

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

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CITIZENS FOR RESPONSIBILITY))	
AND ETHICS IN WASHINGTON,))	
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Plaintiff,))	
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v.))	Civil Action No. 18-3022 (JEB)
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U.S. DEPARTMENT OF COMMERCE,))	
))	
Defendant.))	
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MOTION FOR SUMMARY JUDGMENT

Defendant, the United States Department of Commerce (“DOC”), by its undersigned attorneys, respectfully moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for an order granting summary judgment on the grounds that no genuine issue as to any material fact exists and DOC is entitled to judgment as a matter of law. In support of this motion, the Court is respectfully referred to defendant’s accompanying declaration, exhibits, the Statement of Material Facts As To Which There Is No Genuine Issue, and the Memorandum of Points and Authorities In Support of Defendant’s Motion For Summary Judgment.

A proposed order consistent with the relief sought is also attached.

Respectfully submitted,

JESSIE K. LIU,
D.C. BAR # 472845
United States Attorney
for the District of Columbia

DANIEL F. VAN HORN
D.C. BAR # 924092
Chief, Civil Division

/s/ Marina Utgoff Braswell
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DEFENDANTS’ STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Local Rule 7(h), Defendant, the United States Department of Commerce (“DOC”), submits this statement of material facts as to which there is no genuine issue:

1. By letter dated August 2, 2018, plaintiff made a Freedom of Information Act (“FOIA”) request to DOC, seeking two categories of information regarding the communications of Eric Branstad, former Senior White House Advisor at DOC. Declaration of Brian D. Lieberman (“Lieberman Decl.”), at ¶ 4.

2. In particular, plaintiff requested access to:

- 1) All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.
- 2) All communications sent or received by Mr. Branstad that mention the defense firm Circinus.

Id. & Ex. 2.

3. By letter dated July 22, 2018, DOC made an interim release to plaintiff consisting of 19 pages, withholding sixteen pages in part and one page in full, pursuant to FOIA Exemptions 4, 5 and 6. Id. at ¶ 8.

4. By letter dated June 14, 2019, DOC provided plaintiff with an amended production of 165 pages, including the nineteen pages originally provided, withholding ninety pages in part and seven pages in full, pursuant to FOIA Exemptions 4, 5 and 6. Id. at ¶ 9.

5. In searching for responsive records, “DOC searched the contents of Mr. Branstad’s email box and electronic calendar using terms corresponding to the two portions of Plaintiff’s request for communications: “Rick Gates,” “Richard Gates” and “Circinus.” Id. at ¶ 10.

6. Pursuant to Exemption 4, DOC withheld confidential commercial information pertaining to the company Circinus’s plans and strategy regarding government contracting for defense/military issues, which constitutes information not ordinarily released by such companies, and the release of which would cause substantial competitive harm to Circinus and could impair DOC’s ability to obtain necessary information. Id. at ¶ 19-21.

7. Pursuant to Exemption 5, DOC withheld certain information contained in inter or intra-agency memoranda which is protected from mandatory disclosure by the deliberative process privilege, consisting of draft testimony and the related analysis of that testimony by a senior DOC official. Id. at ¶¶ 6, 27.

8. Pursuant to Exemption 6, DOC withheld certain information the release of which would constitute a clearly unwarranted invasion of personal privacy. Id. at ¶¶ 6, 28-32.

9. All reasonably segregable information has been released. Id. at ¶¶ 33-34.

Respectfully submitted,

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for the District of Columbia

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Chief, Civil Division

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

PRELIMINARY STATEMENT

Plaintiff filed this civil action against defendant United States Department of Commerce (“DOC”), alleging that DOC violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in connection with a request for access to information made by plaintiff. In particular, plaintiff requested access to:

- 1) All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.
- 2) All communications sent or received by Mr. Branstad that mention the defense firm Circinus.

Declaration of Brian D. Lieberman (“Lieberman Decl.”), at ¶ 4 & Ex. 2.

As the accompanying Lieberman Declaration and Vaughn Index demonstrates, DOC performed an adequate search for responsive records and properly withheld information pursuant to FOIA Exemptions 4, 5 and 6. Thus, there is no genuine issue of material fact and BOP is entitled to judgment as a matter of law.

ARGUMENT

I. DOC has Performed an Adequate Search for Responsive Documents.

Plaintiff has indicated an intent to challenge DOC's search for responsive records. Under such circumstances, an agency must establish that it has conducted a search reasonably calculated to uncover all responsive records. See, e.g., Baker & Hostetler LLP v. Department of Commerce, 473 F.3d 312, 318 (D.C. Cir. 2006); Valencia-Lucena v. United States Coast Guard, 180 F.3d 321, 325-26 (D.C. Cir. 1999); Truitt v. Department of State, 897 F.2d 540, 542 (D.C. Cir. 1990).

Although the adequacy of the search is "dependent upon the circumstances of the case," Truitt v. Department of State, 897 F.2d at 542, the agency "must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." Oglesby v. Department of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). In this connection, it is axiomatic that the fundamental question is not "whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate." Steinberg v. Department of Justice, 23 F.3d 548, 551 (D.C. Cir. 1994) (*quoting* Weisberg v. Department of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984)); accord Nation Magazine v. Customs Service, 71 F.3d 885, 892 n.7 (D.C. Cir. 1995); see Allen v. Federal Bureau of Prisons, 263 F. Supp.3d 236, 242 (D.D.C. 2017).

The FOIA does not require that an agency search every division or field office on its own initiative in response to a FOIA request when responsive documents are likely to be located in one place. Kowalczyk v. Department of Justice, 73 F.3d 386, 388 (D.C. Cir. 1996).

Nor does the FOIA require that an agency search every record system. Oglesby, 920 F.2d at 68.

The “[f]ailure to turn up [a specified] document does not alone render [a] search inadequate.” Nation Magazine, 71 F.3d at 892, n.7. Nor is the issue before the Court “whether there might be any further documents,” Kowalczyk, 73 F.3d at 388; rather, it is whether the search was adequate. Weisberg, 745 F.2d at 1485. In order to prove that its search was reasonable, the agency is entitled to rely upon affidavits, provided that they are relatively detailed, nonconclusory, and submitted in good faith. Id. at 1486; Perry v. Block, 684 F.2d at 127 (“affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by the FOIA”); Allen, 263 F. Supp.3d at 242. The affidavits must show “that the search method was reasonably calculated to uncover all relevant documents,” and should “explain how the search was conducted.” Oglesby, 920 F.2d at 68.

The accompanying Lieberman Declaration explains that “DOC searched the contents of Mr. Branstad’s email box and electronic calendar using terms corresponding to the two portions of Plaintiff’s request for communications: ‘Rick Gates,’ ‘Richard Gates’ and ‘Circinus.’” Id. at ¶ 11. Given that plaintiff’s request sought two specific categories of communications by Mr. Branstad, searching his email box was the logical place to look for responsive records. Id. at ¶¶ 14-15.

Accordingly, because the methods of searching were reasonably based on the subject of the request and DOC’s recordkeeping systems, DOC is entitled to summary judgment on the adequacy of its search. See Larson v. Dep’t of State, 565 F.3d 857, 869 (D.C. Cir. 2009) (observing that the adequacy of an agency’s search “is measured by the reasonableness of the effort in light of the specific request”).

II. Pursuant to Exemption 4, DOC Withheld Confidential Commercial Information

Exemption 4 of the FOIA protects from disclosure “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). Commercial or financial information is that information that relates to a trade or business. See, e.g., Baker & Hostetler LLP v. U.S. Dep’t of Commerce, 473 F.3d 312, 319-20 (D.C. Cir. 2006). The requirement that the information be “obtained from a person” includes information obtained from a business. Bd. of Trade v. Commodity Futures Trading Comm’n, 627 F.2d 392, 405 (D.C. Cir. 1980).

With respect to whether information is “confidential,” prior to Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356 (2019), there were two different standards applied to Exemption 4 withholdings—one applied for voluntarily submitted information and one applied for involuntarily submitted information. For voluntarily submitted information, an agency could withhold it under Exemption 4 if “it is of a kind that a provider would not customarily release to the public.” Critical Mass Energy Proj. v. Nuclear Regulatory Comm’n, 975 F.2d 871, 872 (D.C. Cir. 1992) (en banc)). For required submissions, the withholding would satisfy the Exemption 4 test if the disclosure was likely to “(1) impair the government’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.” Nat’l Parks & Conservation Ass’n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

Rejecting this approach, the Supreme Court held that it could not “discern a persuasive reason to afford the *same* statutory term two such radically different constructions.” Food Mktg. Inst., 2019 WL 2570624, at *6 (rejecting differing applications of the term “confidential”). The

Court emphasized how Exemption 4 safeguards the government’s interest in “providing private parties with sufficient assurances about the treatment of their proprietary information so they will cooperate in federal programs and supply the government with information vital to its work.” Id. at *20-21.

