

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

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON,

Plaintiff,

v.

GENERAL SERVICES  
ADMINISTRATION,

Defendant.

Civil Action No. 18-cv-2071-CKK

**MEMORANDUM IN SUPPORT OF**  
**PLAINTIFF'S RENEWED CROSS-MOTION FOR SUMMARY JUDGMENT**  
**AND OPPOSITION TO DEFENDANT'S RENEWED MOTION FOR**  
**SUMMARY JUDGMENT**

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## INTRODUCTION

In this suit under the Freedom of Information Act (“FOIA”), Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) seeks communications between Defendant General Services Administration (“GSA”) and the White House concerning the renovation of the Federal Bureau of Investigation’s (“FBI”) headquarters. In July 2019, this Court ordered GSA to conduct a supplemental search for responsive records, concluding that the agency’s prior search was inadequate. ECF No. 26 (“Op.”) at 7–12. GSA completed a supplemental search and produced 13 pages of records following the Court’s order. The parties now cross-move for summary judgment.

CREW is entitled to summary judgment for multiple reasons. First, GSA’s search remains inadequate, as the agency inexplicably failed to conduct the search agreed upon by the parties in a joint status report and acknowledged by the Court in its September 2019 scheduling order. The search terms ultimately used by GSA were under-inclusive and not reasonably calculated to locate all relevant documents. Second, all of GSA’s exemption claims fail because the agency has provided insufficient detail to satisfy the “foreseeable harm” standard recently codified in the FOIA Improvement Act of 2016. Third, GSA fails to justify its claims of deliberative process privilege, presidential communications privilege, or attorney work product privilege under Exemption 5. Fourth, GSA’s withholding of an email between the GSA Office of the Inspector General (“OIG”) and GSA pursuant to Exemption 7(E) is improper, both because the agency provides insufficient details to support such a claim, and because GSA’s stated desire to protect secret law enforcement “techniques” is incompatible with the fact that the GSA Inspector General, by sending the email at issue, disclosed those techniques to the very

entity and officials it is charged with investigating. Finally, GSA has failed to demonstrate that it segregated all non-exempt material from responsive records it has withheld in full.

CREW respectfully asks the Court to rule upon GSA's exemption claims and the issue of segregability even if the Court decides GSA's search was once again inadequate. Deferring ruling on these issues would serve only to further delay GSA's release of records responsive to CREW's July 2018 FOIA request. Such delay has already been exacerbated by GSA's overall lack of diligence in handling this case, in which it has missed two production deadlines, disregarded clear and obvious leads in conducting searches, and inexplicably abandoned search terms the parties agreed upon—all of which has impeded CREW's statutory right to "prompt[]" release of responsive records. *See* 5 U.S.C. § 552(a)(3). Moreover, GSA had ample opportunity to try to correct the deficiencies identified by CREW's first motion for summary judgment but has made no attempt to do so, indicating it has no better justifications to offer.

For all these reasons, the Court should grant CREW's motion and deny GSA's motion.

## **BACKGROUND**

### **I. The Government's Efforts to Build a New FBI Headquarters**

In 2012, GSA announced its plan to relocate the FBI's headquarters from its current location in Washington, D.C. to a more secure location in the suburbs that could house all FBI personnel in one modern facility. CREW Ex. 2 at 2–3. GSA's plan, for many years, was to partner with a developer that would design and construct a consolidated headquarters facility in exchange for title to the existing FBI headquarters, housed in the J. Edgar Hoover building, and its land. *Id.* at 3. Between 2012 and 2017, GSA made substantial progress on this project and received several proposals by interested developers. *Id.* at 3–4.

On July 11, 2017, just months after President Trump took office, GSA suddenly cancelled the FBI headquarters consolidation project. *Id.* at 4. Then, on February 12, 2018,

GSA and the FBI submitted to Congress a new proposal to demolish and rebuild the FBI headquarters at the existing site in Washington, D.C.—a drastic departure from the prior plan of building a consolidated campus facility in a surrounding suburb. *Id.* at 10.

The agencies’ sudden change-in-course came as a surprise to many, including Congress. At hearings held in February and April 2018, members of Congress expressed concern about the decision to abandon the long-pursued consolidated campus plan in favor of the demolish-rebuild plan, and questioned GSA officials about the reasons for that decision. *Id.*

## **II. President Trump’s Reported Intervention in Decision-making About the New FBI Headquarters**

In July 2018, news reports indicated that President Trump was “obsessed” with the FBI headquarters project, had intervened in decision-making about the project, and, to that end, met with FBI and GSA officials to discuss it. Compl. ¶ 11 (collecting news reports). Any involvement by President Trump in the project would be highly problematic because the current FBI headquarters is located across the street from the Trump International Hotel. *See* CREW Ex. 7 at 1 (Letter from U.S. House Committee on Oversight and Government Reform (“House Oversight”) to GSA). The President thus has a serious conflict of interest as to any decision whether to keep the FBI headquarters at its current location or to transfer the land to a private party, which could be a competitor of the Trump Hotel. *Id.* at 2–3.

On August 27, 2018, GSA’s Office of Inspector General released a report entitled “Review of GSA’s Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project” (“GSA OIG Report”). CREW Ex. 2. The GSA OIG Report described three in-person meetings between GSA and White House officials concerning the FBI headquarters project, which were held on December 20, 2017, January 24, 2018, and June 15, 2018. *Id.* at 5–6, 7–9, 11. The latter two meetings included President Trump. *Id.* at 7–9, 11.

The report concluded that the GSA Administrator’s testimony to Congress in April 2018—which did not disclose these contacts with the White House despite repeated questioning—was “incomplete” and “may have left the misleading impression that [the Administrator] had no discussions with the President or senior White House officials in the decision-making process about the project.” *Id.* at 2, 18–21.

On October 18, 2018, House Oversight publicly released several GSA emails regarding the FBI headquarters project. *See* CREW Exs. 3, 7. Among these emails were the following:

- A January 25, 2018 email exchange between Joseph Lai of the White House and Brennan Hart of GSA concerning the “path forward for the new FBI Headquarters announcement,” which the “President” had “signed off on.” CREW Ex. 3 at 2281.
- A January 28, 2018 email exchange in which GSA officials forwarded an email from an official with the Office of Management and Budget (“OMB”), and explained that the FBI headquarters project is now “a demolition/new construction [project] per the President’s instructions.” *Id.* at 2290–91.

### **III. This Suit**

To help answer questions about President Trump’s involvement in the FBI headquarters project, CREW submitted a FOIA request to GSA on July 30, 2018. GSA Ex. 1 [ECF No. 36-4]; Declaration of Travis Lewis (“Lewis Decl.”) ¶ 4 [ECF No. 36-3]. CREW’s FOIA request sought “all communications from January 20, 2017 to [July 30, 2018] between GSA and the White House concerning the renovation of the FBI headquarters.” GSA Ex. 1. After GSA’s statutory response deadlines elapsed, CREW filed this suit on September 4, 2018. ECF No. 1.

On October 18, 2018—the same day House Oversight released the GSA emails described above—the parties held a phone call during which GSA stated that its search uncovered no records responsive to CREW’s FOIA request. GSA Ex. 2 at 2 [ECF No. 36-5]. After CREW pointed to the emails released by House Oversight earlier that day, GSA agreed to conduct another search using specific terms and parameters provided by CREW, which were formulated based partly on language from the emails released by House Oversight. *Id.* at 1–2.

In a series of communications from December 7, 2018 to March 15, 2019, GSA informed CREW that it had located 52 pages of responsive records and was withholding 27 of those pages pursuant to Exemption 5. CREW Ex. 1, 4–6. GSA produced the remaining 25 pages with redactions pursuant to Exemptions 5, 6, and 7. CREW Ex. 1 at 2<sup>1</sup>; Lewis Decl. ¶ 9.

CREW and GSA then cross-moved for summary judgment. On July 29, 2019, the Court granted in part summary judgment to CREW, holding that GSA’s search was inadequate. *Op.* at 12. The Court observed that at least two emails released by House Oversight were responsive to CREW’s FOIA request but had not been located by GSA—even though GSA had been aware of the emails prior to conducting its search—and found that GSA’s search “was not reasonably calculated to discover all documents responsive to Plaintiff’s request.” *Id.* at 11–12. The Court also held that CREW’s proposal of search terms did not narrow its FOIA request, noting that the parties never agreed to the terms in a written status report filed with the Court. *Id.* at 8–9. The Court ordered GSA to conduct an adequate search, after meeting and conferring with CREW. *Id.* at 12. The Court denied without prejudice the parties’ cross-motions with respect to GSA’s exemption claims. *Id.*

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<sup>1</sup> For exhibits in which the original document had no pagination, the cited page numbers refer to the PDF page numbers.

In accordance with the Court’s directive, the parties met and conferred regarding GSA’s supplemental search. The parties reported to the Court on September 9, 2019 that GSA would search for “all agency communications” with specified employees within the Executive Office of the President (“EOP”), and noted that “[t]he parties agreed” GSA would use the following search terms to locate responsive documents: “FBI”, “Federal Bureau of Investigation”, “Hoover”, “JEH”, “Wray”, “Rosenstein”, and “Deputy AG.” ECF No. 27.<sup>2</sup> The Court issued a minute order that day acknowledging the parties’ agreed-upon search terms and ordering GSA to complete an initial production by September 27, 2019. Minute Order (Sept. 9, 2019).

Production did not take place on schedule. GSA missed the court-ordered production deadline of September 27, 2019, and—only after CREW inquired about the missed deadline—asked the Court to extend the deadline *nunc pro tunc* because the White House needed additional time to review eight documents prior to their production. ECF Nos. 28, 29. The Court, while recognizing a lack of diligence on the agency’s part, granted GSA an extension but instructed that if the White House had not completed review by October 11, 2019, GSA “SHALL release the eight pages to Plaintiff.” Minute Order (Oct. 2, 2019). Following an October production, GSA represented that it would review and produce, as appropriate, all remaining documents by December 2, 2019. ECF No. 31. GSA again missed the deadline, requiring the Court to set a new production deadline of January 10, 2020, *see* Minute Order (Dec. 16, 2019), which GSA met. In total, GSA produced 13 pages as a result of its supplemental search. CREW Ex. 8–10; Lewis Decl. ¶ 15. Twelve of the 13 pages were redacted pursuant to Exemptions 5 and 6. *See* CREW Ex. 8–10. The final page was released in full. Lewis Decl. ¶ 15.

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<sup>2</sup> In an update filed with the Court on October 3, 2019, the parties clarified that the supplemental search included communications with eight EOP employees. ECF No. 30.



GSA has renewed its motion for summary judgment, ECF Nos. 36, 36-1 (“Mot.”), and CREW now cross-moves for summary judgment. At issue is the adequacy of GSA’s supplemental search as well as the validity of the exemptions GSA claimed to withhold 27 pages and redact 37 pages of responsive documents.

## ARGUMENT

### I. GSA Failed to Conduct an Adequate Search for All Responsive Records

#### A. The Agency Did Not Conduct the Search Agreed Upon by the Parties

To obtain summary judgment, “the agency must demonstrate that it has conducted a ‘search reasonably calculated to uncover all relevant documents.’” *Weisberg v. DOJ*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The agency can carry this burden through declarations denoting “which files were searched” and “reflect[ing] a systematic approach to document location.” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (citing *Weisberg v. DOJ*, 627 F.2d 365, 271 (D.C. Cir. 1980)). If “the record raises substantial doubt, particularly in view of ‘well defined requests and positive indications of overlooked materials,’ summary judgment” for the agency “is inappropriate.” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (citation omitted). In addition, “where sophisticated parties to a FOIA case have agreed to narrow the issues in a written status report, they generally may be held to their agreement under traditional waiver principles.” *Am. Ctr. for Law & Justice v. DOJ*, 325 F. Supp. 3d 162, 168 (D.D.C. 2018). Whether a particular search is adequate ultimately depends on “the circumstances of the case.” *Davis v. DOJ*, 460 F.3d 92, 103 (D.C. Cir. 2006) (citation omitted).

Here, the inadequacy of GSA’s search is clear from the agency’s failure to conduct the search agreed upon by the parties. In the September 9, 2019 joint status report, which GSA’s counsel filed with the Court, “the parties agree[d] that the search terms to be used to locate responsive materials” within the set of potentially responsive records would be “any of the

following terms: ‘FBI’, ‘Federal Bureau of Investigation’, ‘Hoover’, ‘JEH’, ‘Wray’, ‘Rosenstein’, or ‘Deputy AG.’” ECF No. 27 at 2. The Court acknowledged the parties’ agreement in its September 9, 2019 order setting the deadline for production. *See* Minute Order (Sept. 9, 2019). Yet GSA apparently disregarded the parties’ agreement and its own representations to the Court. Rather than use the agreed-upon terms, Mr. Lewis’s declaration states that GSA located potentially responsive records using just two terms: “EPW” and “FBI.”<sup>3</sup> Lewis Decl. ¶ 13. Although the Lewis declaration claims that GSA’s “search parameters were communicated to the Plaintiff and no objection was received,” Lewis Decl. ¶ 14, that is patently false. CREW has no record of GSA ever proposing to use only “EPW” and “FBI” as search terms, Declaration of Nikhel S. Sus ¶¶ 3–4, and certainly would have objected to such a proposal as inconsistent with the parties’ joint status report and its more inclusive set of terms. Apart from this misstatement, GSA offers no explanation for abandoning the parties’ agreement.

GSA’s incorrect claim about its search term proposal is not the only factual inaccuracy in the Lewis declaration. For example, the declaration claims that CREW brought the House Oversight emails to GSA’s attention after the completion of GSA’s initial searches and production of 25 pages. *See* Lewis Decl. ¶ 12. However, the record makes clear that CREW identified the House Oversight emails to GSA before GSA conducted the search that became the subject of the parties’ first cross-motions for summary judgment. *See* GSA Ex. 2 at 2 [ECF No. 36-5] (October 18, 2018 email exchange between CREW and GSA counsel discussing House

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<sup>3</sup> “EPW” appears to be a reference to the U.S. Senate’s Committee on Environment and Public Works, which sent GSA Questions for the Record about the FBI headquarters project. *See Vaughn* Index at 5 (describing withheld document). The term “EPW” also appears in an email released by House Oversight that is responsive to Plaintiff’s FOIA request. *See* CREW Ex. 3 at 2281; *see also* Op. at 9–11 (describing email released by House Oversight as responsive).

Oversight emails); ECF No. 22 at PDF 18, ¶¶ 9–11 (Defendant’s Response to Plaintiff’s Statement of Undisputed Material Facts, First Summary Judgment Briefing). Indeed, the Court’s holding that GSA’s prior search was inadequate recognized that “this is not a case where Defendant uncovered additional documents *after* its initial search” but rather “Plaintiff presented Defendant with documents responsive to its FOIA request *prior* to Defendant’s supplemental search.” Op. at 11 (emphasis in original) (quotation marks omitted). Given the multiple inaccuracies, the Court should view the Lewis declaration with skepticism.

Moreover, the Lewis declaration lacks clarity with respect to another part of the parties’ agreement on search parameters. GSA represented in the September 9, 2019 joint status report that it had searched “all agency communications” with specified EOP employees. *See* ECF No. 27 at 1. The language of the Lewis declaration is unclear, however, on whether and how this was done. The Lewis declaration indicates that the EOP employees’ full names, with middle initials, were used as search terms. *See* Lewis Decl. ¶ 13. If the declaration accurately explains GSA’s search, that would again deviate from the joint status report because those terms would not identify “all agency communications” with the EOP employees. For instance, those terms would seem to exclude emails in which the EOP employees’ names were written as “Last Name, First Name, Middle Initial” and emails in which only the EOP employees’ email addresses (and not their names) appeared. GSA fails to explain how the search it conducted meets the terms set forth in the joint status report.

GSA’s inexplicable failure to follow the parties’ agreement renders its search inadequate. The Court made clear the legal significance of joint status reports earlier in this litigation. Op. at 8–9 (analyzing case law). In its prior opinion, the Court held that CREW’s initial proposal of search terms and parameters did not narrow its FOIA request, noting “there were no joint status

reports evidencing an agreement to Plaintiff's FOIA request" and "the parties never agreed to narrow the issues in a written status report filed with the Court." *Id.* Following the Court's ruling, the parties came to an agreement on supplemental search terms and filed a joint status report apprising the Court of their agreement. ECF No. 27. GSA, as a sophisticated responder to FOIA requests that was recently educated on the significance of memorializing agreements in joint status reports, should be "held to [its] agreement." *Am. Ctr. for Law & Justice*, 325 F. Supp. 3d at 168. The Court should hold GSA's search inadequate.

**B. GSA Used Unreasonably Narrow Search Terms that Failed to Locate Emails Released by House Oversight**

Even if GSA were not bound by its agreement in the September 9, 2019 joint status report, CREW would be entitled to summary judgment on this issue. GSA's under-inclusive search terms—"EPW" and "FBI"—fall short of the "standard of reasonableness" the agency must meet. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 498 (D.D.C. 2017). Although CREW's FOIA request sought "all communications from January 20, 2017 to [July 30, 2018] between GSA and the White House concerning the renovation of the FBI headquarters," GSA Ex. 1, GSA's two terms would not have captured documents referring to the FBI headquarters by any name other than one containing "FBI." GSA's search would not locate, for example, communications that used "Federal Bureau of Investigation" instead of the acronym "FBI," or communications discussing the current headquarters location, the J. Edgar Hoover Building. Under such circumstances, GSA's search was not "reasonably calculated to uncover all relevant documents." *See Weisberg*, 745 F.2d at 1485 (citation omitted).

Judges in this district have already rejected similar terms as unreasonable in the context of FOIA requests related to the FBI headquarters consolidation project. *See CREW v. GSA*, No. 18-CV-377 (CRC), 2018 WL 6605862, at \*5–6 (D.D.C. Dec. 17, 2018); *Am. Oversight v. Office*

*of Mgmt. & Budget*, No. 18-CV-2424 (DLF), 2020 WL 1536186, at \*4–5 (D.D.C. Mar. 31, 2020). As Judge Cooper explained, it is “rather likely that ‘JEH’ and ‘the Hoover Building’—referring to the current headquarters—would be used in communications and records regarding the headquarters consolidation project.” *CREW*, 2018 WL 6605862, at \*5. Thus, Judge Cooper held, adequate searches “ought to include these rather obvious synonyms” for the FBI headquarters. *Id.* (holding GSA’s search inadequate when it used the terms “FBI”; “FBI Headquarters”; “FBI Headquarters procurement”; “Mary Gilbert and Tim Horne and eop.gov”; “Mary Gilbert and Tim Horne and fbi.gov”; “Mary Gilbert and Tim Horne and omb.gov”; and “procurement for the new FBI Headquarters consolidation”); *see also Am. Oversight*, 2020 WL 1536186, at \*4 (finding OMB conducted an inadequate search when it used the terms “FBI headquarters consolidation project”; “FBI HQ”; “FBI” within 25 words of “headquarters”; or “HQ” within 25 words of “project,” “renovation,” “relocation,” or “Trump”). Here, GSA’s refusal to use the same “rather obvious synonyms” renders its search inadequate. *See Am. Oversight*, 2020 WL 1536186, at \*4 (“As a general matter, omitting from the search an alternative name by which the subject of the search is known renders the search inadequate.” (quotation marks and citation omitted)).

Moreover, GSA’s search did not locate one of the emails released by House Oversight—even though this Court’s prior opinion specifically faulted GSA for not locating the record.<sup>4</sup> *Op.* at 10–11. In the missing email exchange, dated January 28, 2018, GSA officials forwarded an email from an OMB official (from an EOP email address), and explained that the FBI headquarters project was now “a demolition/new construction [project] per the President’s

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<sup>4</sup> GSA did locate and produce the other email identified in the Court’s prior opinion as responsive. *See Op.* at 9–11 (analyzing House Oversight emails).

instructions.” CREW Ex. 3 at 2290–91. The email also indicated that GSA and OMB exchanged a slide deck entitled “FBI pres feedback.” *Id.* In its prior opinion, the Court noted that “[a]n adequate search for emails between any GSA email address and any White House *or* EOP email address would presumably have discovered the January 28, 2018 email.” *Op.* at 10 (emphasis in original). Yet GSA still has not produced, or identified in its *Vaughn* index, this email. *See generally Vaughn* Index [ECF No. 36-6]. Nor has GSA produced or identified any other emails from GSA and OMB about the “FBI pres feedback” slide deck. GSA’s failure to locate these records casts serious doubt on the adequacy of its search, and leaves the same “positive indications of overlooked materials” that proved dispositive in the first round of summary judgment briefing. *See Op.* at 11–12 (“The fact that Defendant’s search failed to yield responsive records, which Defendant knew existed prior to conducting its search, casts substantial doubt on the adequacy of Defendant’s search.”); *Valencia-Lucena*, 180 F.3d at 327 (“[W]hat causes us to conclude that the search was inadequate arises from the fact that the record itself reveals ‘positive indications of overlooked materials.’”).

GSA offers no justification for its failure to use “obvious synonyms” like “JEH” and “Hoover”—which it initially agreed to in the September 9, 2019 written status report—or its failure to locate the House Oversight email. This lack of explanation, too, renders GSA’s response insufficient. *See Am. Oversight*, 2020 WL 1536186, at \*5 (finding insufficient OMB’s justification as to why it refused to use terms offered by the FOIA requestor); *Am. Ctr. for Equitable Treatment, Inc. v. Office of Mgmt. & Budget*, 281 F. Supp. 3d 144, 152 (D.D.C. 2017) (“[W]here, as here, a FOIA requester suggests search terms that are common in practice, but the agency elects not to use them, the failure of the agency to explain its choices prevents the court from evaluating the reasonableness of the agency’s search method.”).

In sum, GSA ignored the parties' agreed-upon search terms; conducted an under-inclusive search that failed to yield a previously-identified House Oversight email or any related documents; and provided no explanation for its actions. Such efforts are deficient as a matter of law. *See Friends of Blackwater v. U.S. Dep't of Interior*, 391 F. Supp. 2d 115, 121 (D.D.C. 2005) (granting plaintiff summary judgment where agency "fail[ed] to produce documents known to have originated" in a particular bureau of the agency, which "cast[] 'substantial doubt' on the sufficiency of the search of that office"); *Boyd v. U.S. Marshals Serv.*, No. 99-2712, 2002 U.S. Dist. LEXIS 27734, at \*2–3 (D.D.C. Mar. 15, 2002) (denying agency summary judgment where it failed to explain why its search did not identify a particular report known to exist).

## **II. GSA Is Improperly Withholding Material under FOIA Exemptions 5 and 7(E)**

FOIA "mandates that an agency disclose records on request, unless they fall within one of nine exemptions. These exemptions are 'explicitly made exclusive,' and must be 'narrowly construed.'" *Milner v. Dep't of Navy*, 562 U.S. 562, 565 (2011) (citations omitted). "[T]he burden is on the agency to show that requested material falls within a FOIA exemption." *Burka v. HHS*, 87 F.3d 508, 514 (D.C. Cir. 1996) (quotation marks and citation omitted). "To enable the Court to determine whether documents properly were withheld, the agency must provide a detailed description of the information withheld through the submission of a so-called '*Vaughn* index,' sufficiently detailed affidavits or declarations, or both." *Hussain v. DHS*, 674 F. Supp. 2d 260, 267 (D.D.C. 2009) (citing, among others, *Vaughn v. Rosen*, 484 F.2d 820, 827–28 (D.C. Cir. 1973)); *see also Judicial Watch, Inc. v. FDA* ("*Judicial Watch I*"), 449 F.3d 141, 146 (D.C. Cir. 2006). Although there is no set formula for a *Vaughn* index, the agency must "disclos[e] as much information as possible without thwarting the exemption's purpose." *King v. DOJ*, 830 F.2d 210, 224 (D.C. Cir. 1987). "Because of FOIA's critical role in promoting transparency and accountability, '[a]t all times courts must bear in mind that FOIA mandates a strong presumption

in favor of disclosure.”” *Rosenberg v. DOD*, 342 F. Supp. 3d 62, 72 (D.D.C. 2018) (quoting *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002)) (brackets in original).

In 2016, Congress amended FOIA through the FOIA Improvement Act, Pub. L. No. 114-185, 130 Stat. 538. Those amendments “codified the ‘foreseeable harm’ standard established by the Department of Justice in 2009 and used to defend an agency’s decision to withhold information.” *Judicial Watch, Inc. v. U.S. Dep’t of Commerce* (“*Judicial Watch II*”), 375 F. Supp. 3d 93, 98 (D.D.C. 2019) (citing S. Rep. No. 114-4, at 3 & n.8, 7–8 (2015)). As amended, the statute now provides: “An agency shall . . . withhold information under this section only if . . . (I) the agency reasonably foresees that disclosure would harm an interest protected by [a FOIA] exemption . . . ; or (II) disclosure is prohibited by law.” 5 U.S.C.

§ 552(a)(8)(A)(i). “Stated differently, ‘pursuant to the FOIA Improvement Act, an agency must release a record—even if it falls within a FOIA exemption—if releasing the record would not reasonably harm an exemption-protected interest’ and if the law does not prohibit the disclosure.” *Judicial Watch II*, 375 F. Supp. 3d at 98 (quoting *Rosenberg*, 342 F. Supp. 3d at 72). “[T]he foreseeable-harm requirement impose[s] an independent and meaningful burden on agencies,” which is “intended to restrict agencies’ discretion in withholding documents under FOIA.” *Ctr. for Investigative Reporting v. CBP*, No. 18-2901 (BAH), 2019 WL 7372663, at \*9 (D.D.C. Dec. 31, 2019) (quotation marks and citation omitted) (second bracket in original). To satisfy “this independent and meaningful burden, an agency must ‘identify specific harms to the relevant protected interests that it can reasonably foresee would actually ensue from disclosure of the withheld materials’ and ‘connect[] the harms in [a] meaningful way to the information withheld.’” *Id.* (quoting *Judicial Watch, Inc. v. DOJ*, No. 17-0832 (CKK), 2019 WL 4644029, at \*5 (D.D.C. Sept. 24, 2019)) (brackets in original).



Here, GSA has fallen far short of its burden to justify its withholdings under FOIA Exemptions 5 and 7(E).<sup>5</sup>

#### A. Exemption 5

Exemption 5 protects “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Thus, “Exemption 5 permits an agency to withhold materials normally privileged from discovery in civil litigation against the agency.” *Tax Analysts v. IRS*, 117 F.3d 607, 616 (D.C. Cir. 1997). To fit into Exemption 5, “a document must meet two conditions: ‘its source must be a Government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it.’” *Stolt-Nielsen Transp. Grp. v. United States*, 534 F.3d 728, 733 (D.C. Cir. 2008) (quoting *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001)). In addition, as outlined above, an agency invoking Exemption 5 must satisfy the “foreseeable harm” standard codified at 5 U.S.C. § 552(a)(8)(A)(i).

