

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants – the Department of Justice, the Department of Homeland Security, and the Office of the Director of National Intelligence – by and through undersigned counsel, hereby move the Court for summary judgment on Plaintiff’s claims under the Freedom of Information Act. Summary judgment is appropriate for the reasons set forth at length in the accompanying memorandum of law.

June 6, 2016

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 6, 2016, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system, which will send notice of this filing to all parties.

/s/ Samuel M. Singer _____

SAMUEL M. SINGER

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

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INTRODUCTION

This case arises out of a series of nearly identical Freedom of Information Act (“FOIA”) requests for records concerning Plaintiff Laura Poitras. Plaintiff submitted the requests to the Federal Bureau of Investigation (“FBI”), the Office of the Director of National Intelligence (“ODNI”), the Department of Homeland Security (“DHS”), and four DHS components: U.S. Customs and Border Protection (“CBP”), U.S. Citizenship and Immigration Services (“USCIS”), U.S. Immigration and Customs Enforcement (“ICE”), and Transportation Security Administration (“TSA”). Defendants conducted searches for responsive documents. Several Defendants found none; several others located responsive records, determined that certain information is protected from disclosure under FOIA’s statutory exemptions, and released the non-exempt, segregable portions of responsive records subject to FOIA. Because each of the Defendants’ searches was adequate and all of their withholdings proper, Defendants are entitled to summary judgment.

STATEMENT OF FACTS¹

In January 2014, Plaintiff submitted nearly identical FOIA requests to FBI, ODNI, DHS, CBP, TSA, USCIS, and ICE. The requests sought “all agency records concerning, naming, or relating to Ms. Poitras.” As set forth in the attached declarations, with the exception of DHS (which transferred its FOIA request to CBP and TSA), each Defendant conducted its own search for documents, with varying results. USCIS and ICE found no responsive records. The FBI, CBP, and TSA located responsive records, released all non-exempt, segregable information, and determined that the rest is protected from disclosure under FOIA’s statutory exemptions. Specifically, the FBI has withheld information under Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(D), and

¹ For a more complete statement, the Court is respectfully referred to Defendants’ Statement of Material Facts Not in Dispute.

7(E); CBP under Exemptions 4, 5, 6, 7(C), and 7(E); and TSA under Exemption 3. Finally, while ODNI searched and found no responsive records in pertinent non-intelligence files, the agency can neither confirm nor deny the existence or nonexistence of responsive records in its classified holdings.

In support of this motion, Defendants are providing this Court with a series of declarations and exhibits. Certain information is being provided *ex parte* and *in camera*, including classified and sensitive national security and law enforcement information. While the use of public declarations is preferred, the FOIA statute recognizes the propriety of *in camera* review, *see* 5 U.S.C. § 552(a)(4)(B), and courts recognize the need for *ex parte* filings in FOIA cases when “(1) the validity of the government’s assertion of exemptions cannot be evaluated without information beyond that contained in the public affidavits and in the records themselves, and (2) public disclosure of that information would compromise the secrecy asserted,” *Arieff v. Dep’t of Navy*, 712 F.2d 1462, 1471 (D.C. Cir. 1983). While Defendants have made every effort to detail the grounds for their withholdings on the public record, certain information can be provided only *ex parte* and *in camera*. To require otherwise would force the Government to divulge the very information it is trying to protect. Accordingly, Defendants are providing the Court with both public and *ex parte* declarations, as follows:

Exhibit	Defendant	Declarant
1	FBI	<i>Ex Parte</i> and <i>In Camera</i> Declaration of David M. Hardy
2	FBI	Public Declaration of David M. Hardy
3	ODNI	Declaration of Jennifer L. Hudson
4	CBP	Declaration of Sabrina Burroughs
5	TSA	Declaration of Regina Ann McCoy
6	TSA	Declaration of Douglas E. Blair
7	USCIS	Declaration of Jill A. Eggleston
8	ICE	Declaration of Fernando Pineiro
9	DHS	Declaration of Kevin L. Tyrrell

STANDARD OF REVIEW

The Freedom of Information Act, 5 U.S.C. § 552, “represents a balance struck by Congress between the public’s right to know and the government’s legitimate interest in keeping certain information confidential.” *Ctr. for Nat’l Sec. Studies v. DOJ*, 331 F.3d 918, 925 (D.C. Cir. 2003). FOIA requires agencies to release documents responsive to a properly submitted request, except for those documents or portions of documents subject to any of nine statutory exemptions to the general disclosure obligation. 5 U.S.C. §§ 552(a)(3), (b)(1)–(b)(9).

“In order to obtain summary judgment[,] the agency must show that it made a good faith effort to conduct a search for the request records, using methods which can be reasonably expected to produce the information requested.” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). To meet this burden, a defendant may rely on reasonably detailed and non-conclusory declarations. *McGehee v. CIA*, 697 F.2d 1095, 1102 (D.C. Cir. 1983), *on reh’g*, 711 F.2d 1076 (D.C. Cir. 1983); *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

While FOIA requires agency disclosure under certain circumstances, the statute recognizes “that public disclosure is not always in the public interest.” *Baldrige v. Shapiro*, 455 U.S. 345, 352 (1982). FOIA provides nine exemptions that “reflect Congress’ recognition that the Executive Branch must have the ability to keep certain types of information confidential.” *Hale v. DOJ*, 973 F.2d 894, 898 (10th Cir. 1992), *vacated on other grounds*, 509 U.S. 918 (1993), and *overruled on other grounds in later appeal*, 2 F.3d 1055 (10th Cir. 1993). To sustain its burden of justifying nondisclosure of information, an agency may submit a declaration or index describing the withheld material with reasonable specificity, indicating the reasons for non-disclosure, and explaining that reasonably segregable material has been released. *See DOJ v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 753 (1989).

ARGUMENT

I. DEFENDANTS CONDUCTED ADEQUATE SEARCHES FOR RESPONSIVE RECORDS

To demonstrate an adequate records search, an agency must show that “[re]viewing the facts in the light most favorable to the requester, . . . it has conducted a search reasonably calculated to uncover all relevant documents.” *Steinberg v. DOJ*, 23 F.3d 548, 552 (D.C. Cir. 1994) (internal citation omitted). An agency’s search need not be exhaustive, but merely reasonable. *W. Ctr. for Journalism v. IRS*, 116 F. Supp. 2d 1, 8 (D.D.C. 2000), *aff’d*, 22 F. App’x 14 (D.C. Cir. 2001). The 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*, 23 F.3d at 551.

Conducting a “reasonable” search requires “both systemic and case-specific exercises of discretion and administrative judgment and expertise” and “is hardly an area in which the courts should attempt to micro manage the executive branch.” *Schrecker v. DOJ*, 349 F.3d 657, 662 (D.C. Cir. 2003). In the absence of “countervailing evidence” or “substantial doubt,” agency affidavits or declarations describing such a reasonable and adequate search are sufficient to demonstrate an agency’s compliance with FOIA. *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 314 (D.C. Cir. 2003) (citations omitted).

The declarations submitted by Defendants demonstrate through detailed, non-conclusory averments that each agency or agency component engaged in a “good faith effort to conduct a search for the requested records, using methods which [were] reasonably expected to produce the information requested.” *Oglesby*, 920 F.2d at 68.²

² As noted, based on the subject matter of the FOIA request, DHS transferred the request to the FOIA offices at CBP and TSA. Declaration of Kevin L. Tyrrell, Associate Director of FOIA Appeals and Litigation for the DHS Privacy

A. The FBI's Search

The FBI's declaration explains the scope of the search conducted, the search terms and tools used to carry it out, and the basis for the FBI's belief that the search would reasonably be expected to locate any documents responsive to Plaintiff's request. Declaration of David M. Hardy, Section Chief of the Record/Information Dissemination Section, Records Management Division, FBI ("Hardy Decl.") (Ex. 2) ¶ 28. Specifically, the FBI conducted a search of its Central Records System ("CRS") using variations of Plaintiff's name, together with other identifying information from her request letter to help locate responsive records. *Id.* The FBI determined that certain responsive records subject to FOIA are protected from disclosure by Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(D), and 7(E).³

Courts have routinely found that FBI searches of the CRS fully satisfy the FOIA standards of adequacy and reasonableness. *See, e.g., Dillon v. DOJ*, 102 F. Supp. 3d 272, 284 (D.D.C. 2015); *Marshall v. FBI*, 802 F. Supp. 2d 125, 132–33 (D.D.C. 2011); *McGehee v. DOJ*, 800 F. Supp. 2d 220, 229–30 (D.D.C. 2011). Here, the FBI's search was both comprehensive and sufficient.

B. ODNI's Search

ODNI conducted a search of its pertinent non-intelligence holdings and located no responsive records. Declaration of Jennifer L. Hudson, Director ODNI's Information Management Division ("Hudson Decl.") (Ex. 3) ¶ 20. Specifically, ODNI tasked the DNI's

Office ("Tyrrell Decl.") (Ex. 9) ¶ 10. Plaintiff did not appeal DHS's decision to transfer the request, *id.* ¶ 11, and DHS therefore had no reason to conduct an independent search of its records.

³ In processing Plaintiff's FOIA request, the FBI identified a number of pages containing information or equities originating with other government agencies ("OGAs"). Pursuant to 28 C.F.R. § 16.4(d), in some cases the FBI referred documents to other agencies for direct response to Plaintiff, while in other cases the FBI coordinated with the OGAs to determine how the particular agency wanted the FBI to treat the information at issue. *See Hardy Decl.* ¶¶ 93, 96. The FBI has identified various OGAs and the grounds for their respective withholdings in the Hardy declaration and the accompanying exhibits. *Id.* ¶¶ 93–105.

Executive Secretariat, Personnel Security, and Human Resource directorates with searching personnel, security, and human resource files for records relating to Plaintiff. *Id.* ¶¶ 20, 23.

Based on the parameters of the FOIA request, in which Plaintiff sought ODNI records relating to herself, ODNI determined that the classified system most likely to hold responsive records is the Terrorist Identities Datamart Environment (“TIDE”), which is a consolidated repository of information on international terrorist identities controlled by the National Counterterrorism Center (“NCTC”), a component of ODNI. *Id.* ¶¶ 14, 20; *accord Carter v. NSA*, 962 F. Supp. 2d 130, 136 (D.D.C. 2013) (intelligence agency could reasonably interpret a FOIA request about a particular person “as one for information about him which the Agency obtained in the course of its communications surveillance activities”), *aff’d*, No. 1:12-CV-00968-CKK, 2014 WL 2178708 (D.C. Cir. Apr. 23, 2014). Consistent with standard practice, ODNI did not task NCTC with conducting a search of TIDE because ODNI could not disclose the results of the search without revealing classified information. Hudson Decl. ¶ 32.⁴

C. CBP’s Search

After receiving the request, CBP FOIA personnel determined that any responsive records within CBP’s control would most likely be located within two CBP computer systems—TECS (and its subsystems) and the Automated Targeting System (ATS). Declaration of Sabrina Burroughs, Director of the FOIA Division, CBP (“Burroughs Decl.”) (Ex. 4) ¶ 5. TECS is a law enforcement database that contains enforcement, inspection, and intelligence records relevant to the mission of CBP and other federal agencies. *Id.* ¶ 15. ATS is a decision-support tool used by

⁴ After Plaintiff clarified that her request for unclassified information includes public-source materials, ODNI conducted a supplemental search. ODNI is working diligently to process the records generated by that search, which are voluminous and include a substantial amount of copyright-protected material. Hudson Decl. ¶ 25, n. 8. The parties have continued to confer about ODNI’s supplemental search and, in the interest of expediting the agency’s processing, are presently exploring options to limit the scope of the request. Because this process is ongoing, the adequacy of the supplemental search and the propriety of any withholdings are not addressed in this submission.

CBP which contains the official records for Passenger Name Records (PNR) collected by CBP. *Id.* ¶ 25. Both systems can be searched for records pertaining to particular individuals. *Id.* ¶¶ 5, 26.

CBP searched TECS and ATS using search terms encompassing Plaintiff's name and date of birth. *Id.* Given the nature of the FOIA request, which sought CBP records relating to a particular individual, CBP's search was appropriately targeted at uncovering responsive records. *See, e.g., Strunk v. U.S. Dep't of State*, 845 F. Supp. 2d 38, 44 (D.D.C. 2012) (finding that CBP's search of TECS for individual arrival and departure records was reasonably calculated to locate responsive records); *Barnard v. DHS*, 598 F. Supp. 2d 1, 3 (D.D.C. 2009) (finding that CBP search of TECS and ATS in response to a request for "all records about me" was reasonable).

In processing the results of CBP's initial searches, the FOIA staff determined that additional responsive records relating to an August 2010 encounter between Plaintiff and CBP at JFK International Airport were likely to be found in CBP's New York field office. Burroughs Decl. ¶ 30. These records would not have been captured by the TECS or ATS searches, and were likely to include (in addition to other documents) paper and electronic correspondence between CBP and Plaintiff, as well as correspondence internal to CBP. *Id.* Accordingly, personnel in CBP's New York field office conducted both paper and electronic searches using criteria reasonably tailored to identify all responsive records. *Id.* ¶ 31.

D. TSA's Search

After receiving the request, and based on subsequent information provided in correspondence from Plaintiff's counsel as well as in Plaintiff's complaint, TSA FOIA personnel determined that six offices within TSA were reasonably likely to have responsive documents: The Department of Homeland Security's Traveler Inquiry Redress Program ("DHS TRIP"),

TSA's Office of Intelligence Analysis ("OIA"), and TSA offices at John F. Kennedy International Airport ("JFK"), La Guardia Airport ("LGA"), Newark Liberty International Airport ("EWR"), and Washington Dulles International Airport ("IAD"). Declaration of Regina Ann McCoy, TSA FOIA Officer ("McCoy Decl.") (Ex. 5) ¶¶ 14–15. Using the language from Plaintiff's FOIA request, each of those offices conducted searches for records "concerning, naming, or relating to" Plaintiff. *Id.* ¶¶ 17–20.

E. USCIS's Search

After receiving the request, USCIS personnel determined that any records maintained by USCIS that were responsive to the request and subject to FOIA would be in the records system known as the "Alien File/Central Index System." Declaration of Jill A. Eggleston, Associate Center Director, FOIA and Privacy Act Unit, USCIS ("Eggleston Decl.") (Ex. 7) ¶ 10. USCIS conducted a search of the "Alien File/Central Index System" based upon Plaintiff's name and date of birth, as well as a description of the records she sought. *Id.* No responsive records were located. *Id.*

F. ICE's Search

The Court should grant summary judgment in favor of ICE on the independent ground that Plaintiff failed to exhaust administrative remedies. ICE has no record of receiving Plaintiff's FOIA request (which was incorrectly addressed) until it was forwarded to the agency by DOJ counsel after this litigation commenced. Declaration of Fernando Pineiro, Deputy FOIA Officer, ICE ("Pineiro Decl.") (Ex. 8) ¶¶ 7, 10. Plaintiff's own records suggest the request was sent to the wrong address. *Id.* ¶¶ 10,11. Because Plaintiff brought suit against ICE without first serving it with a FOIA request, ICE is entitled to summary judgment on exhaustion grounds. *See*

Willis v. DOJ, 581 F. Supp. 2d 57, 68 (D.D.C. 2008) (“It is axiomatic that an agency has no obligation to respond to a request that it did not receive.”).

Nevertheless, ICE’s declaration explains that, after receiving the request, ICE personnel determined that any responsive records would most likely be found in ICE’s Office of Homeland Security Investigations (HSI). “Pineiro Decl.” ¶ 29. A FOIA analyst conducted a search of the TECS system, which, as noted, is an overarching law enforcement database principally owned and managed by CBP. *Id.* ¶¶ 34–35. As relevant here, TECS contains HSI’s case management database, which is used for “storage, tracking, and retrieval of law enforcement and investigative information.” *Id.* ¶ 35. The analyst searched TECS using Plaintiff’s name and date of birth. *Id.* ¶ 36. This narrow search of TECS located no responsive records, though the analyst did observe from the search results that it appeared that CBP had responsive records. *Id.*

The foregoing discussion and the additional details set forth in the attached declarations demonstrate that each Defendant searched those locations that it determined were reasonably likely to contain responsive documents. The Defendants each “made a good faith effort to search for the records requested,” and their “methods were reasonably expected to produce the information requested.” *Kidd v. DOJ*, 362 F. Supp. 2d 291, 294 (D.D.C. 2005). The Court should therefore enter summary judgment in favor of Defendants on the adequacy of their searches.

II. DEFENDANTS PROPERLY WITHHELD RESPONSIVE DOCUMENTS

After reviewing the documents responsive to Plaintiff’s requests, FBI, CBP, and TSA determined that certain documents contained information subject to one or more of FOIA’s nine statutory exemptions to disclosure. For its part, ODNI invoked Exemptions 1 and 3 as grounds for declining to authorize a search of its classified holdings. Through discussions between the

parties, the dispute before the Court has been narrowed to certain withholdings pursuant to FOIA Exemptions 1, 3, 4, 5, 7(A), 7(D), and 7(E).⁵ Because the attached declarations demonstrate that the withholdings are proper, the Court should enter summary judgment for the Defendants.

A. Exemption 1 (FBI, ODNI)

The FBI and ODNI have determined that certain information implicated by Plaintiff's FOIA request is protected under Exemption 1. Exemption 1 protects from disclosure records that are "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1).

Exemption 1 allows agencies to withhold classified information that is protected in the interest of national security and foreign policy. An agency establishes that it has properly withheld information under Exemption 1 by showing that it has met the four requirements set forth in E.O. 13,526: (1) an original classification authority classifies the information; (2) the U.S. Government owns, produces, or controls the information; (3) the information is within one of eight protected categories listed in section 1.4 of the E.O.; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in a specified level of damage to the national security, and the original classification authority is able to identify and describe the damages. E.O. 13,526 § 1.1(a) (Dec. 29, 2009). The Court must afford "substantial weight" to agency affidavits concerning classified information. *Ctr. for Nat'l Sec. Studies*, 331 F.3d at 927; *ACLU v. Dep't of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011).

⁵ Plaintiff has advised Defendants that she does not contest withholdings pursuant to Exemptions 6 and 7(C). Accordingly, although withholdings pursuant to those exemptions are detailed and supported in the FBI and CBP declarations, they are not discussed in this memorandum.

1. The FBI Has Properly Withheld Information Under Exemption 1

The FBI has determined that information responsive to Plaintiff's FOIA request is protected from disclosure under Exemption 1. The FBI has provided a declaration from an individual who is authorized to classify national security information. Hardy Decl. ¶ 41. The declarant has personally reviewed the documents at issue and determined that the information withheld is properly classified consistent with the requirements of Executive Order 13,526. *Id.* ¶ 43. Further, the declaration confirms that the withheld information is owned and under the control of the United States. *Id.*

The FBI has also determined, and articulated with reasonable specificity, that the information protected from disclosure falls squarely within the category of information set forth in section 1.4(c) of Executive Order 13,526. Hardy Decl. ¶¶ 45–50. The information at issue “contains detailed intelligence activity information gathered or compiled by the FBI on a specific individual or organization of national security interest,” which is classified at the “Secret” level because its release reasonably could be expected to cause serious damage to national security. *Id.* ¶ 49. In particular, disclosure would “reveal the actual intelligence activity or method utilized by the FBI against a specific target,” “disclose the intelligence-gathering capabilities of the method,” and “provide an assessment of the intelligence source penetration of a specific target during a specific period of time.” *Id.* “With the aid of this detailed information, hostile entities could develop countermeasures that would, in turn, severely disrupt the FBI’s intelligence-gathering activities,” with potentially grave consequences for “the FBI’s efforts to detect and apprehend violators of national security and criminal laws of the United States.” *Id.* ¶ 48. The FBI has provided additional detail—information that is itself classified—concerning these withholdings in its *ex parte* declaration. *See Hardy Ex Parte Decl.* (Ex. 1).

As this and other courts have recognized, FBI intelligence information may properly be protected as classified information when it concerns specific intelligence activities or intelligence sources and methods. *See, e.g., Dillon*, 102 F. Supp. 3d at 284; *Wheeler v. DOJ*, 403 F. Supp. 2d 1, 12 (D.D.C. 2005). Based on the FBI's declarations, the sensitive information contained in the responsive documents, and the deference owed to the determinations of national security officials in this context, *see Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003), the Court should uphold the Exemption 1 withholdings by the FBI.

2. ODNI'S Glomar Response Is Proper Under Exemption 1

As discussed, ODNI conducted a search of its pertinent, non-intelligence files for records relating to Plaintiff and located no responsive records. Hudson Decl. ¶ 21. As for any potentially responsive records in ODNI's classified holdings, ODNI responded that it could neither confirm nor deny the existence or nonexistence of such records. *Id.* This *Glomar* response, which is expressly provided for by section 3.6(a) of Executive Order 13,526, *see* 75 Fed. Reg. at 719, was proper under Exemption 1.

Exemption 1 covers “not only the content of protected government records but also the fact of their existence or nonexistence, if that fact itself properly falls within the exemption.” *Larson v. Dep't of State*, 565 F.3d 857, 861 (D.C. Cir. 2009) (internal citation omitted). The doctrine is an “exception to the general rule that agencies must acknowledge the existence of information responsive to a FOIA request and provide specific, non-conclusory justifications for withholding that information.” *Roth v. DOJ*, 642 F.3d 1161, 1178 (D.C. Cir. 2011). The response is appropriate when “to confirm or deny the existence of records . . . would cause harm cognizable under a[] FOIA exception.” *Gardels v. CIA*, 689 F.2d 1100, 1103 (D.C. Cir. 1982). Courts in this circuit have consistently upheld *Glomar* responses where confirming or denying

the existence of records would reveal classified information protected by Exemption 1. *See, e.g., Elec. Privacy Info. Ctr. v. NSA*, 678 F.3d 926 (D.C. Cir. 2012); *Larson*, 565 F.3d at 861–62; *Frugone v. CIA*, 169 F.3d 772, 774–75 (D.C. Cir. 1999).

Here, ODNI has provided a declaration from an individual who is authorized to classify national security information. Hudson Decl. ¶ 3. The declarant has personally reviewed ODNI’s *Glomar* response and determined that the existence or nonexistence of records relating to Ms. Poitras in the agency’s classified holdings is currently and properly classified consistent with the requirements of E.O. 13,526. *Id.* ¶ 34. Moreover, the declaration confirms that the information at issue is owned by and under the control of the United States. *Id.* ¶ 14.

Further, with respect to section 1.4’s eight categories of classification, the declaration demonstrates that the information protected from disclosure falls squarely within the category of information set forth in section 1.4(c) of E.O. 13,526, which provides that information may be classified if it concerns “intelligence activities (including covert action), intelligence sources or methods, or cryptology.” *Id.* ¶ 14. In particular, Plaintiff’s FOIA request for records about herself implicates TIDE, “the system most likely to house responsive records” about particular individuals, *id.* ¶ 18, and TIDE records, in turn, implicate “a great deal of intelligence information obtained through the collection, operations, and reporting of the [Intelligence Community], implicating the most sensitive sources and methods of intelligence gathering,” *id.* ¶ 14; *accord Carter*, 962 F. Supp. 2d at 136 (intelligence agency could reasonably interpret a FOIA request about a particular person “as one for information about him which the Agency obtained in the course of its communications surveillance activities”). Given that the “existence or nonexistence of a particular TIDE record is a classified fact,” ODNI can neither confirm nor deny whether there are responsive records in TIDE, because “[e]ither confirmation would reveal

sensitive information about intelligence activities and intelligence sources and methods that are protected from disclosure by statute and Executive Order 13526.” Hudson Decl. ¶¶ 18, 34.

Finally, the declaration explains the harms to national security that could ensue if this information were disclosed. Confirming or denying whether ODNI does or does not possess TIDE records reflecting an intelligence interest in a particular individual would cause harm to the national security by providing information that adversaries could use to evade detection or monitoring by the U.S. intelligence community. Hudson Decl. ¶ 28. “If the United States confirms that it is conducting a particular intelligence activity, or that it has gathered information on a particular person, such activities would be compromised, and foreign adversaries and terrorist organizations could use that information to avoid detection.” *Id.* Conversely, “confirming that a certain intelligence activity or relationship does not exist, either in general or with respect to specific targets or channels, would harm national security because alerting our adversaries to channels or individuals that are not under surveillance could likewise help them avoid detection.” *Id.* In sum, “a Glomar response to Plaintiff’s request is appropriate because the existence or nonexistence of ODNI records responsive to Plaintiff’s request is a classified fact, the disclosure of which could be expected to cause damage to the national security.” *Id.* ¶ 34.

III. Exemption 3 (FBI, ODNI, TSA)

In support of their handling of Plaintiff’s FOIA requests, FBI, ODNI, and TSA have invoked Exemption 3, which protects information that is “specifically exempted from disclosure by statute” under certain conditions. 5 U.S.C. § 552(b)(3). To qualify as a statute that permits the withholding of information pursuant to Exemption 3, a statute must “(i) require[] that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establish[] particular criteria for withholding or refer[] to particular types of matters to be withheld.” *Id.* “Exemption 3 differs from other FOIA exemptions in that its applicability depends less on the detailed factual contents of specific documents; the sole issue for decision is the existence of a relevant statute and the inclusion of withheld material within that statute’s coverage.” *Goland v. CIA*, 607 F.2d 339, 350 (D.C. Cir. 1978).

A. FBI Properly Withheld Information Under Exemption 3

The FBI has asserted Exemption 3 to protect information pertaining to grand jury proceedings. The tradition of secrecy in grand jury proceedings is “older than our Nation itself,” *In re Pet. of Craig*, 131 F.3d 99, 101 (2d Cir. 1997), and the federal rules prohibit government attorneys from disclosing any information about them, Fed. R. Crim. P. 6(e)(2)(B)(vi); *cf. United States v. John Doe, Inc. I*, 481 U.S. 102, 111–12 (1987) (confirming that DOJ was unable to disclose grand jury information even internally between its own components without a court order). It is well settled that Rule 6(e) qualifies as a withholding statute for the purposes of Exemption 3, and that information associated with grand jury proceedings is therefore protected under Exemption 3. *See, e.g., Lopez v. DOJ*, 393 F.3d 1345, 1349 (D.C. Cir. 2005) (applying Exemption 3 to grand jury information).

The grand jury information withheld in this case consists of

the names and/or identifying information of third parties who were either subpoenaed to provide testimony or actually provided testimony to the Federal Grand Jury; the company names and/or employees served with Federal Grand Jury subpoenas; information identifying specific records subpoenaed by the Federal Grand Jury; and other information on the internal workings of the Federal Grand Jury.

Hardy Decl. ¶ 52. The FBI declaration makes clear that, with respect to the investigative records at issue, “only that information which explicitly discloses matters occurring before a Federal Grand Jury has been withheld.” *Id.* Because disclosure of this information would reveal

protected aspects of the grand jury proceedings, including “the identity of witnesses, and the scope, length, direction, and strategy of the investigation,” *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010), *aff’d*, 646 F.3d 37 (D.C. Cir. 2011), the information was properly withheld under Exemption 3.

The FBI has also invoked Exemption 3 to protect information covered by section 102A(i)(1) of the National Security Act of 1947, as amended. Section 102A(i)(1) states that the DNI “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). The provision qualifies as a withholding statute under Exemption 3. *See, e.g., ACLU v. Dep’t of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011). The FBI is one of seventeen member agencies comprising the intelligence community (“IC”), and as such must protect intelligence sources and methods. Hardy Decl. ¶ 49.

