

**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 THIRD 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. Following three failed attempts to conduct an adequate search (and substantial delays resulting from those failures), GSA has now completed a fourth search and withheld responsive records under FOIA Exemptions 5, 6, 7(C), and 7(E). The parties now cross-move for summary judgment for a third time.

CREW is entitled to summary judgment on GSA’s Exemption 5 and 7(E) withholdings for several reasons.<sup>1</sup> First, all of GSA’s exemption claims fail because the agency has not satisfied the “foreseeable harm” standard of the FOIA Improvement Act of 2016, and instead asserts only generic claims of harm as to broad swaths of records. Second, GSA fails to justify its deliberative process, presidential communications, and attorney-client privilege claims under Exemption 5, and unredacted versions of some of GSA’s withholdings, which were publicly released by Congress, confirm that some of its privilege claims are meritless. Third, GSA’s partial 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 exemption claim is insufficiently justified, and because GSA’s stated desire to protect the OIG’s secret law enforcement “techniques” is incompatible with the fact that the OIG, 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 released all reasonably segregable non-exempt material from the

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<sup>1</sup> CREW challenges neither the adequacy of GSA’s latest search nor its withholdings under Exemptions 6 or 7(C).

118 pages it has withheld in full under Exemption 5. For all these reasons, the Court should grant summary judgment for CREW and order disclosure of GSA's withholdings.

If the Court is not prepared to order disclosure, CREW respectfully requests that it review GSA's withholdings *in camera*. That would be the appropriate next step because CREW's FOIA request is now over two years old, and this case has already suffered substantial delays due to GSA's repeated lack of diligence, which has resulted in three deficient searches, two missed production deadlines, and, now, a woefully inadequate *Vaughn* Index. Ordering GSA to provide yet another *Vaughn* index and the parties to embark on a fourth round of summary judgment briefing would only compound the deprivation of CREW's statutory right to "prompt[]" access to responsive records. 5 U.S.C. § 552(a)(3)(A). In addition, certain representations in GSA's *Vaughn* Index are flatly contradicted by unredacted versions of GSA's withholdings publicly released by Congress, casting broader doubts on the agency's *Vaughn* submissions and, in turn, reinforcing the need for *in camera* review.

## **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. 1 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 the FBI Headquarters Project**

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 (citing 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. 2. 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, the GSA OIG released a report entitled “Review of GSA’s Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project” (the “GSA OIG Report”). CREW Ex. 1. The GSA OIG Report described three in-person meetings between GSA and White House officials concerning the FBI headquarters project 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.

In its response 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. 1 at A-2. With respect to the January 24, 2018 White House meetings, 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 dismissed the “claim that GSA and FBI ‘received direction from the President’ at the January 24 meeting” as “unsubstantiated and conclusory.” *Id.* at A-3. GSA denied the White House meetings resulted in any “decision” that could be “attribute[d] . . . to the President.” *Id.*

On October 18, 2018, the U.S. House Committee on Oversight and Reform (“House Oversight”) publicly released several GSA emails concerning the FBI headquarters project. *See* CREW Ex. 2 at 5-7 (congressional letter discussing emails); CREW Ex. 3 (emails). Among those 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.

- A January 27-28, 2018 email exchange discussing a possible “memo” to “recap the oval meeting with what POTUS directed everyone to do” and “ask[ing] Emily [Murphy] (GSA) to execute POTUS’s orders.” *Id.* at 2296.

### 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. 45-3. 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.” *Id.* After GSA’s response deadline elapsed, CREW filed this suit on September 4, 2018.

On October 18, 2018—the same day House Oversight released the GSA emails discussed above—GSA informed CREW that its search uncovered no records responsive to its FOIA request. Mem. Op. at 3, ECF No. 26. CREW responded by pointing GSA to the emails released by House Oversight, which are plainly responsive to CREW’s request. *Id.* GSA conducted another search, and this time located responsive records. *Id.* at 4-5. But GSA’s second search, like its first one, did not uncover any of the emails released by House Oversight or related communications. *Id.*

Following GSA’s second search and production, the parties cross-moved for summary judgment. The Court granted partial summary judgment for CREW, holding that GSA’s second search was inadequate because GSA “fail[ed] to locate the emails which had been publicly released by” House Oversight, “despite the fact that [CREW] flagged those emails for [GSA] prior to [GSA’s second] search.” *Id.* at 2, 7. The Court deferred consideration of GSA’s exemption claims pending the agency’s completion of an adequate search. *Id.* at 2.

GSA then completed a third search and production, and the parties again cross-moved for summary judgment. In challenging GSA’s third search, CREW pointed out that GSA had

inexplicably failed to implement the parties' agreed-upon search terms, which were memorialized in a joint status report filed with the Court. *See* CREW 2d MSJ at 7-10, ECF No. 39. CREW also highlighted several factual inaccuracies in GSA's sworn declaration. *See id.* In response, GSA moved to indefinitely stay briefing so it could conduct a fourth search to address the continued deficiencies identified by CREW, without offering any explanation for those search deficiencies or the misstatements in its declaration. *See* GSA Mot. to Stay at 1-2, ECF No. 41. The Court granted that motion in part, declining to give GSA an open-ended stay and instead granting it a short extension "[i]n order to avoid extending further than is necessary the resolution of Plaintiff's FOIA request." Order at 2, ECF No. 43. The parties later agreed to withdraw their pending cross-motions and submit new briefs to address remaining issues. June 11, 2020 Minute Order.

GSA has now completed a fourth search and production, and the parties cross-move for summary judgment for a third time. At issue are 118 pages withheld in full and one page withheld in part under Exemption 5, and one page withheld in part under Exemption 7(E). *See Vaughn* Index at 2, 4-9, ECF No. 45-7.

