

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CITIZENS FOR RESPONSIBILITY)	
AND ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 18-2071 (CKK)
)	
GENERAL SERVICES ADMINISTRATION,)	
)	
Defendant.)	
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**DEFENDANT’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Local Civil Rule 7(h), Defendant General Services Administration (“GSA”), submits this statement of material facts as to which there is no genuine dispute.

1. On or about July 30, 2018, Plaintiff submitted a FOIA request, reproduced as Exhibit 1, to Defendant in which Plaintiff sought “copies of all communications from January 20, 2017 to the present between GSA and the White House concerning the renovations of the FBI headquarters.” Compl. ¶ 13; Ex. 1 (July 30, 2018, FOIA Request); Decl. Travis Lewis (“Lewis Decl.”) ¶ 4.

GSA’S SEARCH AND RESPONSE TO PLAINTIFF’S FOIA REQUEST

2. GSA conducted searches for electronic and hard copy documents, locating 52 pages of records responsive to the request. Lewis Decl. ¶¶ 4-11.

3. Before completing those searches, the parties engaged in communications to identify acceptable search terms, which GSA then employed in its search. Ex. 2 (October 22-25, 2018, email exchange); Lewis Decl. ¶ 5.

4. GSA searched electronically for responsive records using the following search parameters:

Date range: January 20, 2017 to July 30, 2018

Custodians: emails between any GSA email address and any White House/EOP email address

Search terms:

headquarters

HQ

demoli!

renov!

rebuild

demo! W/3 rebuild [**explanation:** looking for all variations of demo! Within three words of rebuild]

“demolish rebuild”

remodel!

“construction project”

“new construction”

President W/10 order! OR direct! OR instruct! OR decide! OR want! [**explanation:** looking for all variations of these words within 10 words of President]

POTUS W/10 order! OR direct! OR instruct! OR decide! OR want! [**explanation:** looking for all variations of these words within 10 words of POTUS]

operating lease

leaseback

PA Ave!

Pennsylvania Avenue

Lewis Decl. ¶ 5.

5. Upon becoming aware of Plaintiff’s proposed search terms, Travis Lewis, GSA’s Director of the Freedom of Information Act & Records Management Division of the Office of Administrative Services, tasked GSA’s Office of the Chief Information Officer (“OCIO”) to conduct a search for responsive records using terms recommended by Plaintiff. Lewis Decl. ¶¶ 5-6; Ex. 2.

6. OCIO is the office within GSA that has access to all of the agency’s electronic records and conducts all of the agency’s electronic discovery searches for any potentially responsive documents. Lewis Decl. ¶ 6.

7. OCIO searched all agency employees' emails for responsive electronic records via the search parameters requested by the FOIA requester. Lewis Decl. ¶ 6.

8. Beyond the search for electronic records, GSA also ensured that there were no paper records in the agency's possession that were responsive to Plaintiff's FOIA request. Lewis Decl. ¶ 11.

9. Each GSA employee who had responsive records per the OCIO search query using the terms provided by Plaintiff confirmed that they do not have any paper records that pertain to or are responsive to Plaintiff's FOIA request. Lewis Decl. ¶ 11.

10. GSA initially withheld all of the responsive documents but later produced 25 pages from the emails and an attachment; most of these documents contained redactions, which are described in greater detail, but two pages (pages 11 and 13) were produced without redactions. Lewis Decl. ¶¶ 8-9; *Vaughn* Index at 1.

11. Plaintiff later commented that it viewed a communication in materials publicized by Congress which were not included in the documents released by GSA. To address this, on September 4, 2019, Duane Smith from the GSA Office of General Counsel requested OCIO conduct a second e-mail search using the following parameters:

Email addresses: gsa.gov

Dates: January 20, 2017 to July 30, 2018

Terms:

- [The specific e-mail address for] Joseph G. Lai
- [The specific e-mail address for] Tim A. Pataki
- [The specific e-mail address for] Joyce Y. Meyer
- [The specific e-mail address for] Amy H. Swonger
- [The specific e-mail address for] Daniel Q. Greenwood
- [The specific e-mail address for] Andrew D. Abrams
- [The specific e-mail address for] Kathleen L. Kraninger
- [The specific e-mail address for] Daniel Z. Epstein

The e-mail search returned tens of thousands of pages. Those were further reviewed using the key terms “EPW” and “FBI”. Lewis Decl. ¶¶ 13-14.