The Supreme Court has recognized the “wide-ranging authority” provided by the National Security Act, entrusting the agency to “weigh the variety of complex and subtle factors in determining whether disclosure of information may lead to an unacceptable risk of compromising the Agency’s intelligence-gathering process.” *CIA v. Sims*, 471 U.S. 159, 180 (1985). Rather than placing limits on the scope of the National Security Act, “Congress simply and pointedly protected all sources of intelligence that provide, or are engaged to provide, information the Agency needs to perform its statutory duties with respect to foreign intelligence.” *Id.* at 169–70. For the same reason, the FBI must invoke the National Security Act to protect its intelligence sources and methods and those of the broader intelligence community. *See* Hardy Decl. ¶ 55.

B. ODNI'S Glomar Response Was Proper Under Exemption 3

ODNI has asserted Exemption 3 in support of its *Glomar* response relating to records in its classified holdings, the existence or nonexistence of which would reveal whether or not Plaintiff is of intelligence interest to ODNI or the broader intelligence community. That *Glomar* response is separately and independently justified under this exemption. *See Larson*, 565 F.3d at 862–63 (recognizing that “agencies may invoke the exemptions independently and courts may uphold agency action under one exemption without considering the applicability of the other.”).

Specifically, ODNI invokes section 102A(i)(1) of the National Security Act of 1947, as amended. Hudson Decl. ¶ 10. As discussed, section 102A(i)(1) states that the DNI “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). And as explained in ODNI’s explanation of its *Glomar* response under Exemption 1, ODNI has determined that confirming the existence or nonexistence of records responsive to Plaintiff’s request in the TIDE database would reveal whether or not ODNI has or once had intelligence interest in Plaintiff or her activities, a properly classified fact. Hudson Decl. ¶ 30. That information falls squarely within the scope of the National Security Act, whose mandate to withhold information is actually *broader* than the authority to withhold information pursuant to Exemption 1 and Executive Order 13,526. *Cf. Gardels*, 689 F.2d at 1107 (noting that the executive order governing classification of documents was “not designed to incorporate into its coverage the CIA’s full statutory power to protect all of its ‘intelligence sources and methods’”). This is because, unlike section 1.1(a)(4) of Executive Order 13,526, the National Security Act does not require ODNI to determine that the disclosure of the information would be expected to result in damage to national security. *See Assassination Archives & Research Ctr. v. CIA*, 334 F.3d 55, 58 n.3 (D.C. Cir. 2003) (“Because we conclude that the Agency easily establishes that

the records . . . are exempt from disclosure under Exemption 3, we do not consider the applicability of Exemption 1.”). Congress made that determination when it enacted the National Security Act.

C. TSA Properly Withheld Information Under Exemption 3

For TSA, the relevant Exemption 3 statute is 49 U.S.C. § 114(r). That statute prohibits the disclosure of information that “would be detrimental to the security of transportation” if released and explicitly commands that disclosure be prohibited “[n]otwithstanding section 552 of title 5.” The statute has been implemented through regulations found at 49 C.F.R. Part 1520, which provide that Sensitive Security Information (“SSI”) protected from disclosure shall include security screening procedures, including “information and sources of information used by a passenger . . . screening program.” *See* 49 C.F.R. § 1520.5(b)(9)(ii). As numerous courts have recognized, SSI satisfies the criteria for the withholding of information pursuant to Exemption 3. *See, e.g., Elec. Privacy Info. Ctr. v. DHS*, 928 F. Supp. 2d 139, 146 (D.D.C. 2013); *Skurow v. DHS*, 892 F. Supp. 2d 319 (D.D.C. 2012); *Tooley v. Bush*, No. 06-306, 2006 WL 3783142, at *20 (D.D.C. Dec. 21, 2006), *rev’d & remanded in part on other grounds sub nom., Tooley v. Napolitano*, 556 F.3d 836 (D.C. Cir. 2009).

TSA, as the entity vested with authority to determine what information constitutes SSI and to prohibit its disclosure, has provided a declaration explaining that certain information contained in TSA’s documents constitutes SSI. Declaration of Douglas E. Blair, Chief of the Sensitive Security Information Program Section, Office of Law Enforcement & Federal Air Marshal Service, TSA (“Blair Decl.”) (Ex. 6). This information falls into two categories.

First, information redacted from the twenty-one pages of DHS TRIP records produced to Plaintiff is protected under 49 C.F.R. § 1520.5(b)(9)(ii), which prohibits the disclosure of

“[i]nformation and sources of information used by a passenger or property screening program or system.” The records at issue include information that would tend to confirm or deny whether Plaintiff was or was not on a federal watchlist. Blair Decl. ¶ 12. Because TSA uses federal watchlists in vetting passengers attempting to board aircrafts, the information at issue is “used by a passenger screening program or system, which means that it is SSI under 49 C.F.R. § 1520.5(b)(9)(ii).” *Id.* ¶ 10 (citing Protection of Sensitive Security Information, 69 Fed. Reg. 28,066, 28,071 (May 8, 2004) (interim final rule adding 49 C.F.R. § 1520.5(b)(9)(ii)) (“This is intended to cover . . . lists of individuals identified as threats to transportation or national security.”)).

Second, the SSI Program reviewed the result of a search for responsive records conducted by TSA’s Office of Intelligence Analysis (“OIA”) and determined that TSA cannot disclose whether OIA located any records concerning Plaintiff because acknowledging the existence or non-existence of such records would reveal SSI. Blair Decl. ¶ 11. Because OIA generally maintains a record relating to a particular airline passenger only when the passenger was on a federal watchlist at the time of a flight, “revealing that OIA has a record of a passenger would generally confirm that the passenger was on a watchlist,” and “revealing that OIA does not have a record of a passenger would generally confirm that the passenger was not on a watchlist.” *Id.* ¶ 12. As explained, under 49 U.S.C. § 114(r) and TSA’s SSI regulations, TSA cannot disclose a passenger’s status with respect to a watchlist, and therefore can neither confirm nor deny whether OIA located any records responsive to Plaintiff’s FOIA request. *Id.* This approach is “consistent with the Federal government’s policy regarding watchlist information and the practice of other Federal agencies that maintain watchlist information when responding to FOIA requests. *Id.* ¶ 13.

Because TSA has determined that this information constitutes SSI, the agency's withholdings under Exemption 3 should be upheld. Indeed, pursuant to 49 U.S.C. § 46110(a), "[j]udicial review of TSA's determination that certain material is nondisclosable 'sensitive security information' is available exclusively in federal circuit courts." *Elec. Privacy Info Ctr.*, 928 F. Supp. 2d at 147 n.4; *City of Rochest v. Bond*, 603 F.2d 927, 934-35 (D.C. Cir. 1979); *Koutny v. Martin*, 530 F. Supp. 2d 84, 91 (D.D.C. 2007).

IV. Exemption 4 (CBP)

CBP has withheld information under Exemption (b)(4), which protects records that contain "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 "confidential" for purposes of Exemption 4 if disclosure is likely either "(1) to impair the Government's ability to obtain necessary information in the future," or "(2) to 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). This test recognizes that Exemption 4 protects both the government's interest in the continued availability and reliability of information from third parties, as well as the submitter's interests in the confidentiality of commercial or financial information. *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 877-79 (D.C. Cir. 1992).

Here, CBP redacted certain information consistent with Exemption 4 to protect confidential business information of air carriers that appears in Passenger Name Records found in ATS. U.S. law authorizes CBP to require airlines to provide it with passenger name record information. 49 U.S.C. § 44909(c)(3). These records include information about persons traveling to and from the United States on commercial air carriers, to the extent it is collected by

the carrier. Burroughs Decl. ¶ 25. Withholding this business information is proper because its disclosure “could cause substantial competitive harm to the airlines that provide the information, and may impair the Government’s relations with air carriers and the ability to collect such information in the future.” *Id.* ¶ 28; *see also Nat’l Parks & Conservation Ass’n*, 498 F.2d at 770 (withholding under Exemption 4 proper where disclosure could “impair the government’s ability to obtain necessary information in the future,” or “cause substantial competitive harm”).

V. Exemption 5 (FBI, CBP)

FBI and CBP withheld information pursuant to Exemption 5, which exempts 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). Records are exempt from disclosure if they would be “normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus incorporates the privileges that are available to an agency in civil litigation, including the protection of attorney work product, attorney-client communications, and deliberative process materials. *Id.* at 148–50; *Rockwell Int’l Corp. v. DOJ*, 235 F.3d 598, 601 (D.C. Cir. 2001).

A. CBP Properly Withheld Information Under Exemption 5

CBP has withheld information protected by the attorney-client privilege, which protects “confidential communications from clients to their attorneys made for the purpose of securing legal advice or services,” as well as “communications from attorneys to their clients if the communications rest on confidential information obtained from the client.” *Whitaker v. CIA*, 31 F. Supp. 3d 23, 40 (D.D.C. 2014) (quoting *Tax Analysts v. IRS*, 117 F.3d 607, 618 (D.C. Cir. 1997)), *aff’d*, 2016 U.S. App. LEXIS 1086 (D.C. Cir. Jan. 21, 2016). Here, CBP has withheld Office of Chief Counsel communications among CBP attorneys, as well as communications

between CBP attorneys and other CBP personnel. Burroughs Decl. ¶¶ 33, 41, 46. These communications involved CBP attorneys who “were acting in their capacity as legal counsel for CBP,” and “the communications were for the purpose of rendering legal services.” *Id.* ¶ 33; *see also Tax Analysts*, 117 F.3d at 618 (recognizing that in “the governmental context, the ‘client’ may be the agency and the attorney may be an agency lawyer”). This information must be protected to ensure that the Government’s attorneys may communicate in candor with their clients. *See Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (recognizing that “sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer’s being fully informed by the client”).

CBP also relies on Exemption 5 to withhold information protected by the deliberative process privilege. Burroughs Decl. ¶¶ 33, 41. This privilege protects agency documents “reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Sears, Roebuck & Co.*, 421 U.S. at 150. Exemption 5 applies to these materials because they include communications among CBP attorneys and between CBP attorneys and CBP personnel that reflect the agency’s deliberative processes and conclusions concerning “CBP inspections, processes, and legal authorities.” Burroughs Decl. ¶¶ 33, 41; *see also Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (“There should be considerable deference to the [agency’s] judgment as to what constitutes . . . ‘part of the give-and-take—of the deliberative process—by which the decision itself is made.’”).

Finally, CBP also withheld information protected by the work product doctrine, which protects materials prepared by attorneys during, or in reasonable anticipation of, litigation. *Hickman v. Taylor*, 329 U.S. 495, 509–10 (1947). The doctrine protects records generated as part

of a law enforcement investigation when the investigation is “based upon a specific wrongdoing and represent[s] an attempt to garner evidence and build a case against the suspected wrongdoer.” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1202 (D.C. Cir. 1991).

Here, the CBP declaration explains that CBP withheld internal legal memoranda found during the search relating to the 2010 encounter between Plaintiff and CBP. Burroughs Decl. ¶ 49. These memoranda were prepared by CBP attorneys and reflect the agency’s deliberative processes and conclusions concerning “CBP inspections, processes, and legal authorities.” *Id.*

B. FBI Properly Withheld Information Under Exemption 5

The FBI has withheld materials protected by the deliberative process privilege. Specifically, the FBI asserted Exemption 5 to withhold information from an FBI FD-542 form (Accomplishment Report form). “The document is an intra-agency communication from the New York Field Office (“NY FO”),” in which “the NY FO is analyzing, delivering, sorting ideas and providing recommendations of things to consider for this particular investigation.” Hardy Decl. ¶ 61. “The advisory and deliberate nature of this information can be evidence by the word ‘recommendations’ preceding the redaction block on Poitras-158.” *Id.* Because releasing such opinions and recommendations would “chill the full and frank discussion between agency personnel,” *id.*, the FBI has properly withheld this information pursuant to Exemption 5.

VI. Exemption 7 (FBI, CBP)

Information withheld by FBI and CBP is also protected from disclosure under Exemption 7, 5 U.S.C. § 552(b)(7), which protects “records or information compiled for law enforcement purposes” when disclosure of such records would cause certain types of harm. Of relevance here, the exemption applies when disclosure

(A) could reasonably be expected to interfere with enforcement proceedings,

...

(D) could reasonably be expected to disclose the identity of a confidential source, including State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, [or] (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

5 U.S.C. § 552(b)(7). As detailed below, Defendants have met their burden under FOIA and established that their withholdings under Exemption 7 are proper.

A. The Records Were “Compiled for Law Enforcement Purposes”

Records withheld under each prong of Exemption 7 must first satisfy the threshold requirement that they be “compiled for law enforcement purposes.” 5 U.S.C. § 552(b)(7). “In assessing whether records are compiled for law enforcement purposes, . . . the focus is on how and under what circumstances the requested files were compiled, and whether the files sought relate to anything that can fairly be characterized as an enforcement proceeding.” *Jefferson v. DOJ*, 284 F.3d 172, 176–77 (D.C. Cir. 2002). Documents are compiled for law enforcement purposes if they meet two criteria: (1) the documents were created or acquired in the course of an investigation related to the enforcement of federal laws, and (2) the nexus between the activity and one of the agency’s law enforcement duties was based on information sufficient to support at least a “colorable claim” of the relationship’s rationality. *Abdelfattah v. DHS*, 488 F.3d 178, 186 (3d Cir. 2007).

Here, each agency’s declaration makes clear that the information withheld under Exemption 7 was “compiled for law enforcement purposes.” For example, the FBI’s declaration explains that its records were compiled as part of a criminal investigation into Plaintiff’s “potential involvement with anti-coalition forces during her time in Iraq as an independent media

representative.” Hardy Decl. ¶ 64. The investigation of criminal conduct is plainly a law enforcement purpose. *See, e.g., Baez v. FBI*, 443 F. Supp. 2d 717, 724 (E.D. Pa. 2006) (“[T]here is no question” that documents that “pertain to the investigation of crimes” were “compiled for law enforcement purposes.”).

For its part, CBP’s records include documents that are taken from a database system that contains enforcement, inspection, and intelligence records which are relevant to the agency’s anti-terrorism and law enforcement missions. Burroughs Decl. ¶ 15. Because these records relate to the Government’s mission to enforce immigration laws and to secure the border, they satisfy the threshold inquiry under Exemption 7. *See Strunk*, 845 F. Supp. 2d at 43 (CBP TECS records satisfied Exemption 7 threshold, as they concerned “enforcement checks on individuals seeking to enter or depart the United States”).

B. Exemption 7(A) (FBI)

The FBI has determined that certain documents must be withheld in full under Exemption 7(A) because their disclosure “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Congress enacted Exemption 7(A) because it “recognized that law enforcement agencies had legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it came time to present their cases” in court. *NLRB v. Robbins Tire & Rubber Corp.*, 437 U.S. 214, 224 (1978). The exemption must therefore be construed pragmatically, so as to ensure that the statutory protection of law enforcement records is given “meaningful reach and application.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989).

“To fit within Exemption 7(A), the government must show that (1) a law enforcement proceeding is pending or prospective and (2) release of the information could reasonably be

expected to cause some articulable harm.” *Manna v. DOJ*, 51 F.3d 1158, 1164 (3d Cir. 1995). The exemption broadly applies to pending or prospective proceedings, including ongoing criminal, civil, and administrative investigations. *Id.* at 1165. Moreover, “Exemption 7(A) explicitly requires a predictive judgment of the harm that will result from disclosure of information.” *Ctr. for Nat’l Sec. Studies*, 331 F.3d at 927.

In justifying its reliance on Exemption 7(A), the Government need not discuss the exemption on a document-by-document basis. Instead, an agency may “group[] documents into relevant categories that are sufficiently distinct to allow a court to grasp ‘how each . . . category of documents, if disclosed, would interfere with the investigation.’” *Bevis v. Dep’t of State*, 801 F.2d 1386, 1389 (D.C. Cir. 1986) (internal citation omitted).

The FBI has asserted Exemption 7(A) to protect file numbers of pending FBI investigations. Hardy Decl. ¶ 76. “The release of the file numbers pertaining to investigative activities of third parties of an on-going FBI investigation could result not only in the acknowledgment of the existence of the investigation, but also in the identification of suspects and thus jeopardize the investigation.” *Id.* As a result, disclosure of this information “would interfere with pending and prospective enforcement proceedings, including investigations and prosecutions.” *Id.* The information was therefore properly withheld pursuant to Exemption (7)(A). *See, e.g., Hammouda v. U.S. Dep’t of Justice Office of Info. Policy*, 920 F. Supp. 2d 16, 24 (D.D.C. 2013) (FBI properly applied exemption 7(A) in withholding investigation file numbers).

C. Exemption 7(D) (FBI)

The FBI has withheld information under Exemption 7(D), which permits the redaction of law enforcement records where their release “could reasonably be expected to disclose the

identity of a confidential source.” 5 U.S.C. § 552(b)(7)(D). Unlike some other FOIA exemptions, Exemption 7(D) is an absolute protection, and requires no balancing of public and private interests. *See Dow Jones & Co. v. DOJ*, 917 F.2d 571, 575–76 (D.C. Cir. 1990). Indeed, “Exemption 7(D) has long been recognized as affording the most comprehensive protection of all of FOIA’s law enforcement exemptions.” *Billington v. DOJ*, 301 F. Supp. 2d 15, 22 (D.D.C. 2004).

A source is confidential within the meaning of Exemption 7(D) if the source “provided information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred.” *DOJ v. Landano*, 508 U.S. 165, 172 (1993) (quoting S. REP. NO. 93-1200, at 13 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6285, 6291)). “Under Exemption 7(D), the question is not whether the requested *document* is of the type that the agency usually treats as confidential, but whether the particular *source* spoke with an understanding that the communication would remain confidential.” *Id.* Accordingly, agencies invoking Exemption 7(D)’s protection with respect to an implied assurance of confidentiality must demonstrate expectations of confidentiality based upon the “circumstances” of the case at issue. *Id.* at 180; *see also Billington v. DOJ*, 233 F.3d 581, 585 (D.C. Cir. 2000) (“[T]he circumstances under which the FBI receives information might support a finding of an implied assurance of confidentiality”). As the FBI has explained, “sources must be free to furnish information to the FBI with complete candor and without the understandable tendency to hedge or withhold information because of fear that their cooperation with the FBI will later be made public.” Hardy Decl. ¶ 79.

Here, the FBI asserted Exemption 7(D) to protect two categories of sources: confidential information from foreign governments, and information from third parties who provided

information under an implied assurance of confidentiality. Hardy Decl. ¶¶ 79–83. First, the FBI has invoked Exemption 7(D) to protect the “identity as well as the information provided by an intelligence agency of a foreign government with an implicit understanding of confidentiality.” Hardy Decl. ¶ 79. As explained by the FBI, “the foreign intelligence agency referenced in the responsive records here specifically requested its relationship with the FBI be classified.” *Id.* ¶ 81. This evidences the foreign government’s expectation of “confidentiality in its interactions with the FBI and with regard to the information it provided to the FBI for law enforcement/national security purposes under applicable information sharing agreements.” *Id.*; *see also Shaw v. FBI*, 749 F.2d 58, 62 (D.C. Cir. 1984) (“Nor is it possible to deny that foreign [] law enforcement agencies can qualify as confidential sources for purposes of Exemption 7.”); *Billington*, 233 F.3d at 585 n.5 (recognizing that foreign government agencies may qualify as confidential sources). Under these circumstances, there can be no doubt that “the source furnished information with the understanding that the FBI would not divulge the communication except to the extent the Bureau thought necessary for law enforcement purposes.” *Landano*, 508 U.S. at 174.

An implied assurance of confidentiality is further reflected by both the customary trust that exists between the FBI and foreign government and law enforcement agencies, as well as the significant implications that disclosure of material received from such sources would have on diplomatic relations. As explained in the FBI’s declaration,

The release of official United States Government documents revealing the existence of such a confidential relationship with a current and long-term foreign government partner, in contravention of law enforcement/national security information sharing agreements, reasonably could be expected to strain relations between the United States and the foreign government and lead to negative diplomatic, political, or economic repercussions.

Hardy Decl. ¶ 81. “Without assurance that information given to the FBI would be protected from public disclosure, [foreign] law agencies may very well abstain from providing information to the FBI in their cooperative endeavors.” *Beard v. DOJ*, 917 F. Supp. 61, 63 (D.D.C. 1996).

The FBI has also invoked Exemption 7(D) to protect source-identifying information, including information concerning “an individual source who is a source symbol numbered information under express grant of confidentiality.” Hardy Decl. ¶ 85. “The withheld information includes the name, social security number, phone number, file number, source number, and the type of source expenditures.” *Id.* The disclosure of this information likely would reveal the confidential source’s identity, “forever neutraliz[ing] the source” and resulting in a “chilling effect on the activities and cooperation of other sources.” *Id.* The information was therefore properly withheld. *See, e.g., Bullock v. FBI*, 577 F. Supp. 2d 75, 80 (D.D.C. 2008) (withholding was proper where requested information could enable plaintiff to identify confidential source).

D. Exemption 7(E) (FBI and CBP)

CBP and FBI have withheld information under Exemption 7(E), which protects information whose release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E); *see also Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1193 (D.C. Cir. 2009) (“[T]he importance of deterrence explains why the exemption is written in broad and general terms” and further explains why the exemption looks “not just for certitude of a reasonably expected risk, but for the chance of a reasonably expected risk”). The first clause of Exemption 7(E) affords “categorical” protection for “techniques and procedures” used in law

enforcement investigations or prosecutions. *Smith v. ATF*, 977 F. Supp. 496, 501 (D.D.C. 1997) (citing *Fisher v. DOJ*, 772 F. Supp. 7, 12 n.9 (D.D.C. 1991), *aff'd*, 968 F.2d 92 (D.C. Cir. 1992)).

Here, the FBI withheld eight types of information to protect investigative techniques and procedures: (1) sensitive file numbers or sub-file names; (2) internal, non-public email or IP addresses; (3) dates or types of investigations; (4) identity or location of FBI or Joint Units, Squads, or Divisions; (5) collection or analysis of information; (6) investigative focus; (7) law enforcement strategies or techniques for addressing the techniques, tactics or procedures (TTPs) used by an organization; (8) monetary payments for investigative techniques. Hardy Decl. ¶¶ 87–95.

The Hardy declaration provides detailed and specific justifications for withholding each type of information under Exemption 7(E). *See id.* In each instance, the FBI has determined as a categorical matter that disclosure of the particular type of information implicates law enforcement procedures and techniques and could enable individuals to circumvent the law. For example, the FBI has withheld sensitive case file numbers on the basis that revealing file numbering conventions could identify “the investigative interest or priority given to such matters” and allow suspects to use these numbers, together with other known information, to circumvent the FBI’s law enforcement efforts. Hardy Decl. ¶ 85; *see also Labow v. DOJ*, 66 F. Supp. 3d 104, 127 (D.D.C. 2014) (upholding FBI’s assertion of Exemption 7(E) to protect sensitive case file numbers). Similarly, the FBI has protected information about the types and dates of investigations—i.e., whether an investigation was “preliminary” or “full” and the date it was initiated—because disclosure would allow “individuals to know the types of activities that would trigger a full investigation as opposed to a preliminary investigation, and the particular

dates the investigation covers, which would allow individuals to adjust their behavior accordingly.” Hardy Decl. ¶ 87. In the same way, disclosure of information about the focus of specific FBI investigations “would reveal the scope of the FBI’s programs and the strategies it plans to pursue in preventing and disrupting criminal activity,” thereby allowing criminals to “gauge the FBI’s strengths and weaknesses within certain areas of the criminal arena and structure their activities in a manner that avoids detection.” *Id.* ¶ 90.

The Hardy declaration sets forth similar law enforcement rationales for protecting internal email and intranet information, information about the location and identity of FBI investigative units, the methods used to collect and analyze investigative information, information relating to “the techniques, tactics, and/or procedures (‘TTPs’)” used by certain organizations, and information about monetary payments for investigative techniques. Hardy Decl. ¶¶ 85–92; *see also Labow*, 66 F. Supp. 3d at 127; *Light v. DOJ*, 968 F. Supp. 2d 11, 29 (D.D.C. 2013).

For its part, CBP asserts Exemption 7(E) to protect “the computer screen transaction code, computer program transaction code, computer function codes (i.e., ‘PF codes’ or ‘navigation keys’) and information that would reveal the results of specific law enforcement database queries.” Burroughs Decl. ¶ 21. The codes “facilitate access to and navigation through” the TECS system, and release of the information would “enable an individual knowledgeable in computer mainframes and systems to improperly access the system, facilitate navigation or movement through the system, allow manipulation or deletion of data and interfere with enforcement proceedings.” *Id.* ¶ 22. *See also id.* (“Public dissemination of these access codes would permit unauthorized users to manipulate records to avoid recognition, instant detection and apprehension.”).

Courts have routinely upheld withholding of computer transaction and function codes, including those associated with the TECS system. *See, e.g., Strunk*, 845 F. Supp. 2d 38 (collecting cases); *Miller v. DOJ*, 872 F. Supp. 2d 12, 29 (D.D.C. 2012) (upholding non-disclosure of TECS program and access codes on the ground that “disclosing [them] would expose a law enforcement technique, promote circumvention of the law by allowing criminals to conceal their activity, or allow fraudulent access to DEA’s databases”); *Bloomer v. DHS*, 870 F. Supp. 2d 358, 369 (D. Vt. 2012) (upholding non-disclosure of “various codes and case numbers,” including TECS Record ID numbers, because disclosure of “internal instructions, codes, and guidance would reveal both a law enforcement technique and an internal investigative practice”).

CBP has also withheld information concerning law enforcement techniques and methods which, if disclosed, could enable individuals to circumvent the law. *See* Burroughs Decl. ¶ 24. For example, CBP withheld narrative information from TECS records describing law enforcement techniques and procedures used by CBP officers, *id.*; information from New York field office records concerning non-public law enforcement techniques and procedures used by CBP and ICE, “including information explaining methods regarding data destruction,” *id.* ¶ 37; and email communications between CBP personnel “describing techniques and processes used during CBP inspections and other law enforcement functions,” *id.* ¶ 44. The Burroughs declaration concludes that the disclosure of this information “would enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate countermeasures,” with “debilitating and detrimental” consequences to both CBP and the law enforcement community. *Id.* ¶¶ 24, 37, 44. Because disclosure of this information could

allow individuals to circumvent law enforcement investigations, the information is protected by Exemption 7(E). *See, e.g., Brunetti v. FBI*, 357 F. Supp. 2d 97, 108 (D.D.C. 2004).

Further, in response to Plaintiff's FOIA request, CBP advised that it could neither confirm nor deny the existence or nonexistence of certain records in its search results which would tend to indicate whether a particular person is or ever was listed on a federal watchlist. Exemption (7)(E) would apply to any such records, if they existed, "given their nexus to the terrorist watch-list, because information related to any such status would disclose law enforcement techniques and procedures which are not publicly known or disclosed." Burroughs Decl. ¶ 13.

VII. Defendants Have Produced All Reasonably Segregable Portions of Responsive Records

The FOIA requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b). This provision does not require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund, Inc. v. CIA*, 402 F. Supp. 2d 211, 220-21 (D.D.C. 2005) (concluding that no reasonably segregable information exists because "the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words.").

CBP and FBI have produced all reasonably segregable information. CBP has conducted a line-by-line review of the records determined to be responsive and determined that all reasonably segregable portions of the responsive records have been released to Plaintiff. Burroughs Decl. ¶ 52. The FBI has reviewed the 256 pages released in part and determined that the protected information was either exempt itself or so intertwined with non-exempt information that segregation of the non-exempt information was not reasonably possible without revealing

exempt information or leaving nothing but meaningless content. With respect to the 83 pages withheld in full (not counting four duplicate records), FBI FOIA personnel determined that the 83 pages were either fully covered by one more of the cited FOIA exemptions or so intertwined with non-exempt information that no information could reasonably be segregated for release. Hardy Decl. ¶ 110. For its part, TSA has explained that the only information redacted from the responsive DHS TRIPS records was SSI, and that no other portions of those records constituted SSI. McCoy Decl. ¶ 26. Accordingly, Defendants have produced all “reasonably segregable portion[s]” of the responsive records. 5 U.S.C. § 552(b).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their Motion for Summary Judgment and enter final judgment for them in this matter.