## **ARGUMENT**

### **I. Legal Standards**

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). "[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). "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); *see also Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 146 (D.C. Cir. 2006). Although there is no set formula for an agency’s *Vaughn* submissions, 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), and can obtain summary judgment only if its submissions “contain reasonable specificity of detail rather than merely conclusory statements, and if they are not called into question by contradictory evidence in the record or by evidence of agency bad faith,” *Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1227 (D.C. Cir. 2008). “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)).

For any document withheld as exempt, the agency must separately satisfy the “foreseeable harm” standard of the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538. Under those amendments, “[a]n agency shall . . . withhold information under [FOIA] 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). Thus, “‘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, Inc. v. U.S. Dep’t of Commerce*, 375 F. Supp. 3d 93, 98 (D.D.C. 2019) (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 (“CIR”) v. CBP*, 436 F. Supp. 3d 90, 106 (D.D.C.

2019). To meet that “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*, 2019 WL 4644029, at \*5 (D.D.C. Sept. 24, 2019)). An agency thus cannot “perfunctorily state that disclosure of all the withheld information—regardless of category or substance—would jeopardize the free exchange of information.” *Judicial Watch v. Commerce*, 375 F. Supp. 3d at 100 (quoting *Rosenberg*, 342 F. Supp. 3d at 72). Nor can it rely on “nearly identical boilerplate statements” or “generic and nebulous articulations of harm.” *CIR*, 436 F. Supp. 3d at 106.

Although it applies to all FOIA exemptions, the foreseeable harm requirement warrants particularly strict adherence in the Exemption 5 context because Congress, in adopting the requirement, “was especially concerned about agencies’ . . . over-withholding” of records under “Exemption 5 and the deliberative process privilege.” *CIR*, 436 F. Supp. 3d at 104-05; *see* H.R. Rep. No. 114-391, at 10; S. Rep. No. 114-4, at 3.

## **II. GSA is Improperly Withholding Material under FOIA 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). To fall within 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). Even where these requirements are met, disclosure is mandatory unless the agency satisfies the foreseeable harm standard outlined above.

In support of its Exemption 5 claims, GSA asserts three privileges—presidential communications, deliberative process, and attorney-client—as to six categories of records:

1. A January 25, 2018 email between Brennan Hart of GSA and Joseph Lai of the White House concerning the FBI headquarters project (the “Hart-Lai Email”) (one page withheld in part under the presidential communications and deliberative process privileges);<sup>2</sup>
2. A draft version of GSA’s responses to Questions for the Record from the U.S. Senate’s Committee on Environment and Public Works (“Senate EPW Committee”) regarding the FBI Headquarters Project sent between White House Counsel and GSA’s Office of General Counsel (four pages withheld in full under the deliberative process privilege);
3. A draft version of the GSA OIG Report (19 pages withheld in full under the deliberative process privilege);
4. A draft letter from GSA’s General Counsel to Counsel to the GSA OIG concerning a records request for the FBI headquarters project (three pages withheld in full under the deliberative process privilege and attorney-client privilege);
5. A White House briefing itinerary regarding a discussion of the future of the FBI headquarters on January 24, 2018 (one page withheld in full under the presidential communications privilege); and
6. Email communications between GSA, 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 (91 pages withheld in full under the deliberative process privilege).

*See* GSA Mot. at 8-9, ECF No. 45-1; *Vaughn* Index at 2, 5-9. GSA’s Exemption 5 claims fail for several reasons.

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<sup>2</sup> GSA’s *Vaughn* Index inaccurately describes this category as “[e]mail communications from January 20, 2017 to July 30, 2018, between GSA and the White House concerning the renovation of FBI Headquarters.” *Vaughn* Index at 2. GSA has confirmed to CREW, through counsel, that the withholdings in this category only consist of the redactions made to the Hart-Lai Email. *See* CREW Ex. 7.

**A. GSA Has Failed to Satisfy the Foreseeable Harm Standard as to Each of Its Exemption 5 Withholdings**

As to each of its Exemption 5 withholdings, GSA has fallen far short of its “independent and meaningful” burden to demonstrate foreseeable harm. *See CIR*, 436 F. Supp. 3d at 106. Starting with the Hart-Lai Email withheld in part under the presidential communications privilege, GSA’s *Vaughn* index says only that the email “consist of communications 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.” *Vaughn* Index at 2. This description does not even attempt to “identify specific harms to the relevant protected interests that [GSA] can reasonably foresee would actually ensue from disclosure of the withheld materials,” or “connect[] the harms in [a] meaningful way to the information withheld.” *CIR*, 436 F. Supp. 3d at 106.<sup>3</sup> Similarly, for the briefing itinerary withheld in full under the presidential communications privilege, GSA merely asserts that “[r]evealing 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. But this type of “generic” and “conclusory” harm claim could be made with respect to any withholding under the presidential communications privilege and is therefore plainly insufficient. *See CIR*, 436 F. Supp. 3d at 106.

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<sup>3</sup> As explained *infra* Parts II.B, II.C.2, and V, the unredacted version of the Hart-Lai Email publicly released by House Oversight confirms that GSA’s privilege claims as to the email are utterly baseless, and casts broader doubts on the veracity of GSA’s *Vaughn* submissions.

GSA fares no better on its deliberative process and attorney-client privilege claims. For each claim, GSA repeats some variation of the generic assertions that disclosure would “reveal collaborative dialogue about the matters under consideration, including information about agency personnel’s decisions about which portions to retain and revise”; would “risk[] 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”; or “could confuse the public regarding the official position of the Agency and Administration on the topics discussed in the document.” *Vaughn* Index at 2, 5; *see also id.* 6, 7, 9. Courts have consistently rejected similar “boiler plate language.” *See, e.g., CIR*, 436 F. Supp. 3d at 106-07 (agency failed to show foreseeable harm where *Vaughn* index repeated, “with only slight variation,” generic claims that disclosure “could result in confusion” and “chill open and frank discussions”); *Judicial Watch v. Commerce*, 375 F. Supp. 3d at 100-01 (same, where declaration stated only 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]’”).

