a combination of contemporaneous notes and incomplete, shorthand transcription of a portion of Deputy Attorney General Rosenstein's testimony in a December 13, 2017, oversight hearing before the House of Representatives Judiciary Committee. Brinkmann Decl. ¶ 71.
61. OIP withheld three categories of records under this privilege, all of which contain legal advice requested from and/or provided by OPCL to ODAG regarding the privacy implications of sharing private text messages with reporters and Congress. *See* Brinkmann Decl. ¶ 75–77.
62. First, OIP withheld a five-page memorandum written by OPCL that provides legal advice to ODAG. Brinkmann Decl. ¶ 75.
63. Second, OIP withheld multiple draft versions of that same memorandum, which substantively contain the same information that ODAG initially communicated to

² OIG located these notes and processed them along with OIP, because they contained shared OIG and ODAG equities. Ms. Waller's declaration addresses the portions of this record that OIG redacted. *See* Waller Decl. ¶ 23.

OPCL for the purpose of receiving that advice as well as OPCL staff's edits and suggestions on how to improve the draft.³ *Id.* ¶ 76.

64. Third, OIP withheld five pages of handwritten notes reflecting phone communications between OPCL and ODAG. *Id.* ¶ 77.
65. These communications include information shared in confidence by ODAG clients for the specific purpose of receiving OPCL's expert legal advice, in which ODAG and OPCL discussed drafting the above-described legal memorandum. *Id.* ¶ 78. These communications were confidential at the time they were made, have not been shared with third parties, and thus maintain their confidentiality. *Id.* ¶ 79. Therefore, they were properly withheld under the attorney-client privilege.
66. OIP also determined that the records it withheld under the attorney-client privilege were also properly withheld under the deliberative process privilege. All three categories of records are pre-decisional in that they memorialize and reflect the advice that OPCL provided ODAG prior to ODAG's decision to share FBI text messages with reporters. Brinkmann Decl. ¶ 85–87.
67. The legal memorandum and handwritten notes are deliberative in that they “they contain evaluative discussion and assessments by attorneys regarding a pending decision by senior leadership officials, where these attorneys analyze, make recommendations, give legal advice, and provide opinions on issues relevant to this decision.” *Id.* ¶ 87. The draft memoranda, meanwhile, are deliberative in that

³ Substantial portions of these 116 pages of drafts are duplicative of preceding or subsequent drafts, created because identical versions of the drafts were circulated to various custodians. Brinkman Decl. ¶ 74.

they “reflect successive versions of working drafts and as such, show the internal development of [DOJ’s] decisions.” *Id.* ¶ 85.

68. OIP conducted a line-by-line review of all of the records and released any portions thereof that were not protected by an applicable FOIA exemption, often redacting only portions of paragraphs within the e-mails disclosed to CREW. Brinkmann Decl. ¶ 91.

69. For the records withheld in full, OIP determined that “the disclosure of any portion of these materials would undermine the core advice and analysis that the deliberative process and attorney-client privileges are meant to protect.” Brinkmann Decl. ¶ 91. Records withheld in full under the attorney-client privilege, moreover, were “not appropriate for segregation inasmuch as that privilege applies to records in their entireties.” *Id.*

Dated: October 26, 2018

Respectfully submitted,

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