June 6, 2016

Respectfully submitted,

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MARCIA BERMAN
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/s/ Samuel M. Singer

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Certificate of Service

I hereby certify that on June 6, 2016, I electronically filed the foregoing Memorandum with the Clerk of the Court using the CM/ECF system, which will send notice of this filing to all parties.

/s/ Samuel M. Singer _____

SAMUEL M. SINGER

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 2: Public Declaration of David M. Hardy (FBI)

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-01091
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et. al.)	
)	
Defendants.)	

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), of the Federal Bureau of Investigation (“FBI”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 239 employees who staff a total of ten (10) FBI Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the

FOIA, as amended by the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13,526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by E.O. 13526, 75 Fed. Reg. 707 (2010), and the preparation of declarations in support of claims asserted under Exemption 1 of the FOIA, 5 U.S.C. § 552(b)(1). I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to E.O. 13526, §§ 1.3 ad 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Specifically, I am familiar with the FBI's handling of plaintiff's January 24, 2014 Freedom of Information/Privacy Act ("FOIPA") request to the FBI for all information concerning Laura Poitras.

(4) The FBI processed 344 pages of records responsive to plaintiff's request. Of these pages, 1 page was released in full ("RIF"), 256 pages were released in part ("RIP"), and 87 pages were withheld in full.

(5) In accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration is being submitted in support of the FBI's motion for summary judgment in order to provide the Court and plaintiff with an explanation of the FBI's recordkeeping system; the procedures used to search for, review, and process responsive records; and the FBI's justification

for withholding records in full or in part pursuant to Privacy Act exemption¹ (j)(2), 5 U.S.C. § 552a (j)(2); FOIA exemptions 1, 3, 5, 6, 7 (A), 7(C), 7(D), and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

ADMINISTRATIVE HISTORY OF PLAINTIFF'S FOIPA REQUEST

(6) By letter dated January 24, 2014, Mr. David Sobel submitted a FOIPA request to FBIHQ on behalf of his client, Laura Poitras, seeking "all agency records concerning, naming, or relating to Ms. Poitras." (**See Exhibit A.**)

(7) The FBI opened FOIPA Request Number 1250943-000 to address plaintiff's request regarding herself. By letter dated February 19, 2014, the FBI acknowledged receipt of plaintiff's request. The letter advised plaintiff that the FBI was searching the indices to its Central Records System for information responsive to her request. (**See Exhibit B.**)

(8) By letter dated May 29, 2015, plaintiff filed an administrative appeal with the Office of Information Policy ("OIP"). (**See Exhibit C.**)

(9) By letter dated July 7, 2015, OIP acknowledged plaintiff's FBI appeal and assigned it appeal number AP-2015-04130. (**See Exhibit D.**)

(10) By letter dated July 13, 2015, OIP advised plaintiff that no adverse determination has yet been made by the FBI, there was no action for OIP to consider on appeal. (**See Exhibit E.**)

(11) Plaintiff filed this instant civil action on July 13, 2015.

(12) By letter dated October 14, 2015, the FBI made a first interim release of records to plaintiff. The FBI advised plaintiff it had reviewed 145 pages of records and was releasing 62 pages of those pages to her in full or in part, citing Privacy Act Exemption (j)(2) and FOIA

¹ Privacy Act Exemptions (j)(1) and (k)(1) will be addressed in the Central Intelligence Agency's ("CIA") *Vaughn* submission in this case.

exemptions 3, 6, 7(C), 7(D), and 7(E) as its bases for protecting information. The FBI advised plaintiff she could appeal the FBI's determinations by filing an administrative appeal with OIP within sixty (60) days. In accordance with standard FBI practice, and pursuant to FOIA exemption 7(E), the FBI notified plaintiff that its response neither confirmed nor denied the existence of information indicating whether her name is or has been on a federal watch list.² Finally, the FBI informed plaintiff no fees were being assessed in conjunction with the FBI's processing and release of responsive records. (See Exhibit F.)

(13) By letter dated November 10, 2015, the FBI made a second interim release of records to plaintiff. The FBI advised plaintiff it had reviewed and was releasing 8 pages in full or in part, citing Privacy Act Exemption (j)(2) and FOIA exemptions 1, 3, 6, 7(C), 7(D), and 7(E) as its bases for protecting information. The FBI advised plaintiff she could appeal the FBI's determinations by filing an administrative appeal with OIP within sixty (60) days. In accordance with standard FBI practice, and pursuant to FOIA exemption 7(E), the FBI notified plaintiff that its response neither confirmed nor denied the existence of information indicating whether her name is or has been on a federal watch list. Finally, the FBI informed plaintiff a \$20 fee was assessed in conjunction with the FBI's processing and release of responsive records. (See Exhibit G.)

(14) By letter dated December 14, 2015, the FBI made a third interim release of records to plaintiff. The FBI advised plaintiff it had reviewed and was releasing 10 pages in full or in part, citing Privacy Act exemption (j)(2) and FOIA exemptions 1, 3, 5, 6, 7(C), 7(D), and

² It is FBI's practice in responding to first party FOIA/Privacy Act requests (*i.e.*, requests by individuals for their own records) to include a standard *Glomar* response that neither confirms nor denies the existence of any watch list information. This *Glomar* response is based on FOIA Exemption 7(E), which protects "records or information compiled for law enforcement purposes [when disclosure] would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 522(b)(7)(E).

7(E) as its bases for protecting information. The FBI advised plaintiff she could appeal the FBI's determinations by filing an administrative appeal with OIP within sixty (60) days. In accordance with standard FBI practice, and pursuant to FOIA exemption 7(E), the FBI notified plaintiff that its response neither confirmed nor denied the existence of information indicating whether her name is or has been on a federal watch list. Finally, the FBI informed plaintiff a \$15 fee was assessed in conjunction with the FBI's processing and release of responsive records. (See

Exhibit H.)

(15) By letter dated February 16, 2016, the FBI made a fourth interim release of records to plaintiff. The FBI advised plaintiff it had reviewed 124 pages and was releasing 120 pages of those pages in full or in part, citing Privacy Act Exemptions (j)(1), (j)(2), and (k)(1) and FOIA Exemptions 1, 3, 6, 7(A), 7(C), 7(D), and 7(E) as its bases for protecting information. The FBI advised plaintiff she could appeal the FBI's determinations by filing an administrative appeal with OIP within sixty (60) days. In accordance with standard FBI practice, and pursuant to FOIA Exemption 7(E), the FBI notified plaintiff that its response neither confirmed nor denied the existence of information indicating whether her name is or has been on a federal watch list. Finally, the FBI informed plaintiff a \$15 fee was assessed in conjunction with the FBI's processing and release of responsive records. (See Exhibit I.)

(16) By letter dated March 4, 2016, the FBI made its final release of records to plaintiff. The FBI advised plaintiff it had reviewed 57 pages and was releasing all 57 pages in full or in part, citing Privacy Act Exemptions (j)(1), (j)(2), and (k)(1) and FOIA Exemptions 1, 3, 6, 7(A), 7(C), 7(D), and 7(E) as its bases for protecting information. The FBI advised plaintiff she could appeal the FBI's determinations by filing an administrative appeal with OIP within sixty (60) days. In accordance with standard FBI practice, and pursuant to FOIA Exemption

7(E), the FBI notified plaintiff that its response neither confirmed nor denied the existence of information indicating whether her name is or has been on a federal watch list. Finally, the FBI informed plaintiff a \$30 fee was assessed in conjunction with the FBI's processing and release of responsive records (\$15 for the March 5th release and \$15 for the February 4th interim release).

(See Exhibit J.)

THE FBI CENTRAL RECORDS SYSTEM

(17) The Central Records System ("CRS") is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law enforcement, counterterrorism, and intelligence agency, including performance of administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBI HQ, FBI Field Offices, and FBI Legal Attaché Offices ("Legats") worldwide.

(18) The CRS consists of a numerical sequence of files, called FBI "classifications," which are organized according to designated subject categories. The broad array of CRS file classification categories include types of criminal conduct and investigations conducted by the FBI, as well as categorical subjects pertaining to counterterrorism, intelligence, counterintelligence, personnel, and administrative matters. For identification and retrieval purposes across the FBI, when a case file is opened, it is assigned a Universal Case File Number ("UCFN") consisting of three sequential components: (a) the CRS file classification number, (b) the abbreviation of the FBI Office of Origin ("OO") initiating the file, and (c) the assigned individual case file number for that particular subject matter.³ Within each case file, pertinent documents of interest are "serialized," or assigned a document number in the order which the

³ For example, in a fictitious file number of "11Z-HQ-56789;" the "11Z" component indicates the file classification, "HQ" indicates that FBI Headquarters is the FBI OO of the file, and "56789" is the assigned case specific file number.

document is added to the file, typically in chronological order.

THE CRS GENERAL INDICES AND INDEXING

(19) The general indices to the CRS are the index or “key” to locating records within the enormous amount of information contained in the CRS. The CRS is indexed in a manner which meets the FBI’s investigative needs and priorities, and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement duties. The general indices are arranged in alphabetical order and comprise an index on a variety of subject matters to include individuals, organizations, events, or other subjects of investigative interest that are indexed for future retrieval. The entries in the general indices fall into two category types:

- (a) Main entry. This entry pertains to records indexed to the main subject(s) of a file, known as “main file” records. The “main” entry carries the name of an individual, organization, or other subject matter that is the designated subject of the file.
- (b) Reference entry. This entry, or a “cross-reference,” pertains to records that merely mention or reference an individual, organization, or other subject matter that is contained in a “main” file record about a different subject matter.

(20) FBI Special Agents (“SA”) and/or designated support personnel may index information in the CRS by individual (persons), by organization (organizational entities, places, and things), and by event (*e.g.*, a terrorist attack or bank robbery). Indexing information in the CRS is based on operational necessity, and the FBI only indexes that information considered relevant and necessary for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

AUTOMATED CASE SUPPORT

(21) Automated Case Support (“ACS”) is an electronic, integrated case management system that became effective for FBIHQ and all FBI Field Offices and Legats on October 1,

1995. As part of the ACS implementation process, over 105 million CRS records were converted from automated systems previously utilized by the FBI into a single, consolidated case management system accessible by all FBI offices. ACS has an operational purpose and design to enable the FBI to locate, retrieve, and maintain information in its files in the performance of its myriad missions and functions.⁴

(22) The Universal Index (“UNI”) is the automated index of the CRS and provides all offices of the FBI a centralized, electronic means of indexing pertinent investigative information to FBI files for future retrieval via index searching. Individual names are recorded with applicable identifying information such as date of birth, race, sex, locality, Social Security Number, address, and/or date of an event. Moreover, ACS implementation built upon and incorporated prior automated FBI indices; therefore, a search employing the UNI application of ACS encompasses data that was already indexed into the prior automated systems superseded by ACS. As such, a UNI index search in ACS is capable of locating FBI records well before its 1995 FBI-wide implementation to the present day in both paper and electronic format.⁵ Currently, UNI consists of approximately 112.5 million searchable records and is updated daily with newly indexed material.

ACS AND SENTINEL

(23) Sentinel is the FBI’s next generation case management system that became effective FBI-wide on July 1, 2012. Sentinel provides a web-based interface to FBI users, and it

⁴ ACS and the next generation Sentinel system are relied upon by the FBI daily to fulfill essential functions such as conducting criminal, counterterrorism, and national security investigations; background investigations; citizenship and employment queries, and security screening, to include Presidential protection.

⁵ Older CRS records that were not indexed into UNI as result of the 1995 ACS consolidation remain searchable by manual review of index cards, known as the “manual indices.” A search of the manual indices is triggered for requests on individuals if the person was born on or before January 1, 1958; and for requests seeking information about organizations or events on or before January 1, 1973. Records created after these dates would be captured through a UNI search.

includes the same automated application that is utilized in ACS. After July 1, 2012, all FBI generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS and its relevance as an important FBI search mechanism. Just as pertinent information was indexed into UNI for records generated in ACS before July 1, 2012, when a record is generated in Sentinel, information is indexed for future retrieval. Moreover, there is an index data sharing nexus between the Sentinel and ACS systems whereby information indexed into Sentinel is replicated or “backfilled” into ACS. In sum, the Sentinel case management system builds on ACS and shares its operational purpose; Sentinel provides another portal to locate information within the vast CRS for FBI records generated on or after July 1, 2012.

ELECTRONIC SURVEILLANCE INDICES

(24) The Electronic Surveillance system (ELSUR) has a separate legal identity from the CRS as “systems of records” under the Privacy Act as both the CRS and ELSUR are Privacy Act System of Records; however, in terms of function, information from both ELSUR and the CRS are indexed and retrieved via an index search of ACS and Sentinel. Information that is housed in the ELSUR system is indexed for retrieval by the names of the target(s) of the surveillance; participants in monitored conversations; and owners, lessors, or licensors of the premises where the FBI conducted the surveillance. As a result, the names of these individuals are indexed within, and searchable by, the same UNI application employed to locate CRS records.⁶

(25) Moreover, other information about an investigation where the FBI is conducting electronic surveillance is maintained in the case file in the CRS.⁷ For example, the FBI must

⁶The records include subjects monitored by FBIHQ or FBI Field Offices since January 1, 1960.

⁷The FBI conducts electronic surveillance in furtherance of investigations; therefore, before any electronic surveillance is conducted, there is an investigative case file in the CRS.

obtain proper legal process in order to conduct electronic surveillance; the application for and resulting court order are types of records that would be serialized into a case file. In short, the existence of a CRS record is a condition precedent for the existence of an ELSUR record.

Therefore, there is no factual basis for the FBI to conclude an ELSUR record exists if there are no corresponding case files in the CRS relating to electronic surveillance.

(26) In this case, the FBI did not locate any responsive ELSUR records within the CRS. Specifically, there are no records and/or documents referencing that an electronic surveillance had been conducted. Again, the search of the ELSUR indices here was conducted simultaneously with the CRS search via the UNI function of ACS and an index search of Sentinel, as described below.

ADEQUACY OF SEARCH

(27) Index Searching. To locate CRS information, RIDS employs an index search methodology. Index searches of the CRS are reasonably expected to locate responsive material within the vast CRS since the FBI indexes pertinent information into the CRS to facilitate retrieval based on operational necessity. Given the broad range of indexed material in terms of both time frame and subject matter that it can locate in FBI files, the automated UNI application of ACS is the mechanism RIDS employs to conduct CRS index searches. If a request seeks records that may have been generated on or after July 1, 2012, an overlapping search of ACS via the UNI application and a Sentinel index search are performed at the litigation stage to ensure adequacy of the CRS index search.

(28) CRS Search and Results. Upon receipt of plaintiff's request, RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and a Sentinel index search by using the following search term: "Laura Poitras" and aliases found during

search—“Laura Susan Poitras” and “Lara Susan Poitras.” The FBI’s search included a three-way phonetic⁸ breakdown of “Laura Poitras” and an on-the-nose⁹ search for “Laura Susan Poitras” and “Lara Susan Poitras.” The FBI’s CRS search encompassed records maintained in FBIHQ as well as all FBI’s field offices. The FBI used information in plaintiff’s request letter, such as her date of birth and other identifying information, to facilitate the identification of responsive records. As a result of this search effort, the FBI identified main and cross-reference records indexed to plaintiff’s name.

(29) ELSUR Search and Results. In this case, the search of the CRS via the UNI application of ACS also accomplished the task of searching the ELSUR indices for any responsive records. As noted above, although ELSUR has a different identity from the CRS as a Privacy Act System of Records, the functional task of indexing and retrieving information from both ELSUR and the CRS is accomplished via the UNI application of the FBI’s ACS system. *See supra*. ¶¶ 24-26. As relevant here, as the information sought would have only existed before the July 1, 2012 implementation of Sentinel, the same search terms described herein to perform the UNI search of ACS for CRS indexed records were by default also utilized to locate any ELSUR records.

(30) Scope of Search. RIDS conducted a search reasonably calculated to locate records responsive to plaintiff’s request. First, given its comprehensive nature and scope, the CRS is the principal records system searched by RIDS, to locate information responsive to most

⁸ Three-way phonetic search (“TP search”)—the FBI used the phonetic search capabilities of ACS to conduct a TP search of subject’s name. This means that first, the computer automatically broke her name down and searched the index for three different breakdowns of the name entered. Then, the computer breaks names down based on their phonetic characteristics. The computer will return results based on whether or not they phonetically match a certain percentage of the first and last name searched.

⁹ On-the-nose phonetic search (“OTN” search)—the FBI used the phonetic search capabilities of ACS to conduct an OTN search of plaintiff’s aliases. This means the computer will search exactly the name entered in the name field and only that name.

FOIPA requests, as the CRS is where the FBI indexes information about individuals, organizations, events, and other subjects of investigative interest for future retrieval. Second, the CRS is the FBI system where records responsive to this request would reasonably be found. Given plaintiff's request seeking information about herself, such information would reasonably be expected to be located in the CRS via the index search methodology. Third, in this case, the ELSUR indices were likewise searched via the UNI application of ACS; however, the task of locating any responsive records in ELSUR via the same index search terms was unsuccessful.

BACKGROUND INFORMATION ON PLAINTIFF AND FBI'S INVESTIGATION

(31) In 2004, the U.S. military received information pertaining to American independent film maker, Laura Poitras, possibly being involved in an ambush on U.S. Forces near Baghdad that resulted in the death of one U.S. soldier and serious injuries of several others. The military was informed that Poitras watched and filmed the ambush from on top of a nearby building. Poitras later confirmed that she was on the building working on a documentary that focused on the 2005 Iraqi election. In 2006, the FBI received further information about Poitras's involvement, including the possibility that she had prior knowledge of the ambush and purposely chose not to report it. As a result, the U.S. military requested an investigation of Poitras because of her possible involvement with anti-coalition forces during her time in Iraq as an independent media representative.

JUSTIFICATION FOR NONDISCLOSURE UNDER THE PRIVACY ACT

(32) When an individual requests records about herself from the FBI, the well settled RIDS process is to first consider the request under the Privacy Act, which generally provides individuals a right of access to records about them maintained in government files, unless the records are part of a system of records exempted from individual access. *See* 5 U.S.C. § 552a(d).

Exemption (j)(2) exempts from mandatory disclosure systems of records “maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals...” 5 U.S.C. § 522a(j)(2).

(33) Under the Privacy Act, agencies may promulgate rules to exempt systems of records from various provisions of the Act, to include individual requests for access or amendment. *See* 5 U.S.C. § 552a(d), (j) and (k). Accordingly, the U.S. Department of Justice (“DOJ”) promulgated regulations exempting certain systems of records from individual access, *inter alia*, under the Privacy Act, 5 U.S.C. § 552a(d). As relevant here, the FBI is a criminal and regulatory enforcement agency within DOJ responsible for enforcing federal laws, and DOJ has exempted FBI law enforcement investigative records maintained in the CRS¹⁰ from the Privacy Act’s access provision pursuant to (j)(2). In other words, pursuant to 28 C.F.R. § 16.96(a)(1), the plaintiff has no individual right of access to investigative records about herself under the Privacy Act. Therefore, plaintiff’s request was processed under the provisions of the FOIA.

(34) In response to plaintiff’s request, the FBI located responsive records relating to investigative matters that were compiled per the FBI’s primary law enforcement mission to investigate violations of federal laws. The law enforcement records at issue were retrieved by RIDS through a search of the CRS, a system of records specifically exempt from the access provisions of the Privacy Act as noted above per 5 U.S.C. § 552a(j)(2), as implemented by 28 C.F.R. §16.96(a)(1). Furthermore, records responsive to the plaintiff’s request are law enforcement records as they were specifically compiled in the course of the FBI’s investigation of plaintiff’s possible involvement with anti-coalition forces during her time in Iraq as an independent media representative. Consequently, because the records were generated in

¹⁰ Privacy Act System of Records FBI-002, 63 FR 8671 (1998) (last publication of complete notice).

furtherance of an FBI criminal investigation and are maintained in the CRS, an FBI system of records exempted from individual access under the Privacy Act, the FBI processed the records under the FOIA to achieve maximum disclosure. As a result, the records identified as exempt under Privacy Act Exemption (j)(2) were processed and released to plaintiff subject only to the FOIA exemptions noted. None of the information exempt from disclosure under the Privacy Act has been withheld from plaintiff unless it was withheld under a FOIA exemption.

JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA

Explanation of the Coded Format Used to Describe and Justify Withholdings

(35) All responsive documents subject to the FOIA were processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable, non-exempt information in the responsive records. No reasonably segregable, nonexempt portions have been withheld from plaintiff. Further description of the information withheld, beyond what is provided in this declaration, could identify the actual exempt information that the FBI has protected. Copies of the pages released in part and in full have been consecutively numbered "Poitras-1 through Poitras-344" at the bottom of each page. Pages withheld in their entirety (*e.g.*, removed per exemption, duplicates) were replaced by a "Deleted Page Information Sheet" ("DPIS"), which identifies the reason and/or the applicable FOIA exemptions relied upon to withhold the page in full, as well as the Bates numbers for the withheld material. The exemptions asserted by the FBI as grounds for non-disclosure of information are FOIA exemptions 1, 3, 5, 6, 7(A), 7(C), 7(D), and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

(36) The Bates-numbered documents contain, on their faces, coded categories of

exemptions detailing the nature of the information withheld pursuant to the provisions of the FOIA. The coded categories are provided to aid the Court's and plaintiff's review of the FBI's explanations of the FOIA exemptions it asserted to withhold the material. The coded, Bates-numbered pages (which will be made available to the Court upon request), together with this declaration demonstrate that all material withheld by the FBI is exempt from disclosure pursuant to the cited FOIA exemptions, or is so intertwined with protected material that segregation is not possible without revealing the underlying protected material.

(37) Each instance of information withheld on the Bates-numbered documents is accompanied by a coded designation that corresponds to the categories listed below. For example, if "(b)(7)(C)-1" appears on a document, the "(b)(7)(C)" designation refers to FOIA Exemption 7(C) protecting against unwarranted invasions of personal privacy. The numerical designation of "1" following the "(b)(7)(C)" narrows the main category into a more specific subcategory, such as "Names and/or Identifying Information of FBI Special Agents and Support Personnel."

(38) Listed below are the categories used to explain the FOIA exemptions asserted to withhold the protected material:

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES¹¹	INFORMATION WITHHELD
Category (b)(1)	CLASSIFIED INFORMATION [<i>cited at times with other exemptions (e.g., (b)(3), 7(D), 7(E), 6/7(C))</i>]
(b)(1)-1	E.O. 13526 § 1.4(c)—Intelligence Activities, Sources, and Methods [<i>cited at time in conjunction with (b)(3)</i>]
Category (b)(3)	INFORMATION PROTECTED BY STATUTE
(b)(3)-1	Grand Jury Information—Federal Rules of Criminal Procedure, Rule 6(e) [<i>cited at times in conjunction with (b)(6) and (b)(7)(C)</i>]

¹¹ Throughout the released documents the FBI inadvertently cited codes with other government agencies' (OGAs') exemptions. For instance, "(b)(3)-3 per CIA". OGAs' redactions should have been cited without codes.

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES¹¹	INFORMATION WITHHELD
(b)(3)-2	50 U.S.C., § 3024(i)(1) [<i>cited at times in conjunction with (b)(1)</i>]
Category (b)(5)	PRIVILEGED INFORMATION
(b)(5)-1 ¹²	Deliberative Process Privilege
Category (b)(6) and (b)(7)(C)	CLEARLY UNWARRANTED INVASION OF PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information ¹³ of FBI Special Agents and Support Personnel
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information of Local Law Enforcement Personnel
(b)(6)-3 and (b)(7)(C)-3	Names and/or Identifying Data of Third Parties of Investigative Interest
(b)(6)-4 and (b)(7)(C)-4	Names and/or Identifying Information of Third Parties Merely Mentioned
(b)(6)-5 and (b)(7)(C)-5	Names and/or Identifying Information of 3rd Parties who Provided Information [<i>cited at times in conjunction with 7(D)</i>]
(b)(6)-6 and (b)(7)(C)-6	Names and/or Identifying Information of Non-FBI Federal Government Personnel
Category (b)(7)(A)	PENDING LAW ENFORCEMENT PROCEEDINGS
(b)(7)(A)-1	Information Which, if Disclosed, Could Reasonably be Expected to Interfere with Pending Law Enforcement Proceedings
Category (b)(7)(D)	CONFIDENTIAL SOURCE INFORMATION
(b)(7)(D)-1 ¹⁴	Foreign Government Agency Information Under Express Confidentiality
(b)(7)(D)-2	Names, Identifying Data of a Source Under an Express Assurance of Confidentiality [<i>cited, at times, in conjunction with Exemption 6 and 7(C)</i>]
Category (b)(7)(E)	INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	Sensitive File Numbers or Subfile Names

¹² In the documents released to plaintiff, the FBI inadvertently cited (b)(5)-2 instead of (b)(5)-1 for information related to deliberative process privilege.

¹³ As used in this declaration, the term "identifying information" includes, but is not limited to dates of birth, social security numbers, addresses, telephone numbers, and/or other personal information.

¹⁴ In the 4th interim release dated February 16, 2016, the FBI inadvertently applied FOIA exemption (b)(7)(E)-7 on Bates pages Poitras-231, 237-238, 243-244, and 246-247. The FBI is asserting FOIA exemption (b)(7)(D)-1 in place of FOIA exemption (b)(7)(E)-7 on Bates pages Poitras-231, 237-238, 243-244, and 246-247.

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES ¹¹	INFORMATION WITHHELD
(b)(7)(E)-2	Internal FBI Secure Email or IP Address, Intranet/Web Address
(b)(7)(E)-3	Dates and/or Types of Investigations (Preliminary or Full Investigations)
(b)(7)(E)-4	Identity and/or Location of FBI or Joint Units, Squads, Divisions
(b)(7)(E)-5 ¹⁵	Collection/ analysis of Information
(b)(7)(E)-6	Investigative Focus of Specific Investigation
(b)(7)(E)-7	Law Enforcement Strategies and Techniques for Addressing Techniques, Tactics, and/or Procedures (“TTPs”)
(b)(7)(E)-8	Monetary Payments for Investigative Techniques

EXEMPTION 1 – CLASSIFIED INFORMATION

(39) The FBI withheld classified information contained in these documents based on the standards articulated in the FOIA statute, 5 U.S.C. § 552(b)(1).¹⁶ Exemption 1 protects from disclosure those records that are:

- (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and
- (B) are in fact properly classified pursuant to such Executive Order.

(40) The FBI’s analysis of whether Exemption 1 permits the withholding of agency records consists of two significant steps. The FBI must determine first whether the information contained in the records qualifies for classification under the applicable Executive Order governing classification and protection of national security¹⁷ information, and second whether the information actually has been classified in compliance with the various substantive and

¹⁵ In the 4th interim release dated February 16, 2016, the FBI mistakenly indicated it had applied FOIA exemption (b)(7)(E)-7 on Bates page Poitras-249. The FBI is asserting FOIA exemption (b)(7)(E)-5 in place of FOIA exemption (b)(7)(E)-7 on Bates page Poitras-249.

¹⁶ My *in camera*, *ex parte* declaration provides additional detail concerning the classified information withheld, as a more detailed description on the public record of the withheld material would expose the very classified information that is exempt from disclosure.

¹⁷ Section 6.1 (cc) of E.O. 13526, § 6.1(cc) defines “National Security” as “the national defense or foreign relations of the United States.”

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procedural criteria of the Executive Order. E.O. 13526 presently governs the classification and protection of information that affects the national security, and prescribes the various substantive and procedural criteria. I am bound by the requirements of E.O. 13526 when making classification determinations.