“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 v. Commerce*, 375 F. Supp. 3d at 101. Agencies must instead provide “context or insight into the specific decision-making processes or deliberations at issue, and how they in particular would be harmed by disclosure,” as part of their



broader duty to “identify specific harms to the relevant protected interests that the agency can reasonably foresee would actually ensue from disclosure of the withheld materials,” and “connect[] the harms in [a] meaningful way to the information withheld.” *CIR*, 436 F. Supp. 3d at 106, 100. GSA plainly has not done that.

Because GSA has failed to satisfy FOIA’s foreseeable harm requirement as to each of its Exemption 5 withholdings, the Court should order disclosure of the withheld records.

**B. GSA Has Failed to Show that the Presidential Communications Privilege Applies to the Hart-Lai Email 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*, 365 F.3d 1108, 1114 (D.C. Cir. 2004). The 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). And for the privilege to attach to advisors, the advisors must have “broad and significant responsibility for investigating and formulating the advice to be given the President.” *Judicial Watch v. DOJ*, 365 F.3d at 1114. 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; *Judicial Watch v. DOJ*, 365 F.3d at 1116.

GSA invokes the privilege to withhold the Hart-Lai Email and the briefing itinerary, both of which relate to January 24, 2018 White House meetings concerning the FBI headquarters

project. *See Vaughn* Index at 2, 8. For both withholdings, GSA offers the same boilerplate justification: the withheld records include “communication[s] prepared by” unspecified “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.” *Id.* GSA’s privilege claims fail for multiple reasons.

First and foremost, GSA has not shown that the withheld email or briefing itinerary relate in any way to *presidential* decision-making, and GSA has, outside of this litigation, vigorously disputed that conclusion. In its response 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. 1 at A-2. With respect to the January 24, 2018 White House meetings that are the subject of both the Hart-Lai Email and the briefing 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 that 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). GSA flatly denied that the White House meetings resulted in any “decision” that could be “attribute[d] . . . to the President.” *Id.*

Consistent with GSA’s prior position that the President made no decisions regarding the FBI headquarters project, *see id.*, GSA’s *Vaughn* index does not identify any presidential decisionmaking to which the withheld emails or briefing itinerary relate. It instead states only

the documents generally concern “advice and recommendations for transmission to the President regarding the future of the FBI Headquarters project,” *Vaughn* Index at 2, 8, without specifying the purpose for which that “advice” was provided. This is plainly insufficient to establish the presidential communications privilege. *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”); *Ctr. for Effective Gov’t v. U.S. Dep’t of State*, 7 F. Supp. 3d 16, 28 (D.D.C. 2013) (“[T]he privilege has always been limited to . . . those ‘communications in performance of (a President’s) responsibilities’ of his office . . . made in the process of . . . making decisions.”); *id.* at 25 (rejecting privilege where case did not involve “‘a quintessential and nondelegable Presidential power’—such as appointment and removal of Executive Branch officials,” but rather action that “can be and is ‘exercised or performed without the President’s direct involvement’”). If GSA adheres to its position that the President made no decisions concerning the FBI headquarters project, and that those decisions were instead made solely by “GSA and FBI representatives,” CREW Ex. 1 at A-2-A-3, then its privilege claim fails as a matter of law.<sup>4</sup>

Second, GSA has failed to show that the withholdings 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.’” *Judicial*

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<sup>4</sup> CREW does not concede, as a factual matter, GSA’s position that President Trump had no involvement in the decisionmaking process concerning the FBI headquarters, but CREW’s own position on this issue is irrelevant for purposes of 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 decisionmaking. Not only has GSA failed to provide such facts, it has vehemently denied that any such presidential decisionmaking occurred. *See* CREW Ex. 1 at A-2-A-3.

*Watch v. DOJ*, 365 F.3d at 1114. GSA provides no details on the role of the White House staff who prepared the 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*, 7 F. Supp. 3d at 26-27, 29; *see also Judicial Watch v. DOJ*, 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 Hart-Lai email, GSA provides no details on Lai’s role within the White House. *See Vaughn* Index at 2. And the privilege generally does not apply to agency officials such as Hart, who work outside of the White House and lack any advisory role to the President. *See Ctr. for Effective Gov’t*, 7 F. Supp. 3d at 23, 27 n.10.

Third, comparing the unredacted version of the Hart-Lai Email released by House Oversight to the redacted version released by GSA confirms that the agency’s privilege claim is meritless. The unredacted version reads:

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. GSA’s redacted version reads:

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. 4.

To begin, there is no indication that the President “actually viewed,” or that anyone in the White House “solicited,” the email from Hart, *see Judicial Watch v. DOJ*, 365 F.3d at 1114, who was not a White House official but a GSA employee. It instead appears Hart unilaterally provided the information to Lai without prompting. *See* CREW Ex. 3 at 2281. Nor is any of the material that GSA redacted from Hart’s email “necessary to protect the confidentiality of communications as between the President and his advisors.” *Ctr. for Effective Gov’t*, 7 F. Supp. 3d at 25. The fact that GSA planned to send a report to the Senate EPW Committee “pending OMB clearance,” CREW Ex. 3 at 2281, does not reveal any confidential presidential communications. Nor are such communications revealed by Hart’s statements that “[t]here is a lot of political interest in this project with the potential of it moving to either Maryland or Virginia,” and that [t]he President was briefed [on January 24, 2018] on this by the GSA Administrator, Deputy AG and FBI Director and signed off on this path forward.” *Id.* Since as early as August 2018, it has been public knowledge that the January 24, 2018 White House meetings with the President took place, *see, e.g.*, CREW Ex. 1 (GSA OIG Report) at 7-9, 11, and that fact alone is not privileged in any event, *see 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.”). And for the statement that the President “signed off on this path forward” to conceivably fall within the presidential communications privilege, GSA would first need to demonstrate that the White House meetings entailed some form of *presidential* decisionmaking—a point GSA has explicitly disputed. *See* CREW Ex. 1 at A-2-A-3. Either the President made a decision about the FBI headquarters project or he did not; GSA cannot have it both ways.