On the remaining question—“when does information provided to a federal agency qualify as ‘confidential,’”—the Supreme Court held that information is confidential “whenever it is customarily kept private, or at least closely held, by the person imparting it.” Food Mktg. Inst., 2019 WL 2570624, at *6.¹

In the case at hand, the information withheld concerns the company Circinus, and constitutes commercial information because Circinus used it in its commercial and business activities to provide defense/military contracting and related services on an international basis. Lieberman Declaration, ¶ 19. The information was obtained “from a person” because it was conveyed to DOC by private individuals on behalf of Circinus. Id. at ¶ 20.

Mr. Lieberman explains that:

Viewing the provision of this information as voluntarily [provided], in DOC’s experience, private businesses do not customarily release information of this nature concerning their business plans and strategy to their competitors or other third parties. Even if one considers the submission mandatory, DOC concluded, release of this information concerning Circinus’s international business plans and strategy would either likely cause substantial competitive harm to Circinus, on whose behalf Mr. Gates and Mr. Hodgkins submitted it to DOC, or would impair DOC’s ability to obtain similar information from others in the future concerning international business plans, thus compromising DOC’s role in supporting American businesses developing or expanding their operations abroad.

¹ Notably, the Supreme Court also discussed a second possible requirement—that the “information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.” Food Mktg. Inst., 2019 WL 2570624, at *4. But the Court held that “there’s no need to resolve that question in this case[.]” Id.

Indeed, if Circinus (or any defense contractor) were required to share its plans for the development of international business, it could alert competitors to specific opportunities or reveal specific company strategies.

Lieberman Decl., ¶ 21.

Thus, because the information withheld consists of confidential commercial information that the business would not ordinarily share publicly, DOC properly invoked Exemption 4 to withhold it.

III. Pursuant to Exemption 5, DOC Properly Withheld Information Subject to the Deliberative Process Privilege.

FOIA Exemption 5 protects from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency.” 5 U.S.C. § 552(b)(5). The exemption protects records that ordinarily would be privileged in the civil discovery context, and thus encompasses the deliberative process privilege, the attorney-client privilege, and the attorney work-product doctrine. See Nat’l Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 148-49 (1975) (“NLRB”); Abtew v. U.S. Dep’t of Homeland Sec., 808 F.3d 895, 898 (D.C. Cir. 2015). As explained below, DOC withheld information under Exemption 5, through the deliberative process privilege.

The purpose of the deliberative process privilege is to protect the government’s decision-making process, and “rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news.” U.S. Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 8–9 (2001); Abtew, 808 F.3d at 898; Tax Analysts v. IRS, 117 F.3d 607, 617 (D.C. Cir. 1997) (noting that the privilege “reflect[s] the legislative judgment that the quality of administrative decision-making would be seriously undermined if agencies were forced to ‘operate in a

fishbowl’ because the full and frank exchange of ideas on legal or policy matters would be impossible”). Application of the privilege, therefore, serves to “prevent injury to the quality of agency decisions.” NLRB, 421 U.S. at 150–51.

To qualify for protection under the deliberative process privilege, the agency must show that the information is both (1) “predecisional” and (2) “deliberative.” Nat’l Ass’n of Home Builders v. Norton, 309 F.3d 26, 39 (D.C. Cir. 2002). 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. Dep’t of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Abtew, 808 F.3d at 899. The privilege applies to documents “reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” NLRB, 421 U.S. at 150; Coastal States Gas Corp., 617 F.2d at 866 (deliberative process privilege protects documents “which would inaccurately reflect or prematurely disclose the views of the agency”). The privilege “ensur[es] that persons in an advisory role would be able to express their opinions freely to agency decision-makers without fear of publicity. . . Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.” McKinley v. Bd. Of Gov. of the Fed. Reserve Sys., 647 F.3d 331, 339-40 (D.C. Cir. 2011) (*quoting* Ryan v. Dep’t of Justice, 617 F.2d 781, 789-90 (D.C. Cir. 1980)).

The deliberative process privilege also protects factual materials that are closely intertwined with opinions, recommendations, and deliberations. Ancient Coin Collectors Guild v. U.S. Dep’t of State, 641 F.3d 504, 513 (D.C. Cir. 2011) (“[T]he legitimacy of withholding

does not turn on whether the material is purely factual in nature or whether it is already in the public domain, but rather on whether the selection or organization of facts is part of an agency's deliberative process."); Mapother v. Dep't of Justice, 3 F.3d 1533, 1538-39 (D.C. Cir. 1993).

Whether a document is predecisional does not depend on the agency's ability to identify a specific decision for which the document was prepared. NLRB, 421 U.S. at 151 n.18. Rather, the deliberative process privilege applies as long as the document is generated as part of a continuing process of agency decision-making.

DOC withheld:

(i) a portion of an internal email between DOC officials containing one official's analysis of draft testimony for John Thompson, Director of the Census Bureau, before the House Appropriations Committee's Subcommittee on Commerce, Justice, Science and Related Agencies and (ii) the attachment to that email containing the draft testimony.

Lieberman Decl., ¶ 23 & Vaughn Index, Lines 42, 43 and 46. The information withheld involves a communication by a DOC official discussing draft testimony by the Census Director, and the draft testimony itself.

All of this information is predecisional, because it concerns analyses, opinions and recommendations about nonfinal testimony to be given by the Census Director.

Lieberman Decl., ¶ 27. Thus, given that none of the information at issue constitutes a final decision about the testimony to be given, it qualifies as predecisional.

The information withheld is also deliberative. As the Lieberman Declaration makes clear, these documents contain opinions and recommendations concerning testimony to be given. Release of this deliberative information would harm the agency's decision-making process because it would chill the needed open and frank discussion about testimony to be presented to Congress. Lieberman Decl., ¶ 27. As the Supreme Court aptly observed, "officials will not

communicate candidly among themselves if each remark is a potential item of discovery and front page news.” Klamath Water Users Protective Ass’n, 532 U.S. at 8–9.

In this regard, Mr. Lieberman points out that:

Agency personnel may hold back from sharing important observations, analyses and recommendations, or factual information they thought should be considered, if they knew that such deliberations would be made public, and this would seriously undermine the development of an adequate, thorough, thoughtful, soundly based assessment of testimony to be provided to Congress.

Lieberman Decl., ¶ 27.

Mr. Lieberman further explains: “No factual information can be segregated and released, because the factual information was selectively chosen to highlight certain portions of the draft testimony, and thus its release would reveal the deliberations at issue over the proposed testimony.” Lieberman Decl., ¶ 27.

The forwarding of this information to one private individual, for the sole purpose of expediency so the information could flow from one DOC official to another, while the sender was in transit, does not amount to a waiver of the privilege because the information was not knowingly put out into the public domain by the agency. This incident was unauthorized by DOC and contrary to DOC’s policy and practice. Lieberman Decl., ¶ 24. Under such circumstances, the privilege has not been waived. See Mannina v. District of Columbia, 2019 WL 1993780, at *8 (D.D.C. May 6, 2019).

Accordingly, because DOC had withheld predecisional, deliberative information that is privileged under the deliberative process privilege, the agency’s invocation of Exemption 5 should be upheld.

IV. Pursuant to Exemption 6, DOC Properly Withheld Information to Protect the Personal Privacy of an Individual Whose Name Appears in the Records.

Pursuant to Exemption 6, DOC withheld private email addresses and private phone numbers for several private individuals, private residential addresses, as well as the work cell phone numbers of various DOC employees, and work email addresses of high level DOC employees. Lieberman Decl., ¶ 31. Release of this information could subject these individuals to unwanted and unnecessary personal contact, including the potential for harassment. Id.

Exemption 6 permits the withholding of “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The term “similar files” is broadly construed and includes “Government records on an individual which can be identified as applying to that individual.” U.S. Dep’t of State v. Wash. Post Co., 456 U.S. 595, 602 (1982); Lepelletier v. Fed. Deposit Ins. Corp., 164 F.3d 37, 47 (D.C. Cir. 1999) (“The Supreme Court has interpreted the phrase ‘similar files’ to include all information that applies to a particular individual.”); Govt. Accountability Project v. U.S. Dep’t of State, 699 F. Supp. 2d 97, 105-06 (D.D.C. 2010).

