

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.		)	
<hr/>		)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
DEFENDANT’S RENEWED MOTION FOR SUMMARY JUDGMENT**

Defendant General Services Administration (“GSA”), by and through undersigned counsel, hereby moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. Attached in support of GSA’s renewed motion are a memorandum of points and authorities, declaration of Travis Lewis, statement of material facts not in dispute, *Vaughn* Index,<sup>1</sup> exhibits, and proposed order.

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<sup>1</sup> See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

**TABLE OF CONTENTS**

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY..... 1

II. LEGAL STANDARD .....4

    A. Summary Judgment.....4

    B. Summary Judgment Standard As Applied to FOIA Cases .....4

III. ARGUMENT .....6

    A. GSA Conducted Reasonable and Adequate Searches Calculated to Uncover All Relevant Documents. ....6

    B. GSA Properly Withheld Records Pursuant to Exemption 5.....7

        1. GSA Properly Relied Upon the Attorney-Client Privilege to Withhold One Document.....9

        2. GSA Properly Relied Upon the Deliberative Process Privilege to Withhold Email Communications and Three Draft Documents ..... 11

            a. The Category No. 1 and Category No. 6 Documents Are Pre-Decisional and Deliberative ..... 12

            b. The Draft Materials In Category Nos. 2-4 Also Fall Within the Deliberative Process Exemption..... 14

        3. Defendant Properly Relied Upon the Presidential Communications Privilege to Withhold Two Documents ..... 16

    C. GSA Properly Redacted Information Under Exemption 6..... 19

    D. GSA Properly Redacted Information Under Exemption 7(C).....20

    E. GSA Properly Redacted Information Under Exemption 7(E).....21

    F. GSA Processed and Released All Reasonably Segregable Information. ....23

IV. CONCLUSION .....24

**TABLE OF AUTHORITIES**

**Cases**

*Agrama v. IRS*, 282 F. Supp. 3d 264 (D.D.C. 2017).....23

*Am. Ctr. for Equitable Treatment, Inc. v. Office of Mgmt. & Budget*,  
281 F. Supp. 3d 144 (D.D.C. 2017).....7

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) .....4

*Arthur Andersen & Co. v. IRS*, 679 F.2d 254 (D.C. Cir. 1982).....14

*Assoc. of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993) .....18

*Baker & Hostetler LLP v. Dep’t of Commerce*, 473 F.3d 312 (D.C. Cir. 2006).....6

*Barouch v. U.S. Dep’t of Justice*, 962 F. Supp. 2d 30 (D.D.C. 2013) .....21

*Blackwell v. FBI*, 646 F.3d 37 (D.C. Cir. 2011) .....22

*Boyd v. Crim. Div. of the U.S. Dep’t of Justice*, 475 F.3d 381 (D.C. Cir. 2007).....21, 23

*Brown v. Dep’t of Justice*, 742 F. Supp. 2d 126 (D.D.C. 2010).....5

*Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).....4

*Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854 (D.C. Cir. 1980) ..... 10, 11, 14, 15

*Ctr. for Effective Gov’t v. Dep’t of State*, 7 F. Supp. 3d 16 (D.D.C. 2013) .....17

*Dudman Commc’ns Corp. v. Air Force*, 815 F.2d 1565 (D.C. Cir. 1987)..... 14, 16

*Fed. Open Market Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340 (1979).....5

*Fisher v. United States*, 425 U.S. 391 (1976).....10

*Formaldehyde Inst. v. Dep’t of Health & Human Servs.*, 889 F.2d 1118 (D.C. Cir. 1989).....14

*Gould Inc. v. Gen. Servs. Admin.*, 688 F. Supp. 689 (D.D.C. 1988) .....22

*Greenberg v. U.S. Dep’t of Treasury*, 10 F. Supp. 2d 3 (D.D.C. 1998).....13

*ICM Registry, LLC v. U.S. Dep’t of Commerce*, 538 F. Supp. 2d 130 (D.D.C. 2008) .....14

*In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997)..... 11, 17

*In re Sealed Case*, 737 F.2d 94 (D.C. Cir. 1984)..... 10

*Juarez v. Dep’t of Justice*, 518 F.3d 54 (D.C. Cir. 2008).....23

*Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108 (D.C. Cir. 2004).....8, 17

*Judicial Watch, Inc. v. FDA*, 449 F.3d 141 (D.C. Cir. 2006)..... 19

*Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 59 (D.D.C. 2003).....5

*Lazaridis v. U.S. Dep’t of State*, 934 F. Supp. 2d 21 (D.D.C. 2013) .....21

*Loving v. Dep’t of Def.*, 550 F.3d 32 (D.C. Cir. 2008) ..... 16, 17

*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).....4

*Mayer Brown LLP v. IRS*, 562 F.3d 1190 (D.C. Cir. 2009).....22

*McKinley v. Bd. of Governors of Fed. Reserve Sys.*, 849 F. Supp. 2d 47 (D.D.C. 2012).....12

*Military Audit Project v. Casey*, 656 F.2d 724 (D.C. Cir. 1981).....5

*Murphy v. Dep’t of Army*, 613 F.2d 1151 (D.C. Cir. 1979) ..... 13

*N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975) .....7

*Nat’l Ass’n of Home Buyers v. Norton*, 309 F.3d 26 (D.C. Cir. 2002)..... 19

*Nat’l Ass’n of Retired Fed. Emps. v. Horner*, 879 F.2d 873 (D.C. Cir. 1989)..... 19

*Nat’l Inst. of Military Justice v. Dep’t of Def.*, 512 F.3d 677 (D.C. Cir. 2008) .....8

*Nat’l Sec. Archive v. CIA*, 752 F.3d 460 (D.C. Cir. 2014)..... 14

*Nat’l Sec. Counselors v. CIA*, 206 F. Supp. 3d 241 (D.D.C. 2016).....5

*Oglesby v. Dep’t of Army*, 920 F.2d 57 (D.C. Cir. 1990).....6

*Perry v. Block*, 684 F.2d 121 (D.C. Cir. 1982).....7

*Petroleum Info. Corp. v. Dep’t of the Interior*, 976 F.2d 1429 (D.C. Cir. 1992)..... 11, 12

*Pfeiffer v. CIA*, 721 F. Supp. 337 (D.D.C. 1989)..... 12

*PHE, Inc. v. Dep’t of Justice*, 983 F.2d 248 (D.C. Cir. 1993).....22

*Protect Democracy Project, Inc. v. U.S. Nat’l Sec. Agency*, Civ. A. No. 17-1000,  
2020 WL 1331996 (D.D.C. Mar. 23, 2020) (Kollar-Kotelly, J.) .....18

*Reed v. NLRB*, 927 F.2d 1249 (D.C. Cir. 1991) ..... 19, 20

*Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598 (D.C. Cir. 2001) .....13