For all these reasons, the Court should reject GSA’s presidential communications privilege claims as to the Hart-Lai Email and briefing itinerary.

**C. GSA Has Failed to Show that the Deliberative Process Privilege Applies to Any of its Withholdings**

To fall within 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” and deliberative if it “reflects the give-and-take of the consultative process.” *Coastal States Gas Corp. v. DOE*, 617 F.2d 854, 866 (D.C. Cir. 1980). GSA invokes the privilege to withhold 118 pages in full and one page in part. *See Vaughn Index* at 2, 5-7, 9. Here again, GSA’s privilege claims fail for several reasons.

**1. GSA Has Failed to Provide Basic Details Needed to Evaluate its Deliberative Process Claims**

To meet its burden, the “government must explain, *for each withheld record*, at least, (1) what deliberative process is involved, (2) the role played by the documents in issue in the course of that process, and (3) the nature of the decisionmaking authority vested in the office or person issuing the disputed document[s], and the positions in the chain of command of the parties to the documents.” *CIR*, 436 F. Supp. 3d at 101 (emphasis added); *see also Arthur Andersen & Co. v.*

*IRS*, 679 F.2d 254, 258 (D.C. Cir. 1982). The “government, not the requester, must identify the deliberative process to which any record relates,” *CIR*, 436 F. Supp. 3d at 101, so that the court can “pinpoint an agency decision or policy to which the document contributed,” *Senate of P.R. v. DOJ*, 823 F.2d 574, 585 (D.C. Cir. 1987); *Morley v. CIA*, 508 F.3d 1108, 1127 (D.C. Cir. 2007). And because the privilege requires that a document “precede[], in temporal sequence, the ‘decision’ to which it relates,” a comprehensive *Vaughn* index will generally “at least include . . . a document’s date.” *CIR*, 436 F. Supp. 3d at 103 (alterations omitted).

GSA has not met these requirements. For starters, it has made no effort to identify “the nature of the decisionmaking authority vested in the office or person issuing the disputed document[s],” or “the positions in the chain of command of the parties to the documents”; instead, it has “wholly omitted information about the positions and responsibilities of the authors and recipients . . . of the records.” *CIR*, 436 F. Supp. 3d at 101, 103. That is true for each of its deliberative process withholdings. *See Vaughn* Index at 2, 5-7, 9. Because “[e]xplaining decisionmaking authority is an essential ingredient to justifying withholdings under the deliberative process” privilege, *CIR*, 436 F. Supp. 3d at 102; *see also Access Reports v. DOJ*, 926 F.2d 1192, 1195 (D.C. Cir. 1991); *Morley*, 508 F.3d at 1127, GSA’s failure to provide this information precludes summary judgment in its favor.

Similarly, GSA has failed to identify “what deliberative process [was] involved” or “the role played by the [withheld] documents in . . . that process,” *CIR*, 436 F. Supp. 3d at 101, as to several withholdings. *See, e.g., Vaughn* Index at 2 (not pinpointing any agency policy or decision to which the withholdings relate, and instead referring generically to “matters under consideration”); *id.* at 7 (same, referring generically to “matters of policy and agency action”); *id.* at 9 (same, referring generically to “ultimate communications made or documents provided to

various outside parties”). This, too, precludes summary judgment for GSA. *See CIR*, 436 F. Supp. 3d at 101-02 (citing cases).

The most glaring example of GSA’s failure to meet its explanatory burden is the 91 pages it has withheld in full, which GSA has indiscriminately crammed into a single *Vaughn* Index entry. *See Vaughn* Index at 9. GSA describes this hodgepodge of records as “e-mail conversations between GSA, FBI, and OMB” focusing on “4 things: (1) proposed testimony of a Congressional hearing, (2) communications plans including possible talking points and press statements, (3) the drafts of the FBI project status for relevant stakeholders on Capitol Hill and off, and (4) proposed responses to Congressional Questions for the Record.” *Id.* GSA’s *Vaughn* Index provides no contextual details on the particular agency officials involved in the communications, their relative decisionmaking authority, the particular decisionmaking processes to which the records relate, the role the withheld documents played in those processes, or the dates of either the withheld communications or the final decisions to which they relate. *See id.* This is a textbook example of a deficient *Vaughn* index. *See CIR*, 436 F. Supp. 3d at 101-03 (deeming similar *Vaughn* index deficient and citing cases doing the same); *EFF v. DOJ*, 826 F. Supp. 2d 157, 168 (D.D.C. 2011) (same).

## **2. The Deliberative Process Privilege Does Not Apply to the Hart-Lai Email**

Just as the unredacted version of the Hart-Lai Email debunks GSA’s presidential communications privilege claim, *see supra* Part II.B, so too does it refute the agency’s deliberative process claim. For one thing, it reveals that the *Vaughn* Index’s description of the email as containing “collaborative dialogue about the matters under consideration, including information about agency personnel’s decisions about which portions to retain and revise” is patently false. *See Vaughn* Index at 2. The unredacted email contains no such “collaborative



dialogue” about “portions” of any document to “retain” or “revise.” Rather, Hart unilaterally informed Lai that GSA would be sending a report to the Senate EPW Committee the following week “pending OMB clearance,” that there was “a lot of political interest in this project with the potential of it moving to either Maryland or Virginia,” and that 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.