In assessing the applicability of Exemption 6, courts weigh the “privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of personal privacy.” Lepelletier, 164 F.3d at 46; Chang v. Dep’t of Navy, 314 F. Supp.2d 35, 43 (D.D.C. 2004). “[T]he only relevant public interest in the FOIA balancing analysis [is] the extent to which disclosure of the information sought would ‘she[d] light on an agency’s performance of its

statutory duties’ or otherwise let citizens know ‘what their government is up to.’” Lepelletier, 164 F.3d at 47 (*quoting* U.S. Dep’t of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 497 (1994)) (alterations in original); Beck v. Dep’t of Justice, 997 F.2d 1489, 1492 (D.C. Cir. 1993) (*quoting* Dep’t of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)). “Information that ‘reveals little or nothing about an agency’s own conduct’ does not further the statutory purpose.” Beck, 997 F.2d at 1492.

DOC weighed the privacy interests at stake against the public interest in disclosure, and concluded that the private emails and private phone numbers of private individuals, private residential addresses, work cell phone numbers for DOC employees, and work email addresses for high level DOC employees, shed no light on what DOC or the government is doing, and thus disclosure would cause an unwarranted invasion of privacy. Lieberman Decl., at ¶ 32. Given the complete lack of public interest in disclosure, the disclosure would amount to a clearly unwarranted invasion of personal privacy. Accordingly, the Court should uphold DOC’s application of Exemption 6.

V. DOC Has Complied with FOIA’s Segregability Requirement.

Under the FOIA, if a record contains information exempt from disclosure, any “reasonably segregable,” non-exempt information must be disclosed after redaction of the exempt information. 5 U.S.C. § 552(b). Non-exempt portions of records need not be disclosed if they are “inextricably intertwined with exempt portions.” Mead Data Cent., Inc. v. Dep’t of the Air Force, 566 F.2d 242, 260 (D.C. Cir. 1977). To establish that all reasonably segregable, non-exempt information has been disclosed, an agency need only show “with ‘reasonable specificity’” that the information it has withheld cannot be further segregated. Armstrong v. Executive Office of the President, 97 F.3d 575, 578-79 (D.C. Cir. 1996); Canning v. Dep’t of

Justice, 567 F. Supp. 2d 104, 110 (D.D.C. 2008).

Here, DOC carefully reviewed the material withheld line-by-line to ensure all reasonably segregable information was released, and determined that no additional non-exempt information could be released. Lieberman Decl., ¶¶ 33-34. Release of the withheld information would reveal information protected by Exemptions 4, 5 and 6. Id.

Thus, because DOC carefully reviewed the material withheld and determined that no additional non-exempt information could be released, this Court should find that the segregability requirement has been met.

CONCLUSION

Accordingly, for all of the reasons set forth above and in the accompanying Lieberman Declaration and Vaughn Index, defendants respectfully submit that this motion for summary judgment should be granted.

Respectfully submitted,

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ORDER

Upon consideration of defendant’s motion for summary judgment, plaintiff’s opposition, and the entire record in this case, the Court finds that there are no issues of material fact and the defendant is entitled to judgment as a matter of law. Therefore, it is hereby

ORDERED that defendant’s motion for summary judgment is granted.

This is a final, appealable order.

UNITED STATES DISTRICT JUDGE

**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)

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). I have served in this position 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 of the Department and its agencies regarding requests.
2. The statements contained in this 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 support of DOC's Motion for Summary Judgment. In accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this Declaration and the attached index (Exhibit 1) provide the pertinent background, the procedural history of this request, and the justifications for DOC's withholding of documents pursuant to FOIA Exemptions 4, 5 and 6. See 5 U.S.C. § 552(b)(4), (5) and (6).

Preliminary Statement

4. Eric Branstad served in the capacity of Senior White House Advisor at DOC from January 2017 until his departure in January 2018. On August 2, 2018, Plaintiff submitted a FOIA request to DOC seeking two categories of Mr. Branstad's communications during his tenure. Specifically, in this request, a copy of which is attached as Exhibit 2, Plaintiff sought the following:
 - 1) All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.
 - 2) All communications sent or received by Mr. Branstad that mention the defense firm Circinus.
5. Plaintiff herein challenges the adequacy of the search performed for responsive documents and DOC's withholding of information under Exemptions 4, 5 and 6. As is detailed below, however, DOC conducted an appropriate search of Mr.

Branstad's communications that reflected the clear, specific terms of Plaintiff's request, and DOC properly withheld certain responsive information.

6. DOC applied Exemption 4 to commercial information of a confidential nature regarding a military defense contracting company, Circinus LLC (Circinus), that Mr. Branstad received from two private individuals, Mr. Gates and Thomas Hodgkins, in connection with the potential support for Circinus's marketing of services internationally. DOC invoked Exemption 5 for draft testimony and the related analysis of that testimony by a senior DOC official. DOC utilized Exemption 6 to redact from email communications personal identifying information, such as private email accounts and private phone numbers, the release of which could lead to unwanted personal contact and embarrassment or harassment.

The History of Plaintiff's FOIA Request

7. Within several days of receiving Plaintiff's FOIA request on August 2, 2018, DOC advised Plaintiff via email that DOC had assigned its FOIA Request tracking number DOC-IO-2018-001899. (See Exhibits 2 and 3 respectively). Subsequently, by correspondence dated August 22, 2018, a copy of which is attached as Exhibit 4, DOC informed Plaintiff that its request did not comply with the requirements of 15 CFR 4.4(c), because it did not describe the second item in sufficient detail for DOC to locate responsive records with reasonable effort. DOC explained that Plaintiff must provide a date range for the second item. DOC stated that unless Plaintiff provided the requisite clarification within 30 calendar days, DOC would consider the FOIA request closed and take no further action. Six

weeks later, having received no response, on October 3, 2018, DOC advised Plaintiff that it had closed the FOIA request. (See Exhibit 5).¹

8. Four weeks later, on October 31, 2018, Plaintiff contacted DOC by telephone. Plaintiff's representative stated that it had not received either the correspondence of August 22nd or October 3rd. Where, as is the case here, the requester has submitted the FOIA request online, through the DOC portal for FOIAonline.gov, DOC provides all email and correspondence concerning Plaintiff's request to its FOIAonline.gov email box. Plaintiff should have received the August 22nd and October 3rd emails. Nevertheless, in the spirit of cooperation, during the October 31st call, DOC agreed to reopen Plaintiff's FOIA request, as the parties confirmed in an email exchange on October 31 and November 1, 2018, which are collectively attached as Exhibit 6.² Additionally, at that time, Plaintiff provided the requisite timeframe for the second part of its request, applying the same time period that it had specified for the first part of its request, January 20, 2017 to March 1, 2018.
9. On March 29, 2019, DOC made its initial production of responsive documents, consisting of 19 pages of emails and attachments. (A copy of the correspondence is attached as Exhibit 7). Of those 19 pages, DOC withheld 16 in part and 1 in full pursuant to Exemptions 4, 5 and 6, U.S.C. 552(b)(4), (5) and (6).
10. Following this production, DOC conducted a further search and determined that it had additional responsive documents. Thus, on June 14, 2019, DOC provided

¹ DOC respectfully submits that it properly closed the file, in accordance with DOC's FOIA regulations. 15 CFR 4.6(c) permits the agency to make a one-time written request for clarification and, if, such as here, the agency does not receive a response within 30 calendar days, the agency "will presume that the requester is no longer interested and notify the requester that the request will be closed."

² As DOC reminded Plaintiff in the March 29, 2019 email communication, under cover of which it initially produced responsive documents, a copy of which is provided as Exhibit 7, DOC has not waived its claim that it properly closed out the FOIA request on October 3, 2018.

Plaintiff with an amended production consisting of 165 pages, which included the originally-produced 19 pages. (A copy of the correspondence is attached as Exhibit 8). Of these 165 pages, DOC withheld 97 in part and 37 in full under Exemptions 4, 5 and 6.

