

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

CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON,)
))
Plaintiff,)
))
v.)
))
U.S. DEPARTMENT OF STATE,)
))
Defendant.)

Civil Action No. 19-1344 (RBW)

REPORTERS COMMITTEE FOR)
FREEDOM OF THE PRESS,)
))
Plaintiff,)
))
v.)
))
U.S. DEPARTMENT OF STATE,)
))
Defendant.)

Civil Action No. 19-2125 (RBW)

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ STATEMENT
OF UNDISPUTED MATERIAL FACTS**

1. On March 18, 2019, Secretary of State Mike Pompeo held a briefing call with a select group of “faith-based” media outlets in advance of a planned trip to the Middle East. Weeks Decl. Ex. A.

Defendant’s Response: Defendant disputes the materiality of the facts in this statement. The facts of the call and its timing on March 18, 2019 shortly before an overseas trip taken by the Secretary are undisputed, and the Department selected the participants after a deliberative process

to devise as part of advancing the policy goals of the United States and the State Department. *See* Second Declaration of Eric F. Stein (“2d Stein Decl.”) ¶ 4. But Plaintiffs’ characterization of the nongovernmental participants on the call as “faith based’ media outlets” is not a material fact for purposes of the FOIA action because the claims relate exclusively to redactions in records. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (the substantive law usually identifies the material facts, which are ones that matter to the outcome of the case).

2. According to the briefing transcript, Secretary Pompeo described the planned trip as focusing on “challenges we face from radical Islamic terrorism in the region,” State’s “work[] to promote religious tolerance” in the countries visited, and Israeli-Palestinian relations. Weeks Decl. Ex. A.

Defendant’s Response: Defendant objects to this statement on the basis that it is incomplete evidence of its contents and respectfully refers the Court to the complete transcript. *See* Weeks Decl. Exhibit A; Fed. R. Evid. 103. Defendant further disputes that the portion quoted by Plaintiffs or the full transcript reflect a complete statement of the Department’s strategy with respect to the March 18, 2019 telephone briefing that is the subject of Plaintiffs’ FOIA Requests. *See* 2d Stein Decl. ¶¶ 4-6, 8.

3. Secretary Pompeo added that “persons of all faiths will have something to say” about the administration’s Israel-Palestine “peace plan.” *Id.* He also described “a very robust effort to work with other countries” to “cease allowing radicalism to take place in their mosques or elsewhere in madrasas.” Weeks Decl. Ex. A.

Defendant’s Response: Defendant objects to this statement on the basis that it is incomplete evidence of its contents and respectfully refers the Court to the complete transcript. *See* Weeks Decl. Exhibit A; Fed. R. Evid. 103. Defendant further disputes that the portion quoted

by Plaintiffs or the full transcript reflect a complete statement of the Department's strategy with respect to the March 18, 2019 telephone briefing that is the subject of Plaintiffs' FOIA Requests. *See* 2d Stein Decl. ¶¶ 4-6, 8.

4. Secretary Pompeo took and answered several questions on these subjects from the call participants. Weeks Decl. Ex. A.

Defendant's Response: Defendant objects to this statement on the basis that it does not contain any facts material to claims or defenses available under FOIA. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Additionally, Plaintiffs' reference to "these subjects" is vague, and the transcript is the best evidence of its contents.

5. State initially invited both religious and non-religious media outlets to join the briefing call. Weeks Decl. Ex. B.

Defendant's Response: Undisputed that the group of individuals considered and ultimately invited to participate on the March 18, 2019 call with Secretary Pompeo changed over time as the Department's employees deliberated about the way to execute the Secretary's goals for that particular call. *See* 2d Stein Decl. ¶ 4.

6. State later rescinded invitations to non-religion-focused outlets, over reporters' objections, explaining that the briefing was "for faith-based media only." Weeks Decl. Ex. B.