12. A total of 13 pages were subsequently found to be responsive. One page was fully releasable and 12 pages were partially redacted. Of those 12 pages, some were repetitive. The withholdings and the reasons for those withholdings are provided in the accompanying *Vaughn* Index. Lewis Decl. ¶ 15.

13. In an effort to alleviate concerns by Plaintiff, GSA conducted an additional search using terms and parameters vetted, approved, and confirmed by Plaintiff’s counsel on April 27, 2020. The search consisted of the following:

Date Range: January 20, 2017 to July 30, 2018

Search Terms: (.eop.gov was used to capture OMB messages)

“Federal Bureau of Investigation” and “.eop.gov”

“Hoover” and “.eop.gov”

“FBI” and “.eop.gov”

“JEH” and “.eop.gov”

“Wray” and “.eop.gov”

“Rosenstein” and “.eop.gov”

“Deputy AG” and “.eop.gov”

GSA Custodian e-mail addresses:

emily.murphy@gsa.gov

daniel.mathews@gsa.gov

allison.brigati@gsa.gov

tim.horne@gsa.gov

mary.gibert@gsa.gov

robert.borden@gsa.gov

michael.gelber@gsa.gov

brennan.hart@gsa.gov

darren.blue@gsa.gov

bridget.brennan@gsa.gov

jack.stjohn@gsa.gov

Ex. 3. This new search resulted in 97 pages of responsive material. GSA released 6 pages and withheld 91 pages pursuant to Exemption 5. The withholdings and the reasons for those withholdings are provided in the accompanying *Vaughn* Index.

THE FOIA EXEMPTIONS

14. The documents for which GSA has claimed Exemption 5 and withheld in full consist of:

a. Category No. 1: Email communications between January 20, 2017, to July 30, 2018, between GSA and the White House concerning the renovation of FBI Headquarters (in conjunction with the presidential communications and deliberative process privileges);

b. Category No. 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 (in conjunction with the deliberative process privilege);

c. Category No. 3: a draft copy of GSA's Office of 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 (in conjunction with the deliberative process privilege);

d. Category No. 4: a draft copy of correspondence from GSA's General Counsel to GSA Office of Inspector General's Counsel to the Inspector General concerning a records request for the FBI Headquarters project (in conjunction with the attorney-client privilege and deliberative process privilege);

e. Category No. 5: a White House Briefing Itinerary regarding a discussion of the future of the FBI Headquarters on January 24, 2018 (in conjunction with the presidential communications privilege); and

f. Email communications between GSA, Office of Management and Budget (“OMB”), and FBI officials concerning drafts and plans regarding communications and strategies, Congressional testimony and related correspondence, and predecisional planning for the FBI Headquarters Project (in conjunction with the deliberative process privilege) (“Category No. 6”).

Vaughn Index at 2, 5-9.

15. The first three documents GSA withheld in full (described in paragraphs 11(b), (c), and (d)) were drafts of documents; were predecisional in that they each preceded a decision being contemplated by the government; and were all prepared to aid in the decision-making process by GSA in assessing how to proceed regarding the FBI Headquarters project and related inquiries and records requests. *Vaughn* Index at 5-7.

16. In each instance where GSA assessed whether to disclose the three documents (described in paragraphs 11(b), (c), and (d)), GSA concluded that disclosure would harm the free flow of information within GSA as it assessed how to respond. *Vaughn* Index at 5-7.

17. GSA also relied on the attorney-client privilege to withhold a single document (described in paragraph 11(d)), a draft copy of correspondence from GSA’s General Counsel to GSA Inspector General’s Counsel to the Inspector General concerning a records request for the FBI Headquarters project. *Vaughn* Index at 7.

18. GSA withheld the document described in paragraph 11(d) because it addresses legal issues related to a records request for the FBI Headquarters project and related matters of

policy and agency action. The communications contained in this draft correspondence were made for the purpose of providing legal advice and were confidential. . *Vaughn* Index at 7.

19. Release of the document described in paragraph 11(d) would deprive GSA staff, and the agency in general, of the benefit of confidential advice from GSA attorneys. Disclosing these communications would have a chilling effect on GSA's ability protect attorney-client communications, and stifle GSA's ability to have agency employees engage in discussions about matters of policy and agency action without concern over disclosure of any proposed agency actions prior to its occurrence. *Vaughn* Index at 7.