The unredacted Hart-Lai Email also reveals that the document was neither predecisional nor deliberative. It was not predecisional because, when Hart sent the email on January 25, the decision regarding how to proceed with the FBI headquarters project had already been made. *See id.* (noting that the “President was briefed yesterday”—*i.e.*, on January 24, 2018—and “signed off on this path forward”); CREW Ex. 1 (GSA response to OIG Report) at A-3 (insisting that “GSA and FBI representatives attending the January 24[, 2018] White House meetings had *already agreed and decided* to locate the new [FBI] headquarters at 935 Pennsylvania Avenue NW in Washington, DC”) (emphasis added). The privilege does not shield such postdecisional documents that “simply state or explain a decision the government has already made.” *In re Sealed Case*, 121 F.3d at 737. Nor was the Hart-Lai Email “deliberative,” since it played no role whatsoever in the “agency give-and-take of the deliberative process by which the decision” regarding the FBI headquarters project was made. *Coastal States*, 617 F.2d at 868. Thus, even if GSA had met its burden to sufficiently explain its privilege claim (which it has not), the unredacted email confirms that GSA’s claim fails on the merits.

### **3. GSA Has Failed to Show that Withheld “Drafts” Were Not Formally or Informally Adopted, or Otherwise Used in Dealings with the Public**

GSA has withheld several records in full on the ground that they are “drafts” of materials ultimately released to Congress, unspecified “outside parties,” or the public at large. *See Vaughn*

Index at 5 (draft responses to Senate EPW Questions for the Record); *id.* at 6 (draft GSA OIG Report); *id.* at 9 (emails concerning “drafts and plans regarding communications and strategies, Congressional testimony and related correspondence, and predecisional planning for the FBI project”). But the 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*, 679 F.2d at 257. Rather, when an agency identifies a withholding as a “draft,” it “must indicate whether the draft was (1) adopted formally or informally, as the agency position on an issue, or (2) used by the agency in its dealings with the public,” either of which will defeat the deliberative process privilege. *Heffernan v. Azar*, 317 F. Supp. 3d 94, 125-26 (D.D.C. 2018). Here, GSA has done neither, even though there is a “particularly high” “likelihood” that draft “talking points” and other public-facing materials have been “relied upon or adopted as official positions after their preparation.” *EFF*, 826 F. Supp. 2d at 171 (quoting *EPIC v. DOJ*, 511 F. Supp. 2d 56, 71 (D.D.C. 2007)). GSA has thus “failed to meet [its] burden of establishing that the [purportedly draft] documents were properly withheld” in full. *Wilderness Soc’y v. U.S. Dep’t of Interior*, 344 F. Supp. 2d 1, 14 (D.D.C. 2004); accord *EFF*, 826 F. Supp. 2d at 170-71; *Heffernan*, 317 F. Supp. 3d at 127; *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 261 (D.D.C. 2004); see also *infra* Part IV (addressing segregability).

**D. GSA Has Failed to Show that the Attorney-Client Privilege Applies to a Draft Letter Sent by GSA’s Acting General Counsel to Officials at the White House and the Department of Justice**

“The attorney-client privilege protects confidential communications from clients to their attorneys made for the purpose of securing legal advice or services,” as well as “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). “In the

governmental context, the ‘client’ may be the agency and the attorney may be an agency lawyer.” *Id.* But not every communication between an attorney and a client—government or otherwise—is privileged. As the Circuit has explained, “consultation with one admitted to the bar but not in that other person’s role as a lawyer is not protected,” and thus a government attorney’s “advice on political, strategic, or policy issues, valuable as it may [be], would not be shielded from disclosure by the attorney-client privilege.” *In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998). Moreover, “[a]s a usual rule, disclosure of attorney-client and work-product confidences to third parties waives the protection of the relevant privileges,” though “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); *see also Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 253 (D.C. Cir. 1977) (“If the information has been or is later shared with third parties, the privilege does not apply.”).

GSA invokes the attorney-client privilege to withhold a draft letter from GSA’s General Counsel to Counsel for the GSA OIG, Edward Martin, “concerning a records request for the FBI Headquarters Project.” *Vaughn* Index at 7. That document was attached to an email sent by GSA’s Acting General Counsel, Jack St. John, to two *non-GSA* officials: Dan Epstein of the White House and Paul Colborn of the Department of Justice’s (“DOJ”) Office of Legal Counsel. *See* CREW Ex. 5. GSA claims the withheld draft letter “addresses legal issues related to a records request for the FBI Headquarters project and related matters of policy and agency action,” and includes communications “made for the purpose of providing legal advice” that “were confidential.” *Vaughn* Index at 7.

GSA has again failed to sustain its privilege claim. For starters, GSA has failed to show any attorney-client relationship or common interest with the two non-GSA officials to whom

GSA sent the allegedly privileged letter. Absent such a showing, the privilege cannot apply. *See Chesapeake Bay Found., Inc. v. U.S. Army Corps of Eng'rs*, 722 F. Supp. 2d 66, 74 (D.D.C. 2010) (rejecting agency's claim of "attorney-client common interest privilege" as to communications with external agencies, where withholding agency "ha[d] not shown that it ha[d] an attorney-client relationship" with other agencies); *Rashid v. DOJ*, 99-cv-2461-GK, ECF No. 24, at 10 (D.D.C. June 12, 2001) (rejecting work-product claim where agency "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"). Nor has GSA offered any details to support its bare assertion that the withheld communications were made "for the purpose of providing legal advice," *Vaughn* Index at 7, or explained why GSA's Acting General Counsel needed to involve the non-GSA officials in order to render any legal advice. *See Chesapeake Bay Found.*, 722 F. Supp. 2d at 73 ("[M]erely stating that a communication contains 'legal advice,' or comes from an attorney, is insufficient to show that the privilege is appropriate."). GSA's attorney-client privilege claim should be rejected.