*Rural Hous. Alliance v. U.S. Dep’t of Agric.*, 498 F.2d 73 (D.C. Cir. 1974).....21

*Russell v. Dep’t of the Air Force*, 682 F.2d 1045 (D.C. Cir. 1982)..... 11, 14, 16

*Steinberg v. U.S. Dep’t of Justice*, 23 F.3d 548 (D.C. Cir. 1994).....4

*Students Against Genocide (SAGE) v. Dep’t of State*, 50 F. Supp. 2d 20 (D.D.C. 1999).....12

*Summers v. Dep’t of Justice*, 140 F.3d 1077 (D.C. Cir. 1998).....23

*Tao v. Freeh*, 27 F.3d 635, 638 (D.C. Cir. 1994) .....4

*Tax Analysts v. IRS*, 117 F.3d 607 (D.C. Cir. 1997).....10

*Taxation With Representation Fund v. IRS*, 646 F.2d 666 (D.C. Cir. 1981) .....7

*U.S. Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1 (2001) .....8, 11

*U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595 (1982).....19

*United States v. Safavian*, 528 F.3d 957 (D.C. Cir. 2008) .....22

*Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).....5

*Weisberg v. Dep’t of Justice*, 627 F.2d 365 (D.C. Cir. 1980) .....5

*Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476 (D.C. Cir. 1984).....6

*Wheeler v. U.S. Dep’t of Justice*, 403 F. Supp. 2d 1 (D.D.C. 2005).....4

*Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007) .....13

*Wolfe v. Dep’t of Health & Human Servs.*, 839 F.2d 768 (D.C. Cir. 1988) (en banc) .....11

**Statutes**

5 U.S.C. § 552(a)(8)(A).....9  
5 U.S.C. § 552(b).....5, 23  
5 U.S.C. § 552(b)(5).....7  
5 U.S.C. § 552(b)(6).....19  
5 U.S.C. § 552(b)(7)(C).....20  
5 U.S.C. § 552(b)(7)(E).....22  
FOIA Amendments 1996, Pub. L. No. 104-233, 110 Stat. 3048.....6

**Rules**

Fed. R. Civ. P. 56(a).....4

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On or about July 30, 2018, Plaintiff submitted a Freedom of Information Act (“FOIA”) request to Defendant General Services Administration (“GSA”) seeking “copies of all communications from January 20, 2017 to the present between GSA and the White House concerning the renovation of the FBI headquarters.” Compl. ¶ 13; Ex. 1 (July 30, 2018, FOIA Request); Decl. Travis Lewis (“Lewis Decl.”) ¶ 4. GSA conducted initial searches for electronic and hard copy documents, locating fifty-two pages of records responsive to the request. Lewis Decl. ¶¶ 5-10. Before completing those searches, the parties engaged in communications to identify acceptable terms, which GSA then employed in its search. Ex. 2 (Oct. 22-25, 2018, email exchange); Lewis Decl. ¶ 5.

GSA subsequently processed those fifty-two pages and ultimately produced to Plaintiff twenty-five pages with certain redactions (as reflected in the accompanying *Vaughn* Index). Lewis Decl. ¶¶ 8-10, 18. The remaining twenty-seven pages were withheld in their entirety. *Id.* ¶ 10. As reflected herein, GSA withheld information pursuant to one or more FOIA Exemptions, namely Exemptions 5 (in conjunction with the attorney-client, deliberative process, and presidential communications privileges), 6, 7(C), and 7(E).

The parties briefed cross-motions for summary for summary judgment. In a July 29, 2019, memorandum opinion, the Court granted in part and denied in part Plaintiff’s cross-motion for summary judgment, determining that GSA’s search in response to the FOIA request was inadequate. *See generally* ECF No. 26. The Court also denied without prejudice GSA’s motion for summary judgment. *See id.* at 2, 12. The Court declined to address GSA’s withholdings and redactions, and instead advised the parties that, after GSA completed a new search, they could

file renewed motions for summary judgment addressing all disputed withholdings and redactions. *Id.* at 12-13.

Following the Court's ruling, Duane Smith from the GSA Office of General Counsel ("OGC") requested that GSA's Office of the Chief Information Officer ("OCIO") conduct a second email search utilizing 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

Lewis Decl. ¶ 13. After the email search returned tens of thousands of documents, the search was further reviewed using the key term "EPW" and "FBI". *Id.* ¶ 14. A total of thirteen pages were deemed responsive. *Id.* ¶ 15. Of those thirteen pages, one page was released in full and twelve pages were partially redacted. *Id.* Of those twelve pages, some were repetitive. *Id.* As reflected herein, GSA withheld information pursuant to one or more FOIA exemptions, namely Exemptions 5 (in conjunction with the deliberative process and presidential communications privileges) and 6.

The parties renewed their cross-motions for summary judgment. *See* ECF Nos. 36, 38. Before the parties completed their submissions, GSA moved to stay briefing so that it could, among other things, "rectify the search-related matters CREW raise[d] by supplementing its search and ensuring clarity about all search terms." ECF No. 41 at 2. The Court granted in part GSA's motion, authorizing GSA to conduct a supplemental search, process additional records, determine any additional withholdings, and reexamine its current withholdings. ECF No. 43 at 2. The parties



later agreed to withdraw their pending cross-motions. *See* ECF No. 44; Minute Order (June 11, 2020).

In April 2020, the parties discussed GSA’s supplemental search. The parties negotiated—and Plaintiff’s counsel confirmed—the following search parameters for GSA’s supplemental search:

**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

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michael.gelber@gsa.gov

brennan.hart@gsa.gov

darren.blue@gsa.gov

bridget.brennan@gsa.gov

jack.stjohn@gsa.gov

Ex. 3. Applying these search parameters resulted in an additional ninety-seven pages of responsive material. Lewis Decl. ¶ 17. GSA released six pages and withheld ninety-one pages pursuant to Exemption 5. *Id.*

## **II. LEGAL STANDARD**

### **A. Summary Judgment**

Summary judgment is appropriate when the pleadings and evidence show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Tao v. Freeh*, 27 F.3d 635 (D.C. Cir. 1994). A genuine issue of material fact is one that “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248.

The party seeking summary judgment must demonstrate the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 248. Once the moving party has met its burden, the non-moving party may not rest upon the mere allegations or denials of his pleadings, but must instead establish more than “the mere existence of a scintilla of evidence” in support of its position. *Anderson*, 477 U.S. at 252. Thus, summary judgment is due if the non-moving party fails to offer “evidence on which the jury could reasonably find for the [nonmovant].” *Id.* In determining whether a genuine issue of material fact exists, the trier of fact must view all facts, and reasonable inferences drawn therefrom, in the light most favorable to the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986).