20. GSA withheld the document described in paragraph 11(e) because it is a White House Briefing Itinerary regarding a discussion of the future of the FBI Headquarters. This document is a communication prepared by presidential advisers who have broad and significant responsibility for investigating and formulating advice for the President and who exercised those responsibilities by gathering information and preparing advice and recommendations for transmission to the President regarding the future of the FBI Headquarters. Revealing these communications between presidential advisers and the President would frustrate the need for confidentiality in the communications of the Office of the President. *Vaughn* Index at 8.

21. GSA withheld the documents described in paragraph 11(f) because these communications were deliberative and predecisional, made with the purpose of soliciting comments and feedback from others to ensure accuracy, consistency, and completeness in the ultimate communications made or documents provided to various outside parties. For some of the items (e.g., proposed testimony and answers for the record), GSA is required by Government policy to submit proposed documents to OMB for review prior to final issuance. Disclosure would jeopardize the deliberative process that ensured the final statements or documents were an accurate

reflection of the positions of GSA, FBI, and OMB, and thus the entire Executive Branch, by causing confusion over versions in drafts compared to final versions and causing a chilling effect on future discussions. *See Vaughn Index* at 9.

22. Where GSA withheld information under Exemption 6 from the email communications described on page 1 of the *Vaughn Index*, those materials consisted of White House employee email addresses, the name and contact information for law enforcement personnel within GSA's Office of the Inspector General and federal employees' cellular telephone numbers. *See Vaughn Index* at 1.

23. In making the determination to withhold the information based on Exemption 6 from the email communications described on page 1 of the *Vaughn Index*, GSA determined that any public interest in the release of the White House employee's email address was not outweighed by the privacy interest in nondisclosure of the actual email address. *See Vaughn Index* at 1.

24. In making the determination to withhold the information based on Exemption 6 from the email communications described on page 1 of the *Vaughn Index*, GSA considered that it has released the name of the White House employee, so the public is aware of the employee's identity, yet releasing his actual White House email address does not provide the public with any further insight into the nature of his communications with GSA; any public interest in the release of this email address is not outweighed by the privacy interest in the non-release of the email address of the associate counsel to the President of the United States. *See Vaughn Index* at 1.

25. In making the determination to withhold the information based on Exemption 6 from the email communications described on page 1 of the *Vaughn Index*, GSA redacted the federal employees' cellular phone number because it determined that there is no public interest

in the dissemination of that information given that the employees' names and email addresses have been provided. *See Vaughn Index* at 1.

26. In making the determination to withhold the information based on Exemption 6 from the email communications described on page 1 of the *Vaughn Index*, GSA redacted the name and contact information for law enforcement personnel within GSA's Office of Inspector General because reference to an individual's name in a law enforcement file carries a stigmatizing connotation given the subject matter of the investigation. *See Vaughn Index* at 1.

27. In making the determination to withhold information based on Exemption 7(C) from the email communication described on page 3 of the *Vaughn Index*, GSA removed only the name and contact information of an Assistant Special Agent within GSA's Office of Inspector General that is part of a law enforcement record; GSA did so because it determined that any public interest in the release of the identifying information for the law enforcement personnel was not outweighed by the privacy interest in its nondisclosure of his information since this information is from a law enforcement file in an ongoing investigation within the GSA Office of Inspector General. *Vaughn Index* at 3.

28. In making the determination to withhold information based on Exemption 7(E) from the email communication described on page 4 of the *Vaughn Index*, GSA removed only the portions of the communications 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; GSA did so because the information reflects a specific GSA 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. The redacted portion addresses the specific topic the Office of Inspector

General was reviewing and investigating, and was redacted pursuant to a request from the Office of Inspector General so as not to negatively impact the OIG's work. *Vaughn* Index at 4.

SEGREGABILITY

29. When assessing whether portions of documents should be released, GSA was cognizant that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt.” Lewis Decl. ¶ 20.

30. GSA reviewed each record line-by-line to identify information exempt from disclosure, resulting in the production of several pages of partially-released materials from which only non-exempt information was withheld from disclosure. Lewis Decl. ¶ 21.

31. As a result of the searches and production using the line-by-line analysis, GSA has produced to Plaintiff all responsive, nonexempt records and portions of records that GSA located. Lewis Decl. ¶¶ 20-22.

Dated: July 7, 2020

Respectfully submitted,

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