Defendant's Response: Defendant objects to the portion of this statement about objections by certain reporters on the basis that it does not contain any facts material to the Department's response to Plaintiffs' FOIA requests. *See Anderson*, 477 U.S. at 248. Otherwise, the Department responds that it is undisputed that the participants on the March 18, 2019 call with Secretary Pompeo changed over time as the Department's employees deliberated about the way to execute the Secretary's goals for that particular call. *See* 2d Stein Decl. ¶¶ 4-6, 8.

7. Both the briefing transcript and final list of briefing attendees reveal that no organizations dedicated exclusively or primarily to Muslim-focused issues attended the briefing. Weeks Decl. Ex. A, B.

Defendant's Response: Defendant objects to the portion of this statement about objections by certain reporters on the basis that it does not contain any facts material to the Department's response to Plaintiffs' FOIA requests. *See Anderson*, 477 U.S. at 248. Otherwise, the Department responds that it is undisputed that the participants on the May 18, 2019 call with Secretary Pompeo changed over time as the Department's employees deliberated about the way to execute the Secretary's goals for that particular call. *See* 2d Stein Decl. ¶¶ 4-6, 8. Additionally, the records provided in response to the FOIA Requests are the best evidence of their contents, and whether an organization is "dedicated exclusively or primarily to Muslim-focused issues" is subjective and vague.

8. Emails between State Department employees show that an earlier list of call participants included a representative from the Council on American-Islamic Relations ("CAIR"). Weeks Decl. Ex. G.

Defendant's Response: The content of the records and the call participants at any given time are immaterial, but such e-mails are evidence of the deliberative process and the only redactions in Weeks Decl. Exhibit G are for personal privacy. *See* 2d Stein Decl. ¶ 4; Stein Decl. ¶ 44.

9. Emails between State Department employees further show that State initially invited CAIR to join the briefing, but later rescinded that invitation. Weeks Decl. Ex. H.

Defendant's Response: Undisputed that the participants on the May 18, 2019 call changed over time as the Department's employees deliberated about the best way to execute the

Secretary's goals for that particular call. *See* 2d Stein Decl. ¶¶ 4-6, 8; Stein Decl. ¶ 41. The documents are the best evidence of their contents, and Plaintiffs' characterization of unidentified records fail to create a genuine issue of material fact about the timing, existence or nature of the deliberations. To the extent this paragraph relates to the actions of the Department with respect to CAIR, Defendant objects to this statement on the basis that it does not contain any facts material to this motion, which concerns only the propriety of the Department's response to Plaintiffs' FOIA requests. *See Anderson*, 477 U.S. at 248. Finally, Plaintiffs' use of the terms "invited" and "rescinded" is vague.

10. Emails between State Department Employees further show that reporters from outlets such as *The Washington Post*, *The Wall Street Journal*, Reuters, and CNN were excluded from the call, or received no response to their attempts to RSVP. Weeks Decl. Exs. C, D, E, F.

Defendant's Response: Without waiving its deliberative process privilege by either admitting or denying that any particular media outlet was not included in the March 18 2019 call through intentional act or unintentional omission by any employees of the Department, the Department does not dispute that the participants on the call were limited and that its employees and officials internally debated the final list of participants as part of the strategy of shaping the Department's message. *See* 2d Stein Decl. ¶¶ 4-6, 8.

11. On March 19, 2019, the day after the briefing, a State official sent an email summarizing what transpired and the resulting backlash from the press, stating that "Jessica Donati of the [Wall Street Journal] was extended an invitation and then someone in Kansas asked that the invitation be rescinded. It is unclear to me who made the decision and why it was made. . . . Someone affiliated with CAIR was also rescinded an invite." Weeks Decl. Ex. I.

Defendant's Response: Defendant objects to this statement on the basis that it does not contain any facts material to this motion, which concerns only the propriety of the Department's response to Plaintiffs' FOIA requests. *See Anderson*, 477 U.S. at 248.

12. Emails show that one State Department official wrote, in response to press coverage critical of the briefing, that "This is NOT a good look for the U.S." Weeks Decl. Ex. J.