The Search for Responsive Records

11. DOC searched the contents of Mr. Branstad's email box and electronic calendar using terms corresponding to the two portions of Plaintiff's request for communications: "Rick Gates," "Richard Gates" and "Circinus."
12. The search of Mr. Branstad's email box resulted in 165 pages of responsive documents consisting of emails and attachments.
13. DOC advised Plaintiff of the scope of the search, including the search terms, in the June 14, 2019 email under cover of which it provided the responsive documents.
14. It is unclear why Plaintiff considers the search inadequate, as DOC based it on the specific parameters of Plaintiff's FOIA request. Plaintiff sought two distinct categories of communications: (i) those between Mr. Branstad and Rick Gates between January 20, 2017 and March 1, 2018; and (ii) communications received or sent by Mr. Branstad mentioning the defense firm Circinus between January 20, 2017 and March 1, 2018 (the timeframe that Plaintiff ultimately provided based on communications between the parties in October 2018). Thus, regarding the first item, DOC searched Mr. Branstad's email account and electronic calendar for "Rick Gates" and, as Rick is an informal version of Richard, we also searched for "Richard Gates." For the second item, DOC conducted a search using "Circinus," the name of the entity Plaintiff specified.

15. DOC tailored the search to the scope of the request, which identified particular categories of communications Mr. Branstad sent or received during his tenure at the department.³ Accordingly, DOC has conducted a search reasonably calculated to lead to the discovery of all responsive records.

Justifications for the Information Withheld Under FOIA

16. DOC carefully examined the records at issue and determined that they must be withheld in part or full pursuant to Exemptions 4, 5 and 6.

I. Applicability of Exemption 4

17. 5 U.S.C. § 552(b)(4), commonly known as Exemption 4, exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption protects information that is: 1) commercial or financial; 2) obtained from a person; and 3) privileged or confidential.
18. DOC redacted portions of 12 pages and withheld 7 pages in full under Exemption 4. (See Vaughn Index, Exhibit 1, Lines 49 through 67).
19. To determine whether withheld information was "commercial or financial" information, DOC used the ordinary meaning of the terms and determined whether there was a commercial interest in the information. DOC found that the withheld information, concerning the company Circinus, was commercial information, because Circinus used it in its commercial and business activities to provide

³ In addition, following the June 14th production, Plaintiff inquired whether Mr. Branstad had any physical files that may contain records responsive to the search. Typically, for a FOIA request of this nature, specifically seeking communications, which are typically maintained in electronic form, DOC would not search physical files, especially of a former employee. DOC, however, did confirm to Plaintiff, through counsel, that Mr. Branstad did not maintain records in physical form, only electronic, and conducted his communications via email.

defense/military contracting and related services on an international basis. The commercial information is contained in emails between Mr. Branstad and Mr. Gates and Mr. Hodgkins, as well as attachments. (See, e.g., Vaughn Index, Lines 49-51 and 66). This information is also present in a number of email communications between Mr. Branstad and other government officials regarding Circinus, and the related attachments. (See, e.g., id., at Lines 52-57, 60-61 and 64).

20. The withheld information was obtained from a "person." Rick Gates and Thomas Hodgkins, both private individuals, provided the information to DOC on behalf of Circinus. (See, e.g., Vaughn Index, Lines 49-52). Mr. Branstad then shared this information in communications with other government officials. (See, e.g., id. at Lines 62-63).

21. DOC further determined that this information is confidential, whether one characterizes its submission as voluntary or mandatory.⁴ The information pertains to the company's plans and strategy for providing defense/military contracting and related services to foreign nations, which was intended for DOC review and to potentially use in support of Circinus. (See, e.g., Vaughn Index, Lines 49 and 50). Viewing the provision of this information as voluntarily, in DOC's experience, private businesses do not customarily release information of this nature concerning their business plans and strategy to their competitors or other third parties. Even if

⁴ In a decision just released, *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019), the Supreme Court overruled the precedent established by the Court of Appeals for the District of Columbia in *National Parks & Conservation Assn. v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). In the latter case, the court held that where a business submitted commercial information because the agency required it, the information qualified as confidential only if the government or business could show disclosure would cause substantial competitive harm. In *Food Marketing Institute*, the Court ruled that no showing of harm is necessary. For purposes of this motion, since *National Parks* constituted the applicable law at the time DOC made its determination, DOC presents the analysis as it used at the time, evaluating the information both in terms of voluntarily and mandatory submission.

one considers the submission mandatory, DOC concluded, release of this information concerning Circinus's international business plans and strategy would either likely cause substantial competitive harm to Circinus, on whose behalf Mr. Gates and Mr. Hodgkins submitted it to DOC, or would impair DOC's ability to obtain similar information from others in the future concerning international business plans, thus compromising DOC's role in supporting American businesses developing or expanding their operations abroad. Indeed, if Circinus (or any defense contractor) were required to share its plans for the development of international business, it could alert competitors to specific opportunities or reveal specific company strategies.

II. Applicability of Exemption 5

22. Exemption 5 protects "interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. 552(b)(5). Exemption 5 has been construed to exempt documents or information normally privileged in the civil discovery context and incorporates, inter alia, the attorney-client and deliberative process privileges. As a threshold matter, the responsive records must be inter-agency or intra-agency documents in order to be protected from disclosure under this exemption.
23. The withheld information consists of (i) a portion of an internal email between DOC officials containing one official's analysis of draft testimony for John Thompson, Director of the Census Bureau, before the House Appropriations Committee's Subcommittee on Commerce, Justice, Science and Related Agencies

and (ii) the attachment to that email containing the draft testimony. See Vaughn Index, Lines 42, 43 and 46).

24. The email and attachment were forwarded for printing out by Mr. Branstad to Mr. Gates, a private individual, without authorization by the agency and contrary to DOC policy and practice. Per the correspondence, it was done due to a pressing need to get the testimony to the Secretary of Commerce quickly for review, while Mr. Branstad was in transit, and Mr. Gates' email address was used solely as a means of facilitating getting the testimony to the Secretary. To my knowledge, the email and attachment were not distributed to any private individuals other than Mr. Gates.
25. DOC determined that the portion of the internal DOC email discussing the draft testimony and the attached draft testimony constituted inter-agency or intra-agency documents.

Deliberative Process Privilege

26. DOC determined that certain of the responsive records contain information protected by the deliberative process privilege. To qualify for protection, the information must be pre-decisional and deliberative. The privilege serves several fundamental purposes: encouraging open, frank discussions between subordinates and supervisors, protecting against the premature disclosure of proposed policies before their adoption, and protecting against public confusion that might result from disclosure of policies and rationales that do not ultimately serve as the basis for agency action.

27. The information withheld under the deliberative process privilege consists of an internal DOC email communication in which a DOC official discusses the Census Director's draft testimony and a copy of the draft testimony. (See, e.g. Vaughn Index, Line 42 and 43). The information is predecisional because it does not represent the final testimony given by the Census Director. The information is deliberative because it involves: the analysis of proposed testimony by a DOC official for the consideration by other officials, including the Secretary. Release of this information would harm the agency's decision-making process by revealing draft testimony that was subject to further agency analysis and deliberation. Release of this information could chill others from engaging in free and fulsome analysis of positions to be taken by the agency. Agency personnel may hold back from sharing important observations, analyses and recommendations, or factual information they thought should be considered, if they knew that such deliberations would be made public, and this would seriously undermine the development of an adequate, thorough, thoughtful, soundly based assessment of testimony to be provided to Congress. No factual information can be segregated and released, because the factual information was selectively chosen to highlight certain portions of the draft testimony, and thus its release would reveal the deliberations at issue over the proposed testimony. Accordingly, the information meets the requirements for the deliberative process privilege.

III. Applicability of Exemption 6

28. 5 U.S.C. § 552 (b)(6), commonly known as Exemption 6, permits the government to withhold from disclosure "personnel and medical files and similar files" about

individuals when the disclosure of such information “would constitute a clearly unwarranted invasion” of personal privacy.

29. As noted above, DOC redacted personally identifiable information from 78 pages of responsive records pursuant to Exemption 6. (See Vaughn Index, Lines 1-48, 51-54, 56, 58, 60, 62, and 64-67) . The information redacted from these pages meet the definition of “similar” files, because they contain information pertaining to individuals.

30. In order to determine whether a document or portion of a document may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be compromised by the disclosure of the record. Second, the agency must determine whether the release of the document would further the public interest by shedding light on the operations and activities of the Government. Third, the agency must balance the identified privacy interests against the public interest in disclosure.

31. DOC redacted private email addresses and private phone numbers for private individuals, private residential addresses, and the email addresses and phone numbers of employees of private businesses. DOC also redacted the work cell phone number of Mr. Branstad, a former DOC employee, which may have been reassigned to a current employee, and the work cell phone numbers of other DOC employees. The individuals involved have a significant privacy interest in not having this information made available, which could result in unwanted and unnecessary personal contact and harassment.