In support of its Exemption 5 claims, GSA has asserted a combination of three privileges—the presidential communications privilege, the deliberative process privilege, and the work-product doctrine—as to five categories of documents:

1. Email communications from January 20, 2017 to July 30, 2018, between GSA and the White House concerning the renovation of FBI Headquarters (presidential communications and deliberative process privileges) (“**Category No. 1**”);
2. A draft copy of GSA’s responses to Questions for the Record from the U.S. Senate’s Committee on Environment and Public Works regarding the FBI Headquarters Project sent between White House Counsel and GSA’s Office of General Counsel (deliberative process privilege) (“**Category No. 2**”);

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<sup>5</sup> CREW is not challenging GSA’s application of FOIA Exemptions 6 or 7(C), which the agency relied upon to redact email addresses and cellular phone numbers of agency and White House employees as well as the name of a particular agency employee. See Lewis Decl. ¶ 16; *Vaughn* Index at 1, 3; Mot. at 16 n.5.

3. A draft copy of GSA's Office of the Inspector General's Draft Review of GSA's Revised Plan for the FBI Headquarters Consolidation Project sent between White House Counsel and GSA's Office of General Counsel (deliberative process privilege) ("**Category No. 3**");
4. A draft copy of correspondence from GSA's General Counsel to GSA IG's Counsel to the Inspector General concerning a records request for the FBI Headquarters Project (deliberative process privilege and attorney work product doctrine) ("**Category No. 4**"); and
5. A White House Briefing Itinerary regarding a discussion of the future of the FBI headquarters on January 24, 2018 (presidential communications privilege) ("**Category No. 5**").

See Mot. at 7; *Vaughn* Index at 2, 5–8. GSA's Exemption 5 claims fail for multiple reasons.

**1. GSA Fails to Satisfy the Foreseeable Harm Standard as to Each of Its Exemption 5 Withholdings**

GSA fails to satisfy FOIA's foreseeable harm standard as to each of its Exemption 5 withholdings. To begin, GSA does not even attempt to meet its burden to "articulate both the nature of the harm and the link between the specified harm and specific information contained in the material withheld" with respect to the White House Briefing Itinerary (Category No. 5). See *Judicial Watch II*, 375 F. Supp. 3d at 100 (quoting H.R. Rep. No. 114-391 at 9). GSA's *Vaughn* index says only that "[t]his document is a communication prepared by presidential advisers in the course of preparing advice for the President regarding the future of the FBI Headquarters project." *Vaughn* Index at 8. Because GSA has failed to offer any claim of foreseeable harm, GSA's Exemption 5 claim as to the White House Briefing Itinerary should be summarily rejected.

GSA's remaining Exemption 5 claims fare no better. Each of the other Exemption 5 entries in the *Vaughn* index recites slight variations of the same sentence to justify withholding: "Disclosure would also have a chilling effect on the ability of GSA to engage in either

interagency and intra-agency discussions candidly about matters of policy and agency action without concern that the information could be disclosed prior to its occurrence.” *Vaughn* Index at 2, 5–7 (Category Nos. 1–4). GSA also claims that release of the draft documents (Category Nos. 2–4) would “reveal the editorial judgments of government staff and collaborative dialogue about agency personnel’s decisions about which portions to retain and revise” while release of the email communications (Category No. 1) would reveal the “collaborative dialogue about agency personnel’s decisions about which portions to retain and revise.” *Id.*

Although these descriptions at least attempt to show foreseeable harm, the agency’s perfunctory claim that disclosure would reveal “collaborative dialogue” and “would have a chilling effect” on GSA’s ability to “engage in either interagency and intra-agency discussions about matters of policy and agency action without concern that said information could be disclosed prior its [ ] occurrence” is plainly insufficient. Judges of this court have repeatedly rejected similar “boiler plate language.” *Judicial Watch II*, 375 F. Supp. 3d at 100–01 (declaration failed to demonstrate foreseeable harm in connection with deliberative process claim where it merely stated that “release of the redacted material would have the foreseeable harm of discouraging a frank and open dialogue among interagency staff”); *Rosenberg*, 342 F. Supp. 3d at 79 (same, where declaration “perfunctorily state[d] that disclosure of all the withheld information . . . ‘would jeopardize the free exchange of information between senior leaders within and outside of the [DOD]’” (second brackets in original)); *Ctr. for Investigative Reporting*, 2019 WL 7372663, at \*9 (same, where *Vaughn* index included the same three sentences with every Exemption 5 claim, stating that disclosure “could result in confusion” and “chill open and frank discussions”). “If the mere possibility that disclosure discourages a frank and open dialogue was enough for the exemption to apply, then Exemption 5 would apply

whenever the deliberative process privilege was invoked regardless of whether disclosure of the information would harm an interest protected by the exemption.” *Judicial Watch II*, 375 F.

Supp. 3d at 101. That was not what Congress intended in codifying the “heightened standard” of foreseeable harm. *Ctr. for Investigative Reporting*, 2019 WL 7372663, at \*4, \*9 (noting “Congress’s concern about agencies’ over-withholding under Exemption 5”). GSA’s Exemption 5 claims should therefore be rejected.

Moreover, GSA’s conclusory claims of harm are undermined by reviewing the Category No. 1 emails. Because of the emails released by House Oversight, as well as inconsistent redactions by GSA, it is possible to see in full the text withheld from Category No. 1 under Exemption 5. For example, House Oversight published an unredacted email exchange between Joseph Lai of the White House and Brennan Hart of GSA concerning the “path forward for the new FBI Headquarters announcement,” which the “President” had “signed off on”:

On Jan 25, 2018, at 2:48 PM, Brennan Hart - S [REDACTED] wrote:

Joe-

I wanted to give you a heads up that we will be sending a report to EPW Monday (pending OMB clearance) outlining a path forward for the new FBI Headquarters announcement. There will also be a hearing on this report February 14.

There is a lot of political interest in this project with the potential of it moving to either Maryland or Virginia. The President was briefed yesterday on this by the GSA Administrator, Deputy AG and FBI Director and signed off on this path forward.

Let me know if you have any questions.

PBH

CREW Ex. 3 at 2281. When GSA produced this email in January 2020, it withheld certain information pursuant to Exemption 5:

On Jan 25, 2018, at 2:48 PM, Brennan Hart - S <[brennan.hart@gsa.gov](mailto:brennan.hart@gsa.gov)> wrote:

Joe-

I wanted to give you a heads up that we will be sending a report to EPW Monday (b) (5) outlining a path forward for the new FBI Headquarters announcement. There will also be a hearing on this report February 14.

(b) (5)

Let me know if you have any questions.

PBH

CREW Ex. 10 at 7, 9.<sup>6</sup>

Comparing the redactions to the published email, it is unclear how the withheld information could risk foreseeable harm to GSA's deliberative process. GSA has offered no clarity on the "specific decision-making processes or deliberations" that would be harmed by the information's disclosure, *Ctr. for Investigative Reporting*, 2019 WL 7372663, at \*10, and the email itself indicates that the final decision had already been made with respect to the FBI headquarters, *see* Dep't of Justice, OIP Guidance: Applying the "Foreseeable Harm" Standard under Exemption Five (Jan. 1, 1994), <https://bit.ly/2UWTHAY> (explaining that when "decisions [are] already made" there is "far less likelihood" of "harm from disclosure"). Further, GSA does not describe how the disclosure of OMB's engagement in the FBI headquarters project or the bare fact of the President's meeting with GSA and FBI officials—both of which are discussed in the public GSA OIG Report, *see* CREW Ex. 2 at 7–10—"would have a chilling effect" on GSA's ability to engage in substantive policy discussions. The clear lack of foreseeable harm from the

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<sup>6</sup> In this litigation, GSA actually produced this email with two different sets of redactions. In its October 2019 production (not mentioned in the agency's *Vaughn* index), GSA did not redact the phrase "(pending OMB clearance)" but did redact "outlining a path forward for the new FBI Headquarters announcement." CREW Ex. 8 at 5. Because GSA does not attempt to defend the redactions from the October 2019 production, CREW focuses on the January 2020 redactions.

disclosure of the text in Category No. 1 is fatal to those withholdings, and also undermines GSA's boilerplate claims of foreseeable harm with respect to its other withholdings.

Because GSA has failed to provide sufficient detail to establish that "it is reasonably foreseeable that" disclosure of Category Nos. 1–5 "would have a chilling effect," and failed to specify any "link between this harm and the specific information contained in the material withheld," *Judicial Watch II*, 375 F. Supp. 3d at 101, it has not satisfied FOIA's foreseeable harm standard as to these documents. Each of GSA's Exemption 5 claims should therefore be rejected.

## **2. The Presidential Communications Privilege Does Not Apply to the Email Communications or the Briefing Itinerary**

The presidential communications privilege "applies to communications made in the process of arriving at presidential decisions." *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997). The privilege only protects "communications directly involving and documents actually viewed by the President," and "documents 'solicited and received' by the President or his immediate White House advisers." *Judicial Watch, Inc. v. DOJ* ("*Judicial Watch III*"), 365 F.3d 1108, 1114 (D.C. Cir. 2004). For the presidential communications privilege to attach to advisors, those advisors must have "broad and significant responsibility for investigating and formulating the advice to be given the President." *Id.* (quoting *In re Sealed Case*, 121 F.3d at 752). The withheld documents must also "reflect *presidential* decisionmaking and deliberations," with a clear connection to "presidential powers and responsibilities." *In re Sealed Case*, 121 F.3d at 752–53 (emphasis added); *see also Prop. of the People, Inc. v. Office of Mgmt. & Budget*, 330 F. Supp. 3d 373, 389 (D.D.C. 2018). Ultimately, "the presidential communications privilege should be construed as narrowly as is consistent with ensuring that the

confidentiality of the President’s decisionmaking process is adequately protected.” *In re Sealed Case*, 121 F.3d at 752.

GSA invokes the privilege as to two categories of document: (1) part of the January 25, 2018 email correspondence between Mr. Hart and Mr. Lai indicating that the President “signed off on” the path forward for the FBI headquarters after meeting with GSA on January 24, 2018, and (2) a one-page “Briefing Itinerary” sent by a White House employee to various GSA officials in advance of a January 24, 2018 meeting at the White House concerning the FBI headquarters project. *See Vaughn* Index at 2, 8; CREW Ex. 1 at 22–25 (attaching Briefing Itinerary); CREW Ex. 10 at 7, 9 (redacted emails). GSA’s justification is the same for both withholdings: the information in each document is purportedly “a communication prepared by presidential advisers in the course of preparing advice for the President regarding the future of the FBI Headquarters project.” *Vaughn* Index at 2, 8. This cursory explanation fails to sustain GSA’s privilege claims for several reasons.

First, GSA has not shown that the withheld itinerary or email communications relate in any way to *presidential* decision-making, and GSA has—outside of this litigation—vigorously disputed that conclusion. In its comments responding to the GSA OIG Report, GSA contested the OIG’s suggestion that “the GSA/FBI project team was directed to shift planning efforts from other preferred site options at the behest of senior White House officials,” claiming that “[t]his simply is not true.” CREW Ex. 2 at A-2. With respect to the January 24, 2018 White House meeting referenced in the email and that is the subject of the withheld itinerary, GSA insisted that “[t]he GSA and FBI representatives attending the January 24 White House meetings had already agreed and decided to locate the new headquarters at 935 Pennsylvania Avenue NW in Washington, DC,” and the “*claim that GSA and FBI ‘received direction from the President’ at*

*the January 24 meeting is unsubstantiated and conclusory.” Id. at A-3 (emphasis added) (citation omitted).*

Consistent with GSA’s position that the January 24, 2018 meeting entailed no “decision” that could be “attribute[d] . . . to the President,” *id.*, GSA’s *Vaughn* index here does not identify any presidential decision-making process to which the withheld itinerary or email communication relate. It instead states only that both generally concern “advice for the President regarding the future of the FBI Headquarters project.” *Vaughn* Index at 2, 8. This description is insufficient to establish the presidential communications privilege, particularly given GSA’s prior statements explicitly disputing that the meeting entailed any presidential decision-making. *See Prop. of the People*, 330 F. Supp. 3d at 389–90 (denying summary judgment on presidential communications privilege claim where OMB “offer[ed] no indication of the presidential powers at issue,” and no support for “its contention that the redacted entries relate to presidential decisionmaking”); *cf. In re Sealed Case*, 121 F.3d at 752–53 (privilege established where “the documents in question were generated in the course of advising the President in the exercise of his appointment and removal power, a quintessential and nondelegable Presidential power,” as this provided “assurance” that the documents were “intimately connected to . . . presidential decisionmaking”).<sup>7</sup>

Second, GSA has failed to show that the documents at issue were “documents ‘solicited and received’ by the President or his immediate White House advisers who have ‘broad and

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<sup>7</sup> CREW does not concede, as a factual matter, GSA’s position that President Trump had no involvement in the decision-making process concerning the FBI headquarters, but CREW’s own position on this issue is irrelevant for purposes of evaluating GSA’s privilege claim. Because GSA carries the burden of establishing the privilege, it must provide facts demonstrating that the withheld communications relate to presidential decision-making. It has failed to do so, and thus its privilege claim should be rejected.



significant responsibility for investigating and formulating the advice to be given the President.” *Judicial Watch III*, 365 F.3d at 1114. GSA provides no details on the role of the White House staff who prepared the briefing itinerary. *See Vaughn* Index at 8. There is thus no basis to evaluate whether those staff qualify as immediate presidential advisors or had “an actual advisory relationship [with] the President . . . as to that specific document.” *Ctr. for Effective Gov’t v. U.S. Dep’t of State*, 7 F. Supp. 3d 16, 26–27, 29 (D.D.C. 2013); *see also Judicial Watch III*, 365 F.3d at 1116 (noting the presidential communications privilege does not cover “every person who plays a role in the development of presidential advice, no matter how remote and removed from the President”). Similarly, with respect to the email exchange between Mr. Hart and Mr. Lai, GSA provides no details about the role of Mr. Lai, and the presidential communications privilege does not generally apply to members of the executive branch who work outside of the White House like Mr. Hart. *See Ctr. for Effective Gov’t*, 7 F. Supp. 3d 16 at 23, 27 n.10.

Third, examining unredacted portions of the email exchange proves that GSA is overreaching with its invocation of this privilege. The House Oversight release discussed above, which overlaps with the withheld email exchange, indicates that GSA withheld the following information based on its claim of presidential communications privilege: “There is a lot of political interest in this project with the potential of it moving to either Maryland or Virginia. The President was briefed yesterday on this by the GSA Administrator, Deputy AG and FBI Director and signed off on this path forward.” CREW Ex. 3 at 2281. It is unclear how GSA’s withholding could possibly be “necessary to protect the confidentiality of communications as between the President and his advisors.” *Am. Ctr. for Law & Justice v. U.S. Dep’t of State*, 330 F. Supp. 3d 293, 308 (D.D.C. 2018) (quoting *Ctr. for Effective Gov’t*, 7 F. Supp. 3d at 25). Not

only is the fact of the President’s meeting public knowledge in light of the GSA OIG Report, the withheld information does not reveal any “candid, objective, and even blunt or harsh opinions” regarding a presidential decision. *Judicial Watch III*, 365 F.3d at 1115; *cf. Prop. of the People*, 330 F. Supp. 3d at 390 (“[T]he mere fact of communications between the OMB Director and White House staff or agency staff on matters of policy is insufficient to show that [the withheld documents] concern matters of presidential decisionmaking.”). The purpose of the privilege is clearly not served by GSA’s withholding of the Hart-Lai email exchange, which undermines GSA’s withholding of the briefing itinerary based on the same verbatim justification.

For all these reasons, the presidential communications privilege does not apply to the January 24, 2018 briefing itinerary or the email exchange between Mr. Lai and Mr. Hart.

### **3. The Deliberative Process Privilege Does Not Apply to the Email Communications or Draft Documents**

To be protected by the deliberative process privilege, a document must be both “predecisional” and “deliberative.” *Mapother v. DOJ*, 3 F.3d 1533, 1537 (D.C. Cir. 1993). A document is predecisional if “it was generated before the adoption of an agency policy.” *Judicial Watch I*, 449 F.3d at 151. Deliberative material “reflects the give-and-take of the consultative process.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). But even if a “draft” version of a document is “predecisional at the time it is prepared, it can lose that status if it is adopted, formally or informally, as the agency position on an issue.” *Id.*; *see also NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161 (1975).

With respect to the redactions in Category No. 1, another examination of the unredacted emails released by House Oversight demonstrates the deficiencies in GSA’s deliberative process privilege claim. From the January 25, 2018 email exchange between Mr. Hart and Mr. Lai, after Mr. Hart noted that Congress would be holding a hearing about the FBI headquarters project,

GSA withheld the following text: “There is a lot of political interest in this project with the potential of it moving to either Maryland or Virginia. The President was briefed yesterday on this by the GSA Administrator, Deputy AG and FBI Director and signed off on this path forward.” *Compare* CREW Ex. 3 at 2281, *with* CREW Ex. 10 at 7, 9. GSA also withheld that the agency would be sending a report to Congress “(pending OMB clearance).” *Id.* It is unclear how the withheld information reflects “recommendations so that decisions about the future of the project could be made” or “deliberations through which policy about the project was being formulated,” as the *Vaughn* index claims. *Vaughn* Index at 2. Rather, the withheld information appears factual and primarily related to an already-made decision on how to proceed with the FBI headquarters project. But “[t]he deliberative process privilege does not shield documents that simply state or explain a decision the government has already made.” *In re Sealed Case*, 121 F.3d at 737; *see also Public Citizen, Inc. v. Office of Mgmt. & Budget*, 598 F.3d 865, 876 (D.C. Cir. 2010) (“Only those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld.”). Because “[n]othing in the redacted portions of the document[] reflect anything that can even be construed as a personal opinion of an agency official . . . [t]here is . . . no risk that disclosure would cause the agency’s decisionmakers to ‘temper candor’ in their remarks.” *Cause of Action Inst. v. DOJ*, 330 F. Supp. 3d 336, 353 (D.D.C. 2018) (quoting *Nat’l Sec. Archive v. CIA*, 752 F.3d 460, 462 (D.C. Cir. 2014)). GSA’s deliberative process claim for the emails in Category No. 1 accordingly fails.

As to Category No. 3, GSA appears to assert that it is per se predecisional because it is an “initial draft” of the GSA OIG Report that the OIG shared with GSA for review and comment prior to issuance of the final report in August 2018. *Vaughn* Index at 6. But this Circuit has long rejected the view that “any document identified as a ‘draft’ is per se exempt,” so the mere

“designation of . . . documents . . . as ‘drafts’ does not end the inquiry.” *Arthur Andersen & Co. v. IRS*, 679 F.2d 254, 257 (D.C. Cir. 1982). Here, there are strong indications that much of the draft report was ultimately “adopted” in the final report, which would defeat a deliberative process claim. *See, e.g.*, CREW Ex. 2 at 2 (noting that “[n]one of” GSA’s “revisions” to the draft report “affected [the OIG’s] report conclusions”); *id.* at 21 (“After reviewing a draft of this report, [GSA Administrator] Murphy requested that we remove all discussion of her testimony from our report. . . . We disagree and believe the congressman’s questions speak for themselves, as do Murphy’s answers at the hearing. . . . In the alternative, Murphy requested that we delete our finding about her testimony and replace it with language she requested for inclusion in the report. . . . [W]e cannot do so.”). Because GSA has failed to demonstrate that withheld material in the draft report was not ultimately adopted in the final report, and because there is evidence showing otherwise, the Court should reject GSA’s deliberative process claim as to the draft report. *See Wilderness Soc. v. U.S. Dep’t of Interior*, 344 F. Supp. 2d 1, 14 (D.D.C. 2004) (rejecting deliberative process claim where “the defendants have not indicated whether its designated ‘draft’ documents, many of which are public relations materials, have been formally or informally adopted or used in the agency’s interactions with the public”); *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 261 (D.D.C. 2004) (noting “drafts are not presumptively privileged” and rejecting deliberative process claim where agency failed to indicate whether the draft documents were adopted as the agency position).

The same analysis applies to Category No. 2, the “draft copy of GSA’s responses to Questions for the Record” from a Senate committee. *Vaughn* Index at 5. This is yet another draft of a document that was eventually released outside the agency; to the extent the draft contains material that was adopted in the final version of the responses, it is not exempt. *See*

*also infra* Part III (asserting that GSA must segregate and release non-exempt portions of documents).

#### **4. GSA Fails to Justify Its Application of the Attorney Work Product Privilege**

Exemption 5 also incorporates the attorney work product privilege, which protects from disclosure an attorney’s “mental processes.” *Klamath Water Users Protective Ass’n*, 532 U.S. at 8. The work product doctrine thus “shields materials ‘prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative.’” *Judicial Watch, Inc. v. DOJ*, 432 F.3d 366, 369 (D.C. Cir. 2005) (quoting Fed. R. Civ. P. 26(b)(3)). “As a usual rule, disclosure of attorney-client or work product confidences to third parties waives the protection of the relevant privileges; however, when the third party is a lawyer whose client shares an overlapping ‘common interest’ with the primary client, the privileges may remain intact.” *In re Lindsey*, 158 F.3d 1263, 1282 (D.C. Cir. 1998).

GSA claims that the attorney work product privilege protects one document, a “draft copy of the correspondence that GSA’s General Counsel wrote on behalf of the GSA Administrator to the Office of Inspector General” that “contains the opinions of counsel regarding [a] records request” concerning the FBI headquarters project. *Vaughn* Index at 7. The document was attached to an email from GSA’s acting general counsel to an EOP employee and an individual with DOJ’s Office of Legal Counsel (“OLC”). CREW Ex. 1 at 19–21.

GSA’s cursory justification fails to sustain its privilege claim for two reasons. First, GSA does not claim that the document was prepared “in anticipation of litigation.” *See Vaughn* Index at 7; Lewis Decl. ¶¶ 16–17; Mot. at 8. While GSA need not necessarily identify a specific case to which a document relates in order to invoke the privilege, it still must describe “some articulable claim, likely to lead to litigation.” *Judicial Watch, Inc. v. Reno*, 154 F. Supp. 2d 17,

18 (D.D.C. 2001) (quoting *Coastal States Gas Corp.*, 617 F.2d at 865); *see also Shapiro v. DOJ*, 969 F. Supp. 2d 18, 30 (D.D.C. 2013) (“Thus, ‘the [work product] privilege has no applicability to documents prepared by lawyers in the ordinary course of business or for other nonlitigation purposes.’” (quoting *In re Sealed Case*, 146 F.3d 881, 887 (D.C. Cir. 1998) (bracket in original))). “[B]oilerplate” statements that a document was withheld “as an attorney work product” are insufficient to support a work product claim. *Shapiro*, 969 F. Supp. 2d at 37 (collecting cases). Second, GSA makes no effort to explain why sending the draft correspondence outside of the agency does not result in a loss of the privilege. GSA does not claim that it has a “common interest” with the White House or OLC, nor explain what that interest might be. *See Rashid v. DOJ*, 99-cv-2461-GK, slip op. at 10 (D.D.C. June 12, 2001) (“Upon review of the Vaughn Index, it is clear that Defendant has failed to even *allege* a common interest with the third parties to whom the documents were disclosed, let alone explain with some specificity the nature of the shared interests. Accordingly, in the absence of an asserted common interest, the Court concludes that the work-product privilege does not apply to these documents.”). Under these circumstances, GSA cannot sustain its application of the attorney work product privilege.

## **B. Exemption 7(E)**

To satisfy Exemption 7(E), an agency must show three things: (1) the records were “compiled for law enforcement purposes,” (2) the records “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions,” and (3) “such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E); *see also Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011). GSA fails to establish at least the second and third requirements.

GSA invokes Exemption 7(E) to withhold portions of a June 5, 2018 email “between an Assistant Special Agent within GSA’s Office of Inspector General and the Special Assistant to the GSA Administrator regarding the basis of the Inspector General’s request to interview the Administrator.”<sup>8</sup> *Vaughn* Index at 4; *see* CREW Ex. 1 at 8 (redacted email). GSA claims that the withheld information reflects “a specific GSA Office of Inspector General investigative goal as part of its technique in conducting a law enforcement investigation regarding an ongoing investigation within the GSA’s Office of Inspector General,” and “[i]f this information was made publicly available, it would likely cause a current or future subject of the Office of Inspector General investigation to undertake certain actions in order to circumvent the law.” *Vaughn* Index at 4.

Here, again, GSA falls far short of its burden. The agency provides no details on the specific “technique” implicated by the withheld material, let alone does it explain how disclosure would reveal any such technique. It instead offers only a “near-verbatim recitation of the statutory standard,” which is plainly “inadequate.” *CREW v. DOJ*, 746 F.3d 1082, 1102 (D.C. Cir. 2014) (agency failed to meet burden where it failed to specify “what procedures are at stake,” or “how disclosure . . . could reveal such procedures”); *see also EPIC v. CBP*, 160 F. Supp. 3d 354, 359 (D.D.C. 2016) (denying summary judgment when agency failed to provide the Court “with sufficient detail regarding the law enforcement techniques or procedures the

---

<sup>8</sup> On the produced email, GSA marked the withholding as based on both Exemptions 5 and 7(E). *See* CREW Ex. 1 at 8 (redacted email). GSA defends only the application of Exemption 7(E) in its *Vaughn* index and renewed motion for summary judgment, *see* Mot. at 17; *Vaughn* Index at 4, and thus abandons any claim to Exemption 5 for this material, *Burka*, 87 F.3d at 514 (“[T]he burden is on the agency to show that requested material falls within a FOIA exemption.” (quotation marks and citation omitted)).

defendant seeks to protect”). GSA’s showing similarly fails to satisfy the foreseeable harm standard codified at 5 U.S.C. § 552(a)(8)(A)(i). *See supra* Part II.A.1.