### **III. GSA is Improperly Withholding Material under FOIA 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 satisfy 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 IG office and the Special Assistant to the GSA Administrator regarding the basis of the IG's request to interview the Administrator." *Vaughn*

Index at 4; *see* CREW Ex. 6 (redacted email).<sup>5</sup> GSA claims that the withheld information reflects “a specific GSA IG investigative goal as part of its technique in conducting a law enforcement investigation regarding an ongoing investigation within the GSA’s IG’s Office.” *Vaughn* Index at 4.

GSA’s Exemption 7(E) claim is insufficiently justified. GSA 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 where agency failed to provide the Court “with sufficient detail regarding the law enforcement techniques or procedures the defendant seeks to protect”). Similarly, GSA has failed to satisfy FOIA’s foreseeable harm standard because it has neither “identif[ied] specific harms to the relevant protected interests that [GSA] can reasonably foresee would actually ensue from disclosure of the withheld materials” nor “connect[ed] the harms in [a] meaningful way to the information withheld.” *CIR*, 436 F. Supp. 3d at 106.

GSA’s conclusory claims about the harms of disclosure are also 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;

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<sup>5</sup> On the produced email, GSA marked the withholding as based on both Exemptions 5 and 7(E). *See* CREW Ex. 6. But in moving for summary judgment, GSA invokes only Exemption 7(E), *see Vaughn* Index at 4; GSA Mot. at 21-22, ECF No. 45-1, and thus abandons any Exemption 5 claim as to this withholding, *see Burka*, 87 F.3d at 514 (“[T]he burden is on the agency to show that requested material falls within a FOIA exemption.”).

it is an investigative unit with a narrowly-defined mission focused solely on GSA. *See* GSA OIG Overview, <https://www.gsa.gov/about-us/organization/gsa-office-of-inspector-general-overview>. In keeping with this function, the email at issue concerns the OIG's investigation of GSA's handling of the FBI headquarters project and GSA Administrator Emily Murphy's involvement in that project, on which the OIG later issued findings in its August 2018 report. *See* CREW Ex. 6 (redacted email) ("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. 1 (GSA OIG Report) at 18-22 (reporting OIG's findings on the accuracy of Administrator Murphy's congressional testimony). By sending the email at issue to GSA (and, specifically, Administrator Murphy's assistant), the OIG disclosed its purportedly secret law enforcement techniques to the very agency and officials it is charged with investigating. That disclosure refutes any "law enforcement interest" the OIG claims to have in keeping this information secret. *See Kubik v. BOP*, 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").<sup>6</sup>

#### **IV. GSA Has Failed to Demonstrate that It Released All Reasonably Segregable Non-Exempt Material**

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 segregate and release all non-exempt portions of a document, unless they are "inextricably intertwined with exempt portions." *Trans-Pacific*

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<sup>6</sup> Further undermining any claim of confidentiality, the unredacted portions of the email show that Administrator Murphy's assistant forwarded it to other GSA officials, who in turn forwarded it to White House official Dan Epstein. *See* CREW Ex. 6.

*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*, 566 F.2d at 261.

There are strong indications that GSA has failed to comply with its segregability obligations with respect to the 118 pages it has withheld in full under Exemption 5. *See Vaughn Index* at 2, 5-9. For example, GSA invokes the deliberative process privilege to withhold 91 pages of emails between unspecified GSA, OMB, and FBI officials on a variety of matters, including purported “drafts and plans.” *See Vaughn Index* at 9. It is highly likely that at least some reasonably segregable non-exempt material is included in these 91 pages, including “[f]actual material that does not reveal the [alleged] deliberative process,” *Morley*, 508 F.3d at 1127, and “draft” material that was later “formally or informally adopted or used in the agency’s interactions with the public,” *Wilderness Soc.*, 344 F. Supp. 2d at 14. At a minimum, the header portions of the emails—including the senders, recipients, transmission dates, subject lines, and attachment titles—are not exempt and should be released.

The same is true of the draft version of the GSA OIG Report, which GSA has withheld in full under the deliberative process privilege. *See Vaughn Index* at 6. The final version of that report contains a significant amount of purely factual, non-exempt background information, *see* CREW Ex. 1, that likely appears in the draft report as well, *see PEER 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”). Similarly, GSA’s draft responses to the Senate EPW Committee’s Questions for the Record—which GSA has likewise withheld in full under the deliberative process

privilege, *see Vaughn* Index at 5—are also reasonably likely to contain non-exempt factual material, or material ultimately adopted as the agency’s final position.

In addition, GSA has provided no explanation for why it redacted the *titles* of various withheld documents from the cover emails to which they were attached. *See* CREW Ex. 8 (nine cover emails with titles of attachments redacted under Exemption 5). The *Vaughn* index offers no justification for these redactions, and addresses only the withholding of the attachments themselves. *See Vaughn* Index at 5-8. Because GSA has made no effort to show that the redacted document titles are either exempt from production or not reasonably segregable, this information must be released.

Against all this, GSA’s declaration offers only two conclusory paragraphs on segregability. *See* Declaration of Travis Lewis ¶¶ 20-21, ECF No. 45-6. This falls far short of the “detailed justification” required to meet GSA’s segregability obligations. *Mead Data*, 566 F.2d at 261.