32. I weighed the privacy interests identified against the public interest in disclosure. The only applicable public interest under Exemption 6 is whether release of the information would shed light on DOC's activities and DOC's performance of its statutory duties. DOC determined that the private email accounts, phone numbers and similar information withheld are specific to the individuals. It will not shed light on government activities because it does not add to the public's understanding of DOC's activities. Accordingly, the privacy interests identified outweigh the nonexistent public interest.

Segregability

33. DOC conducted a line-by-line review of the withheld information to ensure that it contained no segregable, nonexempt information. DOC has thus carefully reviewed all responsive records and released all non-exempt information to the extent possible. Some records consist of information exempt as confidential commercial information under Exemption 4 or deliberative communications subject to Exemption 5 and further segregation is not possible. In certain cases, full-page withholding proved necessary because the withheld information was so inextricably intertwined with nonexempt information such that further segregation would result in a meaningless set of words or phrases which have minimal or no information content. DOC limited the redaction of information subject to Exemption 6 to specific personally identifiable information, such as personal email accounts and cell phone numbers, the release of which could pose an unwarranted invasion of individual privacy.

Conclusion

34. DOC has carefully reviewed the responsive records and determined that all non-exempt material responsive to Plaintiff's FOIA request has been released. Exempt information has been properly withheld pursuant to FOIA Exemptions 4, 5 and 6. Accordingly, all reasonably segregable, non-exempt information has been released and the justification for withholding certain information has been detailed in this declaration.

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

Executed this 31th day of July, 2019.



BRIAN D. LIEBERMAN

Line	Bates	Document Name	Date	Exemption	Document Description	Basis for Withholding
2	000001	Email re: Test	3/3/2017	6	This document is an email communication between Eric Branstad and Rick Gates to check whether this is the correct email address for Mr. Branstad. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal identifying information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
3	000002	Email re: White Paper	3/13/2017	6	This document is an email communication from Rick Gates to Eric Branstad providing an attached document for review. The redacted portions consist of Mr. Gates' private email account	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal identifying information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
4	000008	Email re: White Paper	3/13/2017	6	This document is an email communication from Rick Gates to Eric Branstad providing an attached document for review. The redacted portions consist of (i) Mr. Branstad's cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
5	000009	Email re: Meeting w/ Wilbu	3/15/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: rescheduling a meeting between the Commerce Secretary and Thomas Barrack. The redacted portions consist of (i) Mr. Branstad's cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
6	10	Email re: Meeting	3/19/2017	6	This document is an email communication from Rick Gates to Eric Branstad re: availability to schedule a meeting with the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy..
7	000011	Email re: Meeting	3/20/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: availability to schedule a meeting with the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
8	000012	Email re: Meeting	3/20/2017	6	This document is an email form Eric Branstad to Rick Gates re: scheduling a meeting with the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.

9	000013	Email re: Meeting	3/27/2017	6	This document is an email from Eric Branstad to Rick Gates re: scheduling a meeting with the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
10	000014	Email re: Tom Barrack on Wed.	3/28/2017	6	This document is an email communication from Rick Gates to Eric Branstad re: scheduling a meeting with the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's cell work phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
11	000015	Email re: Meeting	4/4/2017	6	This document is an email communication from Rick Gates to Eric Branstad re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
12	000016	Email re: Meeting	4/4/2017	6	This document is an email communication from Rick Gates to Eric Branstad re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
13	000017	Email re: Meeting	4/4/2017	6	This document is an email communication from Rick Gates to Eric Branstad re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
14	000018	Email re: Call	4/12/2017	6	This document is an email from Rick Gates to Eric Branstad requesting that Mr. Branstad call him re: a question. The redacted portions consist of Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
15	000019	Email re: Dinner	4/13/2017	6	This document is an email from Eric Branstad to Rick Gates re: the Commerce Secretary's attendance at a scheduled dinner. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.

16	000020	Email re: Meeting and Dinner	4/20/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
17	000021	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
18	00022-23	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
19	00024-25	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
20	00026-27	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
21	00028-29	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.

22	00030-31	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
23	00032-33	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
24	00034-35	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
25	00036-37	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
26	00038-39	Email re: Meeting and Dinner	4/25/2017	6	This document is an email communication from Eric Branstad to Rick Gates re: scheduling a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
27	00040-41	Fwd: Updated - GC2017 Proposed Itinerary	4/27/2017	6	This document is an email communication from Eric Branstad to Rick Gates forwarding the itinerary for the 2017 Milken Institute Global Conference. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) personal cell phone number and name on the email account for a Milken Institute employee; and (iii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email account for an employee of the Milken Institute, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.

28	00042-44	2017 Milken Institute Global Conference Proposed Itinerary for Secretary Ross	undated	6	This document is an itinerary for a conference to be attended by the Commerce Secretary. The private residential address for the event is redacted.	6 -The redacted information, consisting of a private residential address, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
29	00045-46	Fwd: Updated - GC2017 Proposed Itinerary	4/27/2017	6	This document is an email communication from Eric Branstad to Rick Gates forwarding the itinerary for the 2017 Milken Institute Global Conference. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) personal cell phone number and name on the email account for a Milken Institute employee; and (iii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email account for an employee of the Milken Institute, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
30	00047-49	2017 Milken Institute Global Conference Proposed Itinerary for Secretary Ross	undated	6	This document is an itinerary for a conference to be attended by the Commerce Secretary. The private residential address for the event is redacted.	6 -The redacted information, consisting of a private residential address, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
31	00050-51	Fwd : Updated - GC2017 Proposed Itinerary	4/27/2017	6	This document is an email communication from Eric Branstad to Rick Gates forwarding the itinerary for the 2017 Milken Institute Global Conference. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) personal cell phone number and name on the email account for a Milken Institute employee; and (iii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email account for an employee of the Milken Institute, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
32	00052-54	2017 Milken Institute Global Conference Proposed Itinerary for Secretary Ross	undated	6	This document is an itinerary for a conference to be attended by the Commerce Secretary. The private residential address for the event is redacted.	6 -The redacted information, consisting of a private residential address, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
33	00055-56	Fwd: Updated - GC2017 Proposed Itinerary	4/27/2017	6	This document is an email communication from Eric Branstad to Rick Gates forwarding the itinerary for the 2017 Milken Institute Global Conference. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) personal cell phone number and name on the email account for a Milken Institute employee; and (iii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email account for an employee of the Milken Institute, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
34	00057-59	2017 Milken Institute Global Conference Proposed Itinerary for Secretary Ross	undated	6	This document is an itinerary for a conference to be attended by the Commerce Secretary. The private residential address for the event is redacted.	6 -The redacted information, consisting of a private residential address, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.

35	00060-61	Fwd: Updated - GC2017 Proposed Itinerary	4/27/2017	6	This document is an email communication from Eric Branstad to Rick Gates forwarding the itinerary for the 2017 Milken Institute Global Conference. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) personal cell phone number and name on the email account for a Milken Institute employee; and (iii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email account for an employee of the Milken Institute, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
36	00062-64	2017 Milken Institute Global Conference Proposed Itinerary for Secretary Ross	undated	6	This document is an itinerary for a conference to be attended by the Commerce Secretary. The private residential address for the event is redacted.	6 -The redacted information, consisting of a private residential address, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
37	00065-66	Fwd: Updated - GC2017 Proposed Itinerary	4/27/2017	6	This document is an email communication from Eric Branstad to Rick Gates forwarding the itinerary for the 2017 Milken Institute Global Conference. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) personal cell phone number and name on the email account for a Milken Institute employee; and (iii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email account for an employee of the Milken Institute, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
38	00067-69	2017 Milken Institute Global Conference Proposed Itinerary for Secretary Ross	undated	6	This document is an itinerary for a conference to be attended by the Commerce Secretary. The private residential address for the event is redacted.	6 -The redacted information, consisting of a private residential address, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
39	000070	Email re: A Few Items	4/30/2017	6	This document is an email from Eric Branstad to Rick Gates re: arrangements for an event to be attended by the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
40	000071	Email re: A Meeting	5/1/2017	6	This document is an email from Eric Branstad to Rick Gates re: the timing for a meeting between Thomas Barrack and the Commerce Secretary. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
41	000072	Email re: Seating	5/1/2017	6	This document is an email from Eric Branstad to Rick Gates re: the seating arrangements for a dinner event. The redacted portions consist of (i) Mr. Branstad's work cell phone number and (ii) Mr. Gates' private email account	6 -The redacted information, consisting of Mr. Branstad's work cell phone number and Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.