Moreover, GSA’s claim that disclosure of the information may cause the “subject of the Office of Inspector General investigation to undertake certain actions in order to circumvent the law” is highly dubious given that the withheld email is itself a communication between the OIG—the investigator—and GSA—the subject of the investigation. The GSA OIG is not a general law enforcement agency; it is an investigative unit with a narrowly-defined mission focused exclusively on GSA. *See* GSA Office of Inspector General Overview, *available at* <https://www.gsa.gov/about-us/organization/gsa-office-of-inspector-general-overview> (last reviewed Feb. 14, 2020). Consistent with this function, the email in question plainly concerns the OIG’s investigation of GSA’s handling of the FBI headquarters project and Administrator Murphy’s involvement therein, on which the OIG later issued findings in its August 2018 report. *See* CREW Ex. 1 at 8 (“As part of the Office of Inspector General’s review of the GSA’s Federal Bureau of Investigation (FBI) Headquarters Consolidation Project, I would like to schedule a time to meet with Administrator Murphy. [redacted].”); CREW Ex. 2 at 18–22 (GSA OIG Report) (reporting OIG’s findings on the accuracy of Administrator Murphy’s congressional testimony). Thus, insofar as the withheld email conveys any of the OIG’s secret law enforcement techniques, the OIG—by sending the email to GSA and, specifically, Administrator Murphy’s assistant—disclosed those techniques to the very agency and officials it is charged with investigating. This refutes any notion that the GSA OIG has a law enforcement interest in keeping this information secret. *See Kubik v. BOP*, No. 10-6078-TC, 2011 WL 2619538, at \*11 (D. Or. July 1, 2011) (rejecting Exemption 7(E) claim seeking to prevent



disclosure of guards’ “tactical maneuvers” during a prison riot, where those maneuvers were “no secret to the prison inmates”).

### **III. GSA Fails to Demonstrate that It Released All Reasonably Segregable Non-Exempt Material**

Finally, GSA has failed to show that it complied with its segregability obligations. Even when FOIA exemptions apply, “[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). The agency must therefore segregate and release all non-exempt portions of a document, unless they are “inextricably intertwined with exempt portions.” *Trans-Pacific Policing Agreement v. U.S. Customs Serv.*, 177 F.3d 1022, 1027 (D.C. Cir. 1999). And the agency must provide a “detailed justification,” not just “conclusory statements,” to prove that it has released all reasonably segregable information. *Mead Data Cent., Inc. v. Dep’t of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

As noted, GSA is withholding four documents in full, totaling 27 pages. *See Vaughn* Index at 5–8. The draft GSA OIG report comprises 19 of these pages, which GSA is withholding pursuant to the deliberative process privilege. *Id.* at 6. But even accepting GSA’s claim of privilege, it is highly likely that some portion of this report is non-exempt and segregable. Indeed, the final GSA OIG Report contains a significant amount of purely factual background information, *see* CREW Ex. 2, and “[f]actual material that does not reveal the deliberative process is not” privileged, *Morley v. CIA*, 508 F.3d 1108, 1127 (D.C. Cir. 2007) (citation omitted); *see also Public Emps. for Env’tl. Responsibility v. EPA*, 926 F. Supp. 2d 48, 59 (D.D.C. 2013) (ordering agency to segregate and release background sections of report “because they represent ‘purely factual material’ that can be severed ‘without compromising’ the rest of the report”). Much of this background information is likely included in the draft report, as well.

To the extent it is, GSA must segregate and release it. The same is true for the four-page draft GSA responses to a Senate Committee's "Questions for the Record." *Vaughn* Index at 5. Any purely factual, non-exempt material in this document likewise must be released. Moreover, as explained *supra* Part II.A.3, GSA must segregate and release any portions of the draft documents that were adopted as final agency positions.

Further, GSA provides no explanation as to why it redacted the titles of the withheld draft documents and briefing itinerary from the email communications to which they were attached. *See* CREW Ex. 1 at 6, 16–23, 25. There is no entry on the *Vaughn* index explaining these redactions from the email correspondence; the entries for each document withheld in full addresses only the withheld document itself. *See Vaughn* Index at 5–8. GSA does not attempt to explain how the titles, standing alone, are exempt under FOIA or whether the titles provide more information about the withheld documents than is already revealed through the descriptions in the *Vaughn* index. Nor does GSA claim the titles are "inextricably intertwined" with the exempt portions of the withheld documents or the email communications in which the titles appear. Indeed, the subject line of the emails attaching the briefing itinerary are "Fwd: GSA.DOCX," CREW Ex. 1 at 22–25, suggesting that is the title of the withheld document. If so, it is difficult to see how such a title could not be segregated and released. Because GSA has made no effort to show that the document titles are either exempt from production or not reasonably segregable, this information must be released.

## CONCLUSION

The Court should grant CREW's cross-motion for summary judgment and deny GSA's motion.

Date: April 16, 2020

Respectfully Submitted,

/s/ Jessica Lutkenhaus

Jessica Lutkenhaus

(D.C. Bar No. 1046749)

Nikhel S. Sus

(D.C. Bar No. 1017937)

Anne L. Weismann

(D.C. Bar No. 298190)

Citizens for Responsibility and Ethics  
in Washington

1101 K St. NW, Suite 201

Washington, D.C. 20005

Telephone: (202) 408-5565

Fax: (202) 588-5020

[jlutkenhaus@citizensforethics.org](mailto:jlutkenhaus@citizensforethics.org)

[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)

[aweissman@citizensforethics.org](mailto:aweissman@citizensforethics.org)

*Counsel for Plaintiff*

# **Exhibit 1**



Office of Administrative Services  
FOIA Requester Service Center

March 15, 2019

Mr. Nikhel Sus, Esq.  
Citizens for Responsibility and Ethics in Washington (CREW)  
455 Massachusetts Ave., NW  
Washington, DC 20001

Dear Mr. Sus:

This letter supplements my previous communications on December 7 and December 21, 2018, respectively regarding Case No. 1:18-CV-02071 in the United States District Court for the District of Columbia regarding your GSA FOIA request No. GSA-2018-001496.

Previously on December 14, 2018, I sent you a notice that GSA had an additional 25 pages of responsive documents being withheld in their entirety based on the Presidential Communications Privilege. After a subsequent analysis of the documents, GSA is providing you with these additional responsive documents.

Please note that within these responsive communications, GSA has withheld:

- 1) Certain draft documents in their entirety as they represent the agency's deliberative process and the attachment to page 23 pursuant to the Presidential Communications Privilege per the 5<sup>th</sup> exemption to the FOIA, 5 U.S.C. § 552(b)(5);
- 2) Specific email addresses and employee cellular telephone numbers pursuant to both exemption 6, 5 U.S.C. § 552(b)(6) and exemption 7(C), 5 U.S.C. § 552(b)(7)(C) of the FOIA, because disclosure of the withheld material could reasonably be expected to constitute an unwarranted invasion of personal privacy; and
- 3) Information on page 6 pertaining to investigatory methodologies/ procedures by GSA's office of the Inspector General pursuant to the FOIA, 5 U.S.C. § 552(b)(7)(E).

Sincerely,

*Travis Lewis*

Travis Lewis  
Deputy Director (Formerly FOIA Director)  
Office of Accountability and Transparency  
Office of Administrative Services

U.S. General Services Administration  
1800 F. Street, Northwest  
Washington, DC 20405  
Telephone: (877) 675-FOIA  
Fax: (202) 501-2727

**Subject:** RE: GSA - QFRs regarding the FBI Headquarters project  
**Date:** Wed, 18 Jul 2018 22:00:12 +0000  
**From:** "Epstein, Daniel Z. EOP/WHO" <(b)(6)>  
**To:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**Cc:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**Message-ID:** <2e3675da93da45c196d74e6aec1a6e79@who.eop.gov>  
**MD5:** 43a72169fa3fbff5b68359b77e05968e

Thanks, Bridget. Let's chat about these responses at your earliest convenience tomorrow.

Daniel Epstein | SAP and Associate Counsel  
Office of the White House Counsel  
EEOB No. 120B

(b)(6)  
O: (b)(6) | C: (b)(6)

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**From:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**Sent:** Wednesday, July 18, 2018 5:55 PM  
**To:** Epstein, Daniel Z. EOP/WHO <(b)(6)>  
**Cc:** Jack St. John - A <jack.stjohn@gsa.gov>  
**Subject:** GSA - QFRs regarding the FBI Headquarters project

Hi Dan,

It was great meeting you last week.

GSA is responding to Questions for the Record from EPW regarding the FBI Headquarters project. Attached are the questions and responses that contain White House equities.

Please let me know when you've had a chance to review or if you'd like to discuss.

Thanks,

Bridget Brennan

Counsel to the General Counsel

General Services Administration

Cell: (b)(6)

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**Subject:** Re: GSA - QFRs regarding the FBI Headquarters project  
**Date:** Thu, 19 Jul 2018 09:06:33 -0400  
**From:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**To:** "Epstein, Daniel Z. EOP/WHO" (b)(6) >  
**Message-ID:** <CAD1VZzfBm\_vTwonP8pHabQwBfZ65avCqXFvSSV=g=zgJvhSyCQ@mail.gmail.com>  
**MD5:** 192654ca800f32245de02a9bba67c069

Hi Dan,

I can be available any time. Let me know when works best for you.

Thanks,

Bridget Brennan

Counsel to the General Counsel  
General Services Administration  
Cell: (b)(6)

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On Wed, Jul 18, 2018 at 6:00 PM, Epstein, Daniel Z. EOP/WHO <[Daniel.Z.Epstein@who.eop.gov](mailto:Daniel.Z.Epstein@who.eop.gov)> wrote:

Thanks, Bridget. Let's chat about these responses at your earliest convenience tomorrow.

Daniel Epstein | SAP and Associate Counsel  
Office of the White House Counsel  
EEOB No. 120B

(b)(6)

O: (b)(6)

C: (b)(6)

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**From:** Bridget Brennan - L <[bridget.brennan@gsa.gov](mailto:bridget.brennan@gsa.gov)>  
**Sent:** Wednesday, July 18, 2018 5:55 PM  
**To:** Epstein, Daniel Z. EOP/WHO <(b)(6)>  
**Cc:** Jack St. John - A <[jack.stjohn@gsa.gov](mailto:jack.stjohn@gsa.gov)>  
**Subject:** G S A- Q F R s regarding the F B I Headquarters project

Hi Dan,



**Subject:** GSA - QFRs Regarding the FBI Headquarters project v2  
**Date:** Mon, 23 Jul 2018 13:06:53 -0400  
**From:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**To:** "Epstein, Daniel Z. EOP/WHO" <Daniel.Z.Epstein@who.eop.gov>  
**Cc:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**Message-ID:** <CAD1VZzeU7foiAhaGtN0BZrxOi0vhbnewb\_9fP=Ci-xWZHNTyw@mail.gmail.com>  
**MD5:** 524b4f9332c3aa6e655e520102df0241  
**Attachments:** (b)(5)

Hi Dan,

GSA needed to make some changes to ensure accuracy in the QFR responses. Please see the tracked changes from the feedback you gave last week.

Please let us know if these responses look good to you. Happy to hop on a call to discuss.

Thanks,

Bridget Brennan

Counsel to the General Counsel  
General Services Administration  
Cell: (b)(6)

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**Subject:** RE: GSA - QFRs regarding the FBI Headquarters project  
**Date:** Wed, 18 Jul 2018 22:00:12 +0000  
**From:** "Epstein, Daniel Z. EOP/WHO" (b)(6)  
**To:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**Cc:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**Message-ID:** <2e3675da93da45c196d74e6aec1a6e79@who.eop.gov>  
**MD5:** a611024f0f088046a8abb20f5e7244db

Thanks, Bridget. Let's chat about these responses at your earliest convenience tomorrow.

Daniel Epstein | SAP and Associate Counsel  
Office of the White House Counsel  
EEOB No. 120B

(b)(6)  
(b)(6)

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**From:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**Sent:** Wednesday, July 18, 2018 5:55 PM  
**To:** Epstein, Daniel Z. EOP/WHO (b)(6) >  
**Cc:** Jack St. John - A <jack.stjohn@gsa.gov>  
**Subject:** GSA - QFRs regarding the FBI Headquarters project

Hi Dan,

It was great meeting you last week.

GSA is responding to Questions for the Record from EPW regarding the FBI Headquarters project. Attached are the questions and responses that contain White House equities.

Please let me know when you've had a chance to review or if you'd like to discuss.

Thanks,

Bridget Brennan

Counsel to the General Counsel

General Services Administration

**Subject:** Fwd: Meeting Request: FBI Review  
**Date:** Tue, 5 Jun 2018 14:12:50 -0400  
**From:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**To:** Dan Epstein (b)(6)  
**Message-ID:** <CAMREa5XU\_hpih3G9aXqvG=e7DUbArSZ0MEp9O4gm+JepGY87WQ@mail.gmail.com>  
**MD5:** 18b0d097f142f0ee3cad81cc6fd0f525

FYI

----- Forwarded message -----

From: **Carla Sansalone - AC** <[carla.sansalone@gsa.gov](mailto:carla.sansalone@gsa.gov)>  
Date: Tue, Jun 5, 2018 at 2:06 PM  
Subject: Fwd: Meeting Request: FBI Review  
To: Jack St John <[jack.stjohn@gsa.gov](mailto:jack.stjohn@gsa.gov)>, Bridget Brennan <[bridget.brennan@gsa.gov](mailto:bridget.brennan@gsa.gov)>

----- Forwarded message -----

From: <(b)(6), (b)(7)(C)@gsaig.gov>  
Date: Tue, Jun 5, 2018 at 6:52 AM  
Subject: Meeting Request: FBI Review  
To: [carla.sansalone@gsa.gov](mailto:carla.sansalone@gsa.gov)

Good morning,

As part of the Office of Inspector General's review of the GSA's Federal Bureau of Investigation (FBI) Headquarters Consolidation Project, I would like to schedule a time to meet with Administrator Murphy.

(b)(5), (b)(7)(E)

I would like to schedule the interview the week of June 18, 2018. Please let me know when Administrator Murphy's schedule can accommodate this request.

If the Administrator has any questions, she can contact Edward Martin, Counsel to the Inspector General at (202)273-7293.

Thank you,

(b)(6), (b)(7)(C)

Assistant Special Agent in Charge  
US General Services Administration  
Office of Inspector General  
National Capital Regional Investigations Office

(b)(6), (b)(7)(C)

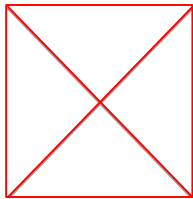
202-252-0042 - Fax

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--

Best,  
Carla

Carla Virgilio Sansalone  
Special Assistant to the Administrator  
Office of the Administrator and Chief of Staff  
U.S. General Services Administration  
(b)(6) - cell  
(202) 969-7530 - office



--

Jack St. John

Acting General Counsel  
General Services Administration  
202-706-8130

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Cell: (b)(6)

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**Subject:** RE: Draft report - FBI HQ  
**Date:** Mon, 30 Jul 2018 17:36:48 +0000  
**From:** "Epstein, Daniel Z. EOP/WHO" (b)(6)  
**To:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**Message-ID:** <af09478bbff84230a06896766e09b607@who.eop.gov>  
**MD5:** 51747795e06915c0759914c7f19c991b

Can we talk at 1:45?

Daniel Epstein | SAP and Associate Counsel  
Office of the White House Counsel  
EEOB No. 120B

(b)(6)

(b)(6)

(b)(6)

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**From:** Jack St. John - A <jack.stjohn@gsa.gov>  
**Sent:** Monday, July 30, 2018 9:28 AM  
**To:** Epstein, Daniel Z. EOP/WHO (b)(6)  
**Subject:** Draft report - FBI HQ

Dan,

Hope you had a nice weekend. Please see the attached report and let me know when you have a moment to discuss. Other than a call with Paul at 11:00, I am generally free until 2:30 today and most of the day tomorrow.

Thanks,

Jack

--

Jack St. John

Acting General Counsel

General Services Administration

(b)(6)

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It was great meeting you last week.

GSA is responding to Questions for the Record from EPW regarding the FBI Headquarters project. Attached are the questions and responses that contain White House equities.

Please let me know when you've had a chance to review or if you'd like to discuss.

Thanks,

Bridget Brennan

Counsel to the General Counsel

General Services Administration

(b)(6)

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Information Act, 5 U.S.C. §§ 552(b)(5), (b)(7).



**Subject:** RE: GSA - QFRs Regarding the FBI Headquarters project v2  
**Date:** Mon, 23 Jul 2018 17:12:20 +0000  
**From:** "Epstein, Daniel Z. EOP/WHO" (b)(6)  
**To:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**Cc:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**Message-ID:** <11394b4c273f4093a9b3192f46808956@who.eop.gov>  
**MD5:** 3c3171401bb181c94e1064f92151e87a

Thank you. I have no further comments.

Daniel Epstein | SAP and Associate Counsel  
Office of the White House Counsel  
EEOB No. 120B

(b)(6)

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**From:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**Sent:** Monday, July 23, 2018 1:07 PM  
**To:** Epstein, Daniel Z. EOP/WHO (b)(6) >  
**Cc:** Jack St. John - A <jack.stjohn@gsa.gov>  
**Subject:** GSA - QFRs Regarding the FBI Headquarters project v2

Hi Dan,

GSA needed to make some changes to ensure accuracy in the QFR responses. Please see the tracked changes from the feedback you gave last week.

Please let us know if these responses look good to you. Happy to hop on a call to discuss.

Thanks,

Bridget Brennan

Counsel to the General Counsel

General Services Administration

Cell: (b)(6)

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**Subject:** GSA - QFRs regarding the FBI Headquarters project  
**Date:** Wed, 18 Jul 2018 17:54:58 -0400  
**From:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**To:** "Epstein, Daniel Z. EOP/WHO" (b)(6)  
**Cc:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**Message-ID:** <CAD1VZzcR0uZKOx=6MPVcp9gX17m\_ksb8qvsuZx7qASX+JoE32A@mail.gmail.com>  
**MD5:** 504dd665804790c43594fab7479ac9ad  
**Attachments:** (b)(5)

Hi Dan,

It was great meeting you last week.

GSA is responding to Questions for the Record from EPW regarding the FBI Headquarters project. Attached are the questions and responses that contain White House equities.

Please let me know when you've had a chance to review or if you'd like to discuss.

Thanks,

Bridget Brennan

Counsel to the General Counsel  
General Services Administration  
Cell: (b)(6)

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**Subject:** GSA - QFRs Regarding the FBI Headquarters project v2  
**Date:** Mon, 23 Jul 2018 13:06:53 -0400  
**From:** Bridget Brennan - L <bridget.brennan@gsa.gov>  
**To:** "Epstein, Daniel Z. EOP/WHO" (b)(6)  
**Cc:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**Message-ID:** <CAD1VZzeU7foiAhaGtN0BZrzxOi0vhbnewb\_9fP=Ci-xWZHNtyw@mail.gmail.com>  
**MD5:** 43f9d293c29e20f51ae01523f97615c0  
**Attachments:** (b)(5)

Hi Dan,

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Please let us know if these responses look good to you. Happy to hop on a call to discuss.

Thanks,

Bridget Brennan

Counsel to the General Counsel  
General Services Administration  
Cell: (b)(6)

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**Subject:** Draft report - FBI HQ  
**Date:** Mon, 30 Jul 2018 09:28:14 -0400  
**From:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**To:** Dan Epstein (b)(6)  
**Message-ID:** <CAMREa5U\_ifXjQzFudVoAC3W9ustBEdNmSXwPUtpj=g+NJA3Uow@mail.gmail.com>  
**MD5:** 60873a728233417ef00f88d73493588d  
**Attachments:** (b)(5)  
Transmittal Memorandum to GSA.pdf

Dan,

Hope you had a nice weekend. Please see the attached report and let me know when you have a moment to discuss. Other than a call with Paul at 11:00, I am generally free until 2:30 today and most of the day tomorrow.

Thanks,  
Jack

--

Jack St. John

Acting General Counsel  
General Services Administration  
(b)(6)

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**Subject:** Draft letter to Ed Martin  
**Date:** Sun, 3 Jun 2018 18:31:04 -0400  
**From:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**To:** Dan Epstein (b)(6) >, "Colborn, Paul P (OLC)"  
<Paul.P.Colborn@usdoj.gov>  
**Message-ID:** <CAMREa5VF=V-13m2BQ3hAcy=diDG==VuQh-EHOPk-WJcJnGhOg@mail.gmail.com>  
**MD5:** da6a2ccf6c1859caa96a7c9dad873380  
**Attachments:** (b)(5)

For discussion at our meeting tomorrow.

--

Jack St. John

Acting General Counsel  
General Services Administration  
(b)(6)

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**Subject:** Fwd: Draft letter to Ed Martin  
**Date:** Sun, 3 Jun 2018 18:44:04 -0400  
**From:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**To:** Allison Brigati - M <allison.brigati@gsa.gov>  
**Message-ID:** <CAMREa5WvtdCyfWn\_Gw8RWK=QgfCx0Q8ffokD71u14rC1RQKKdg@mail.gmail.com>  
**MD5:** 6276e3eece763bcdfee898675871c435  
**Attachments:** (b)(5)

----- Forwarded message -----

From: Jack St. John - A <[jack.stjohn@gsa.gov](mailto:jack.stjohn@gsa.gov)>  
Date: Sun, Jun 3, 2018 at 6:31 PM  
Subject: Draft letter to Ed Martin  
To: Dan Epstein (b)(6) >, Colborn, Paul P (OLC) <[Paul.P.Colborn@usdoj.gov](mailto:Paul.P.Colborn@usdoj.gov)>

For discussion at our meeting tomorrow.

--

Jack St. John

Acting General Counsel  
General Services Administration  
(b)(6)

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Jack St. John

Acting General Counsel  
General Services Administration  
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**Subject:** Fwd: Draft letter to Ed Martin  
**Date:** Mon, 4 Jun 2018 11:43:29 -0400  
**From:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**To:** Bridget Brennan - AC <bridget.brennan@gsa.gov>  
**Message-ID:** <CAMREa5WMgoGTuJF5E0zSPQOHMxftg600zT5Opu2WCNn87oHuFA@mail.gmail.com>  
**MD5:** 9ccc8b3d6db10a2fb4a254e5ea7334c6  
**Attachments:** (b)(5)

----- Forwarded message -----

From: **Jack St. John - A** <[jack.stjohn@gsa.gov](mailto:jack.stjohn@gsa.gov)>  
Date: Sun, Jun 3, 2018 at 6:31 PM  
Subject: Draft letter to Ed Martin  
To: Dan Epstein (b)(6) >, "Colborn, Paul P (OLC)" <[Paul.P.Colborn@usdoj.gov](mailto:Paul.P.Colborn@usdoj.gov)>

For discussion at our meeting tomorrow.

--

Jack St. John

Acting General Counsel  
General Services Administration  
(b)(6)

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Jack St. John

Acting General Counsel  
General Services Administration  
(b)(6)

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**Subject:** Fwd: GSA.DOCX  
**Date:** Mon, 4 Jun 2018 11:57:06 -0400  
**From:** "Jack St. John - A" <jack.stjohn@gsa.gov>  
**To:** Bridget Brennan - AC <bridget.brennan@gsa.gov>  
**Message-ID:** <CAMREa5WqOH3\_prtgnsZne2rGKkK91iY1omagheOcswwXWXETNQ@mail.gmail.com>  
**MD5:** 8cfeaeb86b54e0c050ab17c0a669f21e  
**Attachments:** ATT00001.txt ; (b)(5)

----- Forwarded message -----

From: **Emily Murphy - A** <[emily.murphy@gsa.gov](mailto:emily.murphy@gsa.gov)>  
Date: Wed, Jan 24, 2018 at 8:27 AM  
Subject: Fwd: GSA.DOCX  
To: Brennan Hart <[brennan.hart@gsa.gov](mailto:brennan.hart@gsa.gov)>, Carla Virgilio <[carla.virgilio@gsa.gov](mailto:carla.virgilio@gsa.gov)>, Daniel Mathews - PBS <[daniel.mathews@gsa.gov](mailto:daniel.mathews@gsa.gov)>, "Jack St. John" <[jack.stjohn@gsa.gov](mailto:jack.stjohn@gsa.gov)>

----- Forwarded message -----

From: Gunn, Ashley L. EOP/WHO <(b)(6)>  
Date: Wed, Jan 24, 2018 at 6:44 AM  
Subject: GSA.DOCX  
To: Emily Murphy - A <[emily.murphy@gsa.gov](mailto:emily.murphy@gsa.gov)>

--



EMILY W. MURPHY  
ADMINISTRATOR  
U.S. GENERAL SERVICES ADMINISTRATION  
202.501.0800  
[Emily.Murphy@gsa.gov](mailto:Emily.Murphy@gsa.gov)    [www.gsa.gov](http://www.gsa.gov)

--

Jack St. John

Acting General Counsel  
General Services Administration  
202-706-8130

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**Subject:** Fwd: GSA.DOCX  
**Date:** Wed, 24 Jan 2018 06:28:30 -0800  
**From:** Daniel Mathews - P <daniel.mathews@gsa.gov>  
**To:** Michael Gelber <michael.gelber@gsa.gov>  
**Message-ID:** <CACDZuPVaxgBZrLeRRdqOvCfZN-5K6aWmgf\_ty-zt0r8pveMdw@mail.gmail.com>  
**MD5:** b721e8e8f87b099051346bdf656f4cc8  
**Attachments:** NoName\_1 (b)(5) [REDACTED]

Daniel W. Mathews  
Commissioner  
Public Buildings Service  
US General Services Administration  
202-501-1100  
[daniel.mathews@gsa.gov](mailto:daniel.mathews@gsa.gov)

Sent from my iPhone

Begin forwarded message:

**From:** Emily Murphy - A <[emily.murphy@gsa.gov](mailto:emily.murphy@gsa.gov)>  
**Date:** January 24, 2018 at 8:27:35 AM EST  
**To:** Brennan Hart <[brennan.hart@gsa.gov](mailto:brennan.hart@gsa.gov)>, Carla Virgilio <[carla.virgilio@gsa.gov](mailto:carla.virgilio@gsa.gov)>, Daniel Mathews - PBS <[daniel.mathews@gsa.gov](mailto:daniel.mathews@gsa.gov)>, "Jack St. John" <[jack.stjohn@gsa.gov](mailto:jack.stjohn@gsa.gov)>  
**Subject:** Fwd: GSA.DOCX

----- Forwarded message -----

From: Gunn, Ashley L. EOP/WHO (b)(6) [REDACTED]  
Date: Wed, Jan 24, 2018 at 6:44 AM  
Subject: GSA.DOCX  
To: Emily Murphy - A <[emily.murphy@gsa.gov](mailto:emily.murphy@gsa.gov)>

--



EMILY W. MURPHY  
ADMINISTRATOR  
U.S. GENERAL SERVICES ADMINISTRATION  
202.501.0800  
[Emily.Murphy@gsa.gov](mailto:Emily.Murphy@gsa.gov)    [www.gsa.gov](http://www.gsa.gov)

Ashley Gunn  
Special Assistant to the President  
Cabinet Affairs, The White House

(b)(6)

**Subject:** Fwd: GSA.DOCX  
**Date:** Wed, 24 Jan 2018 13:27:35 +0000  
**From:** Emily Murphy - A <emily.murphy@gsa.gov>  
**To:** Brennan Hart <brennan.hart@gsa.gov>, Carla Virgilio <carla.virgilio@gsa.gov>, Daniel Mathews - PBS <daniel.mathews@gsa.gov>, "Jack St. John" <jack.stjohn@gsa.gov>  
**Message-ID:** <CALC5MEw2GO+975YnkqE8\_rWTMU0zZ0nkPik+bWWABkQJ-OvYtw@mail.gmail.com>  
**MD5:** c452efbd13f23 (b)(5) e24c81  
**Attachments:** ATT00001.txt (b)(5)

----- Forwarded message -----

From: Gunn, Ashley L. EOP/WHO (b)(6)  
Date: Wed, Jan 24, 2018 at 6:44 AM  
Subject: GSA.DOCX  
To: Emily Murphy - A <[emily.murphy@gsa.gov](mailto:emily.murphy@gsa.gov)>

--



EMILY W. MURPHY  
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# **Exhibit 2**



Office of Inspector General  
U.S. General Services Administration

# Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project

August 27, 2018

## Introduction

On February 12, 2018, the General Services Administration (GSA) presented a revised plan for the Federal Bureau of Investigation (FBI) headquarters consolidation project to the Senate Committee on Environment and Public Works (Senate EPW Committee). The plan recommended razing the FBI's existing headquarters facility, the J. Edgar Hoover (JEH) building on Pennsylvania Avenue in Washington, D.C., and constructing a new headquarters facility on that site. This was a change from GSA's previous approach of seeking a campus facility for the FBI at a suburban location in the Washington, D.C., region.