**V. If the Court is Not Prepared to Order Disclosure of the Withheld Records, *In Camera* Review is the Appropriate Next Step**

“The decision to conduct an *in camera* review is committed to the ‘broad discretion of the trial court judge.’” *Quinon v. FBI*, 86 F.3d 1222, 1227 (D.C. Cir. 1996). Although discretionary, “*in camera* review may be particularly appropriate when . . . the agency affidavits are insufficiently detailed to permit meaningful review of exemption claims,” *id.* at 1228, or when “information contained in agency affidavits is contradicted by other evidence in the record,” *Carter v. U.S. Dep’t of Commerce*, 830 F.2d 388, 393 (D.C. Cir. 1987).

Based on GSA’s latest inadequate submissions and continued failure to meet its burden, the Court should order GSA to immediately disclose the withheld records. But if Court is not prepared to take that step, and finds GSA’s *Vaughn* Index “insufficiently detailed to permit



meaningful review of exemption claims,” *in camera* review is warranted. *See Quinon*, 86 F.3d at 1228. The record in this case amply supports that conclusion. CREW’s FOIA request is now over two years old, and the case has experienced substantial delays due solely to agency neglect, which has resulted in three deficient searches, two missed production deadlines, and, now, a woefully inadequate *Vaughn* Index. *See* CREW 2d MSJ at 2, 5-7, ECF No. 39; CREW Stay Opp. at 1-4, ECF No. 42. Perhaps most egregiously, during the parties’ second round of summary judgment briefing, a GSA official submitted a sworn declaration containing material misstatements about the parties’ agreed-upon search terms and other factual inaccuracies, which CREW detailed in its brief. *See* CREW 2d MSJ at 7-9. Tellingly, GSA responded to CREW’s arguments not by defending the inaccurate declaration, but by abandoning it altogether and seeking to conduct another search. *See* GSA Mot. to Stay, ECF No. 41. Through all this, GSA has wasted precious time.

Were the Court to order GSA to provide yet another *Vaughn* index and the parties to embark on a fourth round of summary judgment briefing, that would only compound the deprivation of CREW’s statutory right to “prompt[]” release of responsive records. 5 U.S.C. § 552(a)(3)(A); *see EPIC v. DOJ*, 416 F. Supp. 2d 30, 40 (D.D.C. 2006) (“loss of . . . value” of timely obtaining records under FOIA is a “cognizable harm”). GSA’s dilatory and improper conduct should not be rewarded with another bite at the apple.

*In camera* review is also warranted because GSA’s current *Vaughn* Index is flatly “contradicted by other evidence in the record.” *Carter*, 830 F.2d at 393. As fully explained *supra* Parts II.B and II.C.2, the unredacted version of the Hart-Lai Email publicly released by House Oversight confirms that GSA’s *Vaughn* Index inaccurately describes the email. *Compare Vaughn* Index at 2 (describing Hart-Lai Email as consisting of “communications prepared by

presidential advisers” engaged in a “collaborative dialogue about the matters under consideration, including information about agency personnel’s decisions about which portions to retain and revise”), *with* CREW Ex. 3 at 2281 (unredacted Hart-Lai Email) (revealing that material redacted by GSA consists solely of a unilateral status update from GSA official Brennan Hart, not any “collaborative dialogue” about any “portions” of a document “to retain and revise” by “presidential advisers”). The unredacted email also confirms that GSA’s underlying privilege claims are baseless, with the agency seeking to withhold Hart’s plainly non-privileged, post-decisional statements regarding the “political interest in this project,” and the fact that the President was “briefed” on the issue yesterday and “signed off on this path forward.” *Compare* CREW Ex. 3 at 2281 (unredacted email), *with* CREW Ex. 4 (redacted email). Separate and apart from the question of whether GSA is improperly withholding this particular email, the unredacted version casts broader doubts on the veracity of GSA’s *Vaughn* submissions. This, along with GSA’s prior material misstatements, *see* CREW 2d MSJ at 7-9, reinforces the need for *in camera* review if the Court is not prepared to order disclosure of the withheld records.

### CONCLUSION

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

Date: August 7, 2020

Respectfully Submitted,

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# **Exhibit 1**



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;

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<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				GSA 	
FULL CONSOLIDATION		JEH REBUILD			
10,606 2017	PERSONNEL	8,300 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.



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

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.

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

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 2**

**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

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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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Page 3

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-)



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### **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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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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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.*



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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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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.*

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Thank you for your prompt attention to this request.

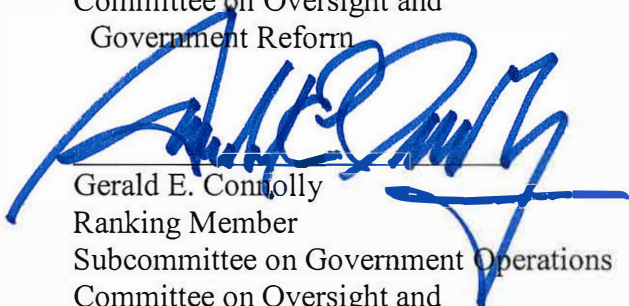
Sincerely,



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 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

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Document ID: 07:3297.76221  
From: Haley, Richard L. (FD) (FBI)  
To: daniel mathews  
Cc:  
Bcc:  
Subject: Re: FBI supports course forward that gets project moving.  
Date: Fri Jan 26 2018 12:54:47 EST  
Attachments:

---

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. R

----- Original message -----  
From: "Haley, Richard L. (FD) (FBI)" <----->  
Date: 1/26/18 12:49 PM (GMT-05:00)  
To: daniel mathews <----->  
Subject: FBI supports course forward that gets project moving.

