

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Action No. 18-CV-03022 (JEB)

SUPPLEMENTAL DECLARATION OF BRIAN D. LIEBERMAN

Pursuant to 28 U.S.C. § 1746, I, **BRIAN D. LIEBERMAN**, hereby declare as follows:

1. I currently serve as Senior Counsel with the Information Law Division of the Office of the General Counsel for the United States Department of Commerce (DOC or Department), in which position I have served since January 2019. My responsibilities include advising the Department and its component agencies regarding requests submitted to the DOC Immediate Office of the Secretary (IOS) for records made under both the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a, and litigation related to such requests. In this capacity, I routinely consult with the FOIA offices regarding requests.
2. The statements contained in this supplemental declaration are based upon my personal knowledge, upon information provided to me in my official capacity, upon conclusions and determinations reached and made in accordance

therewith, and upon my personal examination of the withheld and redacted documents. I am personally familiar with the FOIA request of Plaintiff Citizens for Ethics and Responsibility in Washington (Plaintiff), which is at issue in this case.

3. This Declaration is being submitted in further support of DOC's Motion for Summary Judgment.
4. My initial Declaration, dated July 31, 2019, explained that DOC withheld 19 pages of documents in part or entirety from email communications and attached documents between Eric Branstad, a DOC official, and two private individuals, Rick Gates and Thomas Hodgkins, under FOIA Exemption 4 because they contain commercial information regarding the business activities and plans of the defense/military contracting company, Circinus, and that this information was confidential because it pertains to the company's plans for providing services to foreign nations. (*Id.* at Paras. 17-21).
5. In determining that this information was confidential, DOC considered that Circinus provided this commercial information regarding its plans for the development of international operations to DOC, through Messrs. Barrack and Gates, so that DOC could utilize this information to support Circinus in its efforts, as it does for many businesses. Specifically, DOC used this information to advise representatives of a foreign government of Circinus's particular defense contracting capabilities and interest in providing its services to that government. DOC cannot not reveal the identity of the foreign government, as the disclosure of the government at issue, in and of itself,

would reveal information about a prospective client and the nature of Circinus's marketing and business development plans.

6. DOC further considered that neither Circinus nor any other business would provide information that reveals its specific business plans, strategies and opportunities in the absence of an implicit understanding that DOC would use the information solely for the intended purpose and treat the information as confidential. In the case of Circinus, public dissemination of the information withheld would give insight to competitors of Circinus's pursuit of opportunities with a particular foreign government, its capabilities and the manner in which it markets its capabilities.
7. If Circinus or any other business could not be assured that DOC would treat as confidential information about its commercial plans and operations submitted to DOC to support the business in its efforts, then DOC would not be able to sustain the trust of the American business community, which is vital to DOC's mission to facilitate the growth of American commerce domestically and abroad. DOC has been able to sustain this trust because businesses understand that DOC carefully guards sensitive commercial information and only uses it to further DOC efforts to help these businesses expand their reach.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of October, 2019.



BRIAN D. LIEBERMAN