The GSA Office of Inspector General (OIG) initiated this review on March 12, 2018, in response to a request from the Ranking Member of the House Committee on Oversight and Government Reform's Subcommittee on Government Operations. Our objective was to review GSA's decision-making process for the revised FBI headquarters project plan, including an analysis of whether the revised plan properly accounts for the full costs and security requirements of the project.<sup>1</sup> In the course of the review, we also encountered an issue concerning testimony GSA Administrator Emily Murphy provided on April 17, 2018, to the House Appropriations Subcommittee on Financial Services and General Government in response to questions regarding White House involvement in decision-making regarding the project. We included that issue in our review.

To conduct this review, we held 20 interviews, including with Murphy, GSA Acting General Counsel Jack St. John, GSA Public Buildings Service (PBS) Commissioner Daniel Mathews, and the Unit Chief of the FBI's Headquarters Program Management Office; reviewed over 50,000 GSA documents and emails concerning the FBI headquarters consolidation project; and reviewed congressional testimony of GSA and FBI officials in 2017 and 2018 concerning the decision to rebuild the facility at the JEH site.

Early in the review the OIG learned that during the course of GSA's decision-making on the revised FBI headquarters plan, Murphy met with the President on January 24, 2018, about the project. When we asked about the meeting, some GSA witnesses refused to answer any questions about this and other relevant White House meetings, and some of those said they were told or believed the information was subject to executive privilege. We sought to determine whether GSA took the position that executive privilege precluded sharing information with the OIG, which is part of GSA and within the Executive Branch. Ultimately, GSA's Acting General Counsel informed us that he received direction from White House Counsel's Office regarding the matter. He told us that pursuant to those directions, GSA employees were authorized to disclose to the OIG the existence of the White House meetings, discuss who attended, and discuss any high level agreements that resulted from the meetings;

---

<sup>1</sup> The OIG has been monitoring GSA's efforts related to the FBI headquarters consolidation since August 2013. On March 30, 2017, we issued Audit of PBS's Planning and Funding for Exchange Projects (Report Number A160024/P/R/R17004). The FBI headquarters consolidation exchange project was one of the projects that we reviewed in this audit. We reported that PBS had not fully factored risk into its planning for exchange projects and as a result, cancelled or chose not to pursue several exchange projects.

but not to disclose any statements made by the President. We describe the information we received about the meetings in this report.

The revised plan for the FBI headquarters project presented to the Senate EPW Committee contains a cost comparison showing that the plan to raze and rebuild at the JEH site would be less costly than the cancelled FBI exchange procurement. However, we found that GSA did not include all of the costs in its analysis, and that the JEH demolish and rebuild plan would actually be more costly. We also found that GSA and the FBI intend to construct a Level V secure facility, but until the FBI finalizes a program of requirements it is not clear how this will be achieved. Finally, we found that Murphy's congressional testimony was incomplete and may have left the misleading impression that she had no discussions with White House officials in the decision-making process about the project.

This report first describes background information regarding the FBI headquarters consolidation project and GSA's decision-making process for the revised project plan. It then assesses whether the revised plan GSA provided to the Senate EPW Committee properly accounts for the full costs of the JEH rebuild and the security requirements for the project. Finally, the report describes our concerns regarding Murphy's testimony before the House Appropriations Subcommittee on Financial Services and General Government on April 17, 2018.

GSA provided written comments to our draft report in a response dated August 10, 2018. GSA's comments are included in their entirety in **Appendix A**. We also received comments from Administrator Murphy on the draft report. Because those comments were made in her individual capacity, we have not appended them to the report. In addition, we made excerpts of the report available to FBI officials for their review and comment.

We considered all of the comments we received and have addressed those relating to factual accuracy where appropriate in the body of this report. None of the resulting revisions affected our report conclusions. We respond to certain additional comments made by GSA and Administrator Murphy in **Appendix B**.

## **Factual Background**

### **Need for New FBI Headquarters**

The FBI has occupied the JEH building since construction was completed in 1974. Since then, the FBI's operations and duties have evolved. In the wake of the events of September 11, 2001, the FBI expanded its mission to include greater national security responsibilities, including counterterrorism, counterintelligence, and cyber security. To accommodate its expanded mission, the FBI identified a need for a new headquarters facility in its 2005 Asset Management Plan.

In the 2009 Omnibus Appropriations bill, Congress directed the U.S. Government Accountability Office (GAO) to review the security concerns of the JEH building and associated offsite locations. In a report issued in November 2011, GAO found that actions were needed to address issues with the condition of the FBI headquarters. In response to that review, then FBI Associate Deputy Director Kevin Perkins noted: "[A] new consolidated FBI Headquarters facility



is urgently needed, and we view this as one of our highest priorities for the foreseeable future.” In a March 2013 hearing of the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, entitled “Proposal for a New Consolidated FBI Headquarters Building,” Perkins referenced the November 2011 GAO report and stated:

The FBI has implemented some countermeasures at the JEH building to improve the security of the facility, but those efforts are not a substitution for relocating FBI Headquarters employees to a location that affords the ability to provide true security in accordance with ISC [Interagency Security Committee] standards.

In assessing the concerns raised about the JEH building, GSA and the FBI recognized an opportunity to consolidate FBI personnel at JEH and other locations throughout the D.C. metropolitan area into one modern facility. GSA expected the new headquarters facility would save close to a million square feet in rentable space, eliminate the need for FBI leased space in the National Capital Region, and provide updated workplace solutions tailored to meet the FBI’s needs.

#### **GSA Plans Exchange of the JEH Building for a New Headquarters Campus**

In December 2012, GSA announced its intent to find a new headquarters facility for the FBI. GSA’s plan was to partner with a developer that would design and construct a consolidated headquarters facility in exchange for title to the JEH building and its land. In January 2013, GSA issued a Request for Information to garner reaction from members of the development community, local and state jurisdictions, and other interested parties regarding feasibility, issues, and considerations related to a potential exchange project structure.

In November 2013, the Request for Information was followed by a Request for Expressions of Interest for sites within the National Capital Region to be used for the development of a new FBI headquarters. GSA identified three sites where a new campus headquarters could be built: (1) Springfield, Virginia; (2) Greenbelt, Maryland; and (3) Landover, Maryland.

On December 19, 2014, GSA issued its Phase I Request for Proposals (RFP) for the government to select a short list of no more than five offerors to compete in the Phase II RFP. On October 13, 2015, GSA identified a short list of offerors to proceed to Phase II of the RFP. On January 22, 2016, GSA issued the Phase II RFP to these qualified offerors.

In the Fiscal Year 2017 budget request, GSA and the FBI requested a combined \$1.405 billion to finance the headquarters project. GSA estimated that the \$1.405 billion request, combined with the value of JEH and approximately \$390 million in prior year appropriations, would be enough to fund the project. While the RFP allowed GSA to award the exchange agreement without full funding, GSA maintained that making the award without full upfront funding would put the project at risk.

In early 2017, GSA received developer proposals, which included proposed values for JEH. GSA did not deem the proposals fair and reasonable. GSA found that the proposals fell far short of

the value assumptions that GSA had used when drafting the 2017 budget request. In May 2017, Congress appropriated \$523 million for the FBI headquarters project, which was \$882 million below the GSA and FBI request. GSA had not included any funding for the FBI headquarters consolidation in its Fiscal Year 2018 budget request, given its expectation that the Fiscal Year 2017 budget request would be fully funded.

### **GSA Cancels JEH Exchange and Develops a New Headquarters Plan**

On July 11, 2017, GSA cancelled the FBI exchange procurement, citing a lack of funding as a main reason for the cancellation. The Senate EPW Committee held a hearing, “FBI Headquarters Consolidation Project – What Happened and What’s Next,” on August 2, 2017. The Senate EPW Committee directed then-Acting PBS Commissioner Michael Gelber to provide a new plan for the FBI’s headquarters needs within 120 days.

On August 2, 2017, Christopher Wray was sworn in as the Director of the FBI. On August 3, 2017, Mathews was sworn in as the PBS Commissioner.

Following the August 2, 2017, Senate EPW Committee hearing, GSA and the FBI met regularly to discuss multiple acquisition strategies. Options considered included traditional construction, phased construction, and public-private partnership lease construction with a discounted purchase option or a ground lease-leaseback.<sup>2</sup> GSA focused on a financing strategy. GSA officials told us they believed that public-private partnership options could be used to finance the project in the absence of a multi-billion dollar upfront appropriation.

The Office of Management and Budget (OMB) is responsible for applying the budget scorekeeping guidelines (scoring rules) for federal real property transactions set forth in OMB Circular A-11. OMB uses the criteria in OMB Circular A-11 to determine whether a federal real property transaction scores as a capital lease or an operating lease. If the project scores as a capital lease, Congress must appropriate the full cost of the project, plus interest upfront, for the project to proceed. If the project scores as an operating lease, Congress need only appropriate the annual cost of lease payments, plus interest.

GSA’s interpretation of the scoring rules allowed for a public-private partnership in the form of a ground lease-leaseback to score as an operating lease. GSA advanced its interpretation of OMB Circular A-11 as a matter of policy. As the November 30, 2017, due date for the plan to the Senate EPW Committee approached, the FBI headquarters project intersected with GSA’s policy efforts. GSA officials viewed the FBI headquarters project as a mechanism to apply its broader interpretation of OMB Circular A-11. This interpretation of the scoring rules also presented a viable acquisition strategy for the FBI headquarters, according to GSA officials.

While GSA explored financing options, the FBI evaluated its program of requirements. In a November 6, 2017, conference call with GSA and local government officials, GSA communicated

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<sup>2</sup> In a ground lease-leaseback, the government leases federally-owned land to a private entity, which would then construct a facility and lease the building back to the government. OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget, governs the budgetary treatment of ground lease-leasebacks.

that the FBI's program of requirements was unchanged from the exchange procurement.<sup>3</sup> In late November, the FBI informed GSA that it was developing a plan that reduced the cost and the scope of the project. A chronology created contemporaneously by GSA's Project Executive reflects that in early December 2017, the FBI advised GSA that the FBI planned to reduce its headquarters' personnel requirement by approximately 2,000 people by relocating them nationwide.

After reviewing a draft of this report, GSA commented that in a November 17, 2017, meeting between Mathews and an FBI Assistant Deputy Director, "[I]t became clear to GSA that the FBI was seriously considering the Pennsylvania Avenue site, at the direction of FBI's senior leadership."<sup>4</sup> In her separate comments on the draft report Murphy asserted that the FBI made the decision to stay at the JEH site well before Murphy met with the President. Many of the GSA witnesses we interviewed told us that the FBI under Wray's leadership decided against a suburban campus and in favor of remaining at the JEH site with reduced personnel requirements. Director Wray confirmed to the Senate Appropriations Committee, Commerce, Justice, Science, and Related Agencies Subcommittee that constructing a new building at the JEH site would allow the FBI to reside at the location that the FBI needed while providing the necessary security.<sup>5</sup>

It is not clear from the information GSA provided us precisely when GSA became aware of the FBI's interest in staying at the JEH site. As we describe below, GSA did not focus on the JEH site in its decision-making process until late December 2017 or early January 2018.

#### **December 20, 2017, White House Meeting**

On December 1, 2017, GSA received a 60-day extension from the Senate EPW Committee to provide the new plan for the FBI headquarters needs. The new deadline for the revised plan was January 29, 2018.

Murphy was sworn in as GSA Administrator on December 12, 2017. On December 14, 2017, after meeting with the FBI, Mathews emailed Murphy stating, "There are several things coming out of this meeting we need to discuss. WH has been talking to FBI too."

On December 20, 2017, Murphy met with White House Chief of Staff John Kelly and OMB Director Mick Mulvaney in response to a request from Kelly for an update on the FBI headquarters project. Mathews also attended the meeting.

Murphy told us that she and Mathews went to the meeting prepared to discuss campus options for the project. She said that when they began discussing the campus option, Kelly and

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<sup>3</sup> In a November 6, 2017, email recapping the conference call, the GSA Project Executive stated, "I reiterated that these were informal discussions to accommodate the FBI's internal briefings and that at this time the FBI program and requirements remain unchanged from the previous procurement. I also indicated that GSA is not currently looking for new sites."

<sup>4</sup> See **Appendix A**, page A-2.

<sup>5</sup> Review of the FY2019 Budget Request for the Federal Bureau of Investigation, May 16, 2018.

Mulvaney informed them that the FBI may no longer be seeking a consolidated campus. Murphy said that Kelly and Mulvaney told her that the FBI was concerned about the location of the headquarters. She said they also may have mentioned that the FBI was looking to stay in Washington, D.C. According to Murphy, Kelly suggested that GSA touch base with the FBI to get everyone on the same page. Murphy stated that Kelly and Mulvaney indicated that the goal was to make the FBI happy and that the FBI should be driving the requirement. Murphy noted that funding was a challenge to the project. Murphy also recollected that Kelly or Mulvaney may have mentioned that the President would want an update on the project.

#### **Discussions Between GSA and the FBI About Keeping FBI Headquarters at the JEH Site**

On December 20, 2017, Mathews sent an email to his FBI counterpart on the project and suggested a telephone conversation between Murphy and Wray. On December 21, 2017, Mathews received and passed to Murphy a slide presentation from the FBI regarding renovation options for the JEH building. On December 22, 2017, Murphy received a call from Wray. According to Murphy, Wray informed her in that call of the FBI's interest in remaining at the existing site.

On January 4, 2018, GSA and FBI officials met at the JEH building to discuss options for the FBI headquarters. According to then-GSA Associate Administrator and Acting Chief of Staff P. Brennan Hart III, the meeting was attended by himself, Murphy, Mathews, Wray, then-FBI Associate Deputy Director David Bowdich, and the Unit Chief of the FBI's Headquarters Program Management Office. In his interview, Hart characterized this meeting as the first time that GSA officials met with Wray regarding the project.

Hart informed us that during the January 4, 2018, meeting, GSA and FBI officials discussed plans to renovate the JEH building versus demolishing it and rebuilding on the same site. Murphy told us that at this meeting, FBI staff advised GSA that its headcount requirements had changed and the FBI believed it could stay at its current location and renovate JEH. According to Murphy, the FBI had hired a contractor to develop plans to renovate JEH which accounted for the reduced headquarters personnel count. The FBI presented the renovation plans to GSA. These plans recommended renovating one quarter of the building at a time while FBI personnel remained operating in the sections that were not undergoing renovation. Murphy told us the GSA team was surprised by this decision. Murphy said that up to this point, all discussions she was aware of had focused on a campus scenario for the FBI headquarters. She said that JEH was not GSA's preferred site and that a lot of work had gone into the campus concept.

According to Mathews, GSA communicated its concern to the FBI that if the FBI headquarters stayed at its existing site, it would be difficult to obtain congressional support for full upfront funding for the project. Mathews told us that, if the cost savings between a suburban campus site and the existing site were similar, Wray's preference was to remain at the JEH building. If the campus scenario offered significant savings, Mathews stated, Wray was not opposed to a suburban campus site.

One suggestion briefly discussed at the meeting was a plan to utilize a smaller site for FBI senior leadership in Washington, D.C., and a larger campus for FBI personnel. However, Hart told us

that Wray wanted the FBI headquarters' personnel in one location. Murphy also told us that Wray stated that proximity to the Department of Justice (DOJ) was important to the FBI. Mathews stated that, by the conclusion of the January 4, 2018, meeting, he had not been able to persuade Wray to leave the JEH site in favor of the campus scenario.

#### **Discussions Between GSA and the FBI About Renovation Versus Demolishing and Rebuilding**

After the January 4, 2018, meeting, GSA and the FBI worked to develop options for the FBI to remain at the existing site. As GSA officials evaluated a renovation of the JEH building, they developed serious reservations. GSA officials raised concerns regarding cost, constructability, security, and impact on operations. For example, GSA officials noted that the deteriorating structure of the JEH building would make it problematic to harden the building. Mathews said that it would be "extremely difficult" to renovate while JEH was occupied. The PBS Office of Design and Construction advised him to disagree with a renovation, as it was a "bad idea." Mathews also noted that if a renovation required swing space (temporary office space during construction), it would be faster, cheaper, and more secure to demolish and rebuild.

Given the risks associated with renovation and the FBI's expressed desire to remain at the JEH site, GSA's efforts pivoted to developing a plan to demolish and rebuild at the JEH site. Murphy said she thought that PBS had identified the demolish-rebuild option at an earlier point in time, but had dismissed the idea then due to the FBI's personnel requirements. With the decrease in personnel requirements for JEH, Murphy said that demolish and rebuild was a viable option.

Murphy told us that sometime between January 4, 2018, and January 24, 2018, she discussed the demolish-rebuild option with Wray in a telephone call. Murphy said that Wray "liked the plan," but had some reservations. Murphy stated that she and Wray discussed concerns related to ensuring that the numbers were accurate and determining where to relocate FBI personnel. Murphy noted that Wray was particularly concerned that if the FBI left JEH, it would not be able to return after the rebuild was complete.

Murphy told us that as of January 23, 2018, GSA's recommendation was to demolish and rebuild at the JEH site with a ground lease-leaseback to finance the project. The FBI, according to Murphy, was developing an estimate for renovation. At that point in time, no decisions had been made regarding funding.

#### **White House Meetings on January 24, 2018**

GSA emails and photographs reflect that Murphy, Wray, and others met with the President regarding the FBI headquarters project on January 24, 2018.

When we asked Murphy for information about the meeting, her private counsel stated Murphy was not authorized to discuss specific communications with the President. However, she was

authorized to disclose the existence of White House meetings, attendees at the meetings, the topics of meetings with the President, and the outcomes of the meetings with the President.<sup>6</sup>

Murphy told us that she attended two meetings about the FBI project at the White House on January 24, 2018. The first meeting occurred in Kelly's office, and immediately preceded the second meeting. The second meeting was in the Oval Office with the President.

**Meeting in Kelly's office.** Murphy said that she attended the first meeting with Kelly, Mulvaney, Deputy Attorney General Rod Rosenstein, and Wray. Murphy told us that Mulvaney requested the meeting to ensure that everyone was on the same page prior to the meeting with the President.

Murphy said that during this meeting, Wray reiterated his concern that if the FBI left the JEH building, it would not be able to return to the JEH site after the rebuild was completed. Murphy said that Rosenstein stated that close proximity between DOJ and the FBI headquarters was important to DOJ. Due to the unique security and operational requirements of the FBI headquarters, Murphy and Mulvaney provided assurances that the FBI would return to the site because the building would be designed and constructed to meet the FBI's specific requirements. Murphy stated that upon receiving this assurance, Wray agreed to the demolish-rebuild plan at the existing site.

According to Murphy, all involved in the meeting acknowledged the challenges to a demolish-rebuild plan. The challenges identified were obtaining authorization for the funding level and scope of the project, and securing appropriations for the project. Murphy recalled saying that White House assistance with the funding issues would be appreciated. Mulvaney indicated that all of the agencies needed to work together to secure funding and authorization. Murphy stated that she did not recall discussing a ground lease-leaseback option at that meeting.

**Oval Office Meeting.** Immediately following the meeting in Kelly's office, Murphy met with the President in the Oval Office along with Kelly, Mulvaney, Rosenstein, and Wray. The purpose of the meeting was to provide an update to the President regarding the FBI headquarters project.

According to Murphy, Mulvaney was the first person in the meeting to state that the plan was to demolish and rebuild the FBI headquarters at the JEH site. Murphy told us that the renovation option was not raised at the Oval Office meeting with the President.

Murphy described the conversation in the meeting as "back and forth" with "free flow discussion." Murphy told us that she, Wray, and Mulvaney explained how they collaborated to reach a decision to demolish and rebuild the FBI headquarters. They also discussed swing space, authorization, and appropriation challenges.

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<sup>6</sup> During Murphy's interview, her counsel also stated that the White House Counsel's Office had advised GSA's Acting General Counsel that the presidential communications privilege was being asserted. After reviewing a draft of this report, GSA commented that this was incorrect and that the White House had not asserted executive privilege. Rather, "[t]he White House informed the Administrator, through the Acting General Counsel, that she was not authorized to disclose the content of presidential communications from those meetings. A formal assertion of executive privilege, therefore, was not necessary to justify or explain the Administrator's refusal to disclose those communications." **Appendix A**, page A-8.



Murphy said she presented the ground lease-leaseback as the best funding option because it was more cost effective than incremental funding. She said she also explained that the ground lease-leaseback was less cost effective than full upfront funding, but that GSA did not think that the project could secure full upfront funding.

Murphy told us that there was a general consensus in the room that the government should own the building. Murphy said that she distinguished a ground lease-leaseback option from a lease purchase option. She said she explained that the government would own the building at the end of the term of the lease under the ground lease-leaseback option. Under a lease purchase option, Murphy explained that the government would have the option of purchasing the building at the end of the term of the lease.

According to Murphy, the discussion included the challenges facing the project, such as potential resistance from local congressional delegations. There was a consensus to collaborate to find the funds, develop a legislative strategy, and locate swing space. Murphy told us that Wray was excited about the project; however, he had lingering concerns that the FBI would remain in the swing space, rather than return to the new building. Murphy told us that Wray was interested in making this happen as fast as possible and was grateful to be working together. Murphy said that Mulvaney agreed to work closely with GSA and the FBI on this project.

As described above, pursuant to guidance from the White House Counsel's Office, Murphy did not provide the OIG with information concerning any specific communications or direction from the President at the meeting. However, Murphy stated that at the end of the meeting, she understood that they were moving forward with the demolish-rebuild project at the JEH site, funded through a ground lease-leaseback. She also told us that immediately following the meeting, she communicated that understanding to GSA personnel involved in the project.

GSA emails, including emails from Mathews and Hart, reflect that GSA and FBI personnel who were involved with the project, but not in attendance at the meeting, also understood that the meeting had resulted in a decision or direction to move forward at the JEH site using a ground lease-leaseback funding mechanism.<sup>7</sup> Mathews told us he was not at liberty to talk about the meeting because it was a decision involving the White House. We asked Hart to explain references to the President's "direction" or "instruction" used in his emails. Hart told us he understood the "direction" was simply to execute the plan the FBI and GSA had recommended.

#### **Discussions Between GSA and OMB Regarding Funding**

Shortly after the January 24, 2018, White House meeting, OMB personnel raised objections to the ground lease-leaseback funding option due to scoring rules. GSA leadership endeavored to

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<sup>7</sup> For example, a January 27, 2018, email from Hart to Mathews states: "Ideally I think it would first recap the oval meeting with what POTUS directed everyone to do then ask Emily (GSA) to execute POTUS's orders." In addition, a January, 28, 2018, email from Mathews to the Assistant Director of the FBI Finance Division states: "Though I don't see us conceding these two key points, GL LB [ground lease-leaseback] can be classified as an operating lease and demolish rebuild, as they are necessary to deliver the project the president wants on the timetable he wants it done."

resolve the scoring concerns with OMB. However, according to Murphy, OMB ultimately determined that the ground lease-leaseback was not a viable option.

GSA continued negotiations with OMB on how to fund the project. On February 12, 2018, as part of the Fiscal Year 2018 budget negotiations, the Administration provided Congress with a list of additional items that Congress could consider funding in the budget. The list included \$2.175 billion for the FBI headquarters project. According to GSA officials, OMB indicated to GSA that the FBI project would be funded as part of this budget “add-back.” However, the Consolidated Appropriations Act, 2018, signed into law on March 23, 2018, did not include funding for the project.

Throughout the negotiations with GSA, OMB presented another option for funding the project – the proposed Federal Capital Revolving Fund. The \$10 billion fund would be structured to allow federal agencies to meet large, upfront dollar obligations needed for large scale real property projects. However, the Federal Capital Revolving Fund has not yet been implemented and there is uncertainty as to whether Congress will approve it.

#### **GSA and the FBI Submit Revised FBI Headquarters Plan**

On February 12, 2018, GSA and the FBI provided the *FBI Headquarters Revised Nationally-Focused Consolidation Plan* (Revised FBI Headquarters Plan) to the Senate EPW Committee. The document outlined the Administration’s plan to seek \$2.175 billion to fund the demolition and construction of a new facility at the JEH site. The plan identified the next step as GSA submitting a prospectus to Congress. In the months since GSA and the FBI submitted this plan, Congress has questioned the agencies about it.

On February 15, 2018, the House Oversight and Government Reform Committee, Government Operations Subcommittee held a hearing, “General Services Administration – Checking in with the Government’s Acquisition and Property Manager.” At that hearing, committee members sought information regarding the reasons for rejection of the campus plan in favor of the demolish-rebuild plan.