(41) For information to be properly classified, and thus properly withheld from disclosure pursuant to Exemption 1, the information must meet the requirements set forth in E.O. 13526 § 1.1(a):

- (1) an original classification authority must have classified the information;
- (2) the information must be owned by, produced by or for, or be under the control of the United States Government;
- (3) the information must fall within one or more of the categories of information listed in § 1.4 of this order; and
- (4) the original classification authority must determine that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority must be able to identify or describe the damage.

(42) In my capacity as an original classification authority, I have determined that the information withheld pursuant to Exemption 1 is under the control of the United States Government, falls within applicable categories of E.O. 13526 §1.4, and requires a classification marking at the "Secret" level because the unauthorized disclosure of this information reasonably could be expected to cause serious damage to the national security. *See* E.O. 13526 §1.2(a)(2).

(43) In addition to these substantive requirements, certain procedural and administrative requirements of E.O. 13526 must be followed before information can be considered to be properly classified, such as proper identification and marking of documents. Accordingly, I made certain that all procedural requirements of E.O. 13526 were followed and

specifically that:

- (a) each document was marked as required and stamped with the proper classification designation, *see* E.O. 13526 § 1.6(a)(1) – (5);
- (b) each document was marked to indicate clearly which portions are classified and which portions are exempt from declassification as set forth in E.O. 13526 § 1.5(b), *see* E.O. 13526, § 1.6(a)(5)(c);
- (c) the prohibitions and limitations on classification specified in E.O. 13526 §1.7 were adhered to;¹⁸
- (d) the declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed; and
- (e) any reasonably segregable portion of these classified documents that did not meet the standards for classification under E.O. 13526 were declassified and marked for release, unless withholding was otherwise warranted under applicable law.

Defendant's Burden of Establishing Exemption 1 Claims

(44) I examined the information withheld in this case pursuant to Exemption 1 in light of the body of information available to me concerning the national defense and foreign relations of the United States. This information was not examined in isolation. Instead, each piece of information was evaluated with careful consideration given to the impact that disclosure of this information will have on other sensitive information contained elsewhere. Equal consideration was given to the impact that other information either in the public domain or likely known or suspected by present or potential adversaries of the United States would have upon the information I examined, and upon attempts by a hostile entity to analyze such information.

(45) In those instances where, in my judgment, the disclosure of this information could reasonably be expected to cause serious damage to the national security, and its withholding outweighed the benefit of disclosure, I exercised my prerogative as an original classification

¹⁸ I have determined on a document-by-document basis that information is classified and withheld subsequent to the receipt of plaintiff's FOIA request and that the classification decisions are justified.

authority, designated that information as classified in the interest of national security, and invoked Exemption 1 of the FOIA to prevent disclosure. Likewise, the justifications for the withheld classified information were prepared with the intent that they be read with consideration given to the context in which the classified information is found. This context includes not only the surrounding unclassified information, but also other information already in the public domain, as well as information likely known or suspected by other hostile intelligence entities. It is my judgment that any greater specificity in the descriptions and justifications set forth with respect to information relating to foreign government relations or foreign activities and intelligence sources and methods of the United States could reasonably be expected to jeopardize the national security of the United States, and as a result, further information concerning the withheld material and justifications for its withholding is being provided to the Court for its *ex parte*, *in camera* review. As demonstrated here and in the *in camera* submission, all information withheld pursuant to FOIA Exemption 1 has been appropriately classified pursuant to E.O. 13526.

(b)(1)-1 E.O. 13526, § 1.4(c)—Intelligence Activities, Sources, and Methods

(46) E.O. 13,526 § 1.4(c) authorizes the classification of “intelligence activities (including covert action), intelligence sources or methods, and cryptology,” in order to protect classified intelligence sources, methods, and activities utilized by the FBI for gathering intelligence data.

(47) An intelligence activity or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest. An intelligence method is used to indicate any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An

intelligence activity or method has two characteristics. First, the intelligence activity or method - - and information generated by it -- is needed by U. S. Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the activity or method if the viability, productivity and usefulness of its information is to be preserved. Information was withheld pursuant to Exemption 1 to protect intelligence methods utilized by the FBI for gathering intelligence data.

(48) The classified material here would, if disclosed, reveal actual intelligence activities and methods used by the FBI against specific targets of foreign counterintelligence investigations or operations; identify a target of a foreign counterintelligence investigation; or disclose the intelligence-gathering capabilities of the activities or methods directed at specific targets. The information obtained from the intelligence activities or methods is very specific in nature, provided during a specific time period, and known to very few individuals.

(49) The FBI (on its own or at the request of other agencies) protected information under FOIA Exemption (b)(1) and § 1.4(c) because the information is classified and the release of such information could reasonably be expected to cause serious damage to the national security for the following reasons: (a) disclosure would allow hostile entities to discover the current intelligence-gathering methods used; (b) disclosure would reveal current specific targets of FBI's national security investigations; and (c) disclosure would reveal the determination of criteria used and priorities assigned to current intelligence or counterintelligence investigations. With the aid of this detailed information, hostile entities could develop countermeasures that would, in turn, severely disrupt the FBI's intelligence-gathering capabilities. This severe disruption would also result in severe damage to the FBI's efforts to detect and apprehend violators of national security and criminal laws of the United States. This information is

currently and properly classified at the "Secret" level, in accordance with E.O. 13,526 § 1.4(c), and is exempt from disclosure pursuant to Exemption 1, as well Exemption 3/National Security Act of 1947, 50 U.S.C. § 3024(i)(1), as explained *infra*.

(50) The classified information withheld within these documents contains detailed intelligence activity information gathered or compiled by the FBI on a specific individual or organization of national security interest. The disclosure of this information could reasonably be expected to cause serious damage to the national security, as it would: (a) reveal the actual intelligence activity or method utilized by the FBI against a specific target; (b) disclose the intelligence-gathering capabilities of the method; and (c) provide an assessment of the intelligence source penetration of a specific target during a specific period of time. This information is properly classified at the "Secret" level and withheld pursuant to E.O. 13,526 § 1.4(c), and is exempt from disclosure pursuant to Exemption 1.

(51) It is my determination that the release of this information could permit hostile non-U.S. persons, entities, and foreign governments to appraise the scope, focus, location, target and capabilities of the FBI's intelligence-gathering methods and activities, and allow hostile agents to devise countermeasures to circumvent these intelligence activities or methods and render them useless in providing intelligence information. This revelation of intelligence activities and methods would severely disrupt the FBI's intelligence-gathering capabilities and could cause serious damage to our national security. This information is properly classified at the "Secret" level and withheld pursuant to E.O. 13526, § 1.4(c). Thus, the information is exempt from disclosure pursuant to Exemption 1.¹⁹

¹⁹ The FBI asserted coded category (b)(1)-1 on Bates numbered pages: Poitras-146, 148-152, 155, 160-161, 179-181, 205, 210, 220-221, 225-235, 237-241, 244-245, 296, 300, 311-312, 317, 328-329, 340, 343.

EXEMPTION 3 – INFORMATION PROTECTED BY STATUTE

(52) Exemption 3 protects information that is:

specifically exempted from disclosure by statute requiring . . . provided that such statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

5 U.S.C. § 552(b)(3).

(b)(3)-1 Grand Jury Information—Federal Rules of Criminal Procedure, Rule 6(e)

(53) In Category (b)(3)-1, the FBI has asserted Exemption (b)(3)-1 in conjunction with Rule 6(e) of the Federal Rules of Criminal Procedure to withhold Federal Grand Jury information. As relevant to 5 U.S.C. § 552 (b)(3)(B), Rule 6(e) is a statute enacted before the date of enactment of the OPEN FOIA Act of 2009. It is well-established that Rule (6)(e) embodies a broad, sweeping policy of preserving the secrecy of grand jury material regardless of the substance in which the material is contained. In the investigative records at issue, only that information which explicitly discloses matters occurring before a Federal Grand Jury has been withheld pursuant to Exemption (b)(3)-1. Specifically, the information withheld consists of the names and/or identifying information of third parties who were either subpoenaed to provide testimony or actually provided testimony to the Federal Grand Jury; the company names and/or employees served with Federal Grand Jury subpoenas; information identifying specific records subpoenaed by the Federal Grand Jury; and other information on the internal workings of the Federal Grand Jury.²⁰ The disclosure of this material would clearly violate the secrecy of the grand jury proceedings, revealing the inner workings that led to the information filed against the

²⁰ The FBI asserted coded category (b)(3)-1 on Bates numbered pages: Poitras-100, 104, 109-110, 113-123, 318-319, 327, 341-343.

plaintiff, as well as other possible violations being investigated. Accordingly, the FBI has properly asserted FOIA exemption (b)(3)-1 to withhold this information from disclosure. The FBI also relied on Exemptions 6 and 7(C) to protect information in some of these records.

(b)(3)-2 **50 U.S.C., § 3024(i)(1)**

(54) The FBI has asserted Exemption (b)(3)-2, at times in conjunction with Exemption (b)(1), to protect information pursuant to Section 102A(i)(1) of the National Security Act of 1947 (“NSA”), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), 50 U.S.C. § 3024 (i)(1), which provides that the Director of National Intelligence (“DNI”) “shall protect from unauthorized disclosure intelligence sources and methods.” As relevant to U.S.C. § 552 (b)(3)(B), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009. On its face, this federal statute leaves no discretion to the DNI about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 3024(i)(1) is absolute. See *CIA v. Sims*, 471 U.S. 159 (1985).

(55) To fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(i)(1). The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

(56) As described above, Congress enacted the NSA, as amended by the IRTPA, to protect the IC’s sources and methods of gathering intelligence. Disclosure of such information presents the potential for individuals to develop and implement countermeasures, which would

result in the loss of significant intelligence information, relied upon by national policymakers and the IC. Given that Congress specifically prohibited the disclosure of information pertaining to intelligence sources and methods used by the IC as a whole, I have determined that the FBI's intelligence sources and methods would be revealed if any of the withheld information is disclosed to plaintiff. Thus, the FBI is prohibited from disclosing information falling under 50 U.S.C. § 3024(i)(1). Accordingly, this information was properly withheld pursuant to Exemption (b)(3)-2.²¹

EXEMPTION 5 – PRIVILEGED INFORMATION

(57) FOIA exemption 5 exempts from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5).

(58) Exemption 5 has been construed to exempt documents or information normally privileged in the civil discovery context, and incorporates the attorney work product, attorney-client, and deliberative process privileges. The deliberative process privilege protects pre-decisional, deliberative communications that are part of a process by which agency decisions are made. It protects opinions, advice, evaluations, deliberations, proposals, or recommendations that form part of an agency decision-making process, as well as the selection and sorting of factual information relied upon as part of the decision-making process.

(59) In order to apply Exemption 5, agencies must first satisfy the threshold requirement – *i.e.*, show that the information protected was “inter-agency or intra-agency.” As it pertains to the documents withheld pursuant to Exemption 5 in this case, the inter-agency and/or intra-agency character of the documents is readily apparent on their face or by the context in

²¹ The FBI asserted coded category (b)(3)-2 on Bates numbered pages: Poitras-151, 160-161, 179-181, 205, 210, 220-221, 225-234, 238-240, 244-245, 296, 300, 311-312, 317, 328-329, 340, 343.

which they appear. The documents were generated and distributed in the context of internal FBI discussions or communications between the FBI and other federal agencies, as will be further demonstrated in the following paragraphs. Agencies must next satisfy the elements of the pertinent privilege. With respect to the deliberative process privilege, agencies must show that the withheld information was both pre-decisional – *i.e.*, antecedent to a final agency decision – and deliberative – *i.e.*, part of the process in which the agency engaged in an effort to reach a final decision (whether or not any final decision was ever reached). The satisfaction of the particular elements is discussed in further detail in the following paragraphs.

(b)(5)-1 Deliberative Process Privilege

(60) The FBI asserted exemption (b)(5)-1 to protect privileged deliberative materials. The deliberative process privilege protects the internal deliberations of the government by exempting from release recommendations, analyses, speculation and other non-factual information prepared in anticipation of agency decision-making. The general purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions. Thus, material containing or prepared in connection with the formulation of opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or recommendations may properly be withheld. Release of this type of information would have an inhibitive effect upon the development of policy and administrative direction of an agency because it would chill the full and frank discussion between agency personnel regarding a decision. If agency personnel knew that their preliminary opinions, evaluations and comments would be released for public consumption, they may be more circumspect in what they put in writing, and thereby, impede a candid discussion of the issues surrounding a decision.

(61) To invoke the deliberative process privilege, an agency must show that an allegedly exempt document is both (a) “pre-decisional” – antecedent to the adoption of agency policy; an agency must also pinpoint an agency decision or policy to which document contributed...or...identify a decision-making process to which a document contributed – and (b) “deliberative” – a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters, reflects the give and take of the consultative process, and bears on the formulation or exercise of agency policy-oriented judgment. Furthermore, an agency must identify the role of a contested document in a specific deliberative process.

(62) The FBI asserted Exemption 5 to withhold an intra-agency analysis from the New York Field Office (“NY FO”). In this analysis the NY FO is discussing results of database checks conducted to aid in the investigation at issue and whether a court order or coordination with other agencies needed to be considered. On the face of the information provided, it is unclear if the FBI took any of these actions; therefore, the withheld information details pre-decisional analysis between NY FO personnel. The NY FO is analyzing, deliberating, sorting and modifying ideas and providing recommendations on how to further advance the investigation. The advisory and deliberate nature of this information is evidenced by the word “recommendations” preceding the redaction block on Poitras-158. Accordingly, because the information consists of preliminary opinions, recommendations, evaluations, and comments of FBI staff, and because release of these exempted materials would chill the full and frank discussion between agency personnel, the FBI has properly withheld this information pursuant to FOIA exemption (b)(5)-1.²²

²² The FBI asserted coded category (b)(5)-1 on Bates numbered pages: Poitras-158-159, 163-164.

EXEMPTION 7 THRESHOLD

(63) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Pursuant to 28 USC §§ 533, 534, and Executive Order 12333 as implemented by the Attorney General's Guidelines for Domestic FBI Operations ("AGG-DOM") and 28 CFR § 0.85, the FBI is the primary investigative agency of the federal government with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and further the foreign intelligence objectives of the United States. Under this investigative authority, the responsive records herein were compiled for the following specific law enforcement purpose.

(64) The plaintiff's investigative main file was compiled during the FBI's criminal investigation of plaintiff's possible involvement with anti-coalition forces during her time in Iraq as an independent media representative. Thus, these records were compiled for a law enforcement purpose and they squarely fall within the law enforcement duties of the FBI; therefore, the information readily meets the threshold requirement of Exemption (b)(7).

EXEMPTIONS 6 AND 7(C) – UNWARRANTED INVASION OF PERSONAL PRIVACY²³

(65) 5 U.S.C. § 552 (b)(6) exempts from disclosure "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)(7)(C) exempts from disclosure:

²³ The practice of the FBI is to assert Exemption (b)(6) in conjunction with Exemption (b)(7)(C). Although the balancing test for Exemption (b)(6) uses a "would constitute a clearly unwarranted invasion of personal privacy" standard and the test for Exemption (b)(7)(C) uses the lower standard of "could reasonably be expected to constitute an unwarranted invasion of personal privacy," the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public's interest in disclosure under the analysis of both exemptions.

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(66) In withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. For purposes of this analysis, a public interest exists when information would shed light on the FBI's performance of its mission to protect and defend the United States against terrorists and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In each instance where information was withheld pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI determined that the individuals' privacy interests outweighed the public interest, if any, in the information.

(b)(6)-1 and (b)(7)(C)-1 **Names and/or Identifying Information of FBI Special Agents and Support Personnel**

(67) Exemptions (b)(6)-1 and (b)(7)(C)-1 have been asserted to protect the names of FBI Special Agents ("SAs") who are responsible for conducting, supervising, and/or maintaining the investigative activities in this pending investigation and related investigations. These responsibilities included conducting interviews and compiling information, as well as reporting on the status of investigations. Assignments of SAs to any particular investigation are not by choice. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various

criminal and national security violation cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years. These individuals may seek revenge on the agents and other federal employees involved in a particular investigation. The publicity associated with the release of an agent's identity in connection with a particular investigation could trigger hostility toward a particular agent. The FBI could identify no discernible public interest in the disclosure of this information because disclosure of the names and identifying information of FBI SAs would not shed light on the operations and activities of the FBI.

(68) The names of FBI support employees were also protected. Support personnel are assigned to handle tasks related to the official investigations reflected in the documents responsive to plaintiff's FOIA request. They were, and possibly are, in positions of access to information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. Thus, these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, the FBI concluded that no public interest would be served by disclosing the identities of these FBI support employees to the general public because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Accordingly, after balancing these employees' substantial privacy interests against the non-existent public interest, the FBI properly protected the names and identifying information of SAs and support personnel pursuant to Exemptions 6 and 7(C).²⁴

²⁴ The FBI asserted coded categories (b)(6)-1 and (b)(7)(C)-1 on Bates numbered pages: Poitras-2, 4, 7-8, 45, 47, 52-53, 56-57, 62-63, 68, 96, 98-99, 103, 108-109, 111, 113, 115-117, 123-124, 127-132, 134, 136, 138, 140, 144-146,

(b)(6)-2 and (b)(7)(C)-2 **Names and/or Identifying Information of Local Law Enforcement Personnel**

(69) In Category (b)(6)-2 and (b)(7)(C)-2, the FBI protected the names and identifying information of local law enforcement employees. These employees were acting in their official capacities and aided the FBI in the law enforcement investigative activities reflected in the records responsive to plaintiff's requests. The rationale for protecting the identities of FBI SAs discussed in ¶¶ 67-68, *supra.*, applies equally to the names of these local law enforcement employees. Release of the identities of these law enforcement employees could subject them as individuals to unnecessary and unwelcome harassment that would invade their privacy, and could cause them to be targeted for compromise. In contrast, disclosure of this information would serve no public interest because it would not shed light on the operations and activities of the FBI. Accordingly, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).²⁵

(b)(6)-3 and (b)(7)(C)-3 **Names and/or Identifying Information of Third Parties of Investigative Interest**

(70) The FBI asserted exemptions (b)(6)-3 and (b)(7)(C)-3 to protect the names and/or identifying information of third parties who were of investigative interest to the FBI. Identifying information includes, but is not limited to, names, dates of birth, social security numbers, addresses, telephone numbers, and/or other personal information. Being identified as a subject of a domestic terrorism or criminal investigation carries a strong negative connotation and a

148-150, 153-155, 157, 162, 164, 168, 170, 172, 174-175, 179, 181, 183-185, 189, 191, 193, 195, 197, 199, 201, 205-206, 210-212, 217, 220, 225, 230, 234, 236, 240, 242, 245, 247-248, 252-277, 279-289, 295, 301, 305-306, 310, 320, 326, 328, 331-332, 335, 337, 339.

²⁵ The FBI asserted coded categories (b)(6)-2 and (b)(7)(C)-2 on Bates numbered pages: Poitras-1, 4-5, 7, 45, 48-49, 51, 53-54, 56-57, 59, 61-63, 65, 67-69, 96-99, 103, 111, 115, 117, 140, 144, 146, 150, 154, 157, 164-165, 168, 170, 174-175, 179, 183-185, 187, 189, 191, 195, 197, 199, 201, 206, 211-212, 216, 220, 225, 230, 236, 242, 248, 252-259, 261, 263, 272, 288-289, 295, 301, 305-306, 310, 315-320, 335, 339-343.

stigma. Release of the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Accordingly, the FBI has determined that these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, disclosing personal information about these individuals would not significantly increase the public's understanding of the FBI's performance of its mission and so the FBI concluded that there was no public interest here sufficient to override these individuals' substantial privacy interests. For these reasons, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).²⁶

(b)(6)-4 and (b)(7)(C)-4 Names and/or Identifying Information of Third Parties Merely Mentioned

(71) Exemptions (b)(6)-4 and (b)(7)(C)-4 were asserted to protect the names and identifying information of third parties who were merely mentioned in the criminal investigative files containing information responsive to plaintiff's request. The FBI has information about these third parties in its files because these individuals came into contact directly or indirectly with subject of FBI investigation. These individuals were not of investigative interest to the FBI. These third parties maintain substantial and legitimate privacy interests in not having this information disclosed and thus, being connected with a criminal investigation. Disclosure of these third parties' names and/or identifying information in connection with an FBI investigation of criminal activities carries an extremely negative connotation. Disclosure of their identities would subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them. The FBI then considered whether there was any public interest that would override these privacy interests, and concluded that disclosing information

²⁶ The FBI asserted coded categories (b)(6)-3 and (b)(7)(C)-3 on Bates numbered pages: Poitras-109, 117-119, 121-123, 150-151, 157-161, 163, 166-167, 169-171, 181, 190-192, 196-198, 201-204, 206-209, 212-223, 225-227, 230-234, 236, 238-240, 242, 244-245, 248-249, 307-309, 316-319, 321-322, 327, 335, 339-344.

about individuals who were merely mentioned in an FBI investigative file would not significantly increase the public's understanding of the operations and activities of the FBI. Accordingly, the FBI properly protected these individuals' privacy interests pursuant to FOIA exemptions 6 and 7(C).²⁷

(b)(6)-5 and (b)(7)(C)-5 **Names and/or Identifying Information of Third Parties Who Provided Information to the FBI**

(72) In Category (b)(6)-5 and (b)(7)(C)-5, the FBI protected the names and identifying information of individuals who were interviewed and/or provided information to the FBI during the course of its investigation of plaintiff.

(73) The FBI has found that information provided by individuals during an interview is one of the most productive investigative tools used by law enforcement agencies. The largest roadblock to successfully obtaining the desired information through an interview is fear by the interviewee that his/her identity will be exposed and consequently, that he/she could be harassed, intimidated, or threatened with legal or economic reprisal, possible physical harm, or even death. In order to surmount these obstacles, persons interviewed by the FBI must be assured that their names and personally-identifying information will be held in the strictest confidence. The continued access by the FBI to persons willing to honestly relate pertinent facts bearing upon a particular investigation far outweighs any benefit the public might derive from disclosure of the names of those who cooperated with the FBI. Thus, the FBI has determined that these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, the FBI could identify no public interest in the disclosure of this information because disclosure of these third parties' names and identifying information would not shed light on or significantly increase the public's understanding of the operations and activities of the FBI.

²⁷ The FBI asserted coded categories (b)(6)-4 and (b)(7)(C)-4 on Bates numbered pages: Poitras-54-55, 97, 176, 186-187, 203-204, 208, 266, 290-291, 298, 314, 316.

Accordingly, the FBI properly protected these individuals' privacy interests pursuant to Exemptions 6 and 7(C).²⁸ The FBI is also relying on Exemption 7(D) to protect this information in some instances.

(b)(6)-6 and (b)(7)(C)-6 Names and/or Identifying Information of Non-FBI Federal Government Personnel

(74) The FBI asserted exemptions (b)(6)-6 and (b)(7)(C)-6 to protect the names and/or identifying information of personnel from non-FBI federal government agencies who provided information to or otherwise assisted the FBI in its investigation of plaintiff and/or others. The rationale for protecting the identities of other government employees is the same as the rationale for protecting the identities of FBI employees. See ¶¶ 67-68, *supra*. Publicity, adverse or otherwise, concerning the investigative participation of these other agency employees in an FBI investigation would seriously impair their effectiveness in assisting or participating in future FBI investigations. The privacy consideration also protects these individuals from unnecessary, unofficial questioning as to the FBI investigation. It is possible for a person targeted by such law enforcement action to carry a grudge which may last for years, and to seek revenge on the personnel involved in the criminal investigation at issue in these FBI records. The publicity associated with the release of their names and/or identifying information in connection with this particular investigation could trigger hostility towards them by such persons. Therefore, these employees maintain substantial privacy interests in protecting their identities. In contrast, there is no public interest to be served by the disclosure of these employees' names and/or identifying information because their identities, by themselves, would not demonstrate how the FBI performed its statutory mission and thus, would not significantly increase the public's

²⁸ The FBI asserted coded categories (b)(6)-5 and (b)(7)(C)-5 on Bates numbered pages: Poitras-132-139.

understanding of the FBI's operations and activities. Accordingly, the FBI properly protected these employees' privacy interests pursuant to FOIA exemptions 6 and 7(C).²⁹

EXEMPTION 7(A) – PENDING ENFORCEMENT PROCEEDINGS

(75) 5 U.S.C. § 552 (b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings.

(76) Application of this exemption requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a determination that release of the information could reasonably be expected to interfere with the enforcement proceeding.

Typically, the FBI asserts Exemption (b)(7)(A) for a variety of different documents in an investigative file, which the FBI then groups into functional categories and describes in greater detail. In this case, however, the FBI has asserted Exemption (b)(7)(A) in a limited fashion as explained below.

(b)(7)(A)-1 Information, If Disclosed, Could Reasonably be Expected to Interfere with Pending Law Enforcement Proceedings

(77) Exemption (b)(7)(A)-1 was asserted to protect file numbers of pending FBI investigations. The release of the file numbers pertaining to investigative activities of third parties of an on-going FBI investigation could result not only in the acknowledgment of the existence of an investigation, but also in the identification of suspects and thus jeopardize the investigation. The FBI has concluded that this information is intertwined with other ongoing investigations of known and suspected third party terrorists. The FBI has determined that disclosure of the information, in the midst of this active and ongoing investigation, could

²⁹ The FBI asserted coded categories (b)(6)-6 and (b)(7)(C)-6 on Bates numbered pages: Poitras-53-55, 57, 59-61, 63, 65-70, 96-97, 252-286, 290, 297-298, 313-314, 317-318, 337, 342.

reasonably be expected to interfere with these other investigations as well as any resulting prosecutions. As such, the release of this information would interfere with pending and prospective enforcement proceedings, including investigations and prosecutions; therefore, the FBI withhold this information pursuant to FOIA exemption (b)(7)(A)-1.³⁰

EXEMPTION 7(D) – CONFIDENTIAL SOURCE INFORMATION

(78) Exemption 7(D) protects “records or information compiled for law enforcement purposes” when disclosure:

could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

5 U.S.C. § 552(b)(7)(D).

(79) Numerous confidential sources report to the FBI on a regular basis; they provide information under express assurances of confidentiality and are “informants” within the common meaning of the term. Others are interviewed and/or provide information under implied assurances of confidentiality (*i.e.*, under circumstances from which assurances of confidentiality may be inferred). In either situation, these sources are considered to be confidential because they furnish information only with the understanding that their identities and the information they provided will not be divulged outside the FBI. Information provided by these sources is singular in nature, and if released, could reveal their identities. The FBI has learned through experience that sources assisting, cooperating with, and providing information to the FBI must be free to do

³⁰ The FBI asserted coded category (b)(7)(A)-1 on Bates numbered pages: Poitras-175-180, 183, 289-294, 328.

so without fear of reprisal. The FBI has also learned that sources must be free to furnish information to the FBI with complete candor and without the understandable tendency to hedge or withhold information because of fear that their cooperation with the FBI will later be made public. Sources providing information to the FBI should be secure in the knowledge that their assistance and their identities will be held in confidence.

(80) The release of a source's identity would forever eliminate that source as a future means of obtaining information. When the identity of one source is revealed, that revelation has a chilling effect on the activities and cooperation of other sources providing information to the FBI. Such a result would eliminate one of the FBI's most important means of collecting information and thereby severely hamper law enforcement efforts to detect and apprehend individuals engaged in the violation of federal criminal laws.

