

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 18-0377 (CRC)
)	
UNITED STATES GENERAL SERVICES ADMINISTRATION,)	
)	
Defendant.)	

DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Defendant United States General Services Administration (“GSA”) respectfully submits this reply and the accompanying Second Declaration of Travis Lewis (“Second Lewis Decl.”) in further support of its motion for summary judgment. As the Lewis Declarations make clear, GSA performed a reasonable and adequate search for records responsive to Plaintiff’s Freedom of Information Act (“FOIA”) request seeking several categories of documents “concerning GSA’s decision to cancel the procurement for the new FBI headquarters consolidation project” (see Declaration of Travis Lewis (“Lewis Decl.”), Exh. A) and properly withheld information subject to FOIA Exemption 5.

ARGUMENT¹

I. GSA CONDUCTED A REASONABLE AND ADEQUATE SEARCH FOR RESPONSIVE RECORDS

Plaintiff challenges the adequacy of GSA's search by focusing on the number of pages located, which Plaintiff contends should be larger, notwithstanding the firmly-established principle that "the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search." *Santana v. Dep't of Justice*, 828 F. Supp. 2d 204, 209 (D.D.C. 2011) (quoting *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)); *see also Burnes v. CIA*, Civ. A. No. 05-0242 (GK), 2005 WL 3275895, at *2 (D.D.C. Sept. 14, 2005) ("The Court's inquiry regarding the adequacy of the search focuses on the search itself, not its results."). Plaintiff speculates that additional responsive documents exist because of its assumption that there was "over a decade of planning discussions" concerning the FBI headquarters project and because of a notation in a GSA Inspector General ("IG") report that the IG "reviewed over 50,000 GSA documents and emails concerning the FBI headquarters consolidation project." Pl. Op. at 16, 23. Although it is possible that a large amount of documents concerning the FBI headquarters project in general exist, it does not follow that all such documents are responsive to the FOIA request at issue in this case. The subject FOIA request does not seek *all* documents concerning FBI headquarters. Rather, it seeks a precise subset of such documents concerning the "decision to cancel the procurement for the new FBI headquarters consolidation project." *See Lewis Decl., Exh. A.*

¹ In Plaintiff's Opposition to Defendant's Motion for Summary Judgment (Dkt. No. 17) ("Pl. Op."), Plaintiff has included a lengthy description of its interpretation of "background facts" that are wholly irrelevant to the issues in this case concerning GSA's processing of Plaintiff's FOIA request. Although GSA does not concede the accuracy of Plaintiff's claims concerning those "background facts," GSA is not addressing them in this motion.

As Travis Lewis explains:

In my capacity as GSA's FOIA Officer, I have gained institutional knowledge regarding both: 1) the decision to cancel the procurement of a new FBI headquarters and 2) the decision to renovate the current FBI Headquarters. Specifically I have learned that the decision to cancel the procurement of a new FBI facility was reached by GSA in July, 2017. Approximately (6) six months later, in January, 2018, GSA made the decision to renovate the current FBI headquarters. Plaintiff's FOIA request was for records related to GSA's decision to cancel the procurement of a new FBI facility, which is a wholly separate matter from GSA's decision to renovate the current FBI headquarters.

Second Lewis Decl. ¶ 4.

Plaintiff also questions the reasonableness of the search cutoff date used by GSA. As explained in the Second Lewis Declaration, the search cutoff date was the date the first search was performed. Second Lewis Decl. ¶ 5. As Plaintiff concedes in its opposition, this is well-recognized as an appropriate and reasonable temporal limit. *See* Pl. Op. at 18.

Plaintiff further challenges the search terms and locations. As demonstrated by the Lewis Declarations, GSA used reasonable and appropriate search terms and searched the locations where responsive records could reasonably be expected to be located. In his second declaration, Lewis explains:

GSA did not only search within its Office of the Chief Information Officer ("OCIO") for responsive records. OCIO is the office within GSA that has access to the entirety of GSA's electronic records and conducts all of the agency's electronic discovery searches for potentially responsive documents to FOIA requests. In my capacity as FOIA Officer, I have tasked the OCIO to conduct thousands of searches for records in response to FOIA requests. When OCIO conducts a search for responsive records, a search is conducted agency wide for any potentially responsive records and not only for records located within OCIO as a singular office.