Similarly, on February 28, 2018, the Senate EPW Committee held its “Hearing on Oversight: FBI Headquarters Consolidation Project.” At the hearing, committee members expressed bipartisan concern about the revised plan. In response to a question regarding whether he was aware of conversations with the President about the project, Mathews indicated that he was not in a position to answer that question. Mathews was also asked whether he had any conversations or communications with the President or any senior White House staff about the project. Mathews answered that he had not spoken with the President, but later clarified that he had spoken with senior White House officials.

On April 17, 2018, Murphy testified before the House Appropriations Committee, Subcommittee on Financial Services and General Government regarding GSA’s Fiscal Year 2019 budget. She was questioned about White House involvement in the FBI headquarters project and did not disclose the White House meetings.



## White House Meeting: June 15, 2018

On June 15, 2018, Murphy attended a meeting with the President at the White House to discuss the FBI headquarters project. Kelly; Rosenstein; Wray; Russ Vought, Deputy Director of OMB; Donald McGahn, White House Counsel; and Marc Short, White House Director of Legislative Affairs and Assistant to the President also attended the meeting. Murphy said the invitees discussed ongoing congressional pressure for a campus project and the funding challenges.



## Issues

### Project Cost Analysis

GSA and the FBI submitted the Revised FBI Headquarters Plan to the Senate EPW Committee on February 12, 2018. The Revised FBI Headquarters Plan estimated total costs of \$3.328 billion to raze the JEH building and build a new headquarters on the site (JEH rebuild). The JEH rebuild is expected to house 8,300 personnel. According to the plan, taking into account previously appropriated funding, GSA and the FBI will require an additional \$2.175 billion to move forward with the JEH rebuild.

The Revised FBI Headquarters Plan contrasts the cost of the JEH rebuild with the cost of the cancelled full consolidation exchange procurement (JEH exchange). Though the Revised FBI Headquarters Plan estimated the JEH exchange to have a higher cost of \$3.565 billion, the JEH exchange was to be a larger facility and house more people. *Figure 1* is an excerpt from the Revised FBI Headquarters Plan that compares the cost of the previously cancelled JEH exchange (referred to as “full consolidation” in *Figure 1*) to the newly recommended JEH rebuild strategy. According to *Figure 1*, given the previously appropriated funding, GSA and the FBI would have required \$2.412 billion in additional funding to move forward with the JEH exchange.

**Figure 1 – Excerpt from GSA and the FBI’s Revised FBI Headquarters Plan**

FUNDING GAP ANALYSIS				 	
FULL CONSOLIDATION			JEH REBUILD		
10,606			8,300		
2017	PERSONNEL		2019		
	CONTRACT AWARD				
\$ 3,565 M	TOTAL		\$ 3,328 M	Comments	
\$ 2,650 M	DESIGN + CONSTRUCTION		\$ 1,926 M	Includes: Design, Construction, Developer Fees, Land, Contingency	
\$ (703) M	FY16 + FY17 APPROPRIATIONS		\$ (703) M	GSA + FBI Construction Appropriations	
\$ (750) M	ANTICIPATED JEH*				
\$ (315) M	DOJ WORKING CAPITAL FUND			Account requires contributions before withdrawals	
\$ 882 M	INCLUDING JEH CREDIT		\$ 1,223 M		
\$ 1,632 M	EXCLUDING JEH CREDIT		\$ 1,223 M		
\$ 915 M	FBI FIT-OUT		\$ 923 M	Includes: IT, Security, FF&E, Move, Decommissioning, PMO	
\$ - M	TEMPORARY SWING SPACE		\$ 479 M	Design and construction excluding rent payments**	
\$ (135) M	FY16 PRIOR YEAR AUTHORIZATION		\$ (135) M		
	DOJ WORKING CAPITAL FUND		\$ (315) M	Recommend DOJ WCF be applied to Fit-Out	
\$ 780 M	SUBTOTAL		\$ 952 M		
\$ 2,412 M	TOTAL SHORTFALL		\$ 2,175 M		

\* Presented value used for planning purposes. Actual bids procurement sensitive.

\*\*Rent not included in this estimate as the differential with current rent payments not determined.

**The Revised FBI Headquarters Plan does not include the full costs of the JEH rebuild.** The Revised FBI Headquarters Plan does not accurately portray the costs and shortfall comparison between the previously cancelled JEH exchange and the JEH rebuild. The plan shows that the JEH rebuild would cost less and require less additional funding than the JEH exchange. However, we determined that the JEH rebuild will have a higher project cost and require more additional funding than the JEH exchange would have. We recreated the Revised FBI Headquarters Plan's Funding Gap Analysis for a more transparent cost comparison (see *Figure 2*). We discuss our recalculations in the subheadings below.

**Figure 2 – OIG Recalculated Funding Gap Analysis**

	JEH Exchange	JEH Rebuild
Total cost (from Revised FBI Headquarters Plan's Funding Gap Analysis)	\$3.565 billion	\$3.328 billion
Add: Non-JEH construction cost	-	\$0.459 billion
Add: Personnel relocation cost (2,306 people)	=	<u>\$0.057 billion</u> <sup>8</sup>
<b>Total OIG Recalculated Cost</b>	<b>\$3.565 billion</b>	<b>\$3.844 billion</b>
Less: Prior appropriations and DOJ Working Capital Fund (from Revised FBI Headquarters Plan's Funding Gap Analysis)	(\$1.153 billion)	(\$1.153 billion)
Less: JEH exchange value (market rate) <sup>9</sup>	████████	=
<b>Total OIG Recalculated Shortfall</b>	████████	<b>\$2.232 - \$2.691 billion</b> <sup>10</sup>

After reviewing a draft of this report, GSA asserted that that our analysis in *Figure 2* creates a misleading impression that a true comparison can be made between the JEH rebuild and the cancelled JEH exchange. However, GSA itself purported to compare the costs of those two scenarios in its Revised FBI Headquarters Plan's Funding Gap Analysis (see *Figure 1*). As we describe further below, GSA's purported comparison omits significant relevant items.

**The JEH value was not factored into the funding needed for the JEH exchange.** GSA did not account for the value that it would receive for JEH under the JEH exchange. Although GSA noted an anticipated \$750 million value for the JEH exchange in the Revised FBI Headquarters Plan, it ultimately excluded that value in the JEH exchange total shortfall calculation. The anticipated JEH value should have been included in order to accurately show the total shortfall calculation. Furthermore, GSA should have used a more accurate JEH value, based upon proposals that GSA received from developers during the exchange procurement. To be most

<sup>8</sup> In response to our inquiry, the FBI estimated \$57 million for personnel relocation costs. After reviewing excerpts of the draft report, the FBI stated that the estimate may range from \$20 million to \$60 million and will be dictated by the number of employees accepting a transfer.

<sup>9</sup> Redactions in this report represent either procurement sensitive information or non-Senior Executive Service personnel names.

<sup>10</sup> According to the Unit Chief of the FBI's Headquarters Program Management Office, the FBI has received some funding for three of the four non-JEH construction projects. Accordingly, we present a range for the total OIG recalculated shortfall.

conservative in our recalculation, we incorporated the lowest JEH value proposed during the exchange procurement, [REDACTED] (see *Figure 2*).

The proposed exchange agreement between GSA and the developer under the JEH exchange supports our conclusion. In the exchange procurement, GSA would not have needed an appropriation for the agreed-upon value of JEH. The JEH value would have been designated by the developer and accepted by GSA in the exchange agreement. This JEH value would have been recognized in the latter years of construction of the new facility. The exchange procurement's Phase II Request for Proposals stated:

As part of this procurement, Offerors are required, among other things, to establish the ***credit they will contribute toward the cost of the consolidated FBI Headquarters in exchange for JEH***. It is the Government's intent that this credit will be utilized toward the end of construction of the consolidated FBI Headquarters facility prior to substantial completion and payment of the Developer's profit or incentives. It is also the Government's intent to make regular progress payments to the Contractor during the construction phase of the project up to a defined Government contribution amount, as described and set forth in the Contract. [emphasis added]

Therefore, GSA would have known, before construction began, that it would not need to request funding for the JEH value under the JEH exchange. Because GSA would not need funding equal to the JEH value, it should have factored the JEH value in the JEH exchange total shortfall calculation.

**The Revised FBI Headquarters Plan does not present per person costs in its cost comparison.**

Although the Revised FBI Headquarters Plan estimated the JEH rebuild would be a less costly option than the JEH exchange, it does not show that the JEH rebuild would cost more per person. The JEH exchange planned to house 10,606 personnel. However, the FBI adjusted the headquarters personnel requirement as part of its "nationally-focused consolidation," under which the FBI would move employees out of the National Capital Region and into facilities in Huntsville, Alabama; Pocatello, Idaho; Clarksburg, West Virginia; and Quantico, Virginia. Due to the plan to relocate employees out of the National Capital Region, the FBI reduced its headquarters headcount requirement to 8,300 personnel. A comparison of the total cost of the two project plans and the per person costs is displayed in *Figure 3* below:

**Figure 3 – Comparison of Cost per Person**

Project	Total Cost	Personnel	
		Count	Cost/Person
JEH Exchange	\$3.565 billion	10,606	\$336,130
JEH Rebuild	\$3.328 billion	8,300	\$400,964

As shown above, based on GSA's cost estimates, the cost per person for the JEH Rebuild is higher than that of the JEH Exchange.

**Relocation and non-JEH construction costs are not included.** The Revised FBI Headquarters Plan estimate of \$3.328 billion for the JEH rebuild is understated because it does not capture relocation and non-JEH construction costs. The FBI estimated \$516 million for these costs. The JEH exchange was planned to accommodate 10,606 personnel, while the JEH rebuild plan seeks to accommodate 8,300. In order to meaningfully compare the two plans, the Revised FBI Headquarters Plan should have accounted for the relocation and construction costs associated with housing the 2,306 personnel at other FBI facilities.

The FBI plans to move these 2,306 employees into facilities in Alabama, Idaho, Virginia, and West Virginia. However, the Revised FBI Headquarters Plan does not account for costs associated with relocating these employees. In response to our inquiry, the FBI estimated \$57 million for employee relocation (see *Figure 2*).<sup>11</sup>

In addition, the Revised FBI Headquarters Plan does not account for costs associated with the construction necessary to accommodate the relocated headquarters personnel. FBI personnel stated that construction activities in Huntsville, Pocatello, Clarksburg, and Quantico are not solely attributable to the relocation of headquarters personnel. Rather, these construction activities are associated with the implementation of the FBI's broader space planning. The FBI estimated the construction "cost-share" for the personnel to be relocated under the Revised FBI Headquarters Plan as \$459 million (see *Figure 2*).

We asked the FBI about the four locations where personnel may be relocated and the FBI provided the following responses:

- Huntsville, Alabama – The FBI recently secured funding related to the Huntsville site. The FBI plans to move approximately 1,800 personnel to Huntsville related to the Revised FBI Headquarters Plan. This does not represent all of the expansion that the FBI foresees at this site.
- Pocatello, Idaho – This project has been funded and construction is underway. The FBI estimates that Pocatello will accommodate approximately 250-300 personnel related to the Revised FBI Headquarters Plan.
- Quantico, Virginia – There is no construction currently at this site to accommodate individuals relocating related to the Revised FBI Headquarters Plan.<sup>12</sup>

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<sup>11</sup> After reviewing a draft of this report, GSA stated that it included relocation costs in its Revised FBI Headquarters Plan as part of the costs associated with FBI Fit-Out and Swing Space. This is incorrect. The FBI Fit-Out and Swing Space costs do not include the \$57 million associated with relocating 2,306 personnel to Alabama, Idaho, Virginia, and West Virginia.

<sup>12</sup> After reviewing excerpts of the draft report, the FBI commented that Quantico is not expected to see a net increase in the number of personnel as a result of the FBI's revised national headquarters strategy.

- Clarksburg, West Virginia – This project has been funded and construction is imminent. The FBI is renovating its cafeteria in order to accommodate approximately 150-200 personnel related to the Revised FBI Headquarters Plan.<sup>13</sup>

After GSA and the FBI submitted the Revised FBI Headquarters Plan, GSA officials discussed internally and with the FBI whether these costs should have been included in the plan. A document internal to GSA suggests these costs should have been included in the Revised FBI Headquarters Plan, but that officials unintentionally omitted the information. Further, a GSA official involved in the cost estimating agreed with our conclusion that these construction costs should have been included in the Revised FBI Headquarters Plan.

As a result of excluding non-JEH renovation costs, the JEH rebuild cost in the Revised FBI Headquarters Plan is understated by \$516 million.

**Swing space cost estimates were appropriately excluded.** Swing space, the temporary space for FBI personnel during construction, is one major cost item under the JEH rebuild plan that would not have existed under the JEH exchange proposal. Under the JEH rebuild plan, GSA will have to locate and renovate swing space for the FBI while the new headquarters building is under construction. Under the JEH exchange proposal, the FBI would have continued to occupy the JEH building while the new headquarters facility was constructed, and therefore swing space would not have been needed.

GSA appropriately included design and construction costs associated with the FBI swing space in its cost estimate comparison, but did not include the costs the FBI would incur in rent payments for the swing space. GSA personnel maintain that the costs associated with the FBI remaining in the JEH building and the cost of swing space rent would be roughly equivalent. If these costs were equivalent, there would be no need to include swing space rent in the Revised FBI Headquarters Plan. We compared the cost of operating and maintaining the current space at JEH with a market estimate for swing space rent and agree that the costs would be roughly equivalent.

### **Facility Security Level Analysis**

Executive Order 12977 established the ISC in October 1995. The ISC revised *The Risk Management Process for Federal Facilities: An Interagency Security Committee Standard* (ISC standard) in November 2016. The ISC standard defines the criteria and processes that those responsible for the security of a facility should use to determine its facility security level (security level) and provides an integrated, single source of physical security countermeasures for all federal facilities.

**The FBI is responsible for determining security level and related countermeasures.** According to the ISC standard:

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<sup>13</sup> After reviewing excerpts of the draft report, the FBI commented that the renovation will convert a portion of its cafeteria into office space in order to accommodate the increase of approximately 150-200 personnel as part of the FBI's national facility strategy which is related to but not dependent on the new FBI headquarters project.

The responsibility for making the final [security level] determination rests with the tenant(s) who must devise a risk management strategy and, if possible, fund the appropriate security countermeasures to mitigate the risk:

For single-tenant facilities owned or leased by the government, a representative of the tenant<sup>14</sup> agency will make the [security level] determination in consultation with the owning or leasing department or agency and the security organization responsible for the facility.

The ISC standard also states, “The facility's security organization will conduct a risk assessment to identify risk(s)....When a facility has one Federal tenant with [sic] law enforcement or security function housed in the facility, this entity should be selected as the security organization for the facility.” In its 2011 report, *Federal Bureau of Investigation: Actions Needed to Document Security Decisions and Address Issues with Condition of Headquarters Buildings*, GAO noted that, “In cases where the FBI is the sole tenant in the facility, the FBI usually signs a waiver stating that the FBI is responsible for conducting its own assessments.”<sup>15</sup> Furthermore, the ISC standard describes a building tenant’s responsibility to mitigate or accept risk. Building tenants must fund security measures to reduce risk, or accept the assessed risk and potential consequences. Therefore, as the lone tenant for the new FBI headquarters building, it is the FBI’s decision to fully mitigate or accept risk.

**The FBI and GSA plan for a Level V facility.** The ISC standard bases security level on a score of five factors:

- Mission Criticality;
- Symbolism;
- Facility Population;
- Facility Size; and
- Threat to Tenant Agencies.

The five factors carry equal weight and receive scores on a scale of 1 to 4. A Level IV security level results from a score of 18-20 points. A sixth factor, intangibles, is then applied and can raise or lower the security level by one level. After applying these criteria, the FBI rated the security level needed for the FBI headquarters at a Level V (very high risk). According to the ISC standard, “the criteria and decision-making authority for identifying Level V facilities are within the purview of the individual agency.”

As of the date of this report, the FBI is drafting the program of requirements for the JEH rebuild. Therefore, we cannot verify the security level that the FBI calls for in the program of requirements, nor how the FBI and GSA intend to achieve it. However, FBI and GSA officials have confirmed their intention that the FBI headquarters will be a Level V facility.

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<sup>14</sup> The representative of the tenant agency approved by the department or agency to make such determinations (e.g., the Director of Security might make all determinations to ensure consistency).

<sup>15</sup> GAO-12-96, November 2011

The program of requirements for the cancelled JEH exchange project, dated January 15, 2016, also called for a Level V facility. It stated, “Because of the symbolic nature of the client, the client mission, and performance of functions critical to the security of the United States a Facility Security Level V designation was selected for this campus.” The FBI has confirmed that this Level V security level is not site dependent, but based upon the operations of the FBI headquarters.

Once the security level is determined, the facility's security organization should conduct a risk assessment to identify risk(s). The risk assessment should compare the baseline level of protection with the risks to the facility. If the risks are in line with the baseline level of protection, no customization is needed. If the risks exceed the baseline level of protection, the FBI must decide if a higher level of protection can be achieved, if a different location should be selected, or if risks will be accepted. Until the FBI completes a program of requirements and risk assessment for the project, it will not be able to confirm that the new facility can meet its security needs.

**The ISC standard does not include a minimum setback distance requirement.** For the FBI’s Level V facility, a very high level of protection is required. This very high level of protection is associated with a set of baseline countermeasures. The current ISC standards outline 93 security countermeasures in seven categories:

- Site;
- Structure;
- Facility Entrance;
- Interior;
- Security Systems;
- Security Operations and Administration; and
- Cyber.

The current ISC standard does not explicitly state minimum setback criteria to achieve Level V security, but rather uses a more integrated design approach that recommends a combination of setback and hardening. This lack of minimum setback is a change from the prior ISC standard, and was prompted by the difficulty of obtaining setbacks in urban settings. The current ISC standard states:

For future building construction (whether lease-construct or government-owned), this Standard shall be applied as part of the requirements definition process. The security organization will conduct a project-specific risk assessment during the requirements definition phase and recommend countermeasures and design features to be included in the design specifications. The FSC will determine whether the identified countermeasures will be implemented or risk will be accepted.<sup>16</sup> Those countermeasures will become part of the facility’s design program requirements to

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<sup>16</sup> FSC refers to Facility Security Committee. In the case of the FBI headquarters, the FSC includes representatives from the FBI and GSA. GSA is not a voting member of the FSC.



ensure required security measures are fully integrated into the configuration of the site and/or building design.

Site security requirements for new construction, particularly setback, must be identified before a site is acquired and the construction funding request is finalized. This may prevent the selection of a site that lacks necessary features, especially sufficient setback, and help reduce the need for more costly countermeasures such as blast hardening.

Under the previous program of requirements for the full consolidation, the FBI was relying on facility setback as one of its main countermeasures. However, with the lesser setback at the JEH site, the FBI will have to integrate alternative countermeasures to achieve the desired level of security.

In response to our questions about the FBI's plans for security countermeasures for the JEH rebuild, an FBI official provided the following response:

The urban location and site configuration will require [*sic*] new approach to meet FBI's operational and security requirements. This will include a varied approach including but not limited to increased hardening, greater application of perimeter protections, and progressive collapse requirements. It will also include re-positioning sensitive operations deeper into the core of the facility, operational and administrative changes and security mitigations as we adjust planning from a suburban campus to a limited metropolitan property location. The blast protection at the JEH will be revised to adjust to the level appropriate for being located in a metropolitan location.

#### **Administrator Murphy's April 17, 2018, Testimony**

Murphy told us that in advance of the House Appropriations Committee, Subcommittee on Financial Services and General Government hearing, she participated in a minimum of four preparatory sessions. Murphy said she thought she would be asked at the hearing if the White House was involved in the FBI headquarters project. She stated that the participants in the preparatory sessions agreed that she should try to answer the substance of the question without specifically addressing the White House meetings. If pressed, she would answer that "it would be inappropriate to comment on any discussions I had or did not have with the President."

On April 17, 2018, Murphy testified at the House Appropriations Committee, Subcommittee on Financial Services and General Government hearing. During the hearing, Murphy was asked about the FBI headquarters project by the Subcommittee's Ranking Member, Representative Mike Quigley:

Representative Quigley: Thank you, Mr. Chairman. Thank you so much for being here and again for your service. To your knowledge when did the administration make the decision not to build the suburban FBI facility and instead rebuild where it is?



Murphy: That's – thank you, sir. It's my understanding when – and again I was confirmed in December of last year so I want to be clear that I was not involved with many parts of the decision but I want – I'm going to try and answer your question as fully and as completely as I may – as possible, that last July the – that GSA and the FBI working with OMB reevaluated the lease exchange that had previously been proposed for building a new FBI headquarters and prioritizing the need that there was a new FBI headquarters that was absolutely required. EPW asked – the Environmental and Public Works Committee – forgive me, asked GSA and the FBI to go back and provide them with a report, a plan on the alternatives given that it had also been 14 years since the original program requirements had been developed.

Murphy was then asked about White House involvement in the FBI headquarters project.

Representative Quigley: Was anyone else – at the White House involved with briefing you or to your knowledge did the [P]resident or any of the other officials at the White House consult with any of these other agencies in the decision-making process?

Murphy: Well, sir, the FBI was the one who came to me and said that there's – their requirements had changed, they no longer required a campus for 11,000 individuals, they were looking at a campus – they only had a requirement for about 8,300 individuals and based on that they wanted to put the J. Edgar Hoover site back into play. They actually requested that GSA consider renovating the building. In my conversations with GSA and then with the FBI we pushed back and didn't believe that was the right answer. We thought that the renovation of the building wasn't going to address setback issues and further given that it uses something called post-tensioned cabling to support it would – that any hardening we tried to do with the building wouldn't be successful and that would be a long-term project that was – it – put the FBI's initiative at risk. So, GSA then suggested that instead if the requirement was to stay in proximity to the Department of Justice and that location worked and it had the infrastructure in place that GSA proposed instead taking the opportunity to demolish the current FBI headquarters and rebuild on that site something that had (ph) the setbacks, that could do the – couldn't have hardening, that could meet the requirements of the FBI for that new reduced headcount.

We asked Murphy why she did not disclose the White House involvement in response to this question. Murphy answered that she did not think that was what Representative Quigley was asking. Murphy told us that she interpreted the question as asking how the location decision was made and who she worked with in making the decision. Murphy told us that her answer focused on the substance of the decision regarding the location of the FBI headquarters. Murphy told us that she believed her answer was truthful.

Immediately following her answer quoted above, Representative Quigley asked:

Representative Quigley: But again, to your knowledge was the [P]resident or anyone at the White House involved in those discussions either with your predecessors or people you're working with now or yourself?

Murphy: Sir, to my knowledge – the direction that we got came from the FBI. They – it was the FBI that directed GSA as to what its requirements would be. We obviously did, given that it is a substantial budget request, we coordinated that request with OMB to make sure that – to provide for funding but the requirements were generated by the FBI.

When asked why she did not disclose White House involvement in response to this second question, Murphy told us that she was trying to answer where the “instruction” came from. She indicated that the instruction came from the FBI. Murphy also told us that Representative Quigley’s opening question asked about the decision to build the FBI headquarters at the existing site, and that she thought that the follow-on question’s reference to “those discussions” referred back to his opening question. As noted above, the opening question posed by Representative Quigley was “[t]o your knowledge, when did the administration make the decision not to build the suburban FBI facility and instead rebuild where it is?” Murphy said that she interpreted both of Representative Quigley’s subsequent questions to relate to this question.

When asked why she did not give the answer that was agreed upon in the preparatory sessions, “it would be inappropriate to comment on any discussions she had or did not have with the President,” Murphy told us that she thought that response would “derail” the hearings and not answer the substance of the question.

We found that Murphy’s answers to the questions about White House involvement were incomplete and may have left the misleading impression that she had no discussions with the President or senior White House officials in the decision-making process about the project. Representative Quigley explicitly asked her whether any White House official briefed her or consulted with the other agencies in the decision-making process. She responded by describing discussions between the FBI and GSA about the FBI’s desire to reconsider the JEH site and whether to renovate the existing building or raze and rebuild. The congressman then asked again whether the President or anyone from the White House was involved in “those discussions.”

Despite her expectation going into the hearing that she would be asked about White House involvement in the project, and despite this second explicit inquiry about discussions with White House officials, Murphy again chose not to disclose the three meetings she had had with White House officials in advance of GSA’s submission of the revised plan for the project. Nor did she state (as she told us she had been prepared to do) that it would be inappropriate for her to comment on any discussions she had or did not have with the President. Instead, she described discussions between GSA and the FBI and briefly mentioned coordinating funding for the project “with OMB.” As a result, her testimony may have left the misleading impression that she had no discussions with the President or senior White House officials in the decision-making process about the project.

Murphy told us that she understood the questions were about how the decision to locate the headquarters at the JEH site was made. Even assuming that was her interpretation of the questions, by Murphy's own account to us, the White House meeting on December 20, 2017, was an integral part of GSA's decision-making process on that issue. Murphy told us that at that meeting she and Mathews began presenting campus options for the project, but were told by Kelly and Mulvaney that the FBI was concerned about the location of the headquarters and may no longer be seeking a consolidated campus. She said they also told her that she should touch base with the FBI to get everyone on the same page, and that the goal was to make the FBI happy and the FBI should drive the requirement. After receiving that direction, Murphy talked with Wray and learned of his preference to stay at the JEH site with reduced personnel requirements. GSA and FBI personnel then began discussing options for staying at the JEH site. Similarly, Murphy's account of the January 24, 2018, White House meetings reflect that those meetings were also part of how the decision to rebuild, rather than renovate, the FBI headquarters at the JEH site was made.

Murphy told us that she believed her answers to Representative Quigley were truthful. We agree that her responses were literally true. However, we found that because she omitted any mention in her answers of her discussions with Kelly, Mulvaney, and the President during the decision-making process for the Revised FBI Headquarters Plan, her testimony was incomplete and may have left the misleading impression that she had no discussions with the President or senior White House officials in the decision-making process about the project.

After reviewing a draft of this report, Murphy requested that we remove all discussion of her testimony from our report. Murphy asserted that our conclusion is unfounded and unfair because the congressman's questions were "clearly limited" to the decision to maintain the location of the FBI headquarters at its present site. We disagree and believe the congressman's questions speak for themselves, as do Murphy's answers at the hearing. Murphy's answers went well beyond the decision not to build a suburban FBI facility.