(b)(7)(D)-1 Foreign Government Agency Information Under Express Confidentiality

(81) In Category (b)(7)(D)-1, the FBI protected the identity as well as the information provided by an intelligence agency of a foreign government with an implicit understanding of confidentiality. The FBI has many agreements with foreign governments under which national security and/or criminal law enforcement information is exchanged. The FBI's conclusion that the foreign government agency at issue here expected confidentiality in its dealings with the FBI and with regard to the information it provided to the FBI is based on the Foreign Government Information Classification Guide #1 (The "G-1 Guide").³¹ The G-1 Guide governs classification of foreign government information that foreign governments have asked the FBI to protect over the course of time. The FBI uses the G-1 Guide to determine the level and duration of derivative

³¹ The G-1 Guide is issued in accordance with E.O. 13526, 75 Fed. Reg. 707 (2010) and 75 Fed. Reg. 1013 (2010); the National Archives and Records Administration ("NARA") Information Security Oversight Office ("ISOO") Implementing Directive Number One;³¹ the FBI Security Policy Manual (rev. Apr. 3, 2006); and the designated Original Classification Authority ("OCA") of the Executive Assistant Director, FBI National Security Branch.

classification of foreign government information, including unmarked internal FBI documents which are being reviewed for possible classification.

(82) While ostensibly a classification document, the G-1 Guide also provides for confidentiality in non-national security areas. Specifically, it provides that the relationships between certain foreign law enforcement entities and the FBI will not be disclosed and will remain confidential, at the request of those foreign entities.

(83) As relevant here, according to the G-1 Guide, the foreign agency referenced in the records at issue here requested its relationship with the FBI be classified. That request evidences the foreign intelligence agency's expectation of confidentiality in its interactions with the FBI and with regard to the information it provided to the FBI for law enforcement/national security purposes under applicable information sharing agreements. The release of official United States Government documents revealing the existence of such a confidential relationship with a current and long-term foreign government partner, in contravention of law enforcement/national security information sharing agreements, reasonably could be expected to strain relations between the United States and the foreign government and lead to negative diplomatic, political, or economic repercussions. Furthermore, a breach of this relationship can be expected to have a chilling effect on the free flow of vital law enforcement and national security information to the FBI, which would impede the FBI's effectiveness in countering and solving crimes and protecting our national security.

(84) For the reasons explained above, the FBI properly concluded that the foreign government intelligence agency whose identity and information were protected in Category (b)(7)(D)-1 expected confidentiality in its dealings with the FBI, and consequently, there was an

express assurance of confidentiality.³² Accordingly, the FBI appropriately asserted Exemption 7(D) to protect this information.

(b)(7)(D)-2 Names, Identifying Data of a Source Under an Express Assurance of Confidentiality

(85) Under Exemption (b)(7)(D)-2, the FBI protected information regarding an individual source who is a source symbol numbered informant under an express grant of confidentiality. The withheld information includes the name, social security number, phone number, file number, source number, and the type of source expenditures. The disclosure of this information may likely reveal the confidential source's identity. The disclosure of a source's identity would forever neutralize that source as a future means of obtaining information. In addition, the identity of one source is revealed, that revelation has a chilling effect on the activities and cooperation of other sources. This is particularly significant in national security cases. It is only with the understanding of complete confidentiality that the aid of such sources can be enlisted, and only through this confidence that these sources can be persuaded to continue providing valuable assistance in the future. The FBI therefore properly protected information identifying this third party as well as the information they provided pursuant to FOIA exemption 7(D), cited at times in conjunction with Exemptions 6 and 7(C).³³

Exemption (b)(7)(E) – Investigative Techniques and Procedures

(86) 5 U.S.C. § 552 (b)(7)(E) provides for the withholding of:

law enforcement records which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to

³² The FBI asserted coded category (b)(7)(D)-1 on Bates numbered pages: Poitras-118, 151-155, 159, 163-164, 166-167, 212, 214-220, 222, 224, 231, 236-238, 240-247, 316, 339.

³³ The FBI asserted coded category (b)(7)(D)-2 on Bates numbered pages: Poitras-130-139.

risk circumvention of the law.

(b)(7)(E)-1 Sensitive File Number or Subfile Names

(87) The FBI asserted exemption (b)(7)(E)-1 to protect sensitive case file numbers.

The FBI has determined that this exemption is appropriate for protecting these file numbers. The release of file numbering convention identifies the investigative interest or priority given to such matters. Applying a mosaic analysis, suspects could use these numbers (indicative of investigative priority), in conjunction with other information known about other individuals and/or techniques, to change their pattern of activity to avoid detection, apprehension, or create alibis for suspected activities, etc. Thus, the FBI properly protected this information from disclosure pursuant to Exemption 7(E).³⁴

(b)(7)(E)-2 Internal FBI Secure Email or IP Address, Intranet/Web Address

(88) In Category (b)(7)(E)-2, the FBI protected internal e-mail addresses, non-public intranet web addresses, and a secure internal e-mail tool. With the current emerging news of data breaches and other hacking attempts, it is highly likely that the release of this type of information could allow individuals under investigation to exploit the FBI's Information Technology system to gain unauthorized access to, view and manipulate data on, or otherwise interfere with the FBI's non-public intranet protocol. Such actions could arm them with the information or ability to circumvent the law. Additionally, release of this information would allow individuals to disrupt official business and could subject FBI employees to harassing e-mails. Thus, the FBI properly protected this information from disclosure pursuant to FOIA

³⁴ The FBI asserted coded category (b)(7)(E)-1 on Bates numbered pages: Poitras-1, 4, 7-9, 45-48, 50-70, 96-99, 103, 108-118, 124, 127-128, 130-132, 134, 136, 138, 140, 144-147, 150-151, 154, 157-164, 166-175, 177-180, 183-216, 218, 220-231, 236-246, 248-252, 254-256, 258, 260, 262, 264, 266, 268-270, 272, 274, 276, 278, 280, 282-284, 286, 288-296, 301-311, 320-328, 330, 332, 335-344.

exemption 7(E).³⁵

(b)(7)(E)-3 Dates and/or Types of Investigations (Preliminary or Full Investigations)

(89) Exemption (b)(7)(E)-3 was asserted to protect information pertaining to the types and dates of investigations referenced in the records at issue. Specifically, the information withheld, when referenced in connection with an actual investigation and not in general discussion, pertains to the type of investigation, whether it is a “preliminary” or “full” investigation and the date it was initiated. Disclosure of this information would allow individuals to know the types of activities that would trigger a full investigation as opposed to a preliminary investigation, and the particular dates that the investigation covers, which would allow individuals to adjust their behavior accordingly. Moreover, the knowledge that a specific activity in general warrants investigation could likewise cause individuals to adjust their conduct to avoid detection. Because disclosure of this information could reasonably be expected to impede the FBI’s effectiveness and potentially aid in circumvention of the law, the FBI has properly withheld this information pursuant to Exemption 7(E).³⁶

(b)(7)(E)-4 Identity and/or Location of FBI or Joint Units, Squads, Divisions

(90) The FBI asserted exemption (b)(7)(E)-4 to protect methods and techniques involving the location and identity of FBI units and/or joint units that were involved in this investigation. The office location and units are usually found in the administrative headings of internal FBI documents. These headings identify the locations of the office and unit that originated or received the documents. Disclosure of the location of the units conducting the

³⁵ The FBI asserted coded category (b)(7)(E)-2 on Bates numbered pages: Poitras-8, 98, 148-149, 248-249, 333.

³⁶ The FBI asserted coded category (b)(7)(E)-3 on Bates numbered pages: Poitras-1, 45, 48, 51, 57-58, 63-64, 98, 109, 111, 117, 124, 140, 155, 157-158, 164, 168, 175-176, 180-181, 183, 185-186, 189, 195, 212, 225, 252, 254-256, 258, 260, 262, 264, 268, 270, 272, 274, 276, 278, 280, 282-284, 286, 289-290, 293, 296-297, 301, 306, 311-313, 338,

investigation would reveal the targets, the physical areas of interest of the investigation, and when taken together with the other locations if identified, could establish a pattern or “mosaic” that identification of a single location would not. If the locations are clusters in a particular area, it would allow hostile analysts to avoid or circumvent those locations, especially if one or more location appeared with frequency or in a pattern. This would disrupt the method of the investigative process and deprive the FBI of valuable information. The withholding of the units involved is justifiable as well under a similar rationale. Once identified, the unit’s areas of expertise become known and an individual would then be aware of exactly what the law enforcement agency’s interest is. For example, knowing that a unit whose focus is on financial crimes is involved is quite different information than knowing that the unit involved has a focus on crimes of violence. This knowledge could allow a subject to employ countermeasures targeted toward concealing particular types of behavior and/or to avoid altogether activities in a particular location. The revelation of the involvement that one or more units of differing focuses is critical information that can allow the adjustment of behaviors and activities to avoid detection. Accordingly, the FBI properly withheld this information pursuant to Exemption 7(E).³⁷

(b)(7)(E)-5 Collection/Analysis of Information

(91) In Category (b)(7)(E)-5,³⁸ the FBI protected methods the FBI uses to collect and analyze the information it obtains for investigative purposes. The release of this information

³⁷ The FBI asserted coded category (b)(7)(E)-4 on Bates numbered pages: Poitras-4, 7-9, 45-46, 52, 54, 57-61, 63-67, 69, 97-98, 109, 111-115, 117-119, 123-128, 130-132, 134, 136, 138, 140, 144-155, 157-169, 172-173, 175-183, 185-190, 193-196, 199-210, 212-232, 234, 236-261, 263-287, 289-294, 297, 301, 305-309, 313, 316-318, 320, 326-330, 332-335, 339-344.

³⁸ In the 4th interim release dated February 16, 2016, the FBI inadvertently indicated it had applied FOIA exemption (b)(7)(E)-7 on Bates page Poitras-249. The only codes applied to FOIA exemption (b)(7)(E) on Bates page Poitras-249 are (b)(7)(E)-1, 2, 4, 5.

would disclose the identity of methods used in the collection and analysis of information, including how and from where the FBI collects information and the methodologies employed to analyze it, once it is collected. Such disclosures would enable subjects of FBI investigations to circumvent similar currently used techniques. The relative utility of these techniques could be diminished if the actual techniques were released in this matter. This in turn would facilitate the accumulation of information by investigative subjects regarding the circumstances under which the specific techniques were used or requested and the usefulness of the information obtained. Release of this type of information would enable criminals to educate themselves about the techniques employed for the collection and analysis of information and therefore allow these individuals to take countermeasures to circumvent the effectiveness of these techniques and to continue to violate the law and engage in criminal activities. The FBI has properly withheld this information pursuant to FOIA exemption 7(E).³⁹

(b)(7)(E)-6 Investigative Focus of Specific Investigation

(92) Exemption (b)(7)(E)-6 has been asserted to protect the investigative focus of specific FBI investigations. Revealing the broader investigative focuses as they relate to interconnected investigations would reveal the scope of the FBI's programs and the strategies it plans to pursue in preventing and disrupting criminal activity. Release of this type of information would allow criminals to gauge the FBI's strengths and weakness within certain areas of the criminal arena and structure their activities in a manner that avoids detection and disruption by the FBI. For example, if criminals knew that certain individuals were being investigated based on their association with one particular individual, they would be able to

³⁹ The FBI asserted coded category (b)(7)(E)-5 on Bates numbered pages: Poitras-1-2, 4-8, 45-52, 113-114, 117-126, 148, 153, 157-172, 177-181, 184, 189-193, 195-199, 202-210, 212-216, 218-227, 230-234, 236, 238-240, 242, 244-245, 247-250, 252-286, 289, 291-293, 299, 306-309, 316-319, 321-327, 329-330, 332-333, 339-341, 343-344.

discern that their association with this particular individual may cause them to be the subjects of an FBI investigation. They may then decide to cut ties with this individual and find different ways to pursue criminal activities thus circumventing the FBI's efforts. As releasing the focus of specific FBI investigations would enable criminals to circumvent the law, this information is exempt from disclosure pursuant to Exemption 7(E).⁴⁰

(b)(7)(E)-7 Law Enforcement Strategies and Techniques for Addressing Techniques, Tactics, and/or Procedures ("TTPs")

(93) The FBI asserted FOIA exemption (b)(7)(E)-7 to protect information in two ways: (1) strategies and law enforcement techniques utilized by the United States military and the FBI for countering TTPs of a terrorist organization in Iraq and (2) TTPs utilized by that terrorist organization. With respect to (b)(7)(E) being asserted to protect the United States military's TTPs, the FBI protected an investigative technical tool used by both the military and the FBI. While this particular tool is known by the public, the specific circumstances of its use, and at times the mere fact that it was used at all, are not. Accordingly, the FBI protected a specific instance where the tool was used by the United States military. Although the FBI protected this tool's use in a military context, the FBI also uses this specific tool in various domestic and international security and criminal investigations to gather singular information and intelligence to support those investigations. Disclosure of the use of this specific technical tool in this context could reasonably be expected to risk circumvention of the law or enhance criminals' and terrorists' ability to evade and avoid detection during combat because it would provide these nefarious individuals key details regarding when this technology is employed and by extension

⁴⁰ The FBI asserted coded category (b)(7)(E)-6 on Bates numbered pages: Poitras-45, 57, 63, 98, 109, 111, 113, 115, 117, 124, 127-128, 130-131, 144-146, 150, 153-154, 157, 164, 168, 175, 179, 183, 189, 195, 201, 206, 212, 218, 220, 225, 230, 236, 242, 248, 289, 297-301, 306, 311-320, 328, 335, 343.

the capabilities, limitations, and/or vulnerabilities while it is in use whether for military or investigative purposes of the military and the FBI.

(94) The FBI also asserted (b)(7)(E)-7 to protect the TTPs utilized by the terrorist organization that planned and coordinated the ambush attack against the United States military that triggered this investigation. This information is used by the Intelligence Community (“IC”) to prevent future terrorist attacks and to gain knowledge of the inner workings of terrorist organizations. Disclosure of this specific information could reasonably be expected to circumvent efforts to safeguard national security because disclosure would (1) aid potential terrorists in planning and coordinating attacks against Americans on foreign soil, (2) reveal how the FBI exploits weaknesses of certain terrorist organizations, and (3) reveal the FBI’s strategy in tracking down terrorist organizations and allow those organizations to circumvent United States national security and/or criminal law. With the aid of this detailed information, members of terrorist or insurgent organizations could also develop countermeasures which would, in turn, severely disrupt the FBI’s intelligence gathering capabilities. This severe disruption would severely damage the FBI’s efforts to detect, deter, and apprehend violators of United States national security and criminal laws. In sum, the withheld information constitutes an enforcement roadmap for conducting terrorist activity investigations. The FBI continues to use the same or similar strategies and techniques in this roadmap to conduct investigations into terrorist activity. As a result, the FBI properly withheld this information pursuant to Exemption 7(E).⁴¹

(b)(7)(E)-8 Monetary Payments for Investigative Techniques

(88) In Category (b)(7)(E)-8, the FBI protected monetary amounts requested by FBI personnel and/or paid by the FBI in order to implement particular investigative techniques. The

⁴¹ The FBI asserted coded category (b)(7)(E)-7 on Bates numbered pages: Poitras-69-70, 97.

FBI has limited resources that it must allocate strategically in order to effectively pursue its law enforcement and intelligence gathering missions. Revealing the amount of money the FBI has paid or plans to pay in order to implement certain investigative techniques would reveal the FBI's level of focus on certain types of law enforcement or intelligence gathering efforts. Revealing this level of focus would reveal how the FBI plans to allocate its limited resources and essentially paint a picture as to where the FBI's strengths and weaknesses lie within the spectrum of illegal activities it is mandated to investigate. Releasing the information would give criminals the opportunity to structure their activities in a manner which avoids the FBI's strengths and exploits its weaknesses. Because release of this type of information would enable criminals to circumvent the law, this information has been redacted pursuant to Exemption 7(E).⁴²

**DOCUMENTS REFERRED TO OTHER GOVERNMENT AGENCIES ("OGAs")
FOR DIRECT RESPONSE TO PLAINTIFF**

(95) As part of its search for and processing of records responsive to plaintiff's request, the FBI identified a number of pages containing information and/or equities originating with numerous OGAs. In accordance with DOJ regulations, 28 C.F.R. § 16.4, the FBI referred the documents to those agencies for direct response to plaintiff.

U.S. Army Criminal Investigation Command ("ACIC")

(96) On February 2, 2015, the FBI referred 35 pages to ACIC for a direct response to plaintiff. These pages are identifiable as Poitras-10-44. By letter dated October 2, 2015, the ACIC notified plaintiff that pages marked 000001 thru 000035 are partial denied pursuant to FOIA exemptions (b)(6), (b)(7)(C), and (b)(7)(E). ACIC also informed plaintiff that they are not the originating agency of pages 000014 thru 000021, and, as explained below, the documents in

⁴²The FBI asserted coded category (b)(7)(E)-8 on Bates numbered pages: Poitras-130-139.

question have been referred to the U.S. Army for a direct reply to plaintiff. These pages are identifiable as Poitras-23-30. Detailed accountings of the results of the referrals to ACIC are described in ACIC's *Vaughn* submission in this case. (**See Exhibit K.**)

U.S. Army

(97) By letter dated October 2, 2015, ACIC referred pages 000014 thru 000021 to Army's FOIA Office. These pages are identifiable as Poitras-23-30. The Army's FOIA Office will be processing the 7 pages for a direct response to plaintiff. If the Court requests, the Army can provide a separate declaration on its own behalf detailing the justifications of its withholdings, if any.

Executive Office for United States Attorney ("EOUSA")

(98) On February 3, 2015, the FBI referred 4 pages to EOUSA for a direct response to plaintiff. These pages are identifiable as Poitras-101-102, 105-106. By letter dated May 21, 2015, EOUSA notified plaintiff that pages are being withheld in full pursuant to FOIA exemption (b)(3). EOUSA's accounting of the referral results will be described in EOUSA's *Vaughn* submission in this case. (**See Exhibit L.**)

DOCUMENTS REFERRED TO OGAs FOR COORDINATION WITH THE FBI

(99) The FBI also identified pages, some in their entireties and some in part, containing information and/or equities originating with OGAs. In accordance with DOJ regulations, 28 C.F.R. § 16.4(d), the FBI coordinated with these OGAs with equities in these documents to determine how the OGAs wanted the FBI to treat their information contained within the responsive FBI documents.

Department of the Air Force (“AF”)

(100) On February 9, 2015, the FBI referred 19 pages to the AF for coordination. These pages are identifiable as Poitras-311-319, 335-344. On April 19, 2015, the FBI was notified to withhold in full all AF equities pursuant to FOIA exemption (b)(1). If the Court requests, the AF can provide a separate declaration on its own behalf detailing the justifications of these withholdings.

U.S. Army Criminal Investigation Command (“ACIC”)

(101) On March 4, 2015, the FBI referred 15 pages to ACIC for coordination.⁴³ On August 11, 2015, the FBI was notified to withhold Army-originated information pursuant to FOIA exemptions (b)(6) and (b)(7)(C). The justification for these withholdings will be addressed in ACIC’s *Vaughn* submission in this case. (**See Exhibit K.**)

U.S. Army Intelligence and Security Command (“AISC”)

(102) On February 4, 2015, the FBI referred 7 pages to the AISC for coordination. These pages are identifiable as Poitras-157-163. On February 12, 2015, the FBI was notified to withhold Army-originated information pursuant to FOIA exemption (b)(6). If the Court requests, AISC can provide a separate declaration on its own behalf detailing the justifications of these withholdings.

Central Intelligence Agency (“CIA”)

(103) On February 5, 2015, the FBI referred 17 pages to CIA for coordination. These pages are identifiable as Poitras-242-251, 328-334. On June 23, 2015, the FBI was notified to withhold in full all CIA equities pursuant to PA exemptions (j)(1) and (k)(1) and FOIA

⁴³ The documents were originally referred to the National Guard Bureau on February 9, 2015. On February 27, 2015, the National Guard Bureau notified the FBI that the referred documents belonged to the ACIC. For the FBI’s reference purposes, these pages are identifiable as Poitras-57-61, 335-344.

exemptions (b)(1) and (b)(3). Detailed accountings of the results of the referral to CIA are described in CIA's *Vaughn* submission in this case. (**See Exhibit M.**)

(104) On August 31, 2015, the FBI referred 5 classified FBI documents containing information concerning CIA equities for coordination. These pages are identifiable as Poitras-146-149, 150-152, 154-156, 230-241. On September 16, 2015, the FBI was notified to withhold in full all CIA equities pursuant to FOIA exemptions (b)(1) and (b)(3). Exemption (b)(3) pertains to Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024. The justification for these withholdings will be addressed in CIA's *Vaughn* submission in this case. (**See Exhibit M.**)

Customs and Border Protection ("CBP")

(105) On August 31, 2015, the FBI referred 1 page to CBP for coordination. This page is identifiable as Poitras-153. On November 6, 2015, CBP informed the FBI to withhold portions of CBP-originated information pursuant to FOIA exemption (b)(7)(E). If the Court requests, CBP can provide a separate declaration on its own behalf detailing the justifications of these withholdings.

(106) On September 30, 2015, the Department of Homeland Security ("DHS") forwarded 25 pages⁴⁴ of FBI referred documents to CBP for a direct response to plaintiff and 53 pages⁴⁵ of FBI referred documents to CBP for coordination. On February 29, 2016 the Office of General Counsel ("OGC") of CBP notified FBI's OGC to withhold CBP equities pursuant to

⁴⁴ The FBI originally referred these documents to DHS on February 3, 2015. On October 20, 2015, the FBI was notified that the referred documents were forwarded to CBP on September 30, 2015. For the FBI's reference purposes, these pages are identifiable as Poitras-71-95.

⁴⁵ The FBI originally referred these documents to DHS on February 3, 2015. On October 20, 2015, the FBI was notified that the referred documents were forwarded to CBP on September 30, 2015. For the FBI's reference purposes, these pages were Bates numbered Poitras-289-294, 296-304, 306-309, 311-344.

FOIA exemption (b)(3) and (b)(7)(E). If the Court requests, CBP can provide a separate declaration on its own behalf detailing the justifications of these withholdings.

Department of State ("DoS")

(107) On February 3, 2015, the FBI referred 24 pages to DoS for coordination. These pages are identifiable as Poitras-157-163, 242-247, 289-294, 296-300. On October 1, 2015 via email, the FBI was notified to withhold in part portions of DoS's equities pursuant to FOIA exemption (b)(7)(C). On June 4, 2016 via email, the FBI was advised that the referred information originated with the Department of Transportation and DOS claims no equities in the referred documents.

Department of Transportation ("DoT")

(108) On June 6, 2016 the FBI referred 24 pages to DoT for coordination. These pages are identifiable as Poitras-157-163, 242-247, 289-294, 296-300. The FBI has requested DoT to review the information and return their response to the FBI by June 27, 2016, making any deletions deem appropriate, citing the exemptions claimed.

National Guard Bureau

(109) On February 9, 2015 the FBI referred 15 pages to the National Guard for coordination. These pages are identifiable as Poitras-57-61, 335-344. On February 27, 2015, the FBI was notified that the referred information originated with ACIC. On February 8, 2016, FBI's OGC confirmed with the National Guard that it is claiming no equities in the referred documents, including Bates pages Poitras-176, 186, 290, 297-298. The FBI advised National Guard it was going to withhold the names of third parties individuals the FBI can unequivocally determine from the face of the documents belong to National Guard members, on their behalf. The FBI was advised by the National Guard that the ACIC's *Vaughn* submission in this case will

address their withholdings. (See Exhibit K.)

SEGREGABILITY

(110) As discussed previously, the FBI identified 344 pages of records responsive to plaintiff's request. Of these, 1 page was RIF, 256 pages were RIP, and 87 pages were WIF.

(A) Pages RIF. During its review and processing of responsive records in this case, RIDS determined that 1 page could be released in full without redaction as there was no foreseeable harm to an interest protected by a FOIA exemption.

(B) Pages RIP. RIDS further determined that 256 pages could be released in part with redactions pursuant to the specific FOIA exemptions identified on these pages and described herein. These pages comprise a mixture of material that could be segregated for release and material that was withheld because release would trigger foreseeable harm to one or more interests protected by the cited FOIA exemptions on these pages. The protected information was either exempt itself or was so intertwined with non-exempt information that segregation of the non-exempt information was not reasonably possible without revealing exempt information or leaving nothing but meaningless words or sentence fragments.

(C) Pages WIF. RIDS determined 87 pages were required to be withheld in their entirety. RIDS determined 4 pages of these 87 pages were duplicates of other records released to plaintiff in whole or in part.⁴⁶ The remaining 83 pages were WIF since they were fully covered by one or more of the cited FOIA exemptions, or determined that any non-exempt information on these pages was so intertwined

⁴⁶ It is the policy of the FBI to withhold duplicate pages, in order to speed the processing of requests and reduce duplication costs for requesters. For purposes of this litigation, a deleted page sheet has been inserted in the location of the duplicate pages citing the original pages to which the duplicates correspond.

with exempt material that no information could be reasonably segregated for release. Any further segregation of this intertwined material would employ finite resources only to produce disjointed words, phrases, or sentences, that taken separately or together, would have minimal or no informational content.

CONCLUSION

(111) The FBI has performed adequate and reasonable searches for responsive records, processed all such records, and released all reasonably segregable non-exempt information from documents responsive to plaintiff's FOIPA request. The FBI denied access to these records pursuant to Privacy Act exemption (j)(2). The FBI processed the responsive records under the access provisions of the FOIA to achieve maximum disclosure. The FBI asserted FOIA exemptions 1, 3, 5, 6, 7(A), 7(C), 7(D), and 7(E) to withhold information from these records as release of this information would reveal classified information; would disclose information protected by a statute; would reveal privileged information; would cause a clearly unwarranted invasion of personal privacy, or could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to interfere with enforcement proceedings; could reasonably be expected to disclose the identities of confidential sources and the information they provided; and/or would disclose techniques and procedures for law enforcement investigations. After extensive review of the documents at issue, I have determined there is no further non-exempt information that can be reasonably segregated and released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through M attached hereto are true and correct copies.

Executed this 6th day of June, 2016.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

David L. Sobel

Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

January 24, 2014

BY CERTIFIED MAIL – 70131710000104259885

Federal Bureau of Investigation
Att'n: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras. A "privacy waiver" form executed by Ms. Poitras and authorizing disclosure of responsive records to me is attached to this request.

I request disclosure of all agency records concerning, naming, or relating to Ms. Poitras. I specifically request that the FBI perform a complete and thorough search of all filing systems and locations for all records maintained by the Bureau pertaining to Ms. Poitras. Such a search should include, but not be limited to, files and documents captioned in (or whose captions include) her name in the title. The FBI should search the Central Records System, Electronic Surveillance Records (ELSUR), and Electronic Case File (ECF). Further, I specifically request that the Bureau conduct a text search of the ECF to identify all potentially responsive main and cross-reference files. The FBI's search should include "main" files and "see references."

In the event that you determine that some responsive material might be exempt from disclosure under FOIA, please indicate the specific exemption or exemptions upon which the agency relies. Ms. Poitras agrees to incur legally assessable processing fees not to exceed \$100.

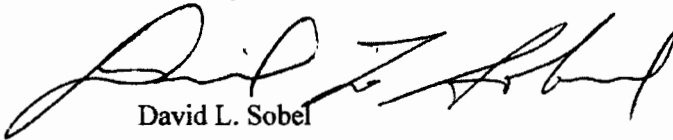
As the FOIA requires, I will anticipate your response to this request within twenty working days. Please feel free to contact me at the e-mail address or telephone number indicated above if you wish to discuss this request.

29 JAN 2014

Federal Bureau of Investigation
January 24, 2014
Page two

Thank you for your prompt attention.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Sobel", written in a cursive style.

David L. Sobel

encl.