### **B. Summary Judgment Standard As Applied to FOIA Cases**

Summary judgment is “the routine vehicle by which most FOIA actions are resolved.” *Wheeler v. U.S. Dep’t of Justice*, 403 F. Supp. 2d 1, 5 (D.D.C. 2005). To obtain summary judgment in a FOIA action, an agency must show, viewing the facts in a light most favorable to the requester, that there is no genuine issue of material fact as to the agency’s compliance with FOIA. *Steinberg v. U.S. Dep’t of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994). An agency is entitled to summary

judgment in a FOIA case when it demonstrates that no material facts are in dispute, it conducted an adequate search for responsive records, and each responsive record that it located either has been produced to the plaintiff or is exempt from disclosure. *See, e.g., Weisberg v. Dep't of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980); *see also Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 59, 62 (D.D.C. 2003) (“The only question for summary judgment is whether the agency finally conducted a reasonable search, and whether its withholdings are justified.”).

The Court may enter summary judgment based solely upon information provided in affidavits or declarations when those affidavits or declarations describe “the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exception, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). A plaintiff “cannot rebut the good faith presumption” afforded to an agency’s supporting affidavits “through purely speculative claims about the existence and discoverability of other documents.” *Brown v. Dep't of Justice*, 742 F. Supp. 2d 126, 129 (D.D.C. 2010).

An agency has the burden of showing that it properly invoked any FOIA exemptions when it decides to withhold information. *Fed. Open Market Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 352 (1979). An agency can prove it had an adequate factual basis for invoking FOIA exemptions through one or more means, including affidavits, declarations, a *Vaughn* Index, or a combination thereof. *See Nat'l Sec. Counselors v. CIA*, 206 F. Supp. 3d 241 (D.D.C. 2016); *see also Vaughn v. Rosen*, 484 F.2d 820, 826-28 (D.C. Cir. 1973). In support of this motion, Defendant submits a Declaration of Travis Lewis and an accompanying *Vaughn* Index. These materials establish Defendant’s justification for redacting or withholding information pursuant to 5 U.S.C. § 552(b).

### III. ARGUMENT

#### A. GSA Conducted Reasonable and Adequate Searches Calculated to Uncover All Relevant Documents.

An agency is entitled to summary judgment in a FOIA case with respect to the adequacy of its search if the agency shows “that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (citations omitted), *superseded by statute on other grounds by* FOIA Amendments 1996, Pub. L. No. 104-233, 110 Stat. 3048. As the D.C. Circuit explained, the “issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the *search* for those documents was *adequate*.” *Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). An agency “may establish the adequacy of its search by submitting reasonably detailed, nonconclusory affidavits describing its efforts.” *Baker & Hostetler LLP v. Dep’t of Commerce*, 473 F.3d 312, 318 (D.C. Cir. 2006).

In its prior ruling, the Court deemed GSA’s search inadequate because Plaintiff presented GSA with at least two emails that were responsive to Plaintiff’s FOIA request but GSA’s search did not locate the responsive records. ECF No. 26 at 11-12. After the Court’s ruling, GSA’s OCIO conducted a second email search. Lewis Decl. ¶ 13. The email search performed by GSA’s OCIO returned tens of thousands of pages, which GSA OGC reviewed using the key term “EPW FBI.” *Id.* ¶ 14. After applying these search parameters, GSA’s OGC determined that thirteen pages were responsive to Plaintiff’s FOIA request. *Id.* ¶ 15. One page was released in full, and twelve pages were partially redacted. *Id.* Some of the twelve pages deemed responsive were repetitive. *Id.*

In an effort to alleviate Plaintiff’s continued concerns, GSA recently conducted an additional search utilizing terms and parameters that were vetted, approved, and confirmed by

Plaintiff's counsel on April 27, 2020.<sup>2</sup> *Id.* ¶ 16. This supplemental search yielded ninety-seven pages of additional responsive material. *Id.* ¶ 17. GSA released six pages and withheld the remaining pages pursuant to Exemption 5. *Id.*

It is now beyond peradventure that GSA conducted reasonable searches utilizing terms and parameters discussed with and approved by Plaintiff. *See id.* ¶ 22; *see also Cause of Action v. IRS*, 253 F. Supp. 3d 149, 158 (D.D.C. 2017) (“Because the agency searched the relevant database using *agreed-upon search terms*, it has shown that ‘all files likely to contain responsive materials’ were searched[.]” (emphasis added)). GSA is therefore entitled to summary judgment with respect to the adequacy of its searches. *See Lewis Decl.* ¶ 22; *Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982) (“[H]owever fitful or delayed the release of information under the FOIA may be, once all requested records are surrendered, federal courts have no further statutory function to perform.”).

#### **B. GSA Properly Withheld Records Pursuant to Exemption 5.**

Exemption 5 protects disclosure of “inter-agency or intra-agency memorandums or letters which 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). Courts have “construed this exemption to encompass the protections traditionally afforded certain documents pursuant to evidentiary privileges in the civil discovery context,” *Taxation With Representation Fund v. IRS*, 646 F.2d 666, 676 (D.C. Cir. 1981), including three executive privileges relevant here: the attorney-client, the deliberative process, and presidential communications privileges. *See N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 149-50, 155 (1975) (discussing the attorney-client and deliberative process privileges); *Mead Data*

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<sup>2</sup> These terms included “search terms that are common in practice,” *Am. Ctr. for Equitable Treatment, Inc. v. Office of Mgmt. & Budget*, 281 F. Supp. 3d 144, 152 (D.D.C. 2017), such as “JEH” and “Hoover,” *Lewis Decl.* ¶ 16.

*Cent., Inc. v. Dep't of Air Force*, 566 F.2d 242, 252-55 (D.C. Cir. 1977) (discussing the attorney-client privilege); *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1113 (D.C. Cir. 2004) (“Exemption 5 also has been construed to incorporate the presidential communications privilege.”).

For a document to qualify for Exemption 5, “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.” *U.S. Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001); *see also Nat'l Inst. of Military Justice v. Dep't of Def.*, 512 F.3d 677, 680 & n.4 (D.C. Cir. 2008) (noting that records withheld under Exemption 5 must be inter- or intra-agency records “‘unavailable by law’ under one of the established civil discovery privileges”). Each document GSA withheld under Exemption 5 satisfies the government agency source requirement:

- a. 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) (“Category No. 1”);<sup>3</sup>
- b. A draft copy of GSA’s response to Questions for the Record from the U.S. Senate’s Committee on Environmental and Public Works regarding the FBI Headquarters Project sent between White House Counsel and GSA’s OGC (in conjunction with the deliberative process privilege) (“Category No. 2”);

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<sup>3</sup> GSA also withheld certain information contained in Category No. 1 pursuant to Exemption 6, *see infra* Part III.C, Exemption 7(C), *see infra* Part III.D, and Exemption 7(E), *see infra* Part III.E.