In response to the congressman's first question about whether the President or any other White House official consulted with the agencies during the decision-making process, Murphy described at length the discussions GSA and the FBI had about the decision whether to renovate the JEH building or raze and rebuild on the site. Immediately after her description of those discussions about renovation versus raze and rebuild, the congressman again asked, "was the President or anyone at the White House involved in those discussions either with your predecessors or people you're working with now or yourself?" As described above, Murphy herself told us that at the January 24, 2018, meeting with Kelly and Mulvaney, she and Mulvaney assured Wray that the FBI could return to the JEH site after a rebuild, which helped persuade Wray to support the raze and rebuild scenario rather than the renovation option the FBI had been advocating. Under these circumstances, we cannot ignore Murphy's failure to disclose that she had discussed those very issues with the President and others at the White House.

In the alternative, Murphy requested that we delete our finding about her testimony and replace it with language she requested for inclusion in the report. For the reasons described in this section, we cannot do so.

## Conclusion

Our review found that GSA did not include all of the costs in its Revised FBI Headquarters Plan, and that the JEH demolish and rebuild plan would cost more than the cancelled JEH exchange. We also found that the FBI determined that the security level for the new FBI headquarters is Level V. However, the security level and the countermeasures cannot be definitively determined until the program of requirements is complete and additional risk assessments are completed. As the project progresses, the FBI will further define the specific security needs and the requisite countermeasures for the new FBI headquarters. Lastly, we found that Administrator Murphy's testimony before the House Appropriations Committee, Financial Services and General Government Subcommittee on April 17, 2018, was incomplete and may have left the misleading impression that she had no discussions with the President or senior White House officials in the decision-making process about the project.

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## Appendix A – GSA Comments

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GSA Chief of Staff

August 10, 2018

MEMORANDUM FOR: CAROL F. OCHOA  
INSPECTOR GENERAL (J)

FROM: ROBERT BORDEN  
CHIEF OF STAFF (AC)

SUBJECT: Review of GSA's Revised Plan for the Federal Bureau of  
Investigation Headquarters Consolidation Project

Thank you for the opportunity to review and respond to the draft Office of Inspector General (IG) report titled "Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project" (the Draft Report). Pursuant to your transmittal Memorandum dated July 27, 2018, the following comments are timely submitted by August 10, 2018.

As the mission of the IG is "to help the GSA effectively carry out its responsibilities and to protect the public interest by bringing about positive change in the performance, accountability, and integrity of GSA programs and operations," GSA wants to ensure that the IG's final report includes all relevant facts and accurately represents the events regarding GSA's decision-making process for the revised FBI headquarters project plan. GSA disagrees with a number of the initial findings, assumptions, and statements in the Draft Report and believes that the Draft Report in its current form contains multiple inaccuracies and incorrect conclusions. It is imperative that the Draft Report be amended to accurately reflect GSA's actions, as the FBI headquarters project is of great public importance, with critical national security implications. GSA has worked diligently with its FBI partners to ensure the project is managed in the best interest of our country.

GSA has several overarching concerns with the Draft Report. First, the chronology of GSA's decision-making process is incomplete, omitting key meetings and discussions between GSA and the FBI during the fall of 2017. Furthermore, the incomplete chronology inaccurately reports on several important facts, including the outcome of the briefing held on January 24, 2018. Second, the Draft Report incorrectly claims that the White House asserted Executive Privilege during the course of this review. Third, GSA disagrees with the "OIG Recalculated Funding Gap Analysis" and stands behind the project's cost analysis that the FBI and GSA submitted to Congress in the *FBI*

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## Appendix A – GSA Comments (cont.)

*Headquarters Revised Nationally-Focused Consolidation Plan* (Revised FBI Headquarters Plan). Finally, and most notably, despite the IG's conclusion in its Draft Report that Administrator Murphy's April 17, 2018 testimony before the House Appropriations Subcommittee was truthful, the Draft Report includes wide-ranging, speculative allegations regarding that testimony which serve as an unnecessary distraction to the report's stated purpose of reviewing GSA's decision making process on the revised FBI headquarters project plan.

### Chronology and Accuracy of Findings

The Draft Report misrepresents the chronology of events associated with issuance of the FBI's and GSA's February 12, 2018 Revised FBI Headquarters Plan.

By focusing on the few meetings at the White House, the Draft Report ignores numerous other meetings<sup>1</sup> and conversations held by GSA and FBI representatives prior to the initial December 20, 2017, briefing for the White House Chief of Staff. In the Draft Report, the IG suggests that the GSA/FBI project team was directed to shift planning efforts from other preferred site options at the behest of senior White House officials. This simply is not true. The shift in location was a direct result of the input and direction from senior leadership at the FBI, particularly during the months of October, November, December 2017, and early January 2018 (see *GSA Questions for the Record* response #34, 02/28/2018 Senate hearing).

GSA provided the IG with documents and testimony that show when and how the location evolved from a potential suburban campus site to the current Pennsylvania Avenue location. However, the Draft Report does not reference any of the meetings or communications with the FBI that occurred before the January 4, 2018, meeting with the FBI Director. These interactions include a November 17, 2017, meeting between the PBS Commissioner and FBI Assistant Deputy Director. At the November 17 meeting (more than a month before the December 20 White House briefing and two months before the January 24 White House briefing), it became clear to GSA that the FBI was seriously considering the Pennsylvania Avenue site, at the direction of the FBI's senior leadership.

<sup>1</sup> The GSA/FBI project team was in contact almost every day during this process. Dates of note for senior level interactions include the: October 10, 2017 GSA/FBI meeting as a part of Winchester, VA groundbreaking; October 12, 2017 PBS Commissioner's conversation with the FBI Director at the Atlanta (GA) field office opening; and October 25, 2017 tour of the FBI Headquarters for the GSA Administrator and PBS Commissioner by FBI officials. These meetings were in addition to calls and meetings between senior PBS and FBI officials on November 3, November 14, November 17 and December 7 prior to the GSA Administrator's confirmation on December 12, and additional contacts on December 14, and December 19, 2017. Calendar invitations and/or e-mails memorialize these interactions.



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## ***Appendix A – GSA Comments (cont.)***

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As noted in the Draft Report, the December 20 briefing resulted in two additional conversations between GSA and FBI leadership: a December 21 telephone conversation between the PBS Commissioner and FBI Assistant Deputy Director, and the first conversation between the FBI Director and GSA Administrator on December 22. In both conversations, FBI officials reiterated their interest and desire to locate the new headquarters on Pennsylvania Avenue. As a result of these calls and meetings, the GSA/FBI project team began to evaluate options to address the FBI's space requirements at the Pennsylvania Avenue site (see Interagency Briefing presentations, dated December 21, 2017, and January 4, 2018, as well as Internal Agency presentation, dated December 28, 2017). Finally, the proposed downtown location was discussed at length at the January 4 meeting between the FBI and GSA, with FBI once again expressing their clear preference to remain at the Pennsylvania Avenue location.

The GSA and FBI representatives attending the January 24 White House meetings had already agreed and decided to locate the new headquarters at 935 Pennsylvania Avenue NW in Washington, DC. The only issues that had not been fully addressed prior to the January 24 White House meetings were whether GSA should renovate or demolish and then rebuild the FBI headquarters at its current site and how to finance the project (Federal appropriations or some type of public/private partnership). The claim that GSA and FBI "received direction from the President" (Draft Report, p. 6) at the January 24 meeting is unsubstantiated and conclusory. Further, the assertion is not supported by the section's conclusion, which does not attribute a decision to the President. Instead, the section's conclusion states that the IG's review of GSA emails reflected that some GSA personnel believed the meeting had resulted in a decision to fund the FBI headquarters project using a ground lease-leaseback. GSA asks that you remove this claim as its inclusion in the section's introductory paragraph creates a false and inaccurate impression.

The Draft Report's reference to a November 6, 2017, conference call (Draft Report, p. 4) with local officials (representatives from Prince George's County, MD), where GSA and FBI attendees made no reference to any programmatic requirement changes, implies that that these changes were not being discussed internally by Federal officials. That, too, is inaccurate. Since the August 2, 2017, Senate Environment and Public Works Committee hearing, the GSA/FBI project team had been evaluating a variety of options as the team drafted the plan requested by the Committee. The November 6, 2017, meeting was the fourth in a series of discussions with non-Federal government offices, which included the District of Columbia on October 18, Maryland on October 24, and Virginia on October 26, to review site and local planning opportunities following GSA's cancellation of the exchange procurement. Not discussing possible changes to the Federal Government's requirements at these meetings does not mean, as the Draft

## ***Appendix A – GSA Comments (cont.)***

Report incorrectly implies, that the GSA/FBI project team was not considering these changes at that time.

The Draft Report (Draft Report, p. 3) identifies the number of offerors GSA selected for Phase II of the Request for Proposals. GSA previously has not made this number public and requests it be redacted in both places from the final version of the IG report.

### **Project Cost Analysis**

GSA takes issue with the Draft Report's attempt to compare costs associated with the the February 12 Revised FBI Headquarters Plan with costs of the prior suburban consolidation plan.<sup>2</sup> As detailed above, FBI leadership made a clear, programmatic decision that its headquarters facility must remain at the current Pennsylvania Avenue site. This decision meant that any suburban consolidation, regardless of its cost, would not meet FBI's operational needs, and would not be pursued.

The Draft Report's inclusion and discussion of Figure 2 (the "OIG Recalculated Funding Gap Analysis") creates the misleading perception that a true comparison can be made between the costs of the "JEH Exchange" and "JEH Rebuild" scenarios (as so labeled in the Draft Report). In fact, this attempted comparison represents an "apples vs. oranges" exercise because the FBI's needs no longer can be satisfied through a suburban consolidation as was envisioned under the "JEH Exchange."

GSA stands behind the cost figures presented in the February 12 Revised FBI Headquarters Plan, as that plan and those figures accurately describe the costs to construct a new facility at the current location that meets FBI's current program requirements. GSA also believes the current plan represents the most cost-effective means of satisfying the FBI's stated needs. The Draft Report fails to identify any alternate housing and cost scenario that would meet the FBI's requirements in a more efficient or cost-effective manner.

GSA does not agree with the Draft Report's conclusion that the J. Edgar Hoover (JEH) demolish-rebuild plan would cost more than a full suburban consolidation. Pages 8 and 11 of the February 12 Revised Headquarters Plan clearly and accurately present the costs to construct a full suburban campus (\$3.565 billion), and to demolish and rebuild a new headquarters on the current JEH Building site (\$3.328 billion). The plan also accurately presents the appropriations currently available and the additional appropriations that would be needed to construct and occupy either of the facilities

<sup>2</sup> The February 12 Plan represented the first time GSA publicly disclosed the total costs of the prior suburban consolidation plan, which included the cost of fit out, a number that previously had not been shared.



## Appendix A – GSA Comments (cont.)

(\$2.412 billion and \$2.175 billion respectively). The Draft Report does not dispute the accuracy of these figures.

Instead, the Draft Report assigns additional offsite costs to the JEH demolish-rebuild project, and credits potential sale proceeds of the JEH property to the suburban campus solution. These actions have the effect of improperly inflating the direct costs of the demolish-rebuild project and deflating the direct costs of the suburban campus solution from the actual costs of both projects. Presenting the project costs in this fashion is misleading and inaccurate. Therefore, the Draft Report's conclusion that the demolish-rebuild project would cost more than a full suburban consolidation is also inaccurate.

Specifically, Figure 2 of the Draft Report inaccurately suggests that the funding gap associated with the now-obsolete suburban campus solution is [REDACTED] due to a credit attributed to JEH exchange value. This statement, and the assumption underlying it, is not correct. GSA cancelled the prior FBI headquarters procurement, which included an exchange component, on July 11, 2017.<sup>3</sup> Thus, even if the FBI's headquarters needs allowed for a suburban solution, which they do not, GSA likely would not include an exchange as part of any such procurement. Additionally, any proceeds from the sale of the JEH site could not be claimed until the FBI takes occupancy of a new facility upon vacating the current site. As a result, any value that could be extracted from a sale of the JEH site would not be available until after the FBI's relocation, could not be used to reduce the amount of appropriated funds required to proceed with a full suburban campus and would require separate Congressional action to utilize these sales proceeds for this project. Moreover, as GSA learned through the previous procurement, including the JEH site in an exchange would significantly diminish the value of the property and would not be in the best financial interest of the taxpayer. The \$2.412 billion figure presented by GSA is the correct amount required to proceed with the full suburban campus and not the [REDACTED] figure presented in the Draft Report.

The Draft Report is correct that the February 12 Revised FBI Headquarters Plan "... does not present per person costs in its cost comparison." (Draft Report, p. 11). This omission is because the Senate Committee's request for the Plan presented no such requirement, and doing so was unnecessary to the presentation of a project cost estimate for a facility meeting the FBI's current needs. The intent of the February 12

<sup>3</sup> The exchange procurement was cancelled due to the lack of appropriated funding. The complexities and value realization associated with the exchange component, as well as suggestions of rescission of then-available project funding, compounded the challenges associated with the project's funding strategy. These factors contributed to diminishing developer interest and undermined confidence in the Government's ability to successfully implement the exchange procurement. Regardless, GSA requests any JEH valuations from appraisals, bidders or otherwise should not be made public and be redacted from the final report since, notwithstanding the cancellation of the prior procurement, such information remains confidential and procurement sensitive.

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## ***Appendix A – GSA Comments (cont.)***

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Revised FBI Headquarters Plan was to provide a recommendation on how to complete the new FBI Headquarters, as stated by FBI senior leadership, as well as the funding needs for this project. As was observed regarding Figure 2 of the Draft Report, GSA similarly believes that Figure 3 (Draft Report, p. 11), and its associated discussion, is misleading to the extent it is based on a flawed incorporation of figures associated with the cancelled exchange procurement. Revisions to this section are requested to address these cost-related errors.

Next, the Draft Report is not correct in stating that “[r]elocation ... costs are not included” (Draft Report, p. 11). Pages 8 and 11 of the February 12 Revised FBI Headquarters Plan present move costs under the \$923 million allocated for “FBI Fit-out” and under the \$479 million allocated for “Swing Space.” The “Swing Space” figure includes a footnote that addresses the rent payments associated with swing space, which the Draft Report agreed were appropriately excluded from the February 12 Plan. Accordingly, an additional \$57 million (reflected in Figure 2 in the row titled “Add: Relocation cost”) should not be included in Figure 2.

Regarding FBI relocation and remote site costs, the Draft Report states:

FBI personnel stated that construction activities in Huntsville, Pocatello, Clarksburg and Quantico are not solely attributable to the relocation of headquarters personnel. Rather, these construction activities are associated with the implementation of FBI’s broader space planning. FBI estimated the construction ‘cost-share’ for headquarters personnel as \$459 million (see Figure 2). (Draft Report, p. 11-12).

GSA understands the FBI independently provided information on the status and funding composition of its other capital construction projects. As such, GSA is not able to evaluate the basis or accuracy of this “cost share” figure. Nonetheless, GSA does not believe these offsite costs should be attributed to the JEH demolish-rebuild project. They are independent and distinct costs, and should be considered separately.

GSA acknowledges discussions within the project team on how best to represent the costs of other FBI locations in Alabama, Idaho, West Virginia and Virginia (Draft Report, p. 12). However, GSA did not “unintentionally” omit this information from the February 12 Revised FBI Headquarters Plan, as suggested by the Draft Report. The Draft Report states, “... a GSA official involved in the cost estimating agreed with our conclusion that these construction costs should have been included in the Revised FBI Headquarters Plan.” (Draft Report, p. 12). Notwithstanding the Draft Report’s inclusion of one unnamed team member’s opinion on this specific matter, GSA requests that the final report note that other GSA team members did not share this opinion. Moreover, and

## **Appendix A – GSA Comments (cont.)**

significantly, the February 12 Revised FBI Headquarters Plan presented GSA's position then, as now, on this issue and question.

In sum, GSA disagrees with the Draft Report's conclusion that "... GSA did not include all of the costs in its Revised FBI Headquarters Plan, and that the JEH demolish and rebuild plan would cost more than the cancelled JEH exchange" (Draft Report, p. 18). As discussed above, GSA stands behind the cost estimates to demolish the current JEH Building and construct a replacement facility on that site to meet FBI's headquarters space requirements. The Draft Report inappropriately inflates direct costs of the demolish-rebuild project and deflates the costs of the suburban solution. More importantly, the Draft Report seeks to draw a misleading comparison between a suburban housing strategy that does not reflect FBI's current stated requirements, and the February 12 Revised FBI Headquarters Plan that does address those requirements.

### **Facility Security Level Analysis**

GSA has no comments on information presented in this section. The text regarding the workings of the Interagency Security Committee and Facilities Security Committee correctly represent GSA's and FBI's roles and responsibilities regarding this issue. The section also correctly states the work that remains regarding this matter.

### **References to Executive Privilege**

The Draft Report incorrectly asserts in two places that the White House asserted the presidential communications privilege. It appears that this assertion is based on an alleged statement made by the Administrator's private counsel, who does not represent, and is not authorized to assert a privilege on behalf of, the White House, GSA or the United States. To the extent the Administrator's private counsel made that unauthorized statement, he was incorrect. In any event, his comments regarding executive privilege have no legal bearing or effect. We ask that your office remove the incorrect and problematic references to presidential communications privilege.

As the Acting General Counsel explained to your office on at least three separate occasions, the White House has not asserted executive privilege.<sup>4</sup> Instructions not to disclose confidential information within the Executive Branch are not assertions of privilege. In this case, the White House exercised its authority to control the dissemination of information about confidential meetings with the President and his senior advisors. The White House informed the Administrator, through the Acting General Counsel, that she was not authorized to disclose the content of presidential

<sup>4</sup> May 30, 2018 meeting between GSA Acting General Counsel Jack St. John, Counsel to the Inspector General Ed Martin and [REDACTED], with GSA Associate General Counsel Eugenia Ellison in attendance; June 18, 2018 interview of St. John [REDACTED] in attendance; and June 20, 2018 meeting between St. John, Martin, and [REDACTED], with [REDACTED] in attendance.



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## ***Appendix A – GSA Comments (cont.)***

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dissemination of information about confidential meetings with the President and his senior advisors. The White House informed the Administrator, through the Acting General Counsel, that she was not authorized to disclose the content of presidential communications from those meetings. A formal assertion of executive privilege, therefore, was not necessary to justify or explain the Administrator's refusal to disclose those communications.

### Administrator Murphy's April 17, 2018 Testimony

As the Draft Report found, Administrator Murphy's testimony on April 17, 2018, before the Subcommittee on Financial Services and General Government, of the U.S. House of Representatives Committee on Appropriations, was truthful. We disagree and object to the Draft Report's inflammatory suggestion that Administrator Murphy's answers to questions posed to her about White House involvement in the Revised FBI Headquarters Plan were incomplete or potentially misleading. The Draft Report did not find an intent by the Administrator to mislead, nor any evidence that her testimony did mislead. GSA was surprised by the inclusion of the section about Administrator's testimony in your review and asks that you remove it from your final report.

After reviewing 50,000 pages of documents and interviewing the Administrator on two separate occasions, your office concludes in the Draft Report that the Administrator's responses to Representative Quigley during the April 17, 2018, hearing were true. This statement, that she responded truthfully to the questions posed to her during the hearing, is the only conclusion in this section of the Draft Report supported by the facts as presented in the Draft Report. We find it puzzling and disappointing that your statement affirming the truthfulness of the Administrator's testimony is currently buried in the final paragraph of this section of the Draft Report behind speculative, and repetitive, conclusions that her testimony "may have left [a] misleading impression."

Additionally, the Draft Report states that the Administrator believed her answers were truthful. It is a GSA practice to review testimony transcripts following a hearing before a Committee of Congress. If GSA finds cause for clarification before or after reviewing a transcript, GSA submits a letter to Congress correcting the record, as Commissioner Mathews did after his February 28, 2018, hearing. Following this standard practice, GSA's Office of Congressional and Intergovernmental Affairs and the Administrator reviewed the April 17 testimony and, being satisfied that it was fully accurate, did not provide any further clarification to Congress.

Notwithstanding your office's suggestions that the Administrator's responses were incomplete or potentially misleading, the actions of the Subcommittee, and the

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## ***Appendix A – GSA Comments (cont.)***

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Members who directed the questions to Administrator Murphy that are discussed in this section of the Draft Report, suggest otherwise. It is common practice for agencies to receive follow-up "questions for the record" (QFRs) following hearings such as Administrator Murphy's on April 17. Indeed, GSA did receive a set of QFRs following this hearing. It is significant and telling that none of the QFRs received by GSA following the hearing sought any follow-up, further explanation, or elaboration regarding the Revised FBI Headquarters Plan, including Administrator Murphy's responses related to White House meetings or involvement.

We do not believe it is necessary or appropriate for the Draft Report to include subjective characterizations and suggestions by your office regarding Administrator Murphy's testimony on April 17 when the Subcommittee, and the Members who participated in the hearing, are more than capable of raising such concerns themselves, and have decided, to date, not to do so.

### Conduct Issues

GSA also has questions and significant concerns regarding the conduct of your office and staff in connection with the interviews conducted with GSA staff. Senior GSA officials promptly made themselves available to be interviewed, sometimes twice, to assist with your office's review, but many GSA officials left their interviews feeling the conduct of your office was inappropriate, outside of normal business practice, deceptive, and, at times, hostile.

The concerning conduct occurred primarily in a number of interviews in which your staff focused almost exclusively on meetings that occurred at the White House. During these interviews, GSA officials communicated to your office that they were not authorized to discuss presidential communications. We understand that your office may take a different view as to your authority to compel disclosure of all information, but it was disappointing that your staff chose, during those interviews, to employ bullying tactics that appeared intended to threaten, intimidate and coerce GSA officials into divulging those communications directly. Furthermore, despite a clear agreement between GSA's Acting General Counsel and your counsel that your office would not ask questions about specific presidential communications in subsequent interviews, your office disregarded that agreement and asked pointed questions about communications that were explicitly out of bounds.

GSA will continue to diligently engage and support your office's reviews of GSA programs and operations. Going forward, GSA asks that you help ensure the conduct of

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## ***Appendix A – GSA Comments (cont.)***

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future IG interviews be more respectful and collegial.

### Conclusion

In conclusion, it is imperative that the Draft Report be amended to accurately reflect GSA's actions, as the FBI headquarters project is of great public importance, with critical national security implications, and GSA has worked diligently along with the FBI to ensure it is managed in the best interest of our country.

First, GSA requests that the chronology of the decision-making be revised to include key meetings and conversations between GSA and the FBI in the fall of 2017 as detailed above, and that the inaccurate reporting in the section titled "White House Meetings on January 24, 2018" be removed.

Second, we ask that your office remove the incorrect and problematic references to presidential communications privilege.

Third, because the Draft Report inappropriately inflates direct costs of the demolish-rebuild project and deflates the costs of the suburban solution, GSA requests that the numbers in Figures 2 and 3 be adjusted as discussed above, and that the final report include a disclaimer that there cannot be a like-comparison between the costs of a suburban housing strategy based on the cancelled procurement that do not reflect the FBI's current stated requirements, and the February 12 Revised FBI Headquarters Plan that does addresses those requirements.

Fourth, GSA requests that you redact from public disclosure the figures and information identified above, as they continue to represent confidential or procurement-sensitive information not otherwise subject to public disclosure.

Finally, given that your office found the Administrator's testimony to be truthful, GSA asks that you remove the section regarding Administrator Murphy's testimony from your final report.

Thank you for considering GSA's proposed edits to your Draft Report. GSA asks for the opportunity to review the final report, as is customary, and the ability to respond with formal comments to be attached as an appendix. GSA looks forward to reviewing the final report and the continued partnership between GSA and your office.

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## ***Appendix B – Response to Comments Regarding Role of the Office of Inspector General***

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The Office of Inspector General (OIG) has carefully considered the comments on our draft report submitted by GSA. We also considered comments submitted on behalf of Administrator Murphy in her individual capacity. We have addressed any comments relating to factual accuracy where appropriate in the body of the report.

This appendix separately responds to certain comments made on behalf of Administrator Murphy and the GSA that appear to reflect a fundamental misunderstanding of the OIG's role in initiating, staffing, and conducting this review.

First, Administrator Murphy has expressed the opinion that the OIG's initiation of this review in response to the request of a congressman whose district has an interest in the project indicates an improper purpose. This is misguided. Inspectors General regularly receive requests to conduct oversight from Members of Congress affiliated with either the majority or the minority party, and must regularly decide whether the subject matter of the request supports directing OIG resources to answer some, none, or all of the issues raised in the request. In this case, the OIG's decision to open the review reflects the importance of the FBI headquarters project and is wholly consistent with our past work in this area; and our definition of the scope of the review reflects our independent consideration of significant issues within our jurisdiction to address.

The FBI headquarters project is a longstanding, high-profile, taxpayer-funded, multi-billion dollar project that GSA has been spearheading for over a decade and the OIG has been monitoring since 2013. In March 2017, the OIG issued its Audit of PBS's Planning and Funding for Exchange Projects. The GSA's FBI headquarters project, which then anticipated exchanging the Hoover building to help finance construction of a new suburban campus, was among the exchange projects the OIG reviewed in this audit. The audit found that PBS had not fully factored risk into its planning for exchange projects and as a result cancelled or chose not to pursue several exchange projects. In July 2017, GSA cancelled the FBI exchange project.

When GSA subsequently presented its new plan to raze and rebuild the FBI headquarters at the Hoover site rather than continue with the suburban campus plan to which GSA had devoted years of planning and taxpayer funds, the change drew widespread public attention and bipartisan concern expressed at multiple congressional hearings. Under these circumstances, the suggestion that it was improper for the OIG to review GSA's decision-making process and the adequacy of its considerations of comparative costs and security is clearly wrong.

Second, Administrator Murphy suggests that the manner in which we exercised our oversight function -- conducting a multi-disciplinary review -- was improper. This argument rests entirely on the premise that a multi-disciplinary review is "not traditional," and therefore is a suspect use of OIG authority. This also is clearly wrong. The Inspector General Act authorizes Inspectors General to "make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable. 5 U.S.C. App. Section 6(a)(2). The Council of



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## ***Appendix B – Response to Comments Regarding Role of the Office of Inspector General (cont.)***

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Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Federal Offices of Inspector General (August 2012) state: “In addition to audits and investigations...OIGs may conduct, supervise, and coordinate inspections, evaluations, and other reviews related to the programs and operations of their departments and agencies.” Likewise, the CIGIE Presidential Transition Handbook (October 4, 2016) concerning the role of Inspectors General states:

[S]everal IGs have created offices that conduct special reviews, combining the multidisciplinary skills of investigators, auditors, evaluators, and lawyers. These special reviews are often hybrid reviews, involving potential misconduct by agency employees as well as systemic evaluations of an agency program or operation. Examples of such special reviews are the Department of Justice OIG’s review of the treatment of detainees after the 9/11 attacks and the Peace Corps IG’s review of the death of a Peace Corps volunteer in China.