Second Lewis Decl. ¶ 6.

Although Plaintiff argues the search was deficient because GSA did not use the terms “JEH” or “Hoover” (Pl. Op. at 21), Mr. Lewis explains:

GSA did not use the terms “JEH” or “Hoover” in the search query. As the responsive documents to Plaintiff’s FOIA request illustrate, the aforementioned terms appear in very few places. It is my determination from my over five (5) years as FOIA Officer for GSA that an additional search including the terms “JEH” or “Hoover” would not return any additional responsive records pertaining to Plaintiff’s FOIA request for records related to GSA’s decision to cancel the FBI procurement.

Second Lewis Decl. ¶ 7.

Plaintiff further contends that documents concerning the Office of Management and Budget’s (“OMB”) “role” are “missing from GSA’s production.” Pl. Op. at 23. Mr. Lewis explains:

GSA’s search was reasonably calculated to locate records related to a purported dispute between OMB and GSA over the FBI relocation project that are responsive to Plaintiff’s FOIA request. The decision to cancel the procurement of a new FBI facility is a wholly separate entity/ issue than the issue to renovate the current FBI headquarters. GSA’s decision to cancel the FBI procurement occurred in July, 2017, and the decision to renovate the current FBI headquarters was not reached by the agency until February, 2018. Thus any records related to any purported dispute between OMB and GSA is beyond a reasonable interpretation of Plaintiff’s FOIA request.

Second Lewis Decl. ¶ 8.

Additionally, Plaintiff claims that the search was deficient because it did not uncover documents concerning “Michael Gelber, GSA’s public building service acting commissioner’s [testimony] that “[a]fter internal and interagency deliberations, GSA determined that moving forward without full funding would put the Government at risk for project cost escalations.” Pl. Op. at 24. Mr. Lewis notes:

GSA’s search was reasonably calculated to locate records pertaining to Michael Gerber, GSA’s then- Acting Public Service

Commissioner held by the Senate Committee on Environment and Public Works (“EPW”). GSA has provided Plaintiff with all responsive records in its possession. Specifically, GSA provided Plaintiff with an email dated July 10, 2017 which included the Agency’s Determination and Findings related to the decision to cancel the procurement for a new FBI facility. Furthermore, GSA does not have a record of Mr. Gelber’s testimony to the EPW. While Plaintiff may take umbrage with the volume of responsive documents, I aver that Plaintiff has received all of the Agency’s records related to this issue as well.

Second Lewis Decl. ¶ 9.

II. GSA PROPERLY APPLIED FOIA EXEMPTION 5 TO PROTECT INFORMATION SUBJECT TO THE DELIBERATIVE PROCESS PRIVILEGE²

As GSA explained in its initial motion papers, *Vaughn* index, and First Lewis Declaration, GSA invoked Exemption 5 to protect portions of interagency communications and “[d]raft documents of communications and talking points for GSA, the White House Office of Management and Budget, and FBI prior to the final determination” to cancel the FBI Headquarters Consolidation Plan that contain “[i]nformation compiled for purposes of the agency’s deliberative process prior to the final determination to cancel the FBI Headquarters Consolidation Plan.” Lewis Decl. ¶ 19; Exh. D.

Lewis further explains in his Second Declaration:

I aver that GSA properly invoked the deliberative process privilege, pursuant to FOIA Exemption 5, 5 U.S.C. § 552(b)(5). GSA withheld the FBI headquarters’ appraised value and information related to the amount of development teams GSA planned to proceed with to a subsequent phase of the procurement as this information reflects the Agency’s deliberative process prior to reaching the decision to cancel the procurement. GSA maintains that the predecisional nature of the redacted information has not changed because it was ultimately part of the agency’s deliberations in deciding whether or not to cancel the procurement.

Second Lewis Decl. ¶ 10.

² GSA has limited its discussion herein to its withholdings pursuant to Exemption 5 since these are the only withholdings Plaintiff is challenging. *See* Pl. Op. at 25-31.

CONCLUSION

For all of the reasons set forth above, in Defendant's initial memorandum, and in the Lewis Declarations, Defendant respectfully submits that its motion for summary judgment should be granted.

Dated: November 8, 2018

Respectfully submitted,

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