42	00073-76; 77-89	Fwd: Census Testimony for Wed. May 3 CJS Hearing	5/1/2017	5 and 6	73-76 consists of a 5/1/17 email from Eric Branstad to Rick Gates forwarding an internal DOC email dated 5/1/17 from Commerce Department Director for the Office of Policy and Strategic Planning, Earl Comstock, to other Commerce Department officials, including Mr. Branstad. The internal DOC email contains excerpts from the draft testimony for John Thompson, Director of the Census Bureau, before a House Appropriations Subcommittee and a DOC official's analysis of the draft testimony. 77-89 is an attachment to the email containing the draft testimony. The redacted portions consist of (i) the draft testimony and a DOC official's discussion of the testimony in the internal DOC email; (ii) Mr. Branstad's work cell phone number, and (iii) Mr. Gates' email address.	5-The redacted information consists of the internal DOC email containing excerpts of draft testimony and analysis by a Commerce official of the testimony and the attached draft testimony. It is, therefore, an intra- or inter-agency memorandum that is both predecisional and deliberative. 6 -The redacted information, consisting of Mr. Branstad's work cell phone, Mr. Gates' personal email account and the email accounts of two senior DOC officials, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
43	00090- 00105	Fwd: Census Testimony for Wed. May 3 CJS Hearing	5/1/2017	5 and 6	90-93 consists of a 5/1/17 email from Eric Branstad to Rick Gates forwarding an internal DOC email dated 5/1/17 from Commerce Department Director for the Office of Policy and Strategic Planning, Earl Comstock, to other Commerce Department officials, including Mr. Branstad. The internal DOC email contains excerpts from the draft testimony for John Thompson, Director of the Census Bureau, before a House Appropriations Subcommittee and a DOC official's analysis of the draft testimony. 94-105 is an attachment to the email containing the draft testimony. The redacted portions consist of (i) the draft testimony and a DOC official's discussion of the testimony in the internal DOC email; (ii) Mr. Branstad's work cell phone number, and (iii) Mr. Gates' email address	5-The redacted information consists of the internal DOC email containing excerpts of draft testimony and analysis by a Commerce official of the testimony and the attached draft testimony. It is, therefore, an intra- or inter-agency memorandum that is both predecisional and deliberative. 6 -The redacted information, consisting of Mr. Branstad's work cell phone, Mr. Gates' personal email account and the email accounts of two senior DOC officials, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
44	000107	Fwd: Sugar Letters/Memo/Background One Paper	5/1/2017	6	This document is an email from Eric Branstad to Rick Gates forwarding attached correspondence and other material for printing. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) Mr. Gates private email account, and (iii) Secretary Ross's and Mr. Comstock's official email addresses.	.6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email accounts of two senior DOC officials, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.

45	000122	Fwd: Sugar Letters/Memo/Background One Paper	5/1/2017	6	This document is an email from Eric Branstad to Rick Gates forwarding attached correspondence and other material for printing. The redacted portions consist of (i) Mr. Branstad's work cell phone number; (ii) Mr. Gates' private email account, and (iii) Secretary Ross's and Mr. Comstock's official email addresses.	6 -The redacted information, consisting of Mr. Branstad's work cell phone number, Mr. Gates' personal email account and the email accounts of two senior Commerce officials, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
46	00137-00143	Email re: Census Testimony for Wed. May 3 House CJS Hearing	5/1/2017	6	This document consists of a 5/1/17 email from Eric Branstad to Rick Gates forwarding an internal DOC email dated 5/1/17 from Commerce Department Director for the Office of Policy and Strategic Planning, Earl Comstock, to other Commerce Department officials, including Mr. Branstad. The internal DOC email contains excerpts from the draft testimony for John Thompson, Director of the Census Bureau, before a House Appropriations Subcommittee and a DOC official's analysis of the draft testimony. The redacted portions consist of (i) a DOC official's analysis of the testimony; (ii) Mr. Branstad's work cell phone number, and (iii) Mr. Gates' email address	5-The redacted information consists of the internal DOC email containing analysis of the draft testimony by a Commerce official. It is, therefore, an intra- or inter-agency memorandum that is both predecisional and deliberative. 6 -The redacted information, consisting of Mr. Branstad's work cell phone, Mr. Gates' personal email account and the email accounts of two senior DOC officials, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy
47	000144	Email re: Question	5/3/2017	6	This document is an email from Eric Branstad to Rick Gates inquiring about the name of Thomas Barrack's girlfriend. The redacted portions consist of (i) Mr. Gates' personal email account, (ii) Mr. Branstad's work cell phone number, and (iii) the name of Mr. Barrack's girlfriend.	6 -The redacted information, consisting of Mr. Branstad's work cell phone, Mr. Gates' personal email account and the identity of Mr. Barrack's girlfriend, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
48	000145	Email re: Saudi Trip	5/9/2017	6	This document is an email from Rick Gates to Eric Bransatad re: scheduling Mr. Barrack's participation in a forthcoming visit to Saudi Arabia. The redacted portions consist of Mr. Gates' private email account.	. 6 -The redacted information, consisting of Mr. Gates' personal email account, is personal information that, if disclosed, could result in unwanted contact and harassment and thus constitutes a clearly unwarranted invasion of personal privacy.
49	000146	Email re: Circinus LLC	8/10/2017	4	This document is an email communication from Rick Gates to Eric Branstad, cc: to Thomas Hodgkins, regarding a meeting between Eric Branstad and Thomas Hodgkins at which they discussed Circinus LLC's potential international business opportunities. The redacted portion provides the nature and details of a specific opportunity for which Circinus sought Commerce Department support.	4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: Circinus LLC's international business plans and strategy. The redacted portion sets forth specific information concerning Circinus's business model and plans for the provision of military/defense contracting services.

50	000147	Untitled document	undated	4	<p>This is a draft document provided by Rick Gates as an attachment to the email communication dated August 10, 2017 described above in the entry for 000146. The document, redacted in entirety, contains detailed information about Circinus's business model and plans for providing military/defense contracting and related services internationally.</p>	<p>4- The entire document is redacted because it presents confidential commercial information concerning Circinus LLC's business model and plans for provision internationally of military/defense contracting and related services. The document discusses the marketing of these services to a potential international client state.</p>
51	000148	Email re: Circinus LLC	8/17/2017	4 and 6	<p>This document is an email communication from Thomas Hodgkins to Rick Gates and Eric Branstad re: the status of the Commerce Department's review of the document provided as an attachment to the August 10, 2017 email described above in the entry for 000146. The redactions include (i) private email accounts for Mr. Hodgkins and Mr. Gates, (ii) Mr. Branstad's work cell phone, and (iii) the information about Circinus LLC's business model and plans appearing in the August 10, 2017 email.</p>	<p>4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number and the personal email accounts constitute personal information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.</p>
52	000149	Email (untitled)	9/19/2017	4 and 6	<p>This document is an email from Eric Branstad to Jeffrey Cooper, an employee of the DOC Institute for Telecommunication Services forwarding the draft document provided as an attachment to the August 10, 2017 email from Rick Gates to Mr. Branstad. (See entry for 000147). The redacted portions include (i) information about Circinus LLC's potential international business opportunity and (ii) Mr. Branstad's work cell phone number.</p>	<p>4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number constitutes personal information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.</p>
53	000150	Untitled document	undated	<p>4 (In the amended production, DOC mistakenly indicated this document was subject to Exemption 5)</p>	<p>This is the draft document provided by Rick Gates as an attachment to the preceding email communication dated August 10, 2017. (See entries for 000146 and 000147). The document, redacted in entirety, contains detailed information about Circinus's business model and plans for providing military/defense contracting and related services internationally.</p>	<p>4- The entire document is redacted because it presents confidential commercial information concerning Circinus LLC's business model and plans for provision internationally of military/defense contracting and related services. The document discusses the marketing of these services to a potential international client state..</p>

54	000151	Document (untitled)	9/19/2017	4 and 6	This document is an email from Eric Branstad to Stephen Renna, Director, Advocacy Center, International Trade Administration, forwarding the draft document provided as an attachment to the August 10, 2017 email from Rick Gates to Mr. Branstad. (See entries for 000147). The redacted portions include (i) information about Circinus LLC's potential international business opportunity and (ii) Mr. Branstad's work cell phone number.	4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number constitutes personal information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.
55	000152	Untitled document	undated	4 (In the amended production, DOC mistakenly indicated this document was subject to Exemption 5)	This is the draft document provided by Rick Gates as an attachment to the preceding email communication dated August 10, 2017 (000146). The document, redacted in entirety, contains detailed information about Circinus's business model and plans for providing military/defense contracting and related services internationally	4- The entire document is redacted because it presents confidential commercial information concerning Circinus LLC's business model and plans for provision internationally of military/defense contracting and related services. The document discusses the marketing of these services to a potential international client state.
56	000153	Email (untitled)	9/19/2017	4 and 6	This document is an email from Eric Branstad to Stephen Renna, Director, Advocacy Center, International Trade Administration, forwarding the draft document provided as an attachment to the August 10, 2017 email from Rick Gates to Mr. Branstad. (See entries for 000147). The redacted portions include (i) information about Circinus LLC's potential international business opportunity and (ii) Mr. Branstad's work cell phone number.	4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number constitutes personal information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.
57	000154	Untitled document	undated	4	This is the draft document provided by Rick Gates as an attachment to the preceding email communication dated August 10, 2017. (See entries for 000146 and 000147). The document, redacted in entirety, contains detailed information about Circinus's business model and plans for providing military/defense contracting and related services internationally.	4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy.