Like others in the IG community, the GSA OIG has frequently used multidisciplinary teams to review GSA programs or operations. For example, the GSA OIG’s Management Deficiency Report of the 2010 Western Regional Conference was completed by a team of investigators, auditors, and lawyers. More recently, a team of inspectors, investigators, and lawyers conducted GSA OIG’s Investigation of Whistleblower Reprisal Complaint, which addressed a complaint that the former GSA Administrator retaliated against a senior GSA career official for making protected disclosures. The use of teams that leverage the skillsets of multiple disciplines within an OIG is one of the most effective ways to achieve the highest quality work in matters, like this one, that are not solely audits or investigations but contain elements of both.

Finally, the GSA’s comments on the draft report contend that the OIG personnel conducting this review acted improperly in seeking information about White House meetings relevant to our review of GSA’s decision-making process. This too is incorrect. As noted in the report, early in the review the OIG learned that during the course of GSA’s decision-making on the Revised FBI Headquarters Plan, Administrator Murphy met with the President on January 24, 2018, to discuss the project. When we sought information about the meeting, however, we initially received inconsistent and unhelpful responses to our inquiries from GSA witnesses.

Some GSA witnesses readily described what they knew of the meeting, while others initially refused to discuss it or even acknowledge that a meeting had occurred. When we asked for the basis for these initial refusals, some witnesses, including Administrator Murphy, told us they could not comment on meetings they had or did not have with senior White House officials. Murphy also stated that she was told not to answer by GSA’s Acting General Counsel, who she said told her that such answers were subject to executive privilege.

Contrary to GSA’s suggestion, the OIG made no “agreement” with GSA’s Acting General Counsel not to seek information relevant to this review. In fact, we sought to determine whether executive privilege was being invoked to preclude sharing of information with the OIG, which is



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## ***Appendix B – Response to Comments Regarding Role of the Office of Inspector General (cont.)***

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part of GSA and within the Executive Branch. Murphy told us that to her knowledge the privilege had not been invoked. GSA's Acting General Counsel told us that the White House had not asserted the privilege, but that the presidential communications privilege was presumed to apply absent White House consent to discuss matters covered by the privilege. He refused, however, to discuss with us his guidance to GSA witnesses regarding the scope and parameters of any presumptive privilege.

Ultimately, after we continued to press for an explanation of the scope of any presumptive privilege GSA was relying upon to limit information provided to the OIG, the Acting General Counsel finally told us he had received direction from the White House Counsel's Office regarding White House meetings relevant to this review. He told us that pursuant to those directions, GSA employees were authorized to disclose the existence of White House meetings, discuss who attended, and discuss any high level agreements that resulted from the meetings; but not to disclose any statements made by the President. Murphy then participated in a second interview with the OIG, in which she provided us the descriptions of the meetings contained in this report, and we were able to conclude the interviews in this review.

Contrary to the GSA's suggestion, the OIG team acted professionally and courteously throughout its efforts to seek information relevant to this review. Had GSA acted earlier in formulating a consistent and clear position regarding the privilege issue, and been more willing to discuss the scope and parameters of the privilege with the OIG, we might have avoided any awkwardness associated with the need to conduct multiple interviews of some of the witnesses to obtain information relevant to this review.

In sum, the GSA OIG properly initiated, staffed, and performed this review.

# **Exhibit 3**

Document ID: 0.7.3297.605983

From: Lai, Joseph G. EOP/WHO  
To: Brennan Hart - S  
Cc: Pataki, Tim A. EOP/WHO  
; Meyer, Joyce Y. EOP/WHO  
; Swonger, Amy H. EOP/WHO  
Greenwood, Daniel Q. EOP/WHO  
Bcc:  
Subject: Re: EPW FBI Report  
Date: Thu Jan 25 2018 15:15:43 EST  
Attachments:

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Thank you. Will GSA be briefing the relevant committees afterwards?

+ the wider WH Leg Team.

Sent from my iPhone

On Jan 25, 2018, at 2:48 PM, Brennan Hart - S wrote:

Joe-

I wanted to give you a heads up that we will be sending a report to EPW Monday (pending OMB clearance) outlining a path forward for the new FBI Headquarters announcement. There will also be a hearing on this report February 14.

There is a lot of political interest in this project with the potential of it moving to either Maryland or Virginia. The President was briefed yesterday on this by the GSA Administrator, Deputy AG and FBI Director and signed off on this path forward.

Let me know if you have any questions.

PBH

U.S. General Services Administration

P. Brennan Hart III

Acting Chief of Staff

Associate Administrator, Congressional & Intergovernmental Affairs

Office: | Mobile:

Email:

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002281

Document ID: 0.7.3297.606199

From: Brennan Hart - S  
To: Jeff Post - A  
Saul Japson - S; Andrew Blaylock - S  
; Jessica Jennings - S  
Cc:  
Bcc:  
Subject: Fwd: Per our conversation  
Date: Sun Jan 28 2018 14:59:59 EST  
Attachments: FBI pres feedback.docx  
Untitled attachment 28257.htm

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FYI, close hold. PBS is working to incorporate the OMB edits into the slide deck and get it back to them tomorrow. GSA is going to hold our ground on the funding source and that it is a demolition/new construction per the President's instructions.

U.S. General Services Administration

P. Brennan Hart III

Acting Chief of Staff

Associate Administrator, Congressional & Intergovernmental Affairs

Email: [REDACTED]

----- Forwarded message -----

From: Daniel Mathews - P [REDACTED]  
Date: Sun, Jan 28, 2018 at 2:07 PM  
Subject: Fwd: Per our conversation  
To: "Jack St. John" [REDACTED], [REDACTED], Michael Gelber [REDACTED]  
[REDACTED]

Daniel W. Mathews  
Commissioner  
Public Buildings Service

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002290

US General Services Administration  
[REDACTED]

Sent from my iPhone

Begin forwarded message:

From: "Abrams, Andrew D. EOP/OMB" [REDACTED]  
Date: January 28, 2018 at 1:53:46 PM EST  
To: [REDACTED]  
Cc: "Kraninger, Kathleen L. EOP/OMB" [REDACTED]  
Subject: Per our conversation

Dan per our conversation, here are the edits we suggest. We will follow up in the near future.

Andrew Abrams

Office of Management and Budget

Deputy Associate Director

Transportation, Homeland, Justice, and Services Division  
[REDACTED]

[REDACTED]

[REDACTED]

# **Exhibit 4**



Office of Administrative Services  
FOIA Requester Service Center

December 7, 2018

Mr. Nikel Sus  
CREW  
455 Massachusetts Ave, NW  
Washington, DC 20001

Dear Mr. Sus:

This letter is in response to your U.S. General Services Administration (GSA) Freedom of Information Act (FOIA) request (No. GSA-2018-001496) for “[c]opies of all communications from January 20, 2017 to the present between GSA and the White House concerning the renovation of the FBI headquarters,” which is now the subject of Case No. 1:18-CV-002071 in the United States District Court for the District Of Columbia.

GSA has determined that the responsive documents are exempt from release pursuant to exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5).

Sincerely,

A handwritten signature in cursive script that reads "Travis Lewis".

Travis Lewis  
Deputy Director (Formerly FOIA Director)  
Office of Accountability and Transparency  
Office of Administrative Services  
Enclosure

U.S General Services Administration  
1800 F. Street, Northwest  
Washington, DC 20405  
Telephone: (202) 501-0800  
Fax: (202) 501-2727

# **Exhibit 5**





Nikhel Sus <nsus@citizensforethics.org>

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## Response Letter for GSA-2018-001496

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Nikhel Sus <nsus@citizensforethics.org>

Mon, Dec 10, 2018 at 9:22 AM

To: travis.lewis@gsa.gov, "Pfaffenroth, Peter (USADC)" <Peter.Pfaffenroth@usdoj.gov>, Duane Smith <duane.smith@gsa.gov>, "Nebeker, Mark (USADC)" <mark.nebeker@usdoj.gov>

Good morning,

Thank you for the response. In light of our joint status report due this Friday 12/14, could you please provide the following details:

1. How many responsive pages is GSA withholding? The letter does not specify.
2. On what ground(s) is GSA invoking Exemption 5 (e.g., deliberative process, attorney-client privilege, etc.)?

Best,  
Nik

[Quoted text hidden]

[Quoted text hidden]

# **Exhibit 6**



Office of Administrative Services  
FOIA Requester Service Center

December 14, 2018

Mr. Nikhel Sus, Esq.  
Citizens for Responsibility and Ethics in Washington (CREW)  
455 Massachusetts Ave., NW  
Washington, DC 20001

Dear Mr. Sus:

This letter supplements and replaces the U.S. General Services Administration's (GSA) December 7, 2018, letter to you and responds to your email dated December 10, 2018.

Pursuant to the Freedom of Information Act (FOIA), you had requested from GSA "[c]opies of all communications from January 20, 2017 to the present between GSA and the White House concerning the renovation of the FBI headquarters." GSA designated this request as No. GSA-2017-001496. The request is now part of litigation pending in the United States District Court for the District of Columbia as case number 1:18-CV-2071 (CKK).

Please note that GSA has located 52 pages of responsive records. GSA is withholding in their entirety 25 pages of these responsive records pursuant to FOIA exemption 5, 5 U.S.C. § 552(b)(5), based upon the presidential communications privilege; portions of these pages are also being withheld pursuant to FOIA exemption 5, 5 U.S.C. § 552(b)(5), based upon the deliberative process privilege, as well as exemption 6, 5 U.S.C. § 552(b)(6), and exemption 7(C), 5 U.S.C. § 552(b)(7)(C), because disclosure of the withheld material could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The remaining 27 pages of responsive records are being withheld in their entirety pursuant to FOIA exemption 5, 5 U.S.C. § 552(b)(5), based upon the deliberative process privilege.

Sincerely,

*Travis Lewis*

Travis Lewis  
Deputy Director (formerly FOIA Director)  
Office of Accountability and Transparency  
Office of Administrative Services

U.S. General Services Administration  
1800 F. Street, Northwest  
Washington, DC 20405  
Telephone: (202) 501-0800  
Fax: (202) 501-2727

# **Exhibit 7**

**Congress of the United States**  
**Washington, DC 20515**

October 18, 2018

The Honorable Emily Murphy  
Administrator  
General Services Administration  
1800 F Street, N.W.  
Washington, DC 20405

Dear Administrator Murphy:

We are writing to raise serious concerns about President Donald Trump's abrupt decision to abandon a long-term plan developed over multiple administrations to move the headquarters of the Federal Bureau of Investigation (FBI) from its current site on Pennsylvania Avenue N.W. in Washington, D.C. to a suburban location, and replace it with a more costly plan to keep the current location, demolish the existing building, and construct a new facility on the same site.

Many years before becoming President, Donald Trump expressed interest in the FBI headquarters moving out of Washington, D.C. so he could acquire the land on Pennsylvania Avenue and redevelop the property, which is directly across the street from the Trump International Hotel. However, after he was sworn in as President—and became ineligible as a federal employee to obtain the property—he reportedly became “dead opposed” to the government selling the property, which would have allowed commercial developers to compete directly with the Trump Hotel.

Given this background, President Trump should have avoided all interactions or communications relating to the FBI headquarters project to prevent both real and perceived conflicts of interest. He should not have played any role in a determination that bears directly on his own financial interests with the Trump Hotel. The General Services Administration (GSA) also should have taken steps to wall off the decision from improper influence.

Instead, new documents provided to the Oversight Committee indicate that President Trump met personally with you, the FBI, and White House officials on January 24, 2018, where he was directly involved with the decision to abandon the long-term relocation plan and instead move ahead with the more expensive proposal to construct a new building on the same site, and thereby prevent Trump Hotel competitors from acquiring the land.

These new documents describe the Trump Administration's decision not to sell the Pennsylvania Avenue property to commercial developers as “direction from the White House,” “what POTUS directed everyone to do,” and “the project the president wants.” These new documents also show that top GSA officials promised to “hold our ground” on this proposal “per the President's instructions.”

Even more troubling is that you concealed this information from Congress. During sworn testimony, you were asked directly and repeatedly whether you had any communications with President Trump or other White House officials about this project. In response, you withheld information about this and other meetings—omissions the Inspector General warned

The Honorable Emily Murphy  
Page 2

may have left a “misleading” impression that you “had no discussions with White House officials in the decision-making process about the project.”

Your meetings with the White House came to light only after direct evidence emerged, including a photograph of you meeting with President Trump in the Oval Office, along with other White House, Justice Department, and FBI officials.

Based on the latest projections, the new proposal to rebuild the existing Pennsylvania Avenue facility could cost hundreds of millions of dollars more than the long-term relocation plan, but it would accommodate 2,306 fewer employees. We have heard no legitimate justification for this decision.

When Donald Trump was elected President, both Republican and Democratic ethics experts recommended that he follow the precedent of every other modern president by liquidating his assets and placing the proceeds into a truly blind trust. They explained that if he failed to do so, conflicts of interest inevitably would arise that would raise questions about his actions. President Trump declined to follow this advice. Instead, he retained ownership of his businesses and claimed he would cede day-to-day control to his sons.

As a direct result of President Trump’s clear conflict of interest on this matter, we are now requesting information and documents to determine whether the President is making decisions about the FBI headquarters building based on what is best for the country or what is best for his own financial bottom-line.

### **President Trump’s Conflict of Interest**

One of President Trump’s most prominent business interests is the Trump International Hotel in Washington D.C. He obtained a 99-year lease from GSA to rent the Old Post Office Building on Pennsylvania Avenue, and GSA allowed him to continue this arrangement after the election despite a provision in the lease explicitly prohibiting elected officials from being “admitted to any share or part of this Lease, or to any benefit that may arise therefrom.”<sup>1</sup>

For many years before the election, Donald Trump was also interested in obtaining land directly across the street that would become available when the FBI implemented its long-term plan to vacate its aging headquarters building, known as the J. Edgar Hoover (JEH) Building, and relocate to a suburban location that would provide enough space for FBI personnel.

For example, in 2013, the *Washington Post* reported, “Now that the Old Post Office deal with the General Services Administration is done, Trump said he is considering whether to pursue an even larger project across the street: redevelopment of the J. Edgar Hoover Building, a block to the east on Pennsylvania Avenue.” Donald Trump said at the time: “Whether or not we will bid on it, we may, we may not. Now if we do as good a job as we will do with [the Old Post

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<sup>1</sup> General Services Administration, *Ground Lease, By and Between The United States of America (as “Landlord”) and Trump Old Post Office, LLC (as “Tenant”)* (GS-LS-11-1307) (Aug. 5, 2013) (online at [www.gsa.gov/portal/content/305477](http://www.gsa.gov/portal/content/305477)).

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Office], people may ask us about it.” According to this report, “Trump said that if he and his daughter Ivanka, who is managing the Old Post Office, pull the hotel project off the way that they hope to it will boost their resume for projects like the FBI.”<sup>2</sup>

Mr. Trump made his statements less than a year after GSA and the FBI announced in December 2012 their long-term plan to use a public-private partnership with a commercial developer to construct a new headquarters facility at a different location in exchange for title to the existing building and underlying land on Pennsylvania Avenue.<sup>3</sup>

This long-term plan was based on significant cost and personnel factors. In 2011, the Government Accountability Office (GAO) reported that the FBI “has outgrown” the Pennsylvania Avenue site, which it warned “does not meet the FBI’s long-term security requirements.” GAO found that if the existing building were demolished and rebuilt, the “FBI’s security concerns about its headquarters facility would remain.” GAO also found: “Operations would remain fragmented because any new facility on the Hoover Building site would still not have enough square footage to meet the FBI’s operational needs.” In contrast, GAO found that building a consolidated headquarters on a new site “should be able to fully meet the FBI’s security requirements” and that “[e]fficiency would increase because the new facility would allow for the optimal organization of division to include FBI’s projected staffing growth.”<sup>4</sup>

After Donald Trump was elected, he lost his ability to bid on the FBI property. Federal contracting rules prohibit the government from awarding a contract to “any business concern or other organization owned or controlled by one or more Government employees.”<sup>5</sup>

At that point, his position on whether the FBI should abandon the property also reportedly changed, as did his ability to affect the outcome. Instead of supporting the commercial development of the property, President Trump reportedly became “dead opposed.”<sup>6</sup> This reversal caused many to question whether he wanted to protect his financial interest in the Trump Hotel, particularly if another private developer could obtain the property and compete directly with the Trump Hotel.<sup>7</sup>

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<sup>2</sup> *Donald and Daughter Ivanka Trump Will Consider Acquiring FBI Headquarters*, Washington Post (Sept. 11, 2013) (online at [www.washingtonpost.com/business/capitalbusiness/donald-and-daughter-ivanka-trump-will-consider-acquiring-fbi-headquarters/2013/09/11/cb353204-1afb-11e3-82ef-a059e54c49d0\\_story.html?utm\\_term=.98ea847e072e](http://www.washingtonpost.com/business/capitalbusiness/donald-and-daughter-ivanka-trump-will-consider-acquiring-fbi-headquarters/2013/09/11/cb353204-1afb-11e3-82ef-a059e54c49d0_story.html?utm_term=.98ea847e072e)).

<sup>3</sup> *GSA Proposes Trading Hoover Building for New FBI Campus*, Washington Post (Dec. 3, 2012) (online at [www.washingtonpost.com/blogs/capital-business/post/gsa-proposes-trading-hoover-building-for-new-fbi-campus/2012/12/03/5b8c94b8-3d5e-11e2-bca3-aadc9b7e29c5\\_blog.html?utm\\_term=.a62568c71fd8](http://www.washingtonpost.com/blogs/capital-business/post/gsa-proposes-trading-hoover-building-for-new-fbi-campus/2012/12/03/5b8c94b8-3d5e-11e2-bca3-aadc9b7e29c5_blog.html?utm_term=.a62568c71fd8)).

<sup>4</sup> Government Accountability Office, *Actions Needed to Document Security Decisions and Address Issues with Condition of Headquarters Buildings* (GAO-12-96) (online at [www.gao.gov/assets/590/586151.pdf](http://www.gao.gov/assets/590/586151.pdf)).

<sup>5</sup> 48 CFR Part 3, Subpart 3.6.

<sup>6</sup> *Scoop: Trump’s Obsession with the ‘Terrible’ FBI Building*, Axios (July 29, 2018) (online at [www.axios.com/donald-trump-obsession-fbi-building-headquarters-65d36fb9-b1a2-42ca-8cbd-3dbbe59de907.html](http://www.axios.com/donald-trump-obsession-fbi-building-headquarters-65d36fb9-b1a2-42ca-8cbd-3dbbe59de907.html)).

<sup>7</sup> See, e.g., *Critics Say President Trump Scuttled New FBI Headquarters to Avoid Hotel Competition*, WUSA9 (Aug. 28, 2018) (online at [www.wusa9.com/article/news/local/dc/critics-say-president-trump-scuttled-new-](http://www.wusa9.com/article/news/local/dc/critics-say-president-trump-scuttled-new-)

The Honorable Emily Murphy  
Page 4

### **Your Testimony Concealing Communications with the President**

In February of this year, GSA and the FBI submitted a new plan for the FBI headquarters to the Senate Committee on Environment and Public Works that no longer included its long-term plan to move the FBI headquarters to a suburban location. Instead, the new plan would retain the land on Pennsylvania Avenue, demolish the existing headquarters building, and construct a new building for the FBI on the same site.<sup>8</sup>

During a congressional hearing on April 17, 2018, you were asked—directly and repeatedly—if President Trump or other White House officials had any communications with GSA or the FBI about this decision. In your testimony, you withheld the fact that you personally met with President Trump, White House Chief of Staff John Kelly, and OMB Director Mick Mulvaney. The exchange went as follows:

- Q: Was anyone else at the White House involved with briefing you or to your knowledge did the President or any of the other officials at the White House consult with any of these other agencies in the decision-making process?
- A: Well, sir, the FBI was the one who came to me and said that there's—their requirements had changed, they no longer required a campus for 11,000 individuals, they were looking at a campus—they only had a requirement for about 8,300 individuals and based on that they wanted to put the J. Edgar Hoover site back into play. They actually requested that GSA consider renovating the building. ...
- Q: But again, to your knowledge was the President or anyone at the White House involved in those discussions either with your predecessors or people you're working with now or yourself?
- A: Sir, to my knowledge—the instruction that we got came from the FBI. It was the FBI that directed GSA as to what it's requirements would be. We obviously did coordinate given that it is a substantial budget request, we coordinated that request with OMB to make sure that—to provide for funding but the requirements were generated by the FBI.<sup>9</sup>

In contrast, the Inspector General of GSA reported on August 27, 2018, that you met personally with President Trump at the White House on January 24, 2018. In fact, an official White House photograph from that day shows you sitting across from President Trump along

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fbi-headquarters-to-avoid-hotel-competition/65-588490322).

<sup>8</sup> General Services Administration and Federal Bureau of Investigation, *FBI Headquarters Revised Nationally-Focused Consolidated Plan* (Feb. 12, 2018) (online at [www.washingtonpost.com/apps/g/page/business/read-trumps-fbi-headquarters-plan/2279/?tid=a\\_inl\\_manual](https://www.washingtonpost.com/apps/g/page/business/read-trumps-fbi-headquarters-plan/2279/?tid=a_inl_manual)).

<sup>9</sup> House Committee on Appropriations, Subcommittee on Financial Services and General Government, *Hearing on FY 2019 Budget—General Services Administration*, 115th Cong. (Apr. 17, 2018) (online at <https://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=395230>).



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Page 5

with General Kelly and Mr. Mulvaney. According to the Inspector General's report, issued following a request by Ranking Member Gerald E. Connolly of the Government Operations Subcommittee of the Committee on Oversight and Government Reform, you also met with General Kelly and Director Mulvaney a month earlier on December 20, 2017.

The Inspector General's report found that your testimony to Congress concealed these meetings with President Trump and his top aides. The report stated:

[W]e found that because she omitted any mention in her answers of her discussions with Kelly, Mulvaney, and the President during the decision-making process for the Revised FBI Headquarters Plan, her testimony was incomplete and may have left the misleading impression that she had no discussion with the President or senior White House officials in the decision-making process about the project.<sup>10</sup>

According to the Inspector General's report, you initially refused to acknowledge that you met with President Trump or other White House officials. After discovering evidence of your meetings, the Inspector General's office was forced to interview you a second time, during which you finally admitted the meetings. You requested that the Inspector General remove all references to your testimony, but the Inspector General refused, stating, "we cannot ignore Murphy's failure to disclose that she had discussed those very issues with the President and others at the White House."<sup>11</sup>

#### **New Documents Show President Trump's Direct Involvement in Decision**

New documents provided to the Oversight Committee show that President Trump and top White House officials intervened directly to reverse the long-term plan to relocate FBI headquarters and prevent Trump Hotel competitors from developing the property. These documents were first obtained by the Inspector General and provided in response to a request from Ranking Member Gerald E. Connolly and Chairman Mark Meadows of the Government Operations Subcommittee.

For example, on December 20, 2017, you and GSA Public Building Service Commissioner Dan Mathews met with General Kelly and Director Mulvaney about the project. Afterwards, Mr. Mathews emailed Richard Haley, the FBI's Chief Financial Officer and Assistant Director of the Finance Division, describing the meeting. Mr. Mathews wrote:

The meeting took an unexpected turn as soon as we got there. Sorry to intrude, but do you have time to talk today? We have some work to do but there is real interest. I can

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<sup>10</sup> Office of Inspector General, General Services Administration, *Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project* (Aug. 27, 2018) (online at [www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REACTED%20-%20508%20compliant.pdf](http://www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REACTED%20-%20508%20compliant.pdf)).

<sup>11</sup> *Id.*

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Page 6

fill you in on the phone. Also, we will need to set up a phone call between our Administrator and your Director very soon.<sup>12</sup>

According to the Inspector General's report, you stated that during a meeting with GSA and FBI officials on January 4, 2018, you pushed back on the idea of abandoning the long-term relocation plan. You reportedly stated that the Pennsylvania Avenue location "was not GSA's preferred site and that a lot of work had gone into the campus concept."

In addition, Director Wray reportedly said that "if the cost savings between a suburban campus site and the existing site were similar" his "preference was to remain at the JEH building," but "[i]f the campus scenario offered significant savings," he was "not opposed to a suburban campus site."<sup>13</sup>

On January 24, 2018, you met with President Trump in the Oval Office, along with Mr. Kelly, Mr. Mulvaney, FBI Director Wray, and Deputy Attorney General Rod Rosenstein. A day earlier, Mr. Mathews sent an email to you warning that "expectation is gsa briefs on renovation options."<sup>14</sup>

You reportedly told President Trump in the meeting that "GSA did not think that the project could secure full upfront funding."<sup>15</sup>

Nevertheless, you informed the Inspector General that your understanding after meeting with President Trump was that the Administration was "moving forward with the demolish-rebuild project."<sup>16</sup>

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<sup>12</sup> Email from Daniel Mathews, Commissioner, Public Buildings Service, General Services Administration, to Richard Haley, Assistant Director, Chief Financial Officer, Finance Division, Federal Bureau of Investigation (Dec. 20, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Mathews%20to%20Haley%2012.20.2017.pdf>).

<sup>13</sup> Office of Inspector General, General Services Administration, *Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project* (Aug. 27, 2018) (online at [www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf](http://www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf)).

<sup>14</sup> Email from Daniel Mathews, Commissioner, Public Buildings Service, General Services Administration, to Emily Murphy, Administrator, General Services Administration (Jan. 23, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Mathews%20to%20Murphy%201.23.2018.pdf>).

<sup>15</sup> Office of Inspector General, General Services Administration, *Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project* (Aug. 27, 2018) (online at [www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf](http://www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf)).