- c. A draft copy of GSA’s Office of the Inspector General (“OIG”) Draft Review of GSA’s Revised Plan for the Federal Bureau of Investigation (“FBI”) Headquarters Consolidation Project sent between White House Counsel and GSA’s OGC (in conjunction with the deliberative process privilege) (“Category No. 3”);
- d. A draft copy of correspondence from GSA’s General Counsel to GSA’s OIG Counsel to the Inspector General concerning a records request for the FBI Headquarters Project (in conjunction with the deliberative process privilege and attorney-client privilege) (“Category No. 4”);
- e. 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) (“Category No. 5”); 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.

Additionally, an agency may only withhold information if it “reasonably foresees that disclosure would harm an interest protected by [a FOIA] exemption.” 5 U.S.C. § 552(a)(8)(A).

As discussed below, GSA has satisfied this additional requirement.

**1. GSA Properly Relied Upon the Attorney-Client Privilege to Withhold One Document**

The attorney-client privilege covers “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead*

*Data Cent., Inc.*, 566 F.2d at 252. This privilege protects “communications from attorneys to their clients if the communications ‘rest on confidential information obtained from the client.’” *Tax Analysts v. IRS*, 117 F.3d 607, 618 (D.C. Cir. 1997) (quoting *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984)). Courts may infer confidentiality where communications suggest that “the Government is dealing with its attorneys as would any private party seeking advice to protect personal interests,” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 863 (D.C. Cir. 1980), courts may infer confidentiality. *See Tax Analysts*, 117 F.3d at 618 (“In the government context, the ‘client’ may be the agency and the attorney may be an agency lawyer.”). The privilege “protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege.” *Fisher v. United States*, 425 U.S. 391, 403 (1976).

The material withheld within Category No. 4 is protected by the attorney-client privilege. The document consists of a draft copy of correspondence prepared by GSA’s General Counsel on behalf of the GSA Administrator to GSA’s OIG that addresses legal issues related to a “records request for the FBI Headquarters Project.” *Vaughn* Index at 7. As a threshold matter, this document confirms that GSA is the “client” and its OGC is the “attorney” for purposes of the attorney-client privilege. Furthermore, the document originated from within GSA’s OGC. And, the communications contained therein were made for the purpose of providing legal advice concerning a records request for the FBI Headquarters project and related matters of policy and agency action. *Id.* These communications were confidential, and the disclosure of these communications would deprive GSA staff, and the agency in general, of the benefit of confidential advice from GSA attorneys. *See id.* Accordingly, GSA properly invoked Exemption 5 to withhold the Category No. 4 document, which is protected by the attorney-client privilege.



**2. GSA Properly Relied Upon the Deliberative Process Privilege to Withhold Email Communications and Three Draft Documents**

The deliberative process privilege protects “materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (citation omitted). This privilege rests “on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government.” *Klamath Water Users Protective Ass’n*, 532 U.S. at 8-9. There are three policy bases for the privilege, which protects: (1) creative debate and candid consideration of alternatives within an agency, thereby improving the quality of agency policy decisions; (1048) (2) the public from misconstruing the views of an individual as the views of the agency; (1949); and (3) the integrity of the decision-making process. *See Russell v. Dep’t of the Air Force*, 682 F.2d 1045, 1048-49 (D.C. Cir. 1982).

Exemption 5 “is intended to protect the deliberative process of government and not just deliberative material.” *Mead Data Cent., Inc.*, 566 F.2d at 256. For the deliberative process privilege to apply under Exemption 5, courts must deem the material both pre-decisional and deliberative. *Wolfe v. Dep’t of Health & Human Servs.*, 839 F.2d 768, 774 (D.C. Cir. 1988) (en banc). A document is pre-decisional if it was “prepared in order to assist an agency decision maker in arriving at his decision, rather than to support a decision already made.” *Petroleum Info. Corp. v. Dep’t of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992) (internal quotations omitted). A document is deliberative in nature if it “reflects the give-and-take of the consultative process.” *Coastal States Gas Corp.*, 617 F.2d at 866.

The “ultimate aim” of the deliberative process privilege set forth in Exemption 5 is to “prevent injury to the quality of agency decisions.” *Petroleum Info. Corp.*, 976 F.2d at 1433-34 (internal quotations omitted). When evaluating deliberate process claims, courts “must give considerable deference to the agency’s explanation of its decisional process.” *Pfeiffer v. CIA*, 721 F. Supp. 337, 340 (D.D.C. 1989) (citation omitted).

Here, GSA has met its burden of demonstrating that the deliberative process privilege applies to certain email communications and three draft documents it withheld from release.

**a. The Category No. 1 and Category No. 6 Documents Are Pre-Decisional and Deliberative**

The documents in Category No. 1 consist of email communications between GSA and the White House regarding the future of the FBI Headquarters project. These communications were made as part of a consultative process and consist of recommendations so that decisions about the future of the project could be made. *Vaughn* Index at 2. They also reflect deliberations through which policy about the project was being formulated. *Id.* The documents in Category No. 1 are therefore both pre-decisional and part of the deliberative process.

To the extent Plaintiff may argue that GSA is precluded from withholding certain deliberative process materials within Category No. 1 because the House Oversight Committee released many of the documents, Plaintiff is mistaken. The e-mails at issue were not documents created to assist Congress. Rather, they were created as part of GSA’s deliberative process. The House Oversight Committee’s release of this information, however, does not constitute “disclosure to the whole world” or waive GSA’s privileges encompassed within Exemption 5.<sup>4</sup> *Murphy v.*

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<sup>4</sup> Indeed, an agency “waives its right to claim a FOIA exemption for information that *it has officially released* in the public domain.” *McKinley v. Bd. of Governors of Fed. Reserve Sys.*, 849 F. Supp. 2d 47, 59 (D.D.C. 2012) (emphasis added); *see also Students Against Genocide (SAGE) v. Dep’t of State*, 50 F. Supp. 2d 20, 25 (D.D.C. 1999) (“[A]gencies lose FOIA exemptions *only*

*Dep't of Army*, 613 F.2d 1151, 1155 (D.C. Cir. 1979); *see also Rockwell Int'l Corp. v. Dep't of Justice*, 235 F.3d 598, 604 (D.C. Cir. 2001) (preserving Exemption 5 protection to deliberative process documents provided to a congressional subcommittee). GSA is not required to research what material may already exist in the public domain. *See, e.g., Greenberg v. U.S. Dep't of Treasury*, 10 F. Supp. 2d 3, 28 (D.D.C. 1998) (rejecting argument that the agency must determine whether persons whose privacy it invokes were dead or alive, explaining that any obligation “would be limited to the cases where the agency ‘has, or has ready access to, data bases that could resolve the issue’”). “[T]he fact that information exists in some form in the public domain does not necessarily mean that official disclosure will not cause harm cognizable under a FOIA exemption.” *Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007) (citation omitted).