Defendant's Response: Defendant objects to this statement on the basis that it does not contain any facts material to this motion, which concerns only the propriety of the Department's response to Plaintiffs' FOIA requests. *See Anderson*, 477 U.S. at 248.

13. In another email, a State Department official wrote to a colleague: "I'm reading about [the briefing] on Twitter and it seems somewhat strange. Would appreciate any context you have." Weeks Decl. Ex. I. The colleague responded: "I have no insight to offer why they decided to conduct this engagement in this highly unusual manner." *Id.*

Defendant's Response: Defendant objects to this statement on the basis that it does not contain any facts material to this motion, which concerns only the propriety of the Department's response to Plaintiffs' FOIA requests. *See Anderson*, 477 U.S. at 248.

CREW's FOIA Request

14. On March 19, 2019, CREW submitted a FOIA request to State seeking "all documents referencing, concerning, or relating to the briefing call on international religious freedom held by Secretary of State Mike Pompeo on March 18, 2019." Stein Decl. ¶ 12 & Ex. 8.

Defendant's Response: No dispute.

15. By letter dated September 30, 2019, State informed CREW that it had located four records responsive to its request, and released two of those records in full and two in part. Stein Decl. ¶ 14 & Ex. 9.

Defendant's Response: No dispute.

16. By letter dated November 15, 2019, State informed CREW that it had located two additional records responsive to its request, and released both records in part. Stein Decl. ¶ 14 & Ex. 9.

Defendant's Response: No dispute.

17. By letter dated December 16, 2019, State informed CREW that it had located 25 additional records responsive to its request, and released 11 of those records in full and 14 in part. Stein Decl. ¶ 16 & Ex. 11.

Defendant's Response: No dispute.

18. By letter dated January 17, 2020, State informed CREW that it had located 48 additional records responsive to its request, and released 20 of those records in full and 28 in part. Stein Decl. ¶ 17 & Ex. 12. It also re-released one document from a prior production, with some redactions lifted. *Id.*

Defendant's Response: No dispute.

19. By letter dated March 9, 2020, State re-released one record to CREW in full that it had previously released in part. Stein Decl. ¶ 18 & Ex. 13.

Defendant's Response: No dispute.

20. In total, State released 34 records in full and 45 records in part in response to CREW's FOIA request. Stein Decl. ¶ 54.

Defendant's Response: Undisputed that this statement was accurate when Plaintiffs filed their cross-motion for summary judgment, but on July 14, 2020, the Department released one document in full that had been previously released in part (Document C06828154), 2d Stein Decl. ¶ 11, so the final count is 35 records released in full and 44 records released in part.

21. State has withheld records responsive to CREW's requests under FOIA Exemptions 1, 5, and 6. Stein Decl. ¶¶ 23-53.

Defendant's Response: Disputed. The Department did not withhold any responsive records. The Department released 35 responsive records in full and withheld portions of 44 other responsive records. The Department does not dispute that portions of certain records that were withheld were withheld under FOIA Exemptions 1, 5, and 6. Stein Decl. ¶¶ 35-54; 2d Stein Decl. ¶ 11.

Reporters Committees' FOIA Request

22. On March 19, 2019, the Reporters Committee submitted a FOIA request to State via fax, seeking:

Any transcripts, readouts, audio recordings, or other records that capture the substance of the March 18, 2019 call on "international religious freedom," in which Secretary Pompeo participated;

Any and all emails or other forms of communication inviting individuals or organizations to join or participate in the March 18, 2019 call on "international religious freedom," in which Secretary Pompeo participated;

Any and all records setting forth the criteria or selection process for inviting individuals or organizations to join or participate in the March 18, 2019 call on "international religious freedom," in which Secretary Pompeo participated.

Stein Decl. ¶ 5 & Ex. 1.

Defendant's Response: No dispute.

23. The Reporters Committee received no response from State prior to its lawsuit filed July 17, 2019. Stein Decl. ¶¶ 6 & Ex. 2; 19-cv-2125 ECF No. 1.

Defendant's Response: No dispute.