<sup>16</sup> *Id.*

The Honorable Emily Murphy  
Page 7

Just one day later, on January 25, 2018, your Chief of Staff at GSA, Brennan Hart, sent an email to Joseph Lai, a Special Assistant to President Trump, confirming that the decision to reverse the relocation plan occurred at the White House meeting. He wrote: "The President was briefed yesterday on this by the GSA Administrator, Deputy AG and FBI Director and signed off on this path forward."<sup>17</sup>

On January 26, 2018, Mr. Haley at the FBI sent an email to Mr. Mathews at GSA also confirming that the direction to reverse the relocation plan came from the White House:

Also, for your pocket, gsa and fbi are working closer now than at any time before. Both teams are closely aligned, and now that we have a direction from WH that will continue to tighten relationship forward.<sup>18</sup>

A day later, on January 27, 2018, GSA's Acting General Counsel Jack St. John sent an email to your Chief of Staff, Mr. Hart, stating that "Rader," presumably a reference to Special Assistant to the President John Rader, "suggested getting something in writing from DOJ/FBI memorializing what was decided in the meeting with POTUS." In response, Mr. Hart sent an email to Mr. Mathews indicating that President Trump was giving the orders: "Ideally I think it would first recap the oval meeting with what POTUS directed everyone to do then ask Emily (GSA) to execute POTUS's orders."<sup>19</sup>

The next day, on January 28, 2018, Mr. Hart sent an email to officials in the Office of Legislative Affairs again confirming President Trump's role: "GSA is going to hold our ground on the funding source and that it is a demolition/new construction per the President's instructions."<sup>20</sup> Mr. Mathews also sent an email to Mr. Haley that day confirming the President's role: "GL LB [ground lease-leaseback] can be classified as an operating lease and demolish rebuild, as they are necessary to deliver the project the president wants on the timetable he wants it done."<sup>21</sup>

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<sup>17</sup> Email from Brennan Hart, Acting Chief of Staff, General Services Administration, to Joseph Lai, Special Assistant to the President (Jan. 25, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Lai%20to%20Hart%201.25.2018.pdf>).

<sup>18</sup> Email from Richard Haley, Assistant Director, Chief Financial Officer, Finance Division, Federal Bureau of Investigation, to Daniel Mathews, Commissioner, Public Buildings Service, General Services Administration (Jan. 26, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Haley%20to%20Mathews%201.26.2018.pdf>).

<sup>19</sup> Email from Brennan Hart, Acting Chief of Staff, General Services Administration, to Daniel Mathews, Commissioner, Public Buildings Service, General Services Administration (Jan. 27, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/St.%20John%20to%20Hart%201.27.2018.pdf>).

<sup>20</sup> Email from Brennan Hart, Acting Chief of Staff, General Services Administration to Jeff Post, Office of Congressional and Intergovernmental Affairs, General Services Administration (Jan. 28, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Hart%20to%20Post%201.28.18.pdf>).

<sup>21</sup> Email from Daniel Mathews, Commissioner, Public Buildings Service, General Services Administration,

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### **Plan Would Cost Taxpayers More, But Accommodate Fewer Employees**

The long-term plan to relocate the FBI headquarters to a suburban location would cost an estimated \$3.565 billion, according to the Inspector General. Selling the existing Pennsylvania Avenue property to commercial developers or others could result in proceeds of approximately \$334 million, which would offset the costs of the new suburban facility.<sup>22</sup>

In contrast, the plan to keep the Pennsylvania Avenue property, demolish the existing facility, and construct a new building would cost an estimated \$3.844 billion. This includes an estimated \$3.328 billion to rebuild the headquarters building, \$57 million to relocate 2,306 FBI personnel who will not fit in the Pennsylvania Avenue facility, and \$459 million in construction costs at FBI facilities in Alabama, Idaho, Virginia, and West Virginia to accommodate those employees.

On February 12, 2018, GSA submitted to the Senate Environment and Public Works Committee an estimate for the new plan to rebuild the Pennsylvania Avenue facility, which was approved by OMB.<sup>23</sup> However, the Inspector General found that GSA overstated the costs of the long-term plan to relocate the FBI headquarters and understated the costs of the new plan to rebuild the Pennsylvania Avenue facility.

According to the Inspector General, GSA's recent proposal underestimated cost because it does not capture relocation and non-JEH construction costs. The plan to relocate the FBI headquarters to a suburban facility would have accommodated 10,606 personnel, while the proposal to keep the Pennsylvania Avenue property would accommodate only 8,300 personnel. According to the Inspector General, GSA "should have accounted for the relocation and construction costs associated with housing the 2,306 personnel at other FBI facilities." The FBI estimates it would cost \$57 million to relocate those employees.<sup>24</sup> The Inspector General reported that the per person cost of the new plan to demolish and rebuild the building on

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to Richard Haley, Assistant Director, Chief Financial Officer, Finance Division, Federal Bureau of Investigation (Jan. 28, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Mathews%20to%20Haley%201.28.2018.pdf>).

<sup>22</sup> Office of Inspector General, General Services Administration, *Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project*, Appendix A—GSA Comments (Aug. 27, 2018) (online at [www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf](http://www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf)).

<sup>23</sup> *FBI Headquarters Revised Nationally-Focused Consolidation Plan*, General Services Administration (Feb. 12, 2018) (online at [www.washingtonpost.com/apps/g/page/business/read-trumps-fbi-headquarters-plan/2279/?tid=a\\_inl\\_manual](http://www.washingtonpost.com/apps/g/page/business/read-trumps-fbi-headquarters-plan/2279/?tid=a_inl_manual)).

<sup>24</sup> Office of Inspector General, General Services Administration, *Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project*, Appendix A—GSA Comments (Aug. 27, 2018) (online at [www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf](http://www.gsaig.gov/sites/default/files/audit-reports/Review%20of%20GSA%E2%80%99s%20Revised%20Plan%20for%20the%20FBI%20Headquarters%20Consolidation%20Project%20REDACTED%20-%20508%20compliant.pdf)).

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Page 9

Pennsylvania Avenue would be \$64,834 higher than the plan to move the FBI headquarters to a new consolidated facility.

You disputed the Inspector General's findings as "inaccurate" claiming that counting the additional offsite costs "have the effect of improperly inflating the direct costs of the demolish-rebuild project." The Inspector General reported, however, that "a GSA official involved in the cost estimating agreed with our conclusion that these construction costs should have been included in the Revised FBI Headquarters Plan."<sup>25</sup>

### **Request for Documents**

For the reasons set forth above, we request that you produce the following documents and information by November 1, 2018:

- (1) a complete timeline of all meetings and discussions between GSA and the FBI regarding the headquarters project from January 20, 2017, to the present including a list of participants in each meeting;
- (2) a complete timeline of all meetings and discussions between White House and GSA officials from January 20, 2017, to the present;
- (3) all documents and communications between GSA and DOJ officials, including FBI officials, regarding the headquarters project from January 20, 2017, to the present;
- (4) all documents and communications between the White House and officials of Executive Branch agencies, including but not limited to OMB and GSA, regarding the FBI headquarters project from January 20, 2017, to the present;
- (5) all documents and communications between GSA and White House officials regarding how GSA should address questions regarding involvement by President Trump or senior White House staff in decisions related to the FBI headquarters project;
- (6) all documents and communications between Trump Organization and GSA officials from September 12, 2016, to the present;
- (7) all drafts of any prospectus exchanged with OMB including any edits suggested or made by OMB; and
- (8) all documents and communications relating to your testimony before Congress on April 17, 2018.

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<sup>25</sup> *Id.*

The Honorable Emily Murphy  
Page 10

Thank you for your prompt attention to this request.

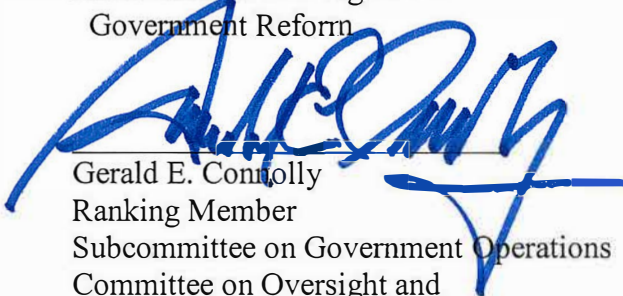
Sincerely,



Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform



Peter DeFazio  
Ranking Member  
Committee on Transportation and  
Infrastructure



Gerald E. Connolly  
Ranking Member  
Subcommittee on Government Operations  
Committee on Oversight and  
Government Reform



Mike Quigley  
Ranking Member  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations



Dina Titus  
Ranking Member  
Subcommittee on Economic Development,  
Public Buildings and Emergency Management  
Committee on Transportation and Infrastructure

cc: The Honorable Trey Gowdy, Chairman  
Committee on Oversight and Government Reform

The Honorable Bill Shuster, Chairman  
Committee on Transportation and Infrastructure

The Honorable Mark Meadows, Chairman  
Subcommittee on Government Operations  
Committee on Oversight and Government Reform

The Honorable Tom Graves, Chairman  
Subcommittee on Financial Services and General Government  
Committee on Appropriations

The Honorable Lou Barletta, Chairman  
Subcommittee on Economic Development, Public Buildings and Emergency Management  
Committee on Transportation and Infrastructure

# **Exhibit 8**



Eden Tadesse &lt;etadesse@citizensforethics.org&gt;

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**Fwd: Crew v. GSA, CA No. 18-2071 (1st rolling production)**

---

**Nikhel Sus** <nsus@citizensforethics.org>  
To: Eden Tadesse <etadesse@citizensforethics.org>

Mon, Oct 14, 2019 at 7:52 AM

For FOIA file

----- Forwarded message -----

From: **Naisha Johnson - LG** <naisha.johnson@gsa.gov>  
Date: Wed, Oct 9, 2019 at 2:28 PM  
Subject: Crew v. GSA, CA No. 18-2071 (1st rolling production)  
To: <nsus@citizensforethics.org>  
Cc: Nebeker, Mark (USADC) <Mark.Nebeker@usdoj.gov>, Travis Lewis - H3 <travis.lewis@gsa.gov>

Dear Mr. Sus,

Please find attached the responsive documents from the first 1000 pages that GSA has reviewed. Of these 1000 pages, 8 pages are responsive. After removing the duplicates, there are 4 total pages of responsive documents.

Thank you,

Naisha Johnson

Naisha J. Johnson  
Assistant General Counsel - LG  
Office of General Counsel  
U.S. General Services Administration  
office: (202) 969-7187  
cell: (202) 322-2728

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**Nikhel Sus**  
Senior Counsel | Citizens for Responsibility and Ethics in Washington (CREW)  
202-408-5565  
[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)  
[www.citizensforethics.org](http://www.citizensforethics.org)



---

**Responsive Documents Litigation No. C-18-cv-2071(1st rolling production)\_Redacted.pdf**  
184K



**Subject:** RE: EPW FBI HQ Hearing  
**Date:** Mon, 24 Jul 2017 16:14:28 +0000  
**From:** "Lai, Joseph (b) (6)" >  
**To:** Brennan Hart - S <brennan.hart@gsa.gov>  
**Message-ID:** <61479acac35a4deb94e4378e5eb33c93@who.eop.gov>  
**MD5:** bc42a0b4495e001b7f52622f040b7edb

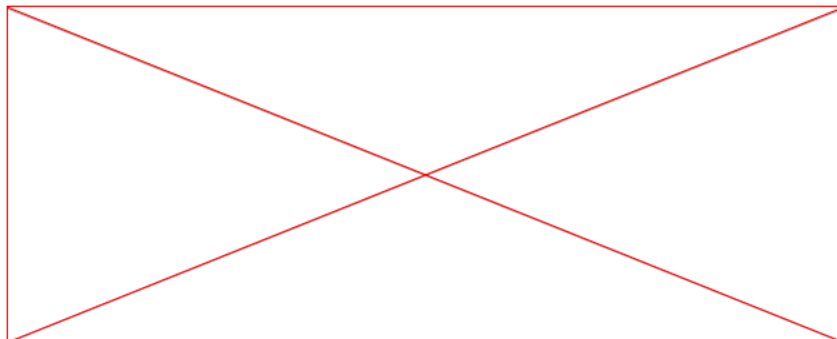
Thank you.

**From:** Brennan Hart - S [mailto:brennan.hart@gsa.gov]  
**Sent:** Monday, July 24, 2017 11:59 AM  
**To:** Lai, Joseph (b) (6)  
**Subject:** EPW FBI HQ Hearing

Joe-

Just wanted to give you a heads up that Michael Gelber (Acting Public Building Service Commissioner) has been invited to testify at a Aug 2nd EPW hearing on the FBI HQ project cancelation. Rich Haley, the FBI CFO is also going to be on the panel.

PBH



**Subject:** Re: EPW FBI Report  
**Date:** Thu, 25 Jan 2018 20:34:52 +0000  
**From:** "Lai, Joseph (b) (6)" >  
**To:** Brennan Hart - S <brennan.hart@gsa.gov>  
**Message-ID:** <CEFC7CBA-8A61-4DC0-8170-ED991F66EF83@who.eop.gov>  
**MD5:** db67bbe36ba834a529241475c6b9118

Thank you.  
  
Sent from my iPhone

On Jan 25, 2018, at 3:33 PM, Brennan Hart - S <brennan.hart@gsa.gov> wrote:

(b) (5)



U.S. General Services Administration

P. Brennan Hart III

Acting Chief of Staff

Associate Administrator, Congressional &

Intergovernmental Affairs

Office: 202.501.0800 | Mobile: (b) (6)

Email: [Brennan.Hart@GSA.gov](mailto:Brennan.Hart@GSA.gov)

---

On Thu, Jan 25, 2018 at 3:15 PM, Lai, Joseph (b) (6) wrote:

Thank you. (b) (5) ?

+ the wider WH Leg Team.

Sent from my iPhone

On Jan 25, 2018, at 2:48 PM, Brennan Hart - S <[brennan.hart@gsa.gov](mailto:brennan.hart@gsa.gov)> wrote:

Joe-  
I wanted to give you a heads up that we will be sending a report to EPW Monday (pending OMB clearance) (b) (5). There will also be a hearing on this report February 14.  
(b) (5)  
Let me know if you have any questions.  
PBH



U.S. General Services Administration

P. Brennan Hart III

Acting Chief of Staff

Associate Administrator, Congressional &

Intergovernmental Affairs

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Office: [202.501.0800](tel:202.501.0800) | Mobile: (b) (6)

Email: [Brennan.Hart@GSA.gov](mailto:Brennan.Hart@GSA.gov)

# Exhibit 9



Eden Tadesse &lt;etadesse@citizensforethics.org&gt;

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**Fwd: CREW v GSA - 18cv02071**

---

**Nikhel Sus** <nsus@citizensforethics.org>  
To: Eden Tadesse <etadesse@citizensforethics.org>

Fri, Dec 13, 2019 at 5:05 PM

For the FOIA file

----- Forwarded message -----

From: **Seth Greenfeld - LG** <[seth.greenfeld@gsa.gov](mailto:seth.greenfeld@gsa.gov)>  
Date: Fri, Dec 13, 2019 at 5:04 PM  
Subject: CREW v GSA - 18cv02071  
To: <[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)>  
Cc: <[Mark.Nebeker@usdoj.gov](mailto:Mark.Nebeker@usdoj.gov)>

Good afternoon. As was previously indicated, GSA is producing one responsive document today. Please see the attached document.

Seth S. Greenfeld  
Senior Assistant General Counsel  
General Law Division, Office of General Counsel  
U.S. General Services Administration  
(202) 501-4560

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--

**Nikhel Sus**  
Senior Counsel | Citizens for Responsibility and Ethics in Washington (CREW)  
202-408-5565  
[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)  
[www.citizensforethics.org](http://www.citizensforethics.org)



---

**18cv02071 Responsive Doc 12\_13\_2019.pdf**  
4229K

Folder: Case1\_18-cv-02071-CKK\_daniel.mathews@gsa.gov\_0

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**Subject:** RE: EPW FBI Extension Letter  
**Date:** Tue, 5 Dec 2017 17:54:01 +0000  
**From:** "Kraninger, Kathleen L. EOP/OMB" <Kathleen.L.Kraninger@omb.eop.gov>  
**To:** Daniel Mathews - P <daniel.mathews@gsa.gov>  
**Cc:** "Abrams, Andrew D. EOP/OMB" <Andrew\_Abrams@omb.eop.gov>  
**Message-ID:** <444675825c9842cf8a9e1331054019c9@CNSSEExch3.whca.mil>  
**MD5:** a6fa0e8d4b15d3c6219c00ca5694c467

Thanks for sending.

**From:** Daniel Mathews - P [mailto:daniel.mathews@gsa.gov]  
**Sent:** Monday, December 4, 2017 4:42 PM  
**To:** Kraninger, Kathleen L. EOP/OMB <Kathleen.L.Kraninger@omb.eop.gov>  
**C c:** Abrams, Andrew D. EOP/OMB <Andrew\_Abrams@omb.eop.gov>  
**Subject:** Fwd: EPW FBI Extension Letter

Kathy,

I wanted to be sure you saw this letter we received from Senate EPW Friday evening.

Thanks,

Daniel W. Mathews

Commissioner

Public Buildings Service

US General Services Administration

202-501-1100

[daniel.mathews@gsa.gov](mailto:daniel.mathews@gsa.gov)

Sent from my iPhone

Begin forwarded message:

**From:** Brennan Hart - S <[brennan.hart@gsa.gov](mailto:brennan.hart@gsa.gov)>  
**Date:** December 1, 2017 at 6:31:02 PM EST  
**To:** Daniel Mathews - PBS <[daniel.mathews@gsa.gov](mailto:daniel.mathews@gsa.gov)>, Michael Gelber <[michael.gelber@gsa.gov](mailto:michael.gelber@gsa.gov)>  
**Subject:** EPW FBI Extension Letter



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U.S. General Services Administration

# **Exhibit 10**





Eden Tadesse &lt;etadesse@citizensforethics.org&gt;

---

**Fwd: GSA Document Production (case 18-cv-02071)**

---

**Nikhel Sus** <nsus@citizensforethics.org>

Fri, Jan 10, 2020 at 3:41 PM

To: Eden Tadesse &lt;etadesse@citizensforethics.org&gt;

For the FOIA file

----- Forwarded message -----

From: **Seth Greenfeld - LG** <[seth.greenfeld@gsa.gov](mailto:seth.greenfeld@gsa.gov)>

Date: Fri, Jan 10, 2020 at 3:38 PM

Subject: GSA Document Production (case 18-cv-02071)

To: <[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)>Cc: <[Mark.Nebeker@usdoj.gov](mailto:Mark.Nebeker@usdoj.gov)>, Travis Lewis - H1F <[travis.lewis@gsa.gov](mailto:travis.lewis@gsa.gov)>

Good afternoon. Attached please find 8 pages of records responsive to the subject matter FOIA request. This production is in compliance with the Court's Minute Order of December 16, 2019.

Seth S. Greenfeld  
Senior Assistant General Counsel  
General Law Division, Office of General Counsel  
U.S. General Services Administration  
(202) 501-4560

**CONFIDENTIALITY NOTICE:**

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--

**Nikhel Sus**

Senior Counsel | Citizens for Responsibility and Ethics in Washington (CREW)

202-408-5565

[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)[www.citizensforethics.org](http://www.citizensforethics.org)

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**GSA Documents for Jan\_10\_2020 Production in 18-cv-02071 (Redacted).pdf**

485K

Folder: Case1\_18-cv-02071-CKK-B\_brennan.hart@gsa.gov\_0

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**Subject:** RE: EPW FBI HQ Hearing  
**Date:** Mon, 24 Jul 2017 16:14:28 +0000  
**From:** "Lai, Joseph (b) (6)"  
**To:** Brennan Hart - S <brennan.hart@gsa.gov>  
**Message-ID:** <61479acac35a4deb94e4378e5eb33c93@who.eop.gov>  
**MD5:** bc42a0b4495e001b7f52622f040b7edb

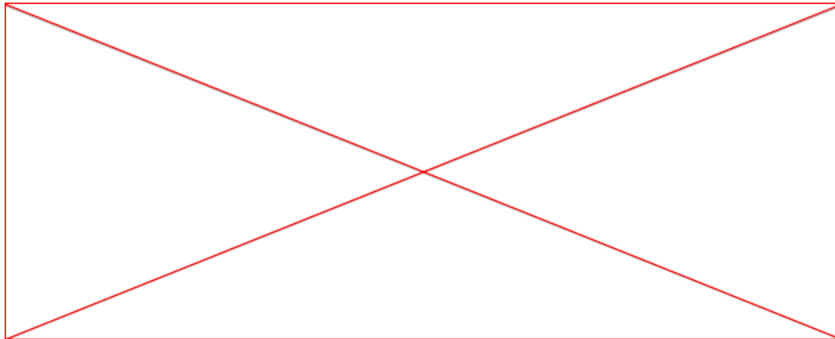
Thank you.

**From:** Brennan Hart - S [mailto:brennan.hart@gsa.gov]  
**Sent:** Monday, July 24, 2017 11:59 AM  
**To:** Lai, Joseph (b) EOP/(b) (6)  
**Subject:** EPW FBI HQ Hearing

Joe-

Just wanted to give you a heads up that Michael Gelber (Acting Public Building Service Commissioner) has been invited to testify at a Aug 2nd EPW hearing on the FBI HQ project cancelation. Rich Haley, the FBI CFO is also going to be on the panel.

PBH

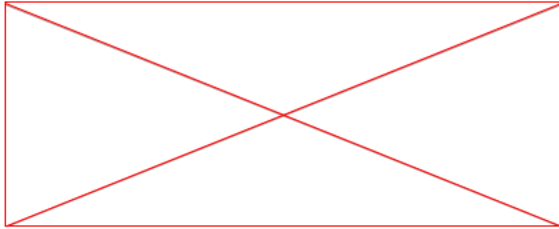


Folder: Case1\_18-cv-02071-CKK-B\_brennan.hart@gsa.gov\_0

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**Subject:** EPW FBI HQ Hearing  
**Date:** Mon, 24 Jul 2017 11:58:41 -0400  
**From:** Brennan Hart - S <brennan.hart@gsa.gov>  
**To:** Joe Lai <(b) (6)>  
**Message-ID:** <CAJjTa=Q7LEM+-v1BUwZCSs3TcfVUMgq7\_HZO=JKezqY\_pcBD7g@mail.gmail.com>  
**MD5:** f08f2fb0fb6fcb720335f2893bd05dea

Joe-Just wanted to give you a heads up that Michael Gelber (Acting Public Building Service Commissioner) has been invited to testify at a Aug 2nd EPW hearing on the FBI HQ project cancelation. Rich Haley, the FBI CFO is also going to be on the panel.  
PBH



Folder: Case1\_18-cv-02071-CKK-B\_brennan.hart@gsa.gov\_0

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**Subject:** RE: EPW issues  
**Date:** Thu, 6 Apr 2017 18:02:42 +0000  
**From:** "Lai, Joseph" (b) (6)  
**To:** Brennan Hart - A <brennan.hart@gsa.gov>, "Boney, Virginia" (b) (6)  
**Message-ID:** <3f318aad92604cfbbcd341dd92e30af@who.eop.gov>  
**MD5:** 0e8b6d61a880f19b511ca262ad5bb395

Yes. That would be me. 202 (b) (6)

**From:** Brennan Hart - A [mailto:brennan.hart@gsa.gov]  
**Sent:** Thursday, April 6, 2017 2:02 PM  
**To:** Lai, Joseph (b) (6) Boney, Virginia (b) (6)  
**Subject:** EPW issues

Do either of you guys have a minute for a phone call this afternoon to bring you up to speed on GSA's business with Senate EPW?

P. Brennan Hart III

U.S. General Services Administration

202-501-0563 (t)

(b) (6) (m)

Brennan.Hart@GSA.gov

Folder: Case1\_18-cv-02071-CKK-B\_brennan.hart@gsa.gov\_0

**Subject:** Re: EPW FBI Report  
**Date:** Thu, 25 Jan 2018 20:34:52 +0000  
**From:** "Lai, Joseph" EOP/(b) (6)  
**To:** Brennan Hart - S <brennan.hart@gsa.gov>  
**Message-ID:** <CEFC7CBA-8A61-4DC0-8170-ED991F66EF83@who.eop.gov>  
**MD5:** dbe67bbe36ba834a529241475c6b9118

Thank you.

Sent from my iPhone

On Jan 25, 2018, at 3:33 PM, Brennan Hart - S <brennan.hart@gsa.gov> wrote:

Yes. We plan on briefing EPW first since it is their report. Then briefing HSGAC, House T&I and OGR. We will do a call with EPW tomorrow to give them a heads up on what is coming and a call with all other interested parties Monday.



U.S. General Services Administration

P. Brennan Hart III

Acting Chief of Staff

Associate Administrator, Congressional &

Intergovernmental Affairs

Office: 202.501.0800 | Mobile: 202.(b) (6)

Email: [Brennan.Hart@GSA.gov](mailto:Brennan.Hart@GSA.gov)

On Thu, Jan 25, 2018 at 3:15 PM, Lai, Joseph [REDACTED] EOP/[REDACTED] (b) (6) wrote:

Thank you. Will GSA be briefing the relevant committees afterwards?

+ the wider WH Leg Team.

Sent from my iPhone

On Jan 25, 2018, at 2:48 PM, Brennan Hart - S <[brennan.hart@gsa.gov](mailto:brennan.hart@gsa.gov)> wrote:

Joe-

I wanted to give you a heads up that we will be sending a report to EPW Monday [REDACTED] (b) (5) [REDACTED] outlining a path forward for the new FBI Headquarters announcement. There will also be a hearing on this report February 14.

[REDACTED] (b) (5) [REDACTED]

Let me know if you have any questions.

PBH



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Folder: Case1\_18-cv-02071-CKK\_brennan.hart@gsa.gov\_0

**Subject:** Re: EPW FBI Report  
**Date:** Thu, 25 Jan 2018 20:15:43 +0000  
**From:** "Lai, Joseph" EOP/(b) (6)  
**To:** Brennan Hart - S <brennan.hart@gsa.gov>  
**Cc:** "Pataki, Tim" EOP/(b) (6); "Meyer, Joyce" EOP/(b) (6); "Swonger, Amy" EOP/(b) (6); "Greenwood, Daniel" EOP/(b) (6)  
**Message-ID:** <99981073-23EE-45D7-BEE9-2BC60CCBFE22@who.eop.gov>  
**MD5:** c47bb1c43da124e90869ada3491658de

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(b) (5)

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**Subject:** Re: EPW FBI Report  
**Date:** Thu, 25 Jan 2018 15:33:20 -0500  
**From:** Brennan Hart - S <brennan.hart@gsa.gov>  
**To:** "Lai, Joseph" EOP/(b) (6)  
**Cc:** "Pataki, Tim" EOP/(b) (6); "Meyer, Joyce" EOP/(b) (6); "Swonger, Amy" EOP/(b) (6); "Greenwood, Daniel" EOP/(b) (6); [REDACTED]  
**Message-ID:** <CAJj1a=QE5cfR3nA22zXQV1Qi\_WZcBkixjJg\_vuwMuTeMkUnzPQ@mail.gmail.com>  
**MD5:** cc77aaacf35aaa2bbd0de6c15159a474

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