58	000155	Email (untitled)	9/19/2017	4 and 6	<p>This document is an email from Eric Branstad to Stephen Renna, Director, Advocacy Center, International Trade Administration, forwarding the draft document provided as an attachment to the August 10, 2017 email from Rick Gates to Mr. Branstad. (See entries for 000147). The redacted portions include (i) information about Circinus LLC's potential international business opportunity and (ii) Mr. Branstad's work cell phone number.</p>	<p>4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number constitutes personal information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.</p>
59	000156	Untitled document	undated	4	<p>This is the draft document provided by Rick Gates as an attachment to the preceding email communication dated August 10, 2017. (See entries for 000146 and 000147). The document, redacted in entirety, contains detailed information about Circinus's business model and plans for providing military/defense contracting and related services internationally.</p>	<p>4- The entire document is redacted because it presents confidential commercial information concerning Circinus LLC's business model and plans for provision internationally of military/defense contracting and related services. The document discusses the marketing of these services to a potential international client state.</p>
60	000157	Email (subject redacted)	9/19/2017	4 and 6	<p>This document is an email from Eric Branstad to Stephen Renna, Director, Advocacy Center, International Trade Administration, forwarding the draft document provided as an attachment to the August 10, 2017 email from Rick Gates to Mr. Branstad. (See entries for 000147). The redacted portions include (i) information about Circinus LLC's potential international business opportunity and (ii) Mr. Branstad's work cell phone number.</p>	<p>4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number constitutes personal information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.</p>
61	000158	Untitled document	undated	4	<p>This is the draft document provided by Rick Gates as an attachment to the preceding email communication dated August 10, 2017. (See entries for 000146 and 000147). The document, redacted in entirety, contains detailed information about Circinus's business model and plans for providing military/defense contracting and related services internationally.</p>	<p>4- The entire document is redacted because it presents confidential commercial information concerning Circinus LLC's business model and plans for provision internationally of military/defense contracting and related services. The document discusses the marketing of these services to a potential international client state.</p>

62	000159	Email (untitled)	9/19/2017	4 and 6	<p>This document is an email from Eric Branstad to Stephen Renna, Director, Advocacy Center, International Trade Administration, forwarding the draft document provided as an attachment to the August 10, 2017 email from Rick Gates to Mr. Branstad. (See entries for 000147). The redacted portions include (i) information about Circinus LLC's potential international business opportunity and (ii) Mr. Branstad's work cell phone number.</p>	<p>4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: a Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number constitutes personal information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.</p>
63	000160	Untitled document	undated	4	<p>This is the draft document provided by Rick Gates as an attachment to the preceding email communication dated August 10, 2017. (See entries for 000146 and 000147). The document, redacted in entirety, contains detailed information about Circinus's business model and plans for providing military/defense contracting and related services internationally.</p>	<p>4- The entire document is redacted because it presents confidential commercial information concerning Circinus LLC's business model and plans for provision internationally of military/defense contracting and related services. The document discusses the marketing of these services to a potential international client state.</p>
64	000161	Email (untitled)	9/19/2017	4 and 6	<p>This document is an email communication from Stephen Renna, Director, Advocacy Center/International Trade Administration in the Commerce Department to Eric Branstad regarding communications with a foreign government official about Circinus LLC's military/defense contracting and related services. The redacted portions include (i) Mr. Renna's work cell phone number, and (ii) information pertaining to Circinus LLC's international business strategy and the requirements of a particular prospective foreign client state.</p>	<p>4-The redacted portion of the email contains confidential commercial information regarding Circinus's business plans and strategy for provision of defense/military contracting and related service internationally to a particular nation. 6 - The redacted work cell phone of Mr. Renna constitutes personal identifying information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.</p>
65	00162-163	Fwd: Circinus LLC	9/20/2017	4 and 6	<p>This document is an email communication from Thomas Hodgkins to Eric Branstad inquiring whether the Commerce Secretary can attend a National Restaurant Association meeting and re: the document provided as an attachment to the August 10, 2017 email described above. (See entries for 000146 and 000147). The redactions include (i) private email accounts for Mr. Hodgkins and Mr. Gates, (ii) Mr. Branstad's work cell phone, (iii) Mr. Hodgkins' phone number, and (iv) the same information about Circinus LLC's business model and plans appearing in the August 10, 2017 email.</p>	<p>4-The redacted portion of the email contains confidential commercial information that Mr. Hodgkins and Mr. Gates provided to the Commerce Department in connection with the meeting re: Circinus LLC's international business plans and strategy. 6 -The redacted work cell phone number, which may have been assigned to another Commerce employee since Mr. Branstad's departure, and the personal email accounts and phone number constitute personal identifying information that, if disclosed, could result in a clearly unwarranted invasion of personal privacy.</p>

August 2, 2018

BY EMAIL: Efoia@doc.gov

Bobbie Parsons
U.S. Department of Commerce
Office of the Secretary
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Freedom of Information Act Request

Dear Ms. Parsons:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Commerce regulations.

Specifically, CREW requests:

1. All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.
2. All communication sent or received by Mr. Branstad that mention the defense firm Circinus.

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

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

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

The *New York Times* reported last week that Mr. Gates considered Mr. Branstad a “contact” of his within the Department of Commerce.¹ They worked on President Trump’s inaugural committee together.² On at least one occasion, Mr. Gates reached out to Mr. Branstad on behalf of a defense firm, Circinus, that was owned by a top fundraiser for President Trump, Elliott Broidy.³ Mr. Gates may have also contacted Mr. Branstad on behalf of other special interest clients.

The requested records would shed light on how individuals with ties to President Trump seek influence for lobbying clients within federal agencies, and how individuals within agencies respond to these requests.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org, and through www.scribd.com. The release of information obtained through this request is not in CREW’s financial interest.

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

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

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

Conclusion

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

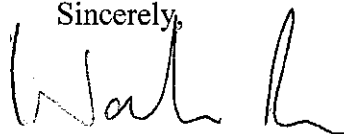
Where possible, please produce records in electronic format. Please send the requested records to me either at wdavis@citizensforethics.org or at Walker Davis, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

¹ Kenneth P. Vogel, Mark Mazzetti, Maggie Haberman, and David D. Kirkpatrick, *Two Trump Allies, Seeing Unlimited Opportunity, Instead Draw Scrutiny*, *New York Times*, July 24, 2018, available at <https://www.nytimes.com/2018/07/24/us/politics/rick-gates-elliott-broidy-trump-payments.html>.

² *Id.*

³ *Id.*

Sincerely,

A handwritten signature in black ink, appearing to read "Walker Davis". The signature is fluid and cursive, with the first name "Walker" being more prominent than the last name "Davis".

Walker Davis

Research Associate

Requester Information

Correspondence to Requester

Subject	From	To	Date	Remove	Detail
Interim response for your FOIA 2018-001899	Bobbie Parsons	Walker Davis	06/04/2019		+
BParsons	Douglas Shontz	Walker Davis	06/04/2019		+
Closing FOIA Request DOC-IOS-2018-001899 for lack of response	Randolph Ballard Jr.	Walker Davis	10/04/2018		+
Final Disposition, Request DOC-IOS-2018-001899	Randolph Ballard Jr.	Walker Davis	10/04/2018		+
Clarification needed for FOIA request DOC-IOS-2018-001899	Randolph Ballard Jr.	Walker Davis	08/22/2018		+
FOIA Request DOC-IOS-2018-001899 Submitted	System	wdavis@citizensforethics.org	08/06/2018		-

This message is to confirm your request submission to the FOIAonline application: View Request . Request information is as follows: Tracking Number: DOC-IOS-2018-001899 Requester Name: Walker Davis Date Submitted: 08/06/2018 Request Status: Submitted Description: 1. All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018. 2. All communication sent or received by Mr. Branstad that mention the defense firm Circinus.