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002288



Document ID: 07329776571

From: Jack St. John - A [REDACTED]  
To: Brennan Hart - S [REDACTED]  
Cc: Daniel Mathews - PBS  
[REDACTED]  
Bcc:  
Subject: Re: Memo  
Date: Sun Jan 28 2018 08:44:35 EST  
Attachments:

It could be a letter from Wray or Rosenstein to Emily to the effect of what Brennan said below, which would probably be most effective but also the hardest to pull off, or it could just be a memo from someone lower at FBI to Dan saying this is FBI's understanding of what was decided at the meeting with POTUS.

On Sat, Jan 27, 2018 at 11:01 PM Brennan Hart - S [REDACTED] wrote:

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.

P. Brennan Hart III  
Acting Chief of Staff  
Associate Administrator, Congressional & Intergovernmental Affairs  
U.S. General Services Administration  
[REDACTED]

On Jan 27, 2018 10:43 PM, "Daniel Mathews - P" [REDACTED] wrote:

I think that is a great idea. What kind of document do you have in mind? I'm not sure what form that would take, but I like the concept.

Daniel W. Mathews  
Commissioner  
Public Buildings Service  
US General Services Administration  
[REDACTED]

Sent from my iPhone

On Jan 27, 2018, at 9:35 PM, Jack St. John - A <jack.stjohn@gsa.gov> wrote:

Dan,

002296

I just talked to Rader and he suggested getting something in writing from DOJ/FBI memorializing what was decided in the meeting with POTUS. That document could be very helpful if we aren't able to reach an agreement with OMB and this needs to be elevated. Do you think Haley could make that happen?

Jack

Jack St. John

Acting General Counsel  
General Services Administration  
[REDACTED]

CONFIDENTIALITY NOTICE

This message and any attachments may contain information that is confidential or legally privileged. If you received this transmission in error, please notify the sender by reply email and delete the message and any attachments.

Jack St. John

Acting General Counsel  
General Services Administration  
[REDACTED]

CONFIDENTIALITY NOTICE

This message and any attachments may contain information that is confidential or legally privileged. If you received this transmission in error, please notify the sender by reply email and delete the message and any attachments.

Document ID: 0.7.3297.606199

From: Brennan Hart - S [REDACTED]  
To: Jeff Post - A [REDACTED]; Andrew Blaylock - S  
Saul Japson - S [REDACTED]; 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

[REDACTED]  
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

---

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**

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

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> 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



U.S. General Services Administration

P. Brennan Hart III

Acting Chief of Staff

Associate Administrator, Congressional &

Intergovernmental Affairs

# **Exhibit 5**



**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-WJcnGhOg@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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# **Exhibit 6**

**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)

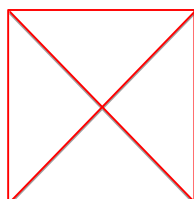
202-252-0042 - Fax

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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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# **Exhibit 7**



Nikhel Sus &lt;nsus@citizensforethics.org&gt;

**CREW v. GSA, 18-cv-2071**

**Caplen, Robert (USADC)** <Robert.Caplen@usdoj.gov>  
 To: Nikhel Sus <nsus@citizensforethics.org>

Thu, Jul 23, 2020 at 9:59 AM

Hi Nik,

That entry in the *Vaughn* index is only referring to the eight pages that were released on January 10, 2020. It refers to portions of page 5 and page 7 of the January 10, 2020 release that were redacted under FOIA Exemption 5.

Let me know if this explanation helps. Thanks,

Robert

**From:** Nikhel Sus <nsus@citizensforethics.org>  
**Sent:** Wednesday, July 22, 2020 5:19 PM  
**To:** Caplen, Robert (USADC) <RCaplen@usa.doj.gov>  
**Subject:** CREW v. GSA, 18-cv-2071

Hi Robert,

I'm hoping you can ask GSA to clarify something about its Vaughn index in the above-referenced case. Page 2 of the Vaughn index (attached to this email) provides the following description of a b5 withholding:

FOIA Request No. GSA-2018-001496

Category of Documents	Total amount of responsive documents/ Redacted page numbers	Exemption Cited	Content of Withheld Portion and Reason for Withholding
Email communications between January 20, 2017, to July 30, 2018, between GSA and the White House concerning the renovation of FBI Headquarters.	Second release of January 10, 2020	Exemption 5 of the FOIA, 5 U.S.C. §552 (b)(5).	<p><b>Content of Withheld Portion:</b> These documents were withheld in part.</p> <p><b>Reason for Withholding:</b> These documents were withheld pursuant to the Presidential Communications Privilege per the fifth Exemption to the FOIA. They consist of communications prepared by presidential advisors 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.</p> <p>These documents also contain professional, deliberative process communications. Disclosure would reveal 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.</p>

Based on this description, GSA appears to have withheld under b5 an unspecified number of documents "in part" from the "second release" it provided to CREW on "January 10, 2020."

CREW only received one release on January 10, 2020. It is attached. It consists of 8 pages, and contains b5 redactions of a single email (see page 566 and duplicate on page 833). Could GSA please confirm whether this withholding is the only record referenced in the above Vaughn entry? Alternatively, if there are more withholdings referenced in the Vaughn entry that GSA has not yet released to CREW, the agency should promptly do so to ensure we can adequately address the issue in our upcoming summary judgment brief. Please advise.

Thanks,

Nik

--

**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) | Bio

---

CREW | Citizens for Responsibility and Ethics in Washington

Main: (202) 408-5565 | Fax: (202) 588-5020 | [www.citizensforethics.org](http://www.citizensforethics.org)

---



# **Exhibit 8**

**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:** <CAD1VZzeU7foiAhaGtN0BZrzo0vvhbnewb\_9fP=Ci-xWZHNTyw@mail.gmail.com>  
**MD5:** 43f9d293c29e20f51ae01523f97615c0  
**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:** 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  
(b)(6)

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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

**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 [REDACTED] e24c81  
**Attachments:** ATT00001.txt (b)(5) [REDACTED]

----- 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)