The documents in Category No. 6 consist of email communications between GSA, FBI, and OMB officials addressing drafts and plans regarding communications and strategies, congressional testimony and related correspondence, and predecisional planning for the FBI Headquarters Project. *See Vaughn* Index at 9. The withheld documents focus on four topics: (1) proposed testimony of a Congressional hearing; (2) communications plans, including possible talking points and press statements; (3) drafts of the FBI Headquarters project status for relevant stakeholders on and off Capitol Hill; and (4) proposed responses to Congressional Question for the Record. *See id.* All of these communications are predecisional and deliberative because they were 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. Furthermore, some of the items (i.e., proposed testimony and answers for

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*when they officially release information* or when the exact information is otherwise in the public domain.” (emphasis added)).

the record), require GSA 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 id.*

**b. The Draft Materials In Category Nos. 2-4 Also Fall Within the Deliberative Process Exemption**

Drafts are *typically* pre-decisional and deliberative. *Nat'l Sec. Archive v. CIA*, 752 F.3d 460, 463 (D.C. Cir. 2014) (emphasis added); *see also Arthur Andersen & Co. v. IRS*, 679 F.2d 254, 257 (D.C. Cir. 1982) (rejecting argument that “any document identified as a ‘draft’ is per se exempt”).<sup>5</sup> As the D.C. Circuit explained, drafts typically fall within Exemption 5 because the “disclosure of editorial judgments—for example, decisions to insert or delete material or to change a draft’s focus or emphasis—would stifle the creative thinking and candid exchange of ideas necessary” to produce the final work. *Dudman Comm’n’s Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Drafts are prepared “prior in time to the final decision on agency policy,” *ICM Registry, LLC v. U.S. Dep’t of Commerce*, 538 F. Supp. 2d 130, 132 (D.D.C. 2008), and reflect the give-and-take process rather than adopted policy itself, *see Coastal States Gas Corp.*, 617 F.2d at 866.

The drafts GSA withheld meet the criteria of the privilege and are exempt from disclosure under FOIA.

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<sup>5</sup> The D.C. Circuit explained that the relevant decision for purposes of analyzing the deliberative process privilege is the decision to publish, not the decision to draft. *See Formaldehyde Inst. v. Dep’t of Health & Human Servs.*, 889 F.2d 1118, 1120 (D.C. Cir. 1989); *see also Russell*, 682 F.2d at 1049 (recognizing that Exemption 5 applies to an agency’s editorial review process).

The document in Category No. 2 is a draft copy of GSA's responses to Questions for the Record from the U.S. Senate's Committee on Environmental and Public Works regarding the FBI Headquarters Project. This draft was exchanged between White House counsel and GSA's OGC, and it included GSA's proposed responses, comments, and interagency deliberations. *Vaughn Index* at 5. Those deliberations occurred prior to any determination being reached about how GSA would move forward with responding to questions for the record. *Id.* The document in Category No. 2 was vetted through various individuals, agencies, and the White House to ensure that they reflected the position of GSA and the Administration about the subject matters discussed in the documents. Release of this draft document would confuse the public about the official position expressed by GSA and the Administration. *Id.* In other words, release of the draft "would inaccurately reflect or prematurely disclose the views of the agency" prior to formulation of an agency position. *Coastal States Gas Corp.*, 617 F.2d at 866. The document in Category No. 2 is therefore both pre-decisional, part of the deliberative process, and not subject to disclosure.

The document in Category No. 3 is a draft copy of GSA's OIG draft review of GSA's revised plan for the FBI project that was sent between White House Counsel and GSA's Office of General counsel. Document No. 3 was marked "Draft" by the OIG because it consisted of a proposal, suggestion, or other subjective material that did not constitute a formulation of the agency's position. It was provided to GSA in order to review and respond to the questions presented therein. *Vaughn Index* at 6. The information contained in this draft document was part of OIG's deliberative process, which involved analyzing and determining what, if any, GSA action with respect to the project required further inquiry or investigation. *Id.* The document in Category No. 3 is therefore both pre-decisional and part of the deliberative process. *Id.*

The document in Category No. 4 is a draft copy of correspondence from GSA's General Counsel to GSA's OIG Counsel to the Inspector General concerning a records request for the FBI Headquarters project. As discussed above, this document constitutes an attorney-client communication. *See supra* Part III.B.1. The content of this draft was also used by GSA to engage in both interagency and intra-agency discussions about policy matters and agency action. *Vaughn Index* at 7. The document in Category No. 4 is therefore both pre-decisional and part of the deliberative process.

Release of non-final documents such as those in Category Nos. 2-4 would reveal the editorial judgments of government staff. It would also disclose collaborative dialogue about the matters under consideration, including information about agency personnel's decisions about which portions to retain and revise. Disclosure of the government's internal deliberations risks chilling government personnel from engaging in candid discussion within the agency about policy matters and proposed agency actions, thereby undermining the agency's ability to perform its functions. The deliberative process privilege prevents these types of intrusions into the government's internal deliberations. *See Dudman Commc'ns Corp. v. Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987); *Russell*, 682 F.2d at 1049.

For these reasons, Defendant properly applied Exemption 5 to withhold release of documents in Category Nos. 1-4.

**3. Defendant Properly Relied Upon the Presidential Communications Privilege to Withhold Two Documents**

The presidential communications privilege "preserves the President's ability to obtain candid and informed opinions from his advisors and to make decisions confidentially." *Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008). This privilege is "fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution."

*Judicial Watch, Inc.*, 365 F.3d at 1113 (citation omitted). The privilege protects “‘communications directly involving and documents actually viewed by the President,’ as well as documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President.” *Loving*, 550 F.3d at 37 (alterations in original) (quoting *Judicial Watch, Inc.*, 365 F.3d at 1114). Thus, the privilege protects in its entirety “the President’s personal decision-making process,” including the gathering of information by White House staff that is relevant to the process. *See Judicial Watch, Inc.*, 365 F.3d at 1118. In other words, to best serve the public interest, the privilege encompasses

communications made by presidential advisers in the course of preparing advice for the President . . . , even when these communications are not made directly to the President. Given the need to provide sufficient elbow room for advisers to obtain information from all knowledgeable sources, the privilege must apply both to communications which these advisers solicited and received from others as well as those they authored themselves. The privilege must also extend to communications authored or received in response to a solicitation by members of a presidential adviser’s staff.