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ Laura PoitrasCitizenship Status ² U.S.Social Security Number ³ [REDACTED]Current Address 135 Hudson St., Apt. 3F, New York, NY 10013

FRCP 5.2

Date of Birth [REDACTED]Place of Birth Boston

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴ Laura PoitrasDate Jan 9, 2014**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

David L. Sobel, Esq.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

David L. Sobel
Attorney-at-Law
1818 N Street, N.W., Suite 410
Washington, DC 20036

CERTIFIED MAIL



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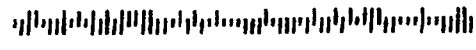
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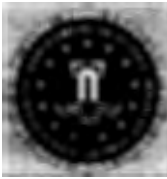
Federal Bureau of Investigation
Att'n: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

JAN 24 2014

22602484370



U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

February 19, 2014

MR. DAVID L. SOBEL
SUITE 410
1818 NORTH STREET, NORTHWEST
WASHINGTON, DC 20036

FOIPA Request No.: 1250943-000
Subject: POITRAS, LAURA

Dear Mr. Sobel:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [_____] Resident Agency / [_____] Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- Please check for the status of your FOIPA request at www.fbi.gov/foia.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the word "Sincerely,".

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division



May 29, 2015

BY CERTIFIED MAIL – 7013 1710 0000 9654 0398

Director
Office of Information Policy
United States Department of Justice
Suite 11050
1425 New York Avenue
Washington, D.C. 20530-0001

RECEIVED
JUN 03 2015
Office of Information Policy

RE: Freedom of Information Act Appeal – REFF-2015-01391

This letter constitutes an appeal under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras. A “privacy waiver” form executed by Ms. Poitras and authorizing disclosure of responsive records to me was attached to the original FOIA request, as submitted to the Federal Bureau of Investigation (“FBI”) and referred by the FBI to your agency.

By letter dated January 24, 2014 to the FBI, I requested disclosure of all agency records concerning, naming, or relating to Ms. Poitras. I requested “that the FBI perform a complete and thorough search of all filing systems and locations for all records maintained by the Bureau pertaining to Ms. Poitras” and indicated that “[s]uch a search should include, but not be limited to, files and documents captioned in (or whose captions include) her name in the title.” I also requested that the FBI “search the Central Records System, Electronic Surveillance Records (ELSUR), and Electronic Case File (ECF).” I further requested that the FBI conduct “a text search of the ECF to identify all potentially responsive main and cross-reference files” and that the FBI’s search “include ‘main’ files and ‘see references.’”

By letter dated February 19, 2014 (attached hereto), the FBI acknowledged receipt of my FOIA request. In its letter, the FBI assigned my request reference number 1250943-000.

After over a year of no further response from the FBI, by letter dated May 21, 2015 (also attached hereto), Susan B. Gerson, Assistant Director of the DOJ’s Executive Office for U.S. Attorneys, denied my request—which had been relabeled as request number REFF-2015-01391. Ms. Gerson’s letter indicated that the agency had located six (6) pages relevant to my request but that the agency was withholding in full (“WIF”) these documents. Ms. Gerson cited Federal Rule of Criminal Procedure 6(e) as the basis for her refusal to disclose the documents.

First, I hereby appeal the agency’s application of Federal Rule of Criminal Procedure 6(e).

Freedom of Information Act Appeal – REFF-2015-01391

May 29, 2015

Page 2 of 2

Second, Ms. Poitras has repeatedly been subject to detentions and interrogations when returning to the United States from foreign travel. This suggests a strong likelihood that the FBI and the DOJ each maintain more than six (6) pages of documents responsive to my request. As such, I hereby appeal the agency's contrary determination.

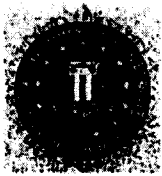
As FOIA requires, I will anticipate you respond to this appeal within twenty (20) working days. Thank you for your prompt attention to this matter.

Sincerely,

Handwritten signature of David L. Sobel in black ink, including the initials "JW" at the end.

David L. Sobel
Electronic Frontier Foundation
sobel@eff.org

Enclosures.



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

February 19, 2014

MR. DAVID L. SOBEL
SUITE 410
1818 NORTH STREET, NORTHWEST
WASHINGTON, DC 20038

FOIPA Request No.: 1250043-000
Subject: POITRAS, LAURA

Dear Mr. Sobel:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [_____ Resident Agency / _____ Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- Please check for the status of your FOIPA request at www.fbi.gov/foia.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

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U.S. Department of Justice
Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W.
Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/eoip)

May 21, 2015

David Sobel
1818 N Street, NW, Suite 410
Washington, DC 20036

Re: Request Number: REFE-2015-01391 Date of Receipt: February 13, 2015
Subject of Request: Laura Poitras
Government Component that Referred Material: NSD FOIA/PA #15-027

Dear Mr. Sobel:

This is in reply to your Freedom of Information Act/Privacy Act request of January 24, 2014. Records were referred to us by the government component above for direct response to you.

The referred material has been considered under both the FOIA and the Privacy Act to provide you the greatest degree of access. Exemptions have been applied when deemed appropriate either for withholding records in full or for excising certain information. The exemptions cited are marked below. An enclosure to this letter explains the exemptions in more detail.

(B)(3) – FRCrP Rule 6(e)

We have reviewed approximately 6 page(s) of material:

- page(s) are being released in full (RIF);
- page(s) are being released in part (RIP);
- 6 page(s) are withheld in full (WIF) and
- page(s) were duplicate copies of material already processed.

This is the final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, Washington, DC 20530-0001, or you may submit an appeal through this Office's eFOIA portal at <http://www.justice.gov/oip/eoia-portal.html>. Your appeal must be received within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Susan B. Gerson
Assistant Director

Enclosure(s)

ADDENDUM TO THE EXPLANATION OF EXEMPTION SHEET

X Rule 6(e) of the Federal Rules of Criminal Procedure pertains to the Federal Grand Jury, its integrity and the secrecy surrounding the Jury.

Under the Freedom of Information Act, an agency has no discretion to release any record covered by an injunction, protective order, or court seal which prohibits disclosure. See GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 386-387 (1980); See also Robert Tyrone Morgan v. U.S. Dept. of Justice, 923 F.2d 195 (D.C. Cir. 1991).

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-01091
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et. al.)	
)	
Defendants.)	

Exhibit D



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

July 7, 2015

Mr. David L. Sobel
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109
sobel@eff.org

Re: Request No. 1250943

Dear Mr. Sobel:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on June 3, 2015.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number AP-2015-04130. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

David L. Sobel, Esq.
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109
sobel@eff.org

Re: Appeal No. AP-2015-04130
Request No. 1250943
CDT:JMB

VIA: E-mail

Dear Mr. Sobel:

You attempted to appeal on behalf of your client, Laura Poitras, from the failure of the Federal Bureau of Investigation to respond to her request for access to records concerning herself.¹

Department of Justice regulations provide for an administrative appeal to the Office of Information Policy only after there has been an adverse determination by a component. See Disclosure or Production of Records or Information, 80 Fed. Reg. 18099, 18110 (Apr. 3, 2015) (to be codified at 28 C.F.R. pt. 16.8(a)). As no adverse determination has yet been made by the FBI, there is no action for this Office to consider on appeal.

As you may know, the Freedom of Information Act authorizes requesters to file a lawsuit when an agency takes longer than the statutory time period to respond. See 5 U.S.C. § 552 (a)(6)(C)(i). However, I can assure you that this Office has contacted the FBI and has been advised that your client's request is currently being processed. If your client is dissatisfied with the FBI's final response, she may appeal again to this Office.

This Office has forwarded a copy of your client's letter to the FBI. Your client should contact the FBI's Requester Service Center at 540-868-1535 for further updates regarding the status of her request.

Sincerely,

7/13/2015

X

A handwritten signature in cursive script, appearing to read "Christina D. Troiani".

Christina D. Troiani, Attorney-Advisor for
Sean O'Neill, Chief, Administrative Appeals Staff
Signed by: ctroiani

¹ Please be advised that the portion of your appeal concerning REFF-2015-01391 is being adjudicated in Appeal No. AP-2015-04128.



Federal Bureau of Investigation

Washington, D.C. 20535

October 14, 2015

MS. LAURA POITRAS
 c/o DAVID L. SOBEL, ESQUIRE
 ELECTRONIC FRONTIER FOUNDATION
 SUITE 640
 5335 WISCONSIN AVENUE, NW
 WASHINGTON, DC 20015-2052

FOIPA Request No.: 1250943-000
 Subject: POITRAS, LAURA

Laura Poitras v. DOJ, et. al.
 Civil Action No: 1:15-cv-01091

Dear Mr. Sobel:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
<u>Rule 6(e), Federal Rules of</u>	<input checked="" type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
<u>Criminal Procedure</u>	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

145 pages were reviewed and 62 pages are being released.

- Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].
 - This information has been referred to the OGA(s) for review and direct response to you.
 - We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.
- In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

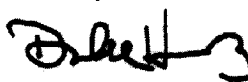
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

Although your request is in litigation, we are required by 5 § USC 552 (a)(6)(A) to provide you the following information concerning your right to appeal. You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☑ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

In response to your client's Freedom of Information/Privacy Acts (FOIPA) request submitted to FBI Headquarters, Records Management Division, Winchester, Virginia, enclosed is one (1) compact disc (CD) containing a processed copy of the related material.

The enclosed documents Bates Stamped Poitras-1 through Poitras-145 represent the 1st interim release of information responsive to the referenced request.

The enclosed documents responsive to your request are exempt from disclosure in their entirety pursuant to the Privacy Act, Title 5, United States Code, Section 552(a), subsection (j)(2). However, these records have been processed pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, thereby affording you the greatest degree of access authorized by both laws

No fee is being assessed at this time. When the second interim release is made in this case, you will be billed for the \$5.00 fee associated with this first release as well as the \$15.00 duplication fee for the second release for a total of \$20.00. Each subsequent release will be made at a cost of \$15.00.

Deletions were made by the U.S. Army Criminal Investigation Command Crime Center. If you wish to appeal those denials, please write directly to that agency.

Inquiries regarding your OGA referrals may be directed to the following agencies at:

Executive Office for United States Attorneys
Department of Justice
ATTN: William G. Stewart II, Assistant Director
FOIA/Privacy Unit
Suite 7300, 600 E Street, NW
Washington, D.C. 20530-0001

U.S. Army Criminal Investigation Command Crime Center
Michael Kardelis
Chief, FOI/PA Division
Russell-Knox Building
27130A Telegraph Road
Quantico, VA 22134

Department of Homeland Security
Delores Barber, Deputy Chief FOIA Officer
Privacy Office FOIA, Mailstop 0655
245 Murray Drive, SW
Washington, D.C. 20528-0655

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-01091
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et. al.)	
)	
Defendants.)	

Exhibit G



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

November 10, 2015

MS. LAURA POITRAS
c/o DAVID SOBEL
ELECTRONIC FRONTIER FOUNDATION
5335 WISCONSIN AVENUE, N.W.
SUITE 640
WASHINGTON, DC 20015

FOIPA Request No.: 1250943-000
Subject: POITRAS, LAURA

Laura Poitras v. DOJ, et. al.
Civil Action No: 1:15-cv-01091

Dear Mr. Sobel:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input checked="" type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
<u>50 USC, Section 3024(i)(1)</u>	<input checked="" type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
_____	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
_____	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

8 pages were reviewed and 8 pages are being released.

Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].

This information has been referred to the OGA(s) for review and direct response to you.

We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

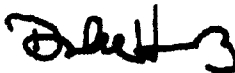
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

Although your request is in litigation, we are required by 5 § USC 552 (a)(6)(A) to provide you the following information concerning your right to appeal. You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☐ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

The enclosed documents represent the 2nd interim release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request. The documents have been properly Bates Stamped Poitras-146 through Poitras-153.

The documents responsive to your request are exempt from disclosure in their entirety pursuant to the Privacy Act, Title 5, United States Code, Section 552(a), subsection (j)(2). However, these records have been processed pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, thereby affording you the greatest degree of access authorized by both laws.

By letter dated October 14, 2015, we sent you a Compact Disc (CD) containing the first interim release for this case. At that time, we explained the \$5.00 balance associated with that release would be billed with this release. Accordingly, upon receipt of the enclosed CD please go to www.pay.gov to make an electronic payment* in the amount of \$20.00, or make a check or money order payable to the Federal Bureau of Investigation and remit it to the Work Process Unit, Record Information/Dissemination Section, Records Management Division, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, VA 22602. Please include the FOIPA Request Number with your payment. Failure to pay for this release within thirty (30) days from the date of this letter will close any pending FBI FOIPA requests from you. Nonpayment will also cause an automatic denial of any future FOIPA requests.

Deletions were made by U.S. Customs and Border Protection. If you wish to appeal those denials,

please write directly to:

U.S. Customs and Border Protection
Sabrina Burroughs
FOIA Officer/Public Liaison
90 K Street, NE, 9th Floor
Washington, D.C. 20229-1181

**Pay.gov is a secure web-based application that accepts credit card and ACH payments online, and is hosted by the United States Department of Treasury, Financial Management Service. For frequent FOIPA requesters, it is recommended to create a Pay.gov account to retain an online history of payments made through Pay.gov and to retain specific information for future payments. To make an electronic payment, complete the FBI Freedom of Information Act and Privacy Act Form located on Pay.gov. Please note: if a refund is necessary, there is less processing time to refund a credit card payment than an ACH payment.*

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-01091
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et. al.)	
)	
Defendants.)	

Exhibit H



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

December 14, 2015

MS. LAURA POITRAS
c/o DAVID SOBEL
ELECTRONIC FRONTIER FOUNDATION
5335 WISCONSIN AVENUE, N.W.
SUITE 640
WASHINGTON, DC 20015

FOIPA Request No.: 1250943-000
Subject: POITRAS, LAURA

Laura Poitras v. DOJ, et. al.
Civil Action No: 1:15-cv-01091

Dear Mr. Sobel:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input checked="" type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
<u>50 USC, Section 3024(i)(1)</u>	<input checked="" type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
_____	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
_____	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input checked="" type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

10 pages were reviewed and 10 pages are being released.

- Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].
- This information has been referred to the OGA(s) for review and direct response to you.
- We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.
- In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

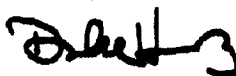
For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Although your request is in litigation, we are required by 5 § USC 552 (a)(6)(A) to provide you the following information concerning your right to appeal. You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☐ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

The enclosed documents represent the 3rd interim release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request. The documents have been properly Bates Stamped Poitras-154 through Poitras-163.

The documents responsive to your request are exempt from disclosure in their entirety pursuant to the Privacy Act, Title 5, United States Code, Section 552(a), Subsection (j)(2). However, these records have been processed pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, thereby affording you the greatest degree of access authorized by both laws.

Upon receipt of the enclosed documents, please go to www.pay.gov to make an electronic payment* in the amount of \$15.00, or make a check or money order payable to the Federal Bureau of Investigation and mail it to the Work Process Unit, Record/Information Dissemination Section, Records Management Division, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, VA 22602. Please include the FOIPA Request Number with your payment. Failure to pay for this release within thirty (30) days from the date of this letter will close any pending FBI FOIPA requests from you. Nonpayment will also cause an automatic denial of any future FOIPA requests.

Deletions were made by the Department of State and the Department of the Army. If you wish to appeal those denials, please write directly to:

Department of State
Attn: Sheryl Walter
Office of Information Programs and Services
A-GIS-IPS-RL-RC
SA 2
Washington, DC 20522

Commander
U.S. Army Intelligence and Security Command
Freedom of Information/Privacy Office (APPEAL)
2600 Ernie Pyle Street, Room 3S02-B
Fort George G. Meade, Maryland 20755-5995

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

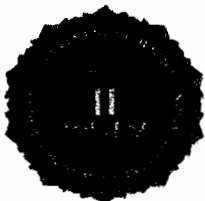
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-01091
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et. al.)	
)	
Defendants.)	

Exhibit I



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

February 16, 2016

MS. LAURA POITRAS
c/o DAVID SOBEL
ELECTRONIC FRONTIER FOUNDATION
5335 WISCONSIN AVENUE, N.W.
SUITE 640
WASHINGTON, DC 20015

FOIPA Request No.: 1250943-000
Subject: POITRAS, LAURA

Laura Poitras v. DOJ, et. al.
Civil Action No: 1:15-cv-01091

Dear Mr. Sobel:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input checked="" type="checkbox"/> (b)(1)	<input checked="" type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (j)(1)
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input checked="" type="checkbox"/> (j)(2)
<u>50 U.S.C. Section 3024(i)(1),</u>	<input checked="" type="checkbox"/> (b)(7)(D)	<input checked="" type="checkbox"/> (k)(1)
<u>CIA Act of 1949, and NSA Act of</u>	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(2)
<u>1947</u>	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(3)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(5)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(6)
		<input type="checkbox"/> (k)(7)

124 pages were reviewed and 120 pages are being released.

Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].

This information has been referred to the OGA(s) for review and direct response to you.

We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

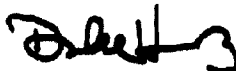
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

Although your request is in litigation, we are required by 5 § USC 552 (a)(6)(A) to provide you the following information concerning your right to appeal. You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be postmarked or transmitted within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☑ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

The enclosed documents represent the 4th interim release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request. The documents have been properly Bates Stamped Poitras-164 through Poitras-287.

The documents responsive to your request are exempt from disclosure in their entirety pursuant to the Privacy Act, Title 5, United States Code, Section 552(a), Subsection (j)(2). However, these records have been processed pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, thereby affording you the greatest degree of access authorized by both laws.

As a result of having completed consultation with the Central Intelligence Agency (CIA), excisions were made by the CIA pursuant to Title 5, United States Code, Section 552, subsections (b1) and (b3), National Security Act of 1947 and the CIA Act of 1949. Enclosed is a copy of the CIA's explanation of exemptions. The CIA official responsible for the CIA's determinations is John Giuffrida, Information and Privacy Coordinator. You have the right to appeal their decision by addressing your appeal to the CIA Information Review Committee, Washington, D.C. 20505. Should you decide to do this, please explain the basis of your appeal.

Deletions were also made by the National Guard. If you wish to appeal those denials, please write directly to:

National Guard Bureau
Air National Guard FOIA
ATTN: NGB-JA/OIP
114 South George Mason Drive, AH2
Arlington, VA 22204-1373

Upon receipt of the enclosed documents, please go to www.pay.gov to make an electronic payment* in the amount of \$15.00, or make a check or money order payable to the Federal Bureau of Investigation and mail it to the Work Process Unit, Record/Information Dissemination Section, Records Management Division, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, VA 22602. Please include the FOIPA Request Number with your

payment. Failure to pay for this release within thirty (30) days from the date of this letter will close any pending FBI FOIPA requests from you. Nonpayment will also cause an automatic denial of any future FOIPA requests.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

CIA EXPLANATION OF EXEMPTIONS

FREEDOM OF INFORMATION ACT:

- (b)(1) applies to material which is properly classified pursuant to an Executive order in the interest of national defense or foreign policy;
- (b)(2) applies to information which pertains solely to the internal rules and practices of the Agency;
- (b)(3) applies to the Director's statutory obligations to protect from disclosure intelligence sources and methods, as well as the organization, functions, names, official titles, salaries or numbers of personnel employed by the Agency, in accord with the National Security Act of 1947 and the CIA Act of 1949, respectively;
- (b)(4) applies to information such as trade secrets and commercial or financial information obtained from a person on a privileged or confidential basis;
- (b)(5) applies to inter- and intra-agency memoranda which are advisory in nature;
- (b)(6) applies to information release of which would constitute an unwarranted invasion of personal privacy of other individuals; and
- (b)(7) applies to investigatory records, release of which could (C) constitute an unwarranted invasion of the personal privacy of others, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

PRIVACY ACT:

- (b) applies to information concerning other individuals which may not be released without their written consent;
- (j)(1) applies to polygraph records; documents or segregable portions of documents, release of which would disclose intelligence sources and methods, including names of certain Agency employees and organizational components; and, documents or information provided by foreign governments;
- (k)(1) applies to information and material properly classified pursuant to and Executive order in the interest of national defense or foreign policy;
- (k)(5) applies to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, or access to classified information, release of which would disclose a confidential source; and
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process.

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-01091
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et. al.)	
)	
Defendants.)	

Exhibit J



U.S. Department of Justice

Federal Bureau of Investigation
 Washington, D.C. 20535

March 4, 2016

 MS. LAURA POITRAS
 c/o DAVID SOBEL
 ELECTRONIC FRONTIER FOUNDATION
 5335 WISCONSIN AVENUE, N.W.
 SUITE 640
 WASHINGTON, DC 20015

 FOIPA Request No.: 1250943-000
 Subject: POITRAS, LAURA

Laura Poitras v. DOJ, et. al.
 Civil Action No: 1:15-cv-01091

Dear Mr. Sobel:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information, are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input checked="" type="checkbox"/> (b)(1)	<input checked="" type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (j)(1)
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input checked="" type="checkbox"/> (j)(2)
<u>50 U.S.C., Section 3024 (j)(1),</u>	<input checked="" type="checkbox"/> (b)(7)(D)	<input checked="" type="checkbox"/> (k)(1)
<u>CIA Act of 1949, and NSA Act of</u>	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(2)
<u>1947 and Rule 6(e), FRCP</u>	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(3)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(5)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(6)
		<input type="checkbox"/> (k)(7)

57 pages were reviewed and 57 pages are being released.

 Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].

 This information has been referred to the OGA(s) for review and direct response to you.

 We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

 In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

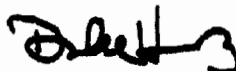
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

Although your request is in litigation, we are required by 5 § USC 552 (a)(6)(A) to provide you the following information concerning your right to appeal. You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be postmarked or transmitted within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☑ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

The enclosed documents represent the final release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request. The documents have been properly Bates numbered Poitras-288 through Poitras-344.

The FBI inadvertently cited FOIA exemption (b)(7)(E)-7 on Bates page Poitras-54. The FBI has reprocessed the page and has enclosed the page with this release.

The documents responsive to your request are exempt from disclosure in their entirety pursuant to the Privacy Act, Title 5, United States Code, Section 552(a), Subsection (j)(2). However, these records have been processed pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, thereby affording you the greatest degree of access authorized by both laws.

Upon receipt of the enclosed documents, please go to www.pay.gov to make an electronic payment* in the amount of \$30.00 (\$15.00 for the current release and \$15.00 for the 4th interim release made on February 16, 2016), or make a check or money order payable to the Federal Bureau of Investigation and mail it to the Work Process Unit, Record/Information Dissemination Section, Records Management Division, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, VA 22602. Please include the FOIPA Request Number with your payment. Failure to pay for this release within thirty (30) days from the date of this letter will close any pending FBI FOIPA requests from you. Nonpayment will also cause an automatic denial of any future FOIPA requests.

As a result of having completed consultation with the Central Intelligence Agency (CIA), excisions were made by the CIA. Enclosed is a copy of the CIA's explanation of exemptions. You have the right to appeal their decision by addressing your appeal to the CIA Information Review Committee, Washington, D.C. 20505. Should you decide to do this, please explain the basis of your appeal.

Deletions were made by the U.S. Customs and Border Protection. You have a right to appeal their withholding determination. Should you wish to do so, you must send your appeal within 60 days of the date of this letter to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177, following the procedures outlined in the DHS regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Redactions were made by the Department of the Air Force. If you choose to appeal their redactions, you must do so within 60 calendar days of the date of this letter. You can submit your appeal by email to afosi_hq_foia_request@us.af.mil, by mail to AFOSI/XILI, ATTN: FOIA Office, 27130 Telegraph Rd, Quantico, VA 22134, or by fax to (571)305-8229. You must include your reason(s) for reconsideration and attach a copy of the response letter.

Deletions were also made by the Department of the Army. If you decide to appeal, your appeal must be submitted within 60 days of the date of this letter. In your appeal, you must state the basis for your disagreement with the partial denial and state the justification for its release. Your appeal should be addressed to the Director, U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, Virginia 22134, for forwarding, as appropriate, to the Office of the Secretary of the Army, the appellate authority. Please note that this appeal should address information denied in this response and cannot be used to make a new request for additional or new information.

Deletions were also made by the National Guard. If you wish to appeal those denials, please write directly to:

National Guard Bureau
Air National Guard FOIA
ATTN: NGB-JA/OIP
114 South George Mason Drive, AH2
Arlington, VA 22204-1373

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

CIA EXPLANATION OF EXEMPTIONS

FREEDOM OF INFORMATION ACT:

- (b)(1)** applies to material which is properly classified pursuant to an Executive order in the interest of national defense or foreign policy;
- (b)(2)** applies to information which pertains solely to the internal rules and practices of the Agency;
- (b)(3)** applies to the Director's statutory obligations to protect from disclosure intelligence sources and methods, as well as the organization, functions, names, official titles, salaries or numbers of personnel employed by the Agency, in accord with the National Security Act of 1947 and the CIA Act of 1949, respectively;
- (b)(4)** applies to information such as trade secrets and commercial or financial information obtained from a person on a privileged or confidential basis;
- (b)(5)** applies to inter- and intra-agency memoranda which are advisory in nature;
- (b)(6)** applies to information release of which would constitute an unwarranted invasion of personal privacy of other individuals; and
- (b)(7)** applies to investigatory records, release of which could (C) constitute an unwarranted invasion of the personal privacy of others, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

PRIVACY ACT:

- (b)** applies to information concerning other individuals which may not be released without their written consent;
- (j)(1)** applies to polygraph records; documents or segregable portions of documents, release of which would disclose intelligence sources and methods, including names of certain Agency employees and organizational components; and, documents or information provided by foreign governments;
- (k)(1)** applies to information and material properly classified pursuant to and Executive order in the interest of national defense or foreign policy;
- (k)(5)** applies to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, or access to classified information, release of which would disclose a confidential source; and
- (k)(6)** testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process.

create the correspondence related to those requests, conduct searches in response to those requests, and the preparation of responses to those requests to ensure that determinations to withhold or to release records are made in accordance with the FOIA; the PA; DoD 5400.7-R, the Department of Defense Freedom of Information Act Program; DoD 5400.11-R, the Department of Defense Privacy Program; and 32 C.F.R. §518.

3. In the course of my official duties at USACIDC, I have become familiar with the FOIA request by Mr. David L. Sobel. The statements made herein are based upon my personal knowledge, upon information made available to me in my official capacity, and upon determinations made by me in accordance therewith.

4. Due to the requirements of my position, I reprocessed the FBI documents involved in this FOIA request to determine if any information withheld pursuant to FOIA Exemption (b)(7)(A) should be released. All documents provided were processed to achieve maximum disclosure consistent with the provisions of the FOIA. Every effort was made to provide Plaintiffs with all material in the public domain and with all reasonably segregable portions of releasable material. The FOIA exemptions asserted as grounds for nondisclosure of the documents are FOIA Exemptions (b)(6), (b)(7)(C) and (b)(7)(E).

5. The documents referred to the USACRC by the Federal Bureau of Investigation are denied in part under 5 U.S.C. §552(b)(6), (b)(7)(C) and (b)(7)(E).

Exemption (b)(6) Privacy Interest

6. 5 U.S.C. § 552(b)(6) provides that the Government may withhold information about individuals contained in personnel and medical files when the disclosure of such information “would constitute a clearly unwarranted invasion of privacy.” When withholding information pursuant to this exemption, the agency is required to balance the privacy interests of the individuals in the documents against any public interest in disclosure. In asserting this

exemption, each piece of information was examined to determine the degree and nature of the privacy interest of any individual whose name and/or identifying data appear in the document at issue. The public interest in disclosure of the information is determined by whether the information in question would inform the plaintiff or the general public about USACIDC's and the FBI's performance of its mission to investigate individuals suspected of committing offenses in which charges may be brought before a Federal Court. There is no legitimate public interest in the information withheld pursuant to Exemption (b)(6). Information categorically withheld includes personal information of third parties, to include USACIDC special agents and other government employees. This included names, email addresses, telephone numbers, home addresses, passport numbers, photographs and other personally identifiable information (PII) of persons involved in the investigation and individuals whose personal information was merely intermingled with the investigation and responsive material. This information, if released, would constitute an unwarranted invasion of their personal privacy. Therefore, this information is protected under Exemption (b)(6).