Other Correspondence



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

August 22, 2018

Walker Davis
Citizens for Responsibility and Ethics in Washington,
455 Massachusetts Ave., N.W.
Washington, DC 20001

RE: Freedom of Information Act Request DOC-IOS-2018-001899

Dear Walker Davis:

This letter is in response to your correspondence to the U.S. Department of Commerce's (Department) Freedom of Information Act (FOIA) Office. We are responding under the FOIA to your request for

“1. All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.

2. All communication sent or received by Mr. Branstad that mention the defense firm Circinus.”

Pursuant to the 15 CFR, Section 4.4(c), records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Unfortunately, we would have difficulty processing your request, referenced above, as it is written. Specifically, we would need a timeframe for each set of requested records, the second request in particular.

We are more than happy to assist you with all parts of your request. However, as indicated above, limiting the scope of your request is needed in order to begin our search for records that may be responsive to your request. We ask that you consider limiting the scope of your request with beginning and ending dates of search.

Please let us know if you agree to our suggestion to narrow the search or contact us and we will be happy to work with you to narrow the scope. If necessary, for assistance, please feel free to contact me, Randolph Ballard Jr. by email at rballard@doc.gov. You may also contact our FOIA Public Liaison, Michael Toland, by telephone at (202) 482-3842 or by email at efoia@doc.gov, or our office in writing at:

Department of Commerce
Office of Privacy & Open Government
RM 61013
1401 Constitution Avenue NW

Washington, DC 20230
Attn: FOIA Public Liaison

If clarification of your request or other communication is not received within 30 calendar days from the date of this letter, your FOIA request will be closed with no further action on our part.

Sincerely,

Randolph Ballard jr

Randolph Ballard Jr., Esq.
FOIA Analyst
Office of Privacy and
Open Government



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

October 3, 2018

Walker Davis
Citizens for Responsibility and Ethics
455 Mass. Ave. NW
Washington, DC 20001

RE: DOC-IOS-2018-001899

Dear Mr. Walker,

This letter is in response to your correspondence, dated August 6, 2018, to the U.S. Department of Commerce's Freedom of Information Act (FOIA) Office. We received your request in this office on August 6, 2018, and have assigned to it tracking number DOC-IOS-2018-001899. We are responding under the FOIA to your request for:

“All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.” And “All communication sent or received by Mr. Branstad that mention the defense firm Circinus.”

According to our records, we sent you an email on August 22, 2018 requesting clarification, specifically date ranges for your request, specifically the second part. Said letter stated that if we did not hear from you within 30 days, we would assume you no longer wished to seek this information, and we would close out your FOIA request.

Since the 30 days have passed and we did not hear from you, this FOIA request has been closed. If you have questions regarding this action, please contact Randolph Ballard Jr. of my office at 202-482-7817 or via e-mail at rballard@doc.gov.

Sincerely,

Bobbie Parsons
Acting Deputy Chief Freedom of Information
Act Officer, Department Privacy Act Officer,
and Deputy Director for
FOIA/Privacy Act Operations

From: [Ballard, Randolph \(Contractor\)](#)
To: [Walker Davis](#)
Cc: [Parsons, Bobbie \(Federal\)](#)
Subject: RE: Notes on call about request 1899
Date: Thursday, November 1, 2018 9:00:00 AM

Thank you, Mr. Davis. I am in receipt of your email and will reopen the request for processing.

Randolph Ballard Jr.
FOIA Analyst
Office of Privacy and Open Government
U.S. Department of Commerce
Phone: (202) 482-7817
Email: Rballard@doc.gov

From: Walker Davis <wdavis@citizensforethics.org>
Sent: Wednesday, October 31, 2018 3:16 PM
To: Ballard, Randolph (Contractor) <RBallard@doc.gov>; Anne Weismann <aweismann@citizensforethics.org>
Subject: Notes on call about request 1899

Hi Randolph,

Thanks for your help on the phone today. This message is just to create a record of what was said.

I called to request an update on FOIA request 1899, which I believed to be overdue. You told me that a letter was sent to my email address through foiaonline on August 22 asking for a clarification on our request. You said that because we didn't respond, we were sent another letter to my email address through foiaonline letting us know the request was being closed on October 4.

I do not believe that I received either message. Neither is in my inbox, and though the August request would have been automatically deleted from my spam folder by now, the October one would still be there, and it is not. I have received several other messages related to this request that were sent through foiaonline. For example, I received a message on October 3 saying the fee waiver was granted, so I'm not sure why the others wouldn't have gone through.

I answered the question that was the subject of the apparently unreceived August 22 letter, and you told me the request would begin processing again.

I'm cc-ing our FOIA counsel, Anne Weismann, here. Thank you again for all your help today.

Sincerely,

Walker Davis
Research associate

Citizens for Responsibility and Ethics in Washington

CREW | Citizens for Responsibility and Ethics in Washington
Main: (202) 408-5565 | Fax: (202) 588-5020 | www.citizensforethics.org

Lieberman, Brian (Federal)

From: Bogomolny, Michael (Federal)
Sent: Friday, March 29, 2019 5:30 PM
To: nsus@citizensforethics.org; aweismann@citizensforethics.org
Cc: Braswell, Marina (USADC); Walker Davis
Subject: document production for CREW v. DOC (D.D.C. No. 18-cv-3022)
Attachments: CREW - all documents - Redacted.pdf

Mr. Sus and Ms. Weismann,

Attached, please find documents from the Department of Commerce responsive to FOIA Request DOC-IOS-2018-001762, dated August 02, 2018. Please note that this response is made without prejudice to our claim that the request was properly closed out on October 3, 2018, for failing to respond to the Department's inquiry of August 22, 2018 seeking clarification of the date range of the second part of your request.

CREW's request sought:

1. All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.
2. All communications sent or received by Mr. Branstad that mention the defense firm Circinus.

The Department performed an electronic search of Mr. Branstad's email account and electronic calendar for the terms "Rick Gates", "Richard Gates", and "Circinus". Because Mr. Branstad is no longer with the Department, no physical files were searched. A total of 19 pages of responsive documents were located by this search – they are herewith produced to you with partial withholdings pursuant to FOIA Exemptions 4, 5 (and the deliberative process privilege), and 6.

Because this matter is in litigation, if you have any questions regarding this production please contact Marina Braswell at 202-252-2561 or marina.braswell@usdoj.gov. She is the attorney of record representing the Department of Commerce in this matter.

Sincerely,
Michael Bogomolny

Michael Bogomolny
Chief, Information Law Division, OGC
United States Department of Commerce
mbogomolny@doc.gov (202) 482-0703

Lieberman, Brian (Federal)

From: Lieberman, Brian (Federal)
Sent: Friday, June 14, 2019 2:57 PM
To: nsus@citizensforethics.org; aweissmann@citizensforethics.org
Cc: Braswell, Marina (USADC); Bogomolny, Michael (Federal)
Subject: amended document production for CREW v. DOC (D.D.C. No. 18-cv-3022)
Attachments: CREW 2018-001899_AMENDED PRODUCTION.pdf

Mr. Sus and Ms. Weisman:

Attached please find an amended production of documents from the Department of Commerce response to your FOIA request, DOC-IOS-2018-001899, dated August 2, 2018. Please note that this response is made without prejudice to our claim that the request was properly closed out on October 3, 2018, for failing to respond to the Department's inquiry of August 22, 2018 seeking clarification of the date range of the second part of your request.

CREW's request sought:

1. All communications between former White House advisor to the Commerce department Eric Branstad and former Trump campaign official Rick Gates from January 20, 2017 to March 1, 2018.
2. All communications sent or received by Mr. Branstad that mention the defense firm Circinus.

The Department performed an electronic search of Mr. Branstad's email account and electronic calendar for the terms "Rick Gates", "Richard Gates", and "Circinus". Because Mr. Branstad is no longer with the Department, no physical files were searched. This amended production consists of 165 pages of responsive documents. They are herewith produced to you with partial withholdings pursuant to FOIA Exemptions 4, 5 (deliberative process privilege), and 6.

Because this matter is in litigation, if you have any questions regarding this production please contact Marina Braswell at 202-252-2561 or marina.braswell@usdoj.gov. Ms. Braswell is the attorney of record representing the Department of Commerce in this matter.

Brian D. Lieberman
Senior Counsel
Information Law Division
Office of General Counsel
Department of Commerce
1401 Constitution Ave. NW, Room 5092
Washington, DC 20230
(202) 482-1634