*In re Sealed Case*, 121 F.3d at 751-52. Although this privilege “should be construed as narrowly as is consistent with ensuring that the confidentiality of the President’s decisionmaking process is adequately protected,” *id.* at 752, the President “must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately,” *United States v. Nixon*, 418 U.S. 683, 708 (1974). Unlike the deliberative process privilege, the presidential communications privilege applies “‘to documents in their entirety, and covers final and postdecisional materials as well as pre-deliberative ones.’” *Ctr. for Effective Gov’t v. Dep’t of State*, 7 F. Supp. 3d 16, 22 (D.D.C. 2013) (citing *In re Sealed Case*, 121 F.3d at 745).

Here, Defendant properly applied the presidential communications privilege to documents in Category No. 1,<sup>6</sup> *see Vaughn* Index at 2, and one page of a document within Category No. 5, *see id.* at 8. In both instances, presidential advisers made the communications during the course of gathering information and formulating advice and recommendations for transmission to the President about the future of the FBI Headquarters project. *Vaughn* Index at 2, 8. These types of communications “were solicited and received by the President or his immediate White House advisers who have broad and significant responsibility for investigating and formulating the advice to be given the President.” *Protect Democracy Project, Inc. v. U.S. Nat’l Sec. Agency*, Civ. A. No. 17-1000, 2020 WL 1331996, at \*4 (D.D.C. Mar. 23, 2020) (Kollar-Kotelly, J.) (internal quotation marks omitted). Furthermore, “the ability to discuss matters confidentially is surely an important condition to the exercise of executive power. Without it, the President’s performance of any of his duties—textually explicit or implicit in Article II’s grant of executive power—would be made more difficult. *Assoc. of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898, 909 (D.C. Cir. 1993); *see also id.* (“Article II not only gives the President the ability to consult with his advisers confidentially, but also, as a corollary, it gives him the flexibility to organize his advisers and seek advice from them as he wishes.”). Revealing these communications between presidential advisers and the President would frustrate the need for confidentiality in the communications of the Office of the President. *See Vaughn* Index at 8. Accordingly, Defendant properly invoked the presidential communications privilege to withhold under Exemption 5 two documents prepared by the President’s advisers tasked with formulating advice for the President and who discharged that responsibility by preparing advice for and recommendations to the President.

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<sup>6</sup> These communications are also protected by the deliberative process privilege. *See supra* Part III.B.2.



In short, GSA properly withheld materials pursuant to FOIA Exemption 5 that included attorney-client communications; preliminary, pre-decisional opinions and deliberations of agency employees underlying decisions or policies; and privileged presidential communications.

**C. GSA Properly Redacted Information Under Exemption 6**

Exemption 6 exempts from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). When evaluating a withholding under Exemption 6, courts must determine whether (1) the records at issue are personnel files, medical files, or similar files; (2) the material at issue implicates a privacy interest that is more than de minimis; and (3) the privacy interest outweighs any public interest in disclosure. *Nat’l Ass’n of Home Buyers v. Norton*, 309 F.3d 26, 33 (D.C. Cir. 2002). With regard to the first inquiry, the Supreme Court has directed lower courts to construe “similar files” broadly to apply to any “Government records on an individual which can be identified as applying to that individual.” *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991) (citing *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 601-02 (1982)). The term “similar files” protection also covers “bits of personal information, such as names and addresses.” *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 152-53 (D.C. Cir. 2006).

With regard to the second inquiry, Exemption 6 is designed to protect personal information in public records, even if it is not embarrassing or of an intimate nature. *Nat’l Ass’n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989). While disclosure of names and addresses is “not inherently and always a significant threat to the privacy of those listed,” whether disclosure is a significant or de minimis threat depends upon the circumstances. *Id.* at 877. As for the third inquiry, courts must balance the relevant privacy interests in nondisclosure and the public interests in disclosure, and determine whether, “on balance, disclosure would work a clearly

unwarranted invasion of personal privacy.” *Reed*, 927 F.2d at 1252. “[O]nly official information that sheds light on an agency’s performance of its statutory duties” merits disclosure under FOIA, whereas “disclosure of information about private citizens that is accumulated in various government files” would “reveal[] little or nothing about an agency’s own conduct.” *Id.* at 1251.

Here, GSA withheld information under Exemption 6 that is contained in personnel, medical, or similar files; the material implicates significant privacy interests; and disclosure of the information would constitute a clear, unwarranted invasion of privacy. At issue are government emails contained in Category No. 1 that were maintained by the agency for purposes of official communications. *Vaughn* Index at 1. Contained within pages 1-10, 12, 14-23 of responsive emails and a two-page attachment are various White House employee addresses, names and contact information for law enforcement personnel within GSA’s OIG, and federal employees’ cellular telephone numbers. *Vaughn* Index at 1. Defendant concluded that releasing this information “does not provide the public with any further insight into the nature of his communications with GSA,” and the privacy interests of those involved outweighed any interest to the public in the contact information and law enforcement officer names. *Vaughn* Index at 1. Accordingly, GSA properly applied Exemption 6 to protect privacy interests contained in Category No. 1.

**D. GSA Properly Redacted Information Under Exemption 7(C).**

Exemption 7(C) authorizes the government to withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). The analysis under Exemption 7(C) is similar to the Exemption 6 analysis. *See supra* Part III.C. The first step is to determine whether the information was compiled for law enforcement purposes. *Barouch v. U.S. Dep’t of Justice*, 962

F. Supp. 2d 30, 59 (D.D.C. 2013) (citing *Rural Hous. Alliance v. U.S. Dep't of Agric.*, 498 F.2d 73 (D.C. Cir. 1974)). Then the Court must determine whether a privacy interest exists and balance that interest against the public interest in disclosure. *Id.* As a general rule, “third-party identifying information contained in [law enforcement] records is ‘categorically exempt’ from disclosure.” *Id.* (quoting *Lazaridis v. U.S. Dep't of State*, 934 F. Supp. 2d 21, 38 (D.D.C. 2013)). If a privacy interest exists, then the FOIA requester must show that (1) the public interest sought to be advanced is significant and one more specific than having the information for its own sake; and (2) the information is likely to advance that interest. *Boyd v. Crim. Div. of the U.S. Dep't of Justice*, 475 F.3d 381, 387 (D.C. Cir. 2007).