EXEMPTION (b)(7)(C)
Personal Information in Law Enforcement Records

7. 5 U.S.C. § 552(b)(7)(C) exempts from disclosure certain "records compiled for law enforcement purposes." The USACIDC and FBI are law enforcement agencies whose sole, overarching mission is to conduct law enforcement investigations. Thus all information included as responsive were obtained by CID and FBI and as such are records compiled for law enforcement purposes.

8. This exemption provides protection for personal information in law enforcement records. Information is exempt if disclosure could reasonably be expected to constitute an

unwarranted invasion of personal privacy. The categorical withholding of information in these documents applies to information that identifies third parties in the law enforcement records.

9. Disclosure of the names and identifying information of U.S. Government personnel investigating suspected terrorists and their organizations would subject these personnel to harassment and annoyance in the conduct of their official duties and their private lives. These personnel include Special Agents assigned to USACIDC, as well as intelligence analysts, interpreters and support personnel. It also includes contractor personnel working with U.S. government personnel in these investigative efforts. Release of their names could jeopardize their safety and the safety of their family members, and cause undue worry and stress regarding their personal security. Nothing in these documents alleges any wrongdoing by any government personnel whose names are withheld that would justify any public disclosure of their identities. There is no legitimate public interest in the identities of these agents. Due to the breadth of privacy protection under Exemption (b)(7)(C) and potential harm resulting from release, any release of these names would be an unwarranted intrusion on the personal privacy of these individuals, even with respect to the discharge of their official duties.

10. Finally, because the subjects of the FOIA request have waived their privacy rights to have their names and identifying information redacted, none of their names have been redacted.

EXEMPTION (b)(7)(E)
Records or Information the Disclosure of Which
Would Disclose Techniques and Procedures for Law Enforcement
Investigations or Prosecutions Which Could Reasonably be
Expected to Risk Circumvention of the Law

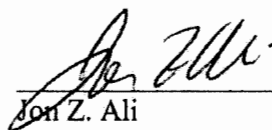
17. 5 U.S.C. § 552 (b)(7)(E) affords protection to “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement

records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

18. The information exempted for release by (b)(7)(E) contain information that, if released, would expose law enforcement techniques associated with investigating and detaining suspects, not generally known to the public. While the techniques set forth in the documents may be known to some degree, their usefulness in the context of USACIDC investigations is not commonly known by members of the public. A further description of the material could allow the exempt material to be identified, but in general terms the redacted material pertains to identification numbers assigned to detainees. Release of these techniques would allow suspects to take steps to counter these investigative methods, circumvent law enforcement procedures, and/or prosecution.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 17th day of March, 2016.



Jon Z. Ali
Information Release Specialist
U.S. Army Criminal Investigation Command

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

LAURA POITRAS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-1091
)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
et al.,)	
)	
Defendant.)	
)	

DECLARATION OF DAVID LUCZYNSKI

Pursuant to 28 U.S.C. § 1746, I, David Luczynski, declare the following to be a true and correct statement of facts:

1. I am an Attorney Advisor with the Executive Office for United States Attorneys ("EOUSA"), United States Department of Justice ("DOJ"). In that capacity, my responsibilities include acting as liaison with other divisions and offices of DOJ in responding to requests and litigation filed under both the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a ("PA"), reviewing FOIA/PA requests for access to records located in this office and the ninety-four United States Attorneys' Offices ("USAOs") and the case files arising therefrom, reviewing correspondence related to requests, reviewing searches conducted in response to requests, locating responsive records, and preparing EOUSA responses to ensure that determinations to withhold or release such responsive records are in accordance with FOIA, PA, and DOJ regulations, 28 C.F.R. §§ 16.3 *et seq.* and §§ 16.40 *et seq.*

2. As an Attorney Advisor of the FOIA/PA Unit, EOUSA, I have the authority to release

and withhold records requested under the FOIA/PA. The statements I make in this Declaration are based upon my review of the official files and records of EOUSA, my own personal knowledge, and information acquired by me through the performance of my official duties.

3. Due to the nature of my official duties, I am familiar with the procedures followed by this office in responding to the request referred to EOUSA as a result of a FOIA request to FBI by Plaintiff, Laura Poitras.

I have reviewed the Complaint which this Declaration addresses.

CHRONOLOGY

4. On February 13, 2015, EOUSA received a referral of a FOIA request from the National Security Division ("NSD"). The FOIA request was initially filed with the Federal Bureau of Investigation ("FBI") and assigned request number FBI FOI/PA # 1250943-000.

5. By letter dated May 21, 2015, EOUSA responded to the referral informing plaintiff that his request has been processed. The letter lists FOIA exemption (b)(3) in conjunction with application of Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings. The response letter also informed Plaintiff of his appeal rights and that the appeal must be received by OIP within 60 days from the date of this letter. **Government Exhibit A.**

6. On July 1, 2015, the Office of Information Policy ("OIP") informed plaintiff that it had received his appeal and assigned it number AP-2015-04128. **Government Exhibit B.**

7. By letter dated September 28, 2015, OIP informed plaintiff that after considering his appeal, it is affirming EOUSA's action on the records referred to it as the application of FOIA Exemption (b)(3) and Rule 6(e) of the Federal Rules of Criminal Procedure was correct in order to

protect record related to the secrecy of the Grand Jury proceedings. **Government Exhibit C.**

JUSTIFICATION FOR NON-DISCLOSURE UNDER THE PRIVACY ACT

8. EOUSA processes all requests by individuals for records pertaining to themselves under both the FOIA and PA in order to provide the requester with the maximum disclosure authorized by law. Criminal case files maintained by U.S. Attorney's Offices are part of the DOJ Privacy Act System of Records. The Attorney General has promulgated regulations at 28 C.F.R. §16.81(a)(1) which exempt U.S. Attorney's Office criminal case files (known as Justice/USA-007 files) from the PA's access provisions, as authorized by 5 U.S.C. §552a(j)(2). Subsection (j)(2) exempts from mandatory disclosure all records maintained by an agency or component performing as its principal function any activity pertaining to the enforcement of criminal laws. Since Plaintiff's entire request pertains to criminal investigations, the materials were necessarily compiled for law enforcement purposes. Therefore, EOUSA determined that the responsive records withheld were not disclosable under the PA. Accordingly, EOUSA next reviewed the records responsive to plaintiff's request under the provisions of the FOIA.

JUSTIFICATION FOR NON-DISCLOSURE UNDER THE FOIA

EXEMPTION 5 U.S.C. §552(b)(3)

9. Exemption (b)(3) exempts from mandatory release information specifically barred from disclosure by another statute. This exemption permits the withholding of information prohibited from disclosure by another statute if that statute either (A) requires that the matters be withheld from the public without discretion, or (B) establishes particular criteria for

withholding or refers to particular types of matters to be withheld. 5 U.S.C. §552(b)(3).

10. Rule 6(e) of the Federal Rules of Criminal Procedure regulates the disclosure of matters occurring before a grand jury. In order for a Federal Rule of Criminal Procedure to qualify as a “statute” for purposes of Exemption (b)(3), it must have been affirmatively enacted into law by Congress. Rule 6(e) has been held to meet this “statute” requirement since it was affirmatively enacted by Congress in 1977. Rule 6(e) embodies a broad, sweeping policy of preserving the secrecy of grand jury material regardless of the document in which the material is contained. Such material encompasses not only the direct revelation of grand jury transcripts, but also the disclosure of information that would reveal the identities of witnesses or jurors, the substance of the testimony given before the grand jury, the strategy or direction of the investigation, the deliberations or questions of the grand jurors, and any other matter, the disclosure of which would suggest a specific act, thought, or focus of the grand jury’s deliberations.

11. EOUSA applied Exemption (b)(3) in conjunction with Rule 6(e) of the Federal Rules of Criminal Procedure categorically to deny parts of the request submitted by the plaintiff. The reasons these records were withheld are because the materials referred were specifically identified as grand jury materials, which, if released, would impermissibly reveal the scope of the grand jury and the direction of the investigation by providing the identities of the target of the investigation, the source of the evidence, as well as the actual evidence produced before the grand jury. Release of this information would provide the requester with the scope of the grand jury’s investigation by setting forth where the Government sought evidence to develop its case, how the Government developed its case, and whom the Government relied upon to develop the elements of

the alleged crimes. Accordingly, relevant parts of plaintiff's FOIA request were denied in full.

VAUGHN INDEX

12. In order to describe the records withheld from plaintiff in more detail, a Vaughn Index is attached to this declaration as **Exhibit D**.

SEGREGABILITY

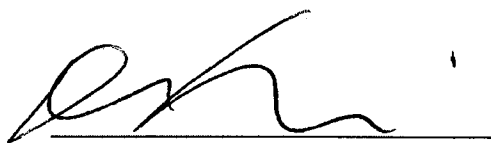
13. All information withheld was exempt from disclosure pursuant to a FOIA exemption. After EOUSA considered the segregability of the requested records, no reasonably segregable non-exempt information was withheld from plaintiff.

CONCLUSION

Each step in the handling of plaintiff's request has been entirely consistent with the EOUSA's and the USAOs' procedures, which were adopted to ensure an equitable response to all persons seeking responsive records under the FOIA/PA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 6, 2016.



David Luczynski
Attorney Advisor
EOUSA, FOIA/PA Unit



U.S. Department of Justice

*Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W.*

*Suite 7300, Bicentennial Building
Washington, DC 20530-0001*

(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

A

May 21, 2015

David Sobel
1818 N Street, NW, Suite 410
Washington, DC 20036

Re: Request Number: REF-2015-01391 Date of Receipt: February 13, 2015
Subject of Request: Laura Poitras
Government Component that Referred Material: NSD FOIA/PA #15-027

Dear Mr. Sobel:

This is in reply to your Freedom of Information Act/Privacy Act request of January 24, 2014. Records were referred to us by the government component above for direct response to you.

The referred material has been considered under both the FOIA and the Privacy Act to provide you the greatest degree of access. Exemptions have been applied when deemed appropriate either for withholding records in full or for excising certain information. The exemptions cited are marked below. An enclosure to this letter explains the exemptions in more detail.

(B)(3) – FRCrP Rule 6(e)

We have reviewed approximately 6 page(s) of material:
_____ page(s) are being released in full (RIF);
_____ page(s) are being released in part (RIP);
6 page(s) are withheld in full (WIF) and
_____ page(s) were duplicate copies of material already processed.

This is the final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, Washington, DC 20530-0001, or you may submit an appeal through this Office's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Susan B. Gerson
Assistant Director

Enclosure(s)

ADDENDUM TO THE EXPLANATION OF EXEMPTION SHEET

X Rule 6(e) of the Federal Rules of Criminal Procedure pertains to the Federal Grand Jury, its integrity and the secrecy surrounding the Jury.

Under the Freedom of Information Act, an agency has no discretion to release any record covered by an injunction, protective order, or court seal which prohibits disclosure. See GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 386-387 (1980); See also Robert Tyrone Morgan v. U.S. Dept. of Justice, 923 F.2d 195 (D.C. Cir. 1991).

B



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

July 1, 2015

Mr. David L. Sobel
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109
sobel@eff.org

Re: Request No. REFF-2015-01391

Dear Mr. Sobel:

This is to advise you that your administrative appeal from the action of the Executive Office for United States Attorneys was received by this Office on June 3, 2015.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2015-04128**. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Mr. David L. Sobel
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109
sobel@eff.org

Re: Appeal No. AP-2015-04128
Request No. REFF-2015-01391
SRO:RRK

VIA: E-mail

Dear Mr. Sobel:

You appealed on behalf of your client, Laura Poitras, from the action of the Executive Office for United States Attorneys (EOUSA) on records referred to it by the Federal Bureau of Investigation pursuant to your Freedom of Information Act request for access to records concerning your client.

After carefully considering your appeal, I am affirming EOUSA's action on the records referred to it. In order to provide your client with the greatest possible access to responsive records, the records that were referred to EOUSA were reviewed under both the Privacy Act of 1974 and the FOIA. I have determined that the records responsive to your client's request are exempt from the access provision of the Privacy Act. See 5 U.S.C. § 552a(j)(2); see also 28 C.F.R. § 16.81 (2015). For this reason, I have reviewed your appeal under the FOIA.

The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities.

EOUSA properly withheld this information in full because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(3). This provision concerns matters specifically exempted from release by a statute other than the FOIA (in this instance, Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings).

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your client's underlying request, and the action of EOUSA in response to your client's request.


If your client is dissatisfied with my action on your appeal, the FOIA permits her to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

- 2 -

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your client's right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

9/28/2015

X 

Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: Sean O'Neill

VAUGH INDEX

Laura Poitras v. Homeland Security, 15-1091 DC

Doc. #	Pages	Description	Exempt/ Status	Justification
				<p>SUMMARY OF ABBREVIATIONS "RIF"- Released in full "RIP"- Released in part "WIF"-Withheld in full "NS" - Deemed not segregable after review for segregability.</p>
1	1	Grand Jury Subpoena directed at a third party.	(b)3 WIF	<p>Exemption (b)3 exempts from disclosure information which is protected by another statute. Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure matters pertaining to the secrecy of grand jury proceedings are exempt from disclosure.</p> <p>There are no public interests to weigh.</p> <p>No page was determined segregable after review for segregability. The release of blank portions of the forms would be meaningless.</p>
2	1	Letter dated October 27, 2007 from the USAO to a third party regarding Subpoena compliance.	(b)3 WIF	<p>Exemption (b)3 exempts from disclosure information which is protected by another statute. Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure matters pertaining to the secrecy of grand jury proceedings are exempt from disclosure.</p> <p>There are no public interests to weigh.</p> <p>No page was determined segregable after review for segregability. The release of blank portions of the forms would be meaningless.</p>
3	1	Rider regarding the Grand Jury Subpoena requesting specific information release of which would reveal the scope and	(b)3 WIF	<p>Exemption (b)3 exempts from disclosure information which is protected by another statute. Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure matters pertaining to the secrecy of grand jury proceedings are exempt from disclosure.</p>

VAUGH INDEX
 Laura Poitras v. Homeland Security, 15-1091 DC

		direction of the investigation.		<p>There are no public interests to weigh.</p> <p>No page was determined segregable after review for segregability. The release of blank portions of the forms would be meaningless.</p>
4	1	Grand Jury Subpoena directed at a third party.	(b)3 WIF	<p>Exemption (b)3 exempts from disclosure information which is protected by another statute. Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure matters pertaining to the secrecy of grand jury proceedings are exempt from disclosure.</p> <p>There are no public interests to weigh.</p> <p>No page was determined segregable after review for segregability. The release of blank portions of the forms would be meaningless.</p>
5	1	Letter dated October 26, 2007 from the USAO to a third party regarding Subpoena compliance.	(b)3 WIF	<p>Exemption (b)3 exempts from disclosure information which is protected by another statute. Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure matters pertaining to the secrecy of grand jury proceedings are exempt from disclosure.</p> <p>There are no public interests to weigh.</p> <p>No page was determined segregable after review for segregability. The release of blank portions of the forms would be meaningless.</p>
6	1	Rider regarding the Grand Jury Subpoena requesting specific information release of which	(b)3 WIF	<p>Exemption (b)3 exempts from disclosure information which is protected by another statute. Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure matters pertaining to the secrecy of grand jury proceedings are exempt from</p>

VAUGH INDEX

Laura Poitras v. Homeland Security, 15-1091 DC

		would reveal the scope and direction of the investigation.		disclosure. There are no public interests to weigh. No page was determined segregable after review for segregability. The release of blank portions of the forms would be meaningless.
--	--	--	--	--

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Laura Poitras,)	
)	
Plaintiff,)	
)	Civil Action No. 1:15-CV-01091
v.)	
)	
Department of Homeland)	
Security, et al.)	
)	
Defendants.)	
)	

**DECLARATION OF ANTOINETTE B. SHINER,
INFORMATION REVIEW OFFICER,
LITIGATION INFORMATION REVIEW OFFICE,
CENTRAL INTELLIGENCE AGENCY**

I, ANTOINETTE B. SHINER, hereby declare and state:

I. Introduction

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I assumed this position effective 19 January 2016.

2. Prior to becoming the IRO for LIRO, I served as the IRO for the Directorate of Support ("DS") for over sixteen months. In that capacity, I was responsible for making classification and release determinations for information originating within the DS. Prior to serving in the DS, I was the Deputy IRO for the Director's Area of the CIA ("DIR Area") for over three years. In that role, I was responsible for

making classification and release determinations for information originating within the DIR Area, which included, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of General Counsel. I have held other administrative and professional positions within the CIA since 1986, and have worked in the information review and release field since 2000.

3. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

4. Although CIA is not a party to this litigation, this declaration supports the Government's motion for summary judgment by providing additional details regarding certain CIA-related information contained in documents located by the Federal Bureau of Investigation ("FBI") in connection with this litigation. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA/Privacy Act request. I make the following statements based

upon my personal knowledge and information made available to me in my official capacity.

5. The purpose of this declaration is, to the greatest extent possible on the public record, (a) to explain the nature and scope of the CIA information involved in this case; (b) to identify the FOIA exemptions that apply to that information; and (c) to explain why the information is classified and cannot be publicly released.

II. Plaintiff's FOIA/Privacy Act Request

6. It is my understanding that Plaintiff Laura Poitras, through her attorney, submitted a FOIA/Privacy Act request to the FBI, a component of the Department of Justice ("DOJ"), on 24 January 2014. Plaintiff's request sought "disclosure of all agency records concerning, naming, or relating to Ms. Poitras."

7. In the course of processing the Plaintiff's FOIA/Privacy Act request, the FBI located FBI documents that possibly contained CIA information. In a letter dated 5 February 2015, the FBI referred certain FBI documents to the CIA for consultation. On 23 June 2015, the CIA sent a letter to the FBI stating that the Agency had determined that three of the documents contained CIA information that needed to be redacted on the basis of FOIA exemptions (b)(1) and (b)(3).¹ Specifically, CIA requested that FBI redact CIA information on

¹ The CIA also inadvertently cited Privacy Act exemptions (j)(1) and (k)(1) as an additional basis for some of these redactions.

pages 243, 246, 249, and 330-32 of the documents produced to Plaintiff.

8. On 31 August 2015, the FBI referred five additional documents to the CIA for consultation. On 16 September 2015, the CIA responded to the FBI that it had determined that all five of the documents contained CIA information that must be redacted on the basis of FOIA exemptions (b)(1) and (b)(3). Specifically, CIA requested that FBI redact CIA information on pages 146, 148-52, 155, 231, 234-35, 237, and 241 of the documents produced to Plaintiff.

III. Application of FOIA Exemptions

A. FOIA Exemption (b)(1)

9. FOIA exemption (b)(1) provides that agencies need not disclose materials that are "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and "are in fact properly classified pursuant to such Executive order."

5 U.S.C. § 552(b)(1). Here, the information withheld pursuant to exemption (b)(1) satisfies the procedural and substantive requirements of Executive Order 13526, which governs classification. See Executive Order 13526 § 1.1(a), § 1.4(c).

10. As an original classification authority, I have determined that discrete portions of records responsive to Plaintiff's request are currently and properly classified. This

information is owned by and is under the control of the U.S. Government. As described below, the information falls under classification category § 1.4(c) of the Executive Order because it concerns "intelligence activities (including covert action), [or] intelligence sources or methods." The unauthorized disclosure of this information could reasonably be expected to result in serious damage to national security, and thus the redacted information is classified SECRET. None of the information at issue has been classified in order to conceal violations of law, inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

11. Because revealing additional details about the withheld portions would disclose classified information, I am limited in my ability to describe the intelligence activities, sources, and methods at issue and the harm that would be occasioned by their disclosure on the public record.² However, publicly I can acknowledge that the redacted CIA information can generally be grouped into three categories: (1) information relating to the CIA's cooperation with law enforcement; (2) information that

² If the Court desires, the CIA is prepared to supplement this unclassified declaration with an in camera, ex parte classified declaration containing additional information about the withheld information that the CIA cannot file on the public record.

would reveal whether or not the CIA possesses information about a particular individual; and (3) information concerning CIA's organization and functions. The disclosure of this information could reasonably be expected to cause serious damage to the national security.

12. Much of the redacted information contains details concerning the coordination process between the CIA and the FBI. Although it is generally acknowledged that the CIA and the FBI coordinate and cooperate to some extent in both the overseas and domestic arenas, the CIA cannot reveal certain details concerning the nature, scope, or application of the CIA-FBI coordination process because doing so would reveal classified CIA intelligence activities, sources, and methods. Disclosing these details could harm the national security by hindering the intelligence community and law enforcement's ability to track and identify certain individuals who may seek to avoid detection. For example, if terrorists were to gain knowledge about the specific methods used to facilitate interagency coordination, they might be able to utilize such information to purposely mislead reporting, misdirect investigators, or circumvent detection.

13. Additionally, some of the redacted CIA information would reveal the results of name traces run by the CIA. The results of a name trace, regardless of whether the CIA possesses

any responsive information about an individual, is classified. Indeed, the mere confirmation or denial of the existence or nonexistence of responsive information would in itself reveal a classified fact: namely, whether the CIA has an intelligence interest in or clandestine connection to a particular individual or activity. Our adversaries could use this information to identify CIA intelligence interests, capabilities, and priorities, and to exploit gaps in coverage. Accordingly, the results of name traces run by the CIA, regardless of whether the CIA possesses or does not possess any responsive information, would reveal sensitive information about the CIA's intelligence collection interests, capabilities, and activities. This information is currently and properly classified pursuant to Executive Order 13526 and, therefore, protected from disclosure under FOIA exemption (b) (1) because its disclosure could cause serious damage to the national security.³

14. Similarly, additional classified information was withheld regarding the CIA's organization and functions. The CIA is charged with carrying out a number of important functions on behalf of the United States, which include, among other

³ When the CIA can neither confirm nor deny the existence or nonexistence of records that would reveal a classified connection to the CIA, it issues what is known as a "Glomar" response. The origins of the Glomar response trace back to the D.C. Circuit's decision in Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976), which affirmed the CIA's use of the "neither confirm nor deny" response to a FOIA request for records concerning the CIA's reported contacts with the media regarding Howard Hughes' ship, the "Hughes Glomar Explorer."

activities, collecting and analyzing foreign intelligence and counterintelligence. A defining characteristic of the CIA's intelligence activities is that they are typically carried out through clandestine means, and therefore must remain secret in order to be effective. Disclosure of certain details related to the CIA's organization and functions, which pertain to intelligence activities and methods, could undermine these efforts by revealing, among other things, CIA capabilities, interests, and resources. Disclosure of these details could help our adversaries exploit, infiltrate, and target CIA facilities, infrastructure, and employees.

15. For the reasons set forth above, disclosure of this information could reasonably be expected to cause serious damage to national security and must be withheld under FOIA exemption (b) (1).

B. FOIA Exemption (b) (3)

16. FOIA exemption (b) (3) provides that the FOIA disclosure provision does not apply to matters that are:

Specifically exempted from disclosure by statute (other than 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

5 U.S.C. § 552 (b) (3).

17. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(i)(1) (the "National Security Act"), provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." Accordingly, the National Security Act constitutes a federal statute which "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b)(3). Under the direction of the DNI pursuant to section 102A, and consistent with section 1.6(d) of Executive Order 12333, the CIA is authorized to protect CIA sources and methods from unauthorized disclosure.⁴

18. Because the information withheld in this case falls within the ambit of the National Security Act, it is exempt from disclosure under FOIA exemption (b)(3). In contrast to Executive Order 13526, this (b)(3) qualified statute does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from the unauthorized disclosure of intelligence sources and methods. Simply stated, no showing of harm is required.

⁴Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 25 (West Supp. 2009), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008) requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the [DNI][.]"

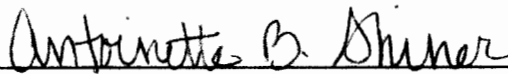
19. Nevertheless, because information withheld pursuant to exemption (b)(3) involves intelligence activities, sources, and methods, i.e., the same categories of information which are classified and exempt from release pursuant to (b)(1), I refer the Court to the paragraphs above for a description of the damage that reasonably could be expected to result from the disclosure of this information.

IV. Conclusion

20. For all of the reasons stated above, eight of the documents in the FBI records responsive to Plaintiff's FOIA request contain classified information concerning intelligence activities, sources, and methods, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security of the United States. Consequently, that information must be withheld under FOIA exemption (b)(1). Additionally, and separately, because the classified information implicates intelligence sources and methods, the information must also be withheld under FOIA exemption (b)(3).

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

Executed this 3rd day of June 2016.

A handwritten signature in cursive script that reads "Antoinette B. Shiner". The signature is written in black ink and is positioned above a horizontal line.

Antoinette B. Shiner,
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 3: Declaration of Jennifer L. Hudson (ODNI)

2. IMD is responsible for facilitating the implementation of information management-related Executive orders, laws, regulations, and ODNI policy. This function entails controlling information throughout its life cycle and includes the areas of records management, classification management and declassification, pre-publication reviews, and responding to requests under the Freedom of Information Act (“FOIA”) and the Privacy Act.

3. Under a written delegation of authority by the Director of National Intelligence (“DNI”) pursuant to section 1.3(c) of Executive Order 13526, I hold original classification authority (“OCA”) at the TOP SECRET level. I am authorized, therefore, to conduct classification reviews and to make original classification and declassification decisions for intelligence information up to and including the TOP SECRET level.

4. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

I. BACKGROUND RELATING TO ODNI AND NCTC

5. During the course of my work with ODNI I have become familiar with the organization, functions, and missions of ODNI and its components, including the National Counterterrorism Center (“NCTC”). Where applicable I have also consulted with representatives of NCTC in order to ensure the accuracy of this declaration.

6. Congress created the position of the DNI in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1101(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending Sections 102 through 104 of Title 1 of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as the head of the Intelligence Community (IC) and as the principal adviser to the President and the National Security Council for intelligence matters related to the national security. 50 U.S.C. §§ 3023(b)(1), (2).

7. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. These responsibilities include ensuring that national intelligence is provided to the President, the heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and certain committees of the Senate and House of Representatives. 50 U.S.C. § 3024(a)(1). The DNI is charged with establishing the objectives of, determining the requirements and priorities for, and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the IC. 50 U.S.C. §§ 3024(f)(1)(A)(i) and (ii).

8. In the course of executing these duties, the DNI is responsible for protecting information that has been classified in the interest of the national defense or foreign policy, and that has in fact been properly classified pursuant to Executive Order 13526 (“E.O. 13526”).

9. Section 1.1 of E.O. 13526 provides that information may be originally classified if: 1) an original classification authority is classifying the information; 2) the information is owned by, produced by or for, or is under the control of the Government; 3) the information falls within one or more of the categories of information listed in section 1.4 of the Executive Order; and 4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and the original classification authority is able to identify or describe the damage.¹

10. In addition, the National Security Act of 1947, as amended, provides that the DNI “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for

¹ Section 1.2(a) of E.O. 13526 provides that information shall be classified at one of three levels. Information shall be classified at the TOP SECRET level if its unauthorized disclosure reasonably could be expected to cause exceptionally grave damage to the national security. Information shall be classified at the SECRET level if its unauthorized disclosure reasonably could be expected to cause serious damage to the national security. Information shall be classified at the CONFIDENTIAL level if its unauthorized disclosure reasonably could be expected to cause damage to the national security.

the IC for the classification of information under applicable law, executive orders, or other presidential directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(2)(A), (B).

11. The function of ODNI is to assist the DNI in carrying out his duties and responsibilities under the Act and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

12. ODNI contains within it several component organizations, such as the National Counterproliferation Center and the National Counterintelligence and Security Center, which assist the DNI in carrying out his national intelligence mission. One of these components is the NCTC.

13. NCTC was established by Executive Order 13354 and became a part of ODNI upon enactment of the Intelligence Reform and Terrorism Prevention Act of 2004. 50 U.S.C. § 3056. Among its principal missions, NCTC serves as the primary organization within the U.S. Government for the analysis and integration of all information related to terrorism and counterterrorism, with the exception of intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism; ensures that appropriate agencies have access to and receive intelligence needed to accomplish their missions; and serves as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contact and support. 50 U.S.C. §3056(d). NCTC has broad authority to access all terrorism-related information that may be collected by other federal agencies, both within and without the IC. Executive Order No. 13388 (Oct. 25, 2005).

14. Pursuant to its role as the “central and shared knowledge bank on known or suspected terrorists and international terror groups,” NCTC maintains the Terrorist Identities Datamart Environment (TIDE) as the consolidated repository of information on international terrorist identities. TIDE supports the Government’s various terrorist screening systems and the

IC's overall counterterrorism mission. TIDE includes, to the extent permitted by law, information the U.S. Government possesses related to the identities of individuals known or suspected to be engaging in conduct constituting terrorism, or in conduct that constitutes aid or preparation for terrorism or that is related to terrorist activities. However, TIDE does not contain purely domestic terrorism information. TIDE records thus include a great deal of intelligence information obtained through the collection, operations, and reporting of the IC, implicating the most sensitive sources and methods of intelligence gathering. Records in TIDE are classified up to the TOP SECRET/SCI level.

15. A TIDE record is a collection of reporting from various sources, assembled to represent all information the U.S. Government possesses about an individual known or suspected to be an international terrorist. All information is sourced back to specific intelligence or law enforcement reports, whether from the Central Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation (FBI), the Department of Homeland Security, the Department of State, or another intelligence or law enforcement entity. These reports can be extremely sensitive, implicating classified collection methods and sources, including clandestine human sources and signals intelligence.

16. In addition to the array of analytic and investigatory uses throughout the IC, the information in TIDE supports the U.S. Government's terrorist screening system by serving as the primary source of information for the Terrorist Screening Database (TSDB) or Terrorist Watchlist. Every day, NCTC analysts create and enhance TIDE records based on their review of information and reporting received. NCTC then exports, in real time, a sensitive but unclassified subset² of the data containing terrorist identifiers to the Terrorist Screening Center (TSC), a multi-agency center administered by the FBI, for use in the U.S. Government's unclassified consolidated terrorist

² Providing declassified information is necessary so that TSC can share the terrorist identifiers with downstream users (e.g., law enforcement) who do not have access to classified information.

watchlist.³ The TSDB is a critical tool for counterterrorism and homeland security, as it supports the screening processes to detect and interdict known and suspected terrorists at home and abroad, through implementation of tools such as the No Fly list, and the sharing of terrorism information with those in the counterterrorism community responsible for protecting the homeland, such as the Department of Homeland Security, the Department of State, the Department of the Treasury, and a variety of law enforcement organizations, including the FBI.

II. THE PROCESSING OF FOIA REQUESTS FOR PERSONAL INFORMATION IN GENERAL AND OF PLAINTIFF'S REQUEST IN PARTICULAR

17. When a requester submits a request for information within ODNI files about herself, IMD first assigns a file number to the request. If accompanying the request is a signed document authorizing release of the requested information under the Privacy Act,⁴ IMD begins to process the request. As a standard practice IMD tasks the personnel, security, and human resources components of ODNI to search for responsive unclassified records regarding that individual. This will sometimes turn up responsive records, particularly if the individual is a former employee of the ODNI seeking information about herself.

18. Whether ODNI will conduct a search of its classified holdings depends on the nature of the request. If the request relates to a category of ODNI classified records, the existence of which is not a secret – national intelligence estimates, for example, or budget records⁵ – IMD will authorize a search of ODNI's classified holdings in an attempt to locate responsive documents. However, where a FOIA requester seeks information about a particular individual, ODNI generally

³ Purely domestic terrorist identity information is provided by the FBI directly to the TSDB.

⁴ While individuals generally have a right of access to records about them maintained in government files, the right does not apply to information that is currently and properly classified pursuant to an Executive Order in accordance with Privacy Act exemption (k)(1).

⁵The Director of National Intelligence is required, pursuant to the National Security Act, to exercise budgetary authorities (50 U.S.C § 3024(c)) and to oversee the production of national intelligence estimates through the National Intelligence Council (50 U.S.C. § 3027), and so the mere fact that it possesses classified holdings on those subjects is not a classified fact.

will not search its classified holdings, because the system most likely to house responsive records is TIDE, and the existence or nonexistence of a particular TIDE record is a classified fact. Instead, ODNI provides a “Glomar” response to the requester, informing her that no classified ODNI records have been searched in response to the request, and that this response should not be taken as an indication that records exist or do not exist with respect to that request.

19. By letter dated January 24, 2014, Plaintiff, through her attorney David L. Sobel, submitted a request under the FOIA. Plaintiff requested the following:

{A}ll agency records concerning, naming, or relating to Ms. Poitras. This request includes, but is not limited to, records maintained by the National Counterterrorism Center (“NCTC”). In the event that you determine that some responsive material might be exempt under FOIA, please indicate the specific exemption or exemptions upon which the agency relies. Ms. Poitras agrees to bear legally assessable processing fees not to exceed \$100.⁶

20. The case was assigned number DF 2014-00111 for tracking purposes. IMD then tasked the relevant ODNI components—DNI’s Executive Secretariat, Personnel Security, and Human Resources directorates—to conduct a search of personnel, human resources, or security records pertaining to Ms. Poitras. That search turned up no responsive records. Further, based on the parameters of the request, ODNI determined that the classified system most likely to hold responsive information was TIDE. Consistent with standard practice, ODNI did not task NCTC with conducting a search of TIDE, because, as explained at length below, to provide any response other than a Glomar response would cause damage to the national security.

21. On February 25, 2014, in a letter to Mr. Sobel, I explained that ODNI had conducted a search of certain unclassified holdings and located no records relating to Ms. Poitras. I also explained that, with regard to any classified records that might be responsive to the request:

FOIA exemption (b)(1) and Privacy Act exemption (k)(1) protect information which is currently and properly classified in accordance with Executive Order 13526. Exemption (b)(3) protects information that is specifically covered by statute. In this case, the applicable statute is the National Security Act, which protects information pertaining to

⁶ A true and correct copy of this letter is attached as Exhibit A.

intelligence sources and methods. Accordingly, no classified ODNI records systems were searched and this response should not be taken as an indication that ODNI records do or do not exist with respect to your request.⁷

22. On March 21, 2014, Ms. Poitras appealed IMD's determination.

23. In response to the appeal, IMD re-tasked the DNI's Executive Secretariat, Personnel Security, and Human Resources directorates to search their holdings for responsive documents. Once again, no responsive documents were located.

24. On November 5, 2015, Mr. Sobel sent a letter to IMD clarifying that responsive records should include "all public source materials that are responsive to {the} pending request."

25. On November 12, 2015, Mark W. Ewing, the authority for FOIA administrative appeals, confirmed that no responsive documents were located in ODNI's human resource, security, or personnel files, and that ODNI would neither confirm nor deny the existence or nonexistence of any responsive information in its classified holdings. Mr. Ewing also stated that ODNI would search its unclassified holdings for public source materials in response to Mr. Sobel's November 5, 2015 letter.⁸

III. ODNI's GLOMAR DETERMINATION

26. Section 3.6(a) of Executive Order 13526 provides the authority for ODNI to issue a response neither confirming nor denying the existence of requested records, also known as a "Glomar" response, in response to requests for information submitted pursuant to the FOIA. Specifically, Section 3.6(a) provides that: "An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors."

27. To the extent Plaintiff's request seeks records relating to Plaintiff in ODNI's

⁷ A true and correct copy of this letter is attached as Exhibit B.

⁸ A true and correct copy of this letter is attached as Exhibit C. ODNI is working diligently to process the records generated by this supplemental search, which are voluminous and include a substantial amount of copyright-protected material.

classified holdings, the mere existence or non-existence of records responsive to that aspect of the request is a protectable fact under exemptions (b)(1) and (b)(3). Acknowledging the existence or non-existence of any such records would reveal a classified fact—whether TIDE contains intelligence information relating to Plaintiff or her activities.

28. As a matter of national security, the United States can neither confirm nor deny the existence or nonexistence of records concerning intelligence activities, sources, methods, relationships, or targets. If the United States confirms that it is conducting a particular intelligence activity, or that it has gathered information on a particular person, such activities would be compromised, and foreign adversaries and terrorist organizations could use that information to avoid detection. Even confirming that a certain intelligence activity or relationship does not exist, either in general or with respect to specific targets or channels, would harm national security because alerting our adversaries to channels or individuals that are not under surveillance could likewise help them avoid detection.

29. In a typical scenario, a FOIA requester submits a request to ODNI for information on a particular subject, and ODNI conducts a search of non-exempt records and advises where responsive records have been located. If records are located, the agency provides the non-exempt records or reasonably segregable non-exempt portions of those records. In this typical circumstance, ODNI's response—either to provide or not to provide the requesters sought—actually confirms the existence or nonexistence of these records. Typically, a confirmation of this nature would reveal neither classified information nor intelligence sources and methods because, as explained, the mere fact that ODNI possesses records on a particular subject (e.g., national intelligence estimates or budget records) is often not a classified fact.

30. This is not the case with a request for personal information that may or may not be located within TIDE. In such a case, confirming the existence or nonexistence of responsive

records within that classified database would reveal a classified fact. If ODNI were to confirm the existence of documents that would reveal whether ODNI has interest in a particular individual or activity, the mere acknowledgment of responsive records – even if those records were withheld in full – would reveal a classified fact, namely, ODNI's interest in the individual or activity.

Conversely, if ODNI were to confirm that no responsive records existed, that fact would itself be revealing, because the absence of records would tend to reveal that ODNI does not have an interest in the particular individual or activity. In these circumstances, ODNI asserts a Glomar response because the existence or nonexistence of ODNI records responsive to the request is a currently and properly classified fact, the disclosure of which could be expected to cause damage to the national security.

31. As noted, TIDE contains information derived from intelligence reports on the identities of known or suspected international terrorists. It is an important tool in the government's watchlisting and terrorist identity screening programs, and it remains an effective tool in large part because its contents are not disclosed outside intelligence and law enforcement channels.

32. ODNI can make no response to a request for TIDE records relating to a particular individual without compromising intelligence-gathering and national security interests. To confirm that an individual has (or once had) a TIDE record database is necessarily to confirm that he or she is (or once was) the subject of counterterrorism intelligence-gathering by the Government. Once so alerted, that individual would likely take steps to avoid further surveillance of his or her terrorist activities. Similarly, terrorist groups with whom the confirmed subject of a TIDE record has associated could use that information to undermine the Government's intelligence-gathering efforts. On the other hand, to confirm that a particular individual is not now, or never has been, the subject of a TIDE record would also be detrimental to the national security, because it would reassure individuals or groups intent on committing acts of terrorism

that they can carry out their plans without fear of surveillance.

33. In short, to be credible and effective, ODNI must assert a Glomar response consistently in all cases where the existence or nonexistence of responsive records is itself a classified fact, including in those cases where ODNI does not possess records responsive to a particular request. If ODNI were to invoke a Glomar response only when it actually possessed responsive records, the Glomar response would be interpreted as an admission that the responsive records exist, thereby revealing the very information that ODNI is obligated to protect.

34. After careful review, I have determined that if ODNI were to confirm the existence of records responsive to Plaintiff's request, whether in TIDE or another classified system of records, such confirmation would at the very least indicate that ODNI had an intelligence interest in Plaintiff. On the other hand, if ODNI were to respond by admitting that it did not possess any responsive records, it would indicate that ODNI had no intelligence interest in Plaintiff. Either confirmation would reveal sensitive information about intelligence activities and intelligence sources and methods that are protected from disclosure by statute and Executive Order 13526. Accordingly, a Glomar response to Plaintiff's request is appropriate because the existence or nonexistence of ODNI records responsive to Plaintiff's request is a classified fact, the disclosure of which could be expected to cause damage to the national security. This classified fact is therefore exempt from disclosure under exemptions (b)(1) and (b)(3).

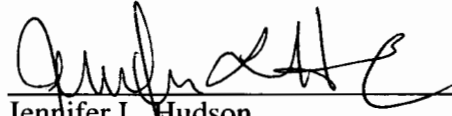
IV. CONCLUSION

35. In this case, the fact of the existence or nonexistence of records responsive to Plaintiff's request is itself a properly classified fact. Requiring the disclosure of information from classified ODNI holdings would cause damage to the national security and would result in the unauthorized disclosure of intelligence sources and methods protected by the National Security Act of 1947, as amended. Accordingly, I have determined the only appropriate response is for ODNI to neither

confirm nor deny the existence of such a record under FOIA exemptions (b)(1) and (b)(3), as well as (k)(1) of the Privacy Act.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 6th day of June, 2016

A handwritten signature in black ink, appearing to read "Jennifer L. Hudson", written over a horizontal line.

Jennifer L. Hudson
Director, Information Management Division
Office of the Director of National Intelligence

EXHIBIT A

DF 2014 00111

David L. Sobel
Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

January 24, 2014

BY CERTIFIED MAIL – 70131710000104259892

Jennifer L. Hudson
Chief, Information and Data Management Group
Office of the Director of National Intelligence
Washington, D.C. 20511

Re: Freedom of Information Act Request

Dear Ms. Hudson:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras. A "privacy waiver" form executed by Ms. Poitras and authorizing disclosure of responsive records to me is attached to this request.

I request disclosure of all agency records concerning, naming, or relating to Ms. Poitras. This request includes, but is not limited to, records maintained by the National Counterterrorism Center ("NCTC"). In the event that you determine that some responsive material might be exempt from disclosure under FOIA, please indicate the specific exemption or exemptions upon which the agency relies. Ms. Poitras agrees to incur legally assessable processing fees not to exceed \$100.

As the FOIA requires, I will anticipate your response to this request within twenty working days. Please feel free to contact me at the e-mail address or telephone number indicated above if you wish to discuss this request.

Thank you for your prompt attention.

rcd
JAN 30 2014

Sincerely,


David L. Sobel

encl.

Exhibit A

EXHIBIT B

Office of the Director of National Intelligence
Washington, DC 20511

Mr. David L. Sobel Attorney-at-Law
Suite 410
1818 N. Street, N.W.
Washington, DC 20036

FEB 25 2014

Reference: ODNI Case #DF-2014-00111

Dear Mr. Sobel:

This is in response to your letter dated 24 January 2014, received in the Information Management Division of the Office of the Director of National Intelligence (ODNI) on 30 January 2014. Pursuant to the Freedom of Information Act (FOIA), you are requesting on behalf of your client Laura Poitras, "*... any disclosure of all agency records concerning, naming, or relating to Ms. Laura Poitras. This request includes, but is not limited to, records maintained by the National Counterterrorism Center ("NCTC").*"

Your request was processed in accordance with the FOIA 5 U.S.C. § 552, as amended. ODNI conducted a search for unclassified records responsive to your request and no records were located.

In accordance with Section 3.6(a) of Executive Order 13526, the ODNI can neither confirm nor deny the existence or nonexistence in its files of any information responsive to your request. The fact of existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by the CIA Act of 1949, as amended, and the National Security Act of 1947, as amended. Therefore your request is denied pursuant FOIA exemptions (b)(1) and (b)(3).

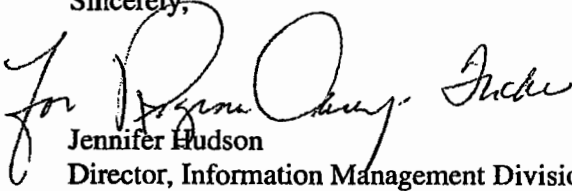
You have the right to appeal this determination within 45 days of the date of this letter to:

Office of the Director of National Intelligence
Information Management Office
Washington, DC 20511

Exhibit B

Should you decide to do this, please explain the basis of your appeal. If you have any questions, please call the Requester Service Center at (703) 874-8500.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Hudson".

Jennifer Hudson

Director, Information Management Division

EXHIBIT C

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
CHIEF MANAGEMENT OFFICER
WASHINGTON, DC 20511

NOV 12 2015

Mr. David L. Sobel
Electronic Frontier Foundation
5335 Wisconsin Avenue, N.W.
Suite 640
Washington, DC 20015

Reference: DF-2014-00111 Appeal

Dear Mr. Sobel:

This is in response to your 21 March 2014 letter wherein you appealed our 25 February 2014 determination in response to your 24 January 2014 request for disclosure of all agency records concerning, naming, or relating to Ms. Laura Poitras. This request includes, but is not limited to, records maintained by the National Counterterrorism Center.

Your appeal was processed in accordance with the FOIA, 5 U.S.C § 552, as amended, and the Privacy Act, 5 U.S.C. § 552a. The Office of the Director of National Intelligence (ODNI) conducted an additional search for potentially responsive unclassified records, including human resource, security, and personnel files, and no records were located.

Regarding classified holdings, in accordance with Section 3.6(a) of Executive Order 13526, the ODNI can neither confirm nor deny the existence or nonexistence in its files of any information responsive to your request. The fact of existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by the National Security Act of 1947, as amended. Therefore your request is denied pursuant FOIA exemptions (b)(1) and (k)(1). By this statement, the ODNI neither confirms nor denies that such records may or may not exist. After careful consideration of your appeal, we have determined that the decision of the Director, Information Management Division should be affirmed.

In accordance with the provisions of the FOIA, you have the right to seek judicial review of this determination in a United States district court. Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies. Using services offered by OGIS does not affect your right to pursue litigation. For more information, including how to contact OGIS, please consult this website, <http://ogis/archives.gov>.

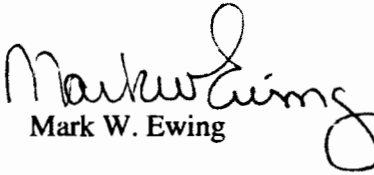
In your 5 November 2015 letter sent to ODNI's Information Management Division, you indicate that your request includes "all public source materials that are responsive to [your] pending request." Based on that clarification, ODNI will search its unclassified files and process any public records that are responsive to the request. We agree that any challenges you make in

Exhibit C

Mr. David L. Sobel

response to our review will be adjudicated as part of the claims you have raised in Poitras v. Department of Homeland Security, 15-cv-01001, the FOIA litigation you have filed in the U.S. District Court for the District of Columbia.

Sincerely,


Mark W. Ewing

Enclosure:
Appeal Request

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 4: Declaration of Sabrina Burroughs (CBP)

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND SECURITY,
ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

DECLARATION OF SABRINA BURROUGHS

I, Sabrina Burroughs, declare as follows:

1. I am the Director of the Freedom of Information Act (FOIA) Division, Privacy and Diversity Office, Office of the Commissioner, at U.S. Customs and Border Protection (“CBP”). I have been Director of the FOIA Division in Washington, D.C. since May 20, 2013. As Director of the FOIA Division, I am responsible for supervising the processing of FOIA requests submitted to CBP, and I am familiar with CBP’s procedures for responding to FOIA requests. I provide technical and administrative supervision and direction, through subordinate supervisors, to a group of FOIA specialists in processing FOIA requests; assist with FOIA / Privacy Act (PA) litigation matters; and am personally familiar with the processing of FOIA/PA responses including by, at times, directly reviewing for adequacy, accuracy, and adherence to federal laws and regulations.

2. The statements in this Declaration are based upon my personal knowledge, upon information and documents made available to me in the course of the performance of my duties, as well as my experience and knowledge of the internal operations of this office and agency.

3. The purpose of this Declaration is to explain the actions CBP has taken since receiving Plaintiff's FOIA request dated January 24, 2014 (the "Request"), and to explain the procedures used in reviewing and processing records in response to the Request. In accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), this Declaration, together with the corresponding Vaughn index, appropriately identifies information that has been withheld, the statutory exemption(s) claimed, and the justification for asserting the exemptions.

A. Plaintiff's Request and CBP's Search for Responsive Records.

4. By letter dated January 24, 2014, Plaintiff submitted the Request to CBP seeking disclosure of "all agency records concerning, naming, or relating to [Plaintiff] Ms. Poitras." A copy of the Request is attached as **Exhibit A**.

5. Upon receiving the Request, CBP FOIA staff carefully evaluated the Request and considered which offices, databases, and personnel were likely to hold responsive information. CBP personnel determined that responsive records within CBP's control were likely to be found within two CBP systems—TECS (including its subsystems) and the Automated Targeting System (ATS) (specifically, its passenger module, ATS – Passenger or ATS-P)—and performed searches on the relevant databases within those systems using Plaintiff's name and date of birth. CBP personnel further determined that responsive records, both paper and electronic, were likely to be found within CBP's New York field office. CBP searched paper files and performed an electronic search on email records using Plaintiff's name and other relevant search terms. These searches identified responsive records that were subsequently provided to Plaintiff consistent with applicable laws and policies, as detailed below.

B. Applicable FOIA Exemptions.

6. CBP released records to Plaintiff through two responses, dated November 12, 2015 and February 17, 2016. The cover letters for these responses are attached as **Exhibits B** and **C**.

7. In each response, CBP provided Plaintiff with a description of all FOIA exemptions, including applicable exemptions asserted by CBP, as well as supplemental information regarding appeals and generally applicable agency policies relevant to all FOIA responses. With respect to the records released to Plaintiff, CBP has redacted information pursuant to the exemptions found in 5 U.S.C. §§ 552(b)(4), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

8. Section 552(b)(4) of Title 5 of the U.S. Code exempts from disclosure trade secrets and commercial or financial information which could harm the competitive posture or business interests of a company.

9. Section 552(b)(5) of Title 5 of the U.S. Code protects deliberative or policy-making processes within an agency by exempting from disclosure opinion, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters, including communications covered by the attorney-client privilege.

10. Section 552(b)(6) of Title 5 of the U.S. Code exempts from disclosure personnel and medical files, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption requires balancing the public's right to disclosure against an individual's right of privacy.

11. Section 552(b)(7)(C) of Title 5 of the U.S. Code exempts from disclosure law enforcement records or information that "could reasonably be expected to constitute an

unwarranted invasion of personal privacy.” This exemption extends to CBP as a law enforcement agency, and is designed to protect, among other things, law enforcement personnel from harassment and annoyance in the conduct of their official duties and in their private lives, which could conceivably result from the public disclosure of their identity. The exemption applies where the privacy interest in the identity of an individual outweighs any public interest in disclosure of that information.

12. Section 552(b)(7)(E) of Title 5 of the U.S. Code exempts from disclosure law enforcement records or information that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

13. In each response, CBP also included supplemental information regarding appeals and generally applicable agency policies relevant to all FOIA responses. For example, Plaintiff was advised that to the extent the Request could be construed as seeking records or information reflecting whether a particular person is or has ever been listed in the government terrorist watchlist, CBP can neither confirm nor deny the existence or non-existence of certain records which would tend to indicate whether a particular person is or ever was listed on the terrorist watchlist, in accordance with exemptions (b)(7)(E). Exemption (b)(7)(E) would apply to any such records, if they existed, given their nexus to the terrorist watch-list, because information related to any such status would disclose law enforcement techniques and procedures which are not publicly known or disclosed.

14. Below is an explanation of the records pulled from the relevant CBP systems, and how the exemptions identified have been applied to those records.

C. TECS Records.

15. TECS is an overarching law enforcement information collection, analysis, and sharing environment, comprised of several modules and subsystems designed to collect, maintain, and screen data as well as conduct analysis, screening and information sharing to facilitate the law enforcement and antiterrorism mission of CBP. CBP is responsible for collecting and reviewing border crossing information, both inbound and outbound, related to international travel. Information collected by CBP related to the inbound and outbound travel of individuals to and from the United States, including the inspection of travelers seeking entry to the United States, is maintained in TECS (including its subsystems).¹

16. For example, CBP's Advanced Passenger Information System (APIS), which operates within the TECS system architecture, enables CBP to collect and maintain certain biographical information on passengers and crew members who arrive in, depart from, or transit through the United States on covered air or vessel carriers.² Similarly, the Border Crossing Information system (BCI), another TECS subsystem, allows CBP to collect certain biographic and biometric information on individuals who enter and exit the United States, including the time and location of the border crossing.³

17. As a whole, TECS is a key tool of CBP's law enforcement and antiterrorism mission. TECS is used by CBP to track individuals who have violated or are suspected of violating laws or regulations enforced or administered by CBP, assists officers in determining

¹ See Privacy Act of 1974; U.S. Customs and Border Protection – TECS System of Records Notice, 73 Fed. Reg. 77778, 77779 (December 19, 2008) (describing the TECS system and its subsystems, which are subject to separate SORNs).

² See Privacy Act of 1974; U.S. Customs and Border Protection – Advanced Passenger Information System Systems of Records Notice, 80 Fed. Reg. 13407 (March 13, 2015).

³ See Privacy Act of 1974; U.S. Customs and Border Protection-007 – Border Crossing Information System of Records, 81 Fed. Reg. 404 (January 25, 2016).

admissibility of persons arriving in the United States, and aids officers in identifying security threats related to international travelers.

18. CBP's FOIA Division searched TECS and its subsystems for all responsive records through June 16, 2015. On November 12, 2015, CBP's FOIA Division released 492 pages of records from TECS to Plaintiff, labeled CBP000001 through CBP000492, as part of an initial production.

Exemptions Applicable to TECS Records.

19. CBP redacted certain information in the TECS records pursuant to the FOIA exemptions found in 5 U.S.C. §§ 552(b)(6), (b)(7)(C), and (b)(7)(E).

20. Exemptions (b)(6) and (b)(7)(C) have been applied to government fax and phone numbers, names of government employees, terminal identification numbers of the TECS users who retrieved the TECS records, personally identifiable information and other identifying details of third party individuals, as well as identity and other personal documents of third party individuals that would identify those individuals if released. Government employees, including CBP law enforcement officers, have a protectable privacy interest in their identities that would be threatened by disclosure. Release of this information would constitute a clearly unwarranted invasion of privacy and would not shed light on the actions of CBP. As such, there is no public interest in the disclosure of this information.

21. Exemption (b)(7)(E) has been applied to protect the computer screen transaction code, computer program transaction code, computer function codes (i.e., “PF codes” or “navigation keys”) and information that would reveal the results of specific law enforcement database queries (the “RSLT” column). Release of this information would enable an individual knowledgeable in computer mainframes and systems to improperly access the system, facilitate navigation or movement through the system, allow manipulation or deletion of data and interfere with enforcement proceedings.

22. The computer codes at issue facilitate access to and navigation through TECS. Individuals who knew the meaning of the codes would have sufficient law enforcement information, including how CBP conducts its law enforcement operation, to enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and take other countermeasures, thereby corrupting the integrity of ongoing investigations. Public dissemination of these access codes would permit unauthorized users to manipulate records to avoid recognition, instant detection and apprehension. It would also arm unauthorized users with the ability to corrupt the integrity of data contained therein through the alteration/manipulation of such data. In addition, if the system were to be hacked, it would permit the intruder to potentially manipulate the way certain records are created and maintained, which could put at risk ongoing investigations and border security operations.

23. Protecting and maintaining the integrity of TECS is imperative in assisting CBP in its primary mission to prevent terrorists, their weapons, and other dangerous items from entering the United States. TECS is CBP’s principal law enforcement and anti-terrorism database system, and it is one of the primary tools that CBP law enforcement officers, and other personnel with authorized access, regularly use, in order to effectively and efficiently enforce all

applicable laws, particularly as it relates to travelers and trade crossing the border into or