Here, the information GSA withheld under Exemption 7(C) pertains to law enforcement information contained in Category No. 1. *Vaughn* Index at 3. GSA determined that the name and identifying information of the law enforcement personnel at issue provided no insight to the public, and any public interest was not outweighed by the privacy interest in nondisclosure of information contained in the law enforcement file of an ongoing investigation in the GSA OIG's office. *Vaughn* Index at 3. Accordingly, GSA properly redacted this information pursuant to Exemption 7(C).<sup>7</sup>

**E. GSA Properly Redacted Information Under Exemption 7(E).**

Exemption 7(E) protects all information compiled for law enforcement purposes when its release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if

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<sup>7</sup> If the Court concludes that Exemption 7(C) does not apply to these materials, then GSA asks the Court to assess whether Exemption 6 would apply to the document. Each of the exemptions involves similar balancing such that protecting third parties' information would be appropriate.

such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). Courts “set[] a relatively low bar for the agency to justify withholding” under Exemption 7(E), *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011), which only requires that the agency “demonstrate[] logically how the release of that information might create a risk of circumvention of the law,” *PHE, Inc. v. Dep’t of Justice*, 983 F.2d 248, 251 (D.C. Cir. 1993). Exemption 7(E) looks not just for circumvention of the law,

but for a risk of circumvention; not just for an actual or certain risk of circumvention, but for an expected risk; not just for an undeniably or universally expected risk, but for a reasonably expected risk; and not just for certitude of a reasonably expected risk, but for the chance of a reasonably expected risk.

*Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1193 (D.C. Cir. 2009).

Here, GSA invoked Exemption 7(E) to a single page of responsive material in Category No. 1 containing portions of a communication between an Assistant Special Agent within GSA’s OIG and the Special Assistant to the GSA Administrator regarding the basis of the Inspector General’s request to interview the Administrator. *Vaughn* Index at 4. The redacted information addresses the specific topic the OIG was reviewing and investigating and was redacted pursuant to a request from the OIG to prevent any negative impact upon the OIG’s work. *Id.* GSA’s OIG “is a ‘mixed function agency’” that investigates compliance with the law and has capacity to generate records for law enforcement purposes. *Gould Inc. v. Gen. Servs. Admin.*, 688 F. Supp. 689, 695 (D.D.C. 1988); *see also United States v. Safavian*, 528 F.3d 957, 967-69 (D.C. Cir. 2008) (vacating the defendant’s conviction on, among other charges, one count of obstruction of a GSA OIG investigation). Accordingly, GSA properly withheld the information pursuant to Exemption 7(E).

**F. GSA Processed and Released All Reasonably Segregable Information.**

While an agency may properly withhold records or parts of records under one or more FOIA exemptions, it “must release ‘any reasonably segregable portions’ of responsive records that do not contain exempt information.” *Agrama v. IRS*, 282 F. Supp. 3d 264, 275 (D.D.C. 2017); *see* 5 U.S.C. § 552(b) (requiring “any reasonably segregable portion of a record shall be provided to [the requester] after deletion of the portions which are exempt”). Non-exempt portions of a document “must be disclosed unless they are inextricably intertwined with exempt portions.” *Mead Data Cent., Inc.*, 566 F.2d at 260. Before approving the application of a FOIA exemption, district courts must make specific findings of segregability regarding the documents to be withheld. *Summers v. Dep’t of Justice*, 140 F.3d 1077, 1081 (D.C. Cir. 1998). Agencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material. *Boyd*, 475 F.3d at 391. Courts “may rely on government affidavits that show with reasonable specificity why documents withheld pursuant to a valid exemption cannot be further segregated.” *Juarez v. Dep’t of Justice*, 518 F.3d 54, 61 (D.C. Cir. 2008).

Here, GSA conducted a detailed, line-by-line review of the responsive records to determine whether it could release any reasonably segregable material. Lewis Decl. ¶ 18. It determined that, for records that were released in part, “all information not exempted from disclosure pursuant to the FOIA . . . was correctly segregated and non-exempt portions were released.” *Id.* GSA has explained its redactions and withholdings, and produced segregable material when possible. *See generally Vaughn Index*. Accordingly, GSA has properly withheld information pursuant to Exemptions 5, 6, 7(C), and 7(E).

**IV. CONCLUSION**

For the foregoing reasons, GSA respectfully requests that this Court grant its Renewed Motion for Summary Judgment.

Dated: July 7, 2020

Respectfully submitted,

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Acting United States Attorney

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# CREW | citizens for responsibility and ethics in washington

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FACSIMILE TRANSMITTAL SHEET

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TO:	FROM:
FOIA Officer	Anne L. Weismann
COMPANY:	DATE:
General Services Administration	JULY 30, 2018
RECIPIENT'S FAX NUMBER:	PAGE 1 OF 4
202-501-2727	
RECIPIENT'S PHONE NUMBER:	RE:
	Please see enclosed FOIA request

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NOTES/COMMENTS:

*Pages transmitted are privileged and confidential.*



# CREW

 | citizens for responsibility  
and ethics in washington

July 30, 2018

**BY FACSIMILE: (202) 501-2727**

U.S. General Services Administration  
FOIA Requester Service Center (H1F)  
1800 F Street, N.W., Room 7308  
Washington, D.C. 20405-0001

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and General Services Administration ("GSA") regulations.

Specifically, CREW requests copies of all communications from January 20, 2017 to the present between GSA and the White House concerning the renovation of the FBI headquarters. This request includes, but is not limited to, records from GSA Public Buildings Service, GSA Office of the Administrator, and the National Capital Region.

CREW makes this request in light of recent reporting that President Donald Trump is "obsessed" with renovating the FBI headquarters, wants to be personally involved with the details of any renovation, and has met with FBI officials and GSA to discuss the renovation.<sup>1</sup>

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly

<sup>1</sup> Alex Lockie, Trump Is Reportedly 'Obsessed' With Redoing FBI HQ and Treating it Like a Trump Tower Project, *Business Insider*, July 2018, available at <https://www.businessinsider.com/trump-obsessed-with-remodeling-fbi-hq-like-trump-tower-2018-7>; Jonathan Swan, Scoop: Trump's Obsession With the 'Terrible' FBI Building, *Axios*, July 29, 2018, available at <https://www.axios.com/donald-trump-obsession-fbi-building-headquarters-65d36fb9-b1a2-42ca-8cbd-3dbbe59de907.html>; Margaret Hartmann, Why Trump Is 'Obsessed' With Revamping the FBI Building: 5 Theories, *New York Magazine*, July 30, 2018, available at <http://nymag.com/daily/intelligencer/2018/07/trumps-fbi-building-revamp-obsession-5-theories.html>.



FOIA Officer  
 July 30, 2018  
 Page 2

exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

### Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and GSA regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

The sudden and unexpected decision of GSA to cancel what it termed the “new FBI headquarters consolidation project,”<sup>2</sup> announced on July 11, 2017, generated criticism and controversy. Members of Congress described the cancellation as “putt[ing] America’s national security at risk,” while local officials commented on the significant amount of “time and energy wasted.”<sup>3</sup> The latest revelations about President Trump’s personal involvement and desire to oversee the details of any renovation<sup>4</sup> raise questions about what is behind the intensity of his interest, especially given the concerns of GSA “that the building can’t be rehabilitated particularly given the security requirements[.]”<sup>5</sup> The requested records will help answer these questions and assist the public in evaluating the merits of the any renovation, which is expected to cost significantly more than the costs of relocating the FBI to a more secure location where virtually the entire FBI staff could be housed.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request

<sup>2</sup> GSA Statement on FBI Headquarters, July 11, 2017

<sup>3</sup> Robert McCartney, *For D.C. Area, Demise of FBI Plan Means ‘a Lot of Time and Energy Wasted’*, *Washington Post*, July 11, 2017, available at [https://www.washingtonpost.com/local/for-dc-area-demise-of-fbi-plan-means-a-lot-of-time-and-energy-wasted/2017/07/11/c11c7cba-6632-11e7-9928-22d00a47778f\\_story.html?hpid=hp\\_local-news\\_fbi-headquarters-1145am%3Ahomepage%2Fstory&utm\\_term=.e951a48375c1](https://www.washingtonpost.com/local/for-dc-area-demise-of-fbi-plan-means-a-lot-of-time-and-energy-wasted/2017/07/11/c11c7cba-6632-11e7-9928-22d00a47778f_story.html?hpid=hp_local-news_fbi-headquarters-1145am%3Ahomepage%2Fstory&utm_term=.e951a48375c1).

<sup>4</sup> See n. 1, *supra*.

<sup>5</sup> Lockie, *Business Insider*, July 2018.

FOIA Officer  
July 30, 2018  
Page 3

to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts documents it receives under the FOIA at its website.

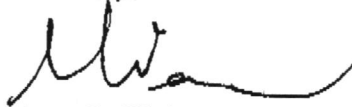
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

#### Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or [aweismann@citizensforethics.org](mailto:aweismann@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at [aweismann@citizensforethics.org](mailto:aweismann@citizensforethics.org) or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann  
Chief FOIA Counsel

## Nebeker, Mark (USADC)

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**From:** Duane Smith <duane.smith@gsa.gov>  
**Sent:** Thursday, October 25, 2018 10:24 AM  
**To:** Nikhel Sus  
**Cc:** Nebeker, Mark (USADC)  
**Subject:** Re: Activity in Case 1:18-cv-02071-CKK CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON v. GENERAL SERVICES ADMINISTRATION Order

Hey Nik-

Yes, we are running a subsequent search with your proposed search terms. I'll get back to you as soon as practicable on the results of the search.

On Thu, Oct 25, 2018 at 10:15 AM, Nikhel Sus <[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)> wrote:  
Duane and Mark,

Any update on whether GSA can implement our search terms? Happy to discuss.

Thanks,  
Nik

On Mon, Oct 22, 2018 at 11:33 AM, Nikhel Sus <[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)> wrote:  
Duane and Mark,

Thanks for speaking with me earlier. We propose the following search terms/parameters for this FOIA request:

- **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!



o Pennsylvania Avenue

We developed these terms based on the publicly-released docs I mentioned below concerning the FBI HQ project. Please let me know if you would like to discuss.

Thanks,  
Nik

On Thu, Oct 18, 2018 at 3:27 PM, Nikhel Sus <[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)> wrote:  
Hi Mark,

Thanks for speaking with me earlier. To recap, our July 30, 2018 FOIA request seeks "all communications from January 20, 2017 to the present between GSA and the White House concerning the renovation of the FBI headquarters." On our call this afternoon, the GSA rep said that the agency's search uncovered no responsive records. Today, however, HOCR released the following documents: <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Emails%20on%20FBI%20HQ%20Decision.pdf>. This release includes emails between GSA and White House officials that are responsive to our request (e.g. 002281, a Jan. 25, 2018 email between Joseph Lai and Brennan Hart discussing "a path forward for the new FBI Headquarters announcement"). This indicates GSA does in fact have responsive records.

As discussed, our plan was for GSA to review these docs and for us to discuss next steps on Monday at 10:00am. Look forward to discussing more then.

Best,  
Nik

On Thu, Oct 18, 2018 at 2:38 PM, Nebeker, Mark (USADC) <[Mark.Nebeker@usdoj.gov](mailto:Mark.Nebeker@usdoj.gov)> wrote:

I cannot get through to you. Could you call me back, please?

W. Mark Nebeker

Assistant United States Attorney

Civil Division

555 4<sup>th</sup> Street, N.W.

Washington, DC 20530

(202) 252-2536

**From:** [Nikhel Sus](#)  
**To:** [Caplen, Robert \(USADC\)](#)  
**Subject:** Re: 18-2071, CREW v. GSA  
**Date:** Monday, April 27, 2020 12:15:59 PM

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Confirmed. Thank you.

On Mon, Apr 27, 2020 at 12:13 PM Caplen, Robert (USADC) <[Robert.Caplen@usdoj.gov](mailto:Robert.Caplen@usdoj.gov)> wrote:

Hi Nik,

GSA is okay with CREW's proposed revisions. Below is final confirmation of GSA's supplemental search parameters:

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

**Search Terms:**

- "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](mailto:emily.murphy@gsa.gov)
- [daniel.mathews@gsa.gov](mailto:daniel.mathews@gsa.gov)

- [allison.brigati@gsa.gov](mailto:allison.brigati@gsa.gov)
- [tim.horne@gsa.gov](mailto:tim.horne@gsa.gov)
- [mary.gibert@gsa.gov](mailto:mary.gibert@gsa.gov)
- [robert.borden@gsa.gov](mailto:robert.borden@gsa.gov)
- [michael.gelber@gsa.gov](mailto:michael.gelber@gsa.gov)
- [brennan.hart@gsa.gov](mailto:brennan.hart@gsa.gov)
- [darren.blue@gsa.gov](mailto:darren.blue@gsa.gov)
- [bridget.brennan@gsa.gov](mailto:bridget.brennan@gsa.gov)
- [jack.stjohn@gsa.gov](mailto:jack.stjohn@gsa.gov)

I indicated when we spoke last week that the date range would remain unchanged, but I inadvertently omitted the date range from my prior e-mail. I apologize for that oversight. The complete search parameters are reflected above.

Thanks again,

Robert

**From:** Nikhel Sus <[nsus@citizensforethics.org](mailto:nsus@citizensforethics.org)>  
**Sent:** Monday, April 27, 2020 10:19 AM  
**To:** Caplen, Robert (USADC) <[RCaplen@usa.doj.gov](mailto:RCaplen@usa.doj.gov)>  
**Subject:** Re: 18-2071, CREW v. GSA

Robert, below are our responses to the agency's proposed search terms and parameters. Please let me know GSA's position.

On Fri, Apr 24, 2020 at 12:29 PM Caplen, Robert (USADC) <[Robert.Caplen@usdoj.gov](mailto:Robert.Caplen@usdoj.gov)> wrote:

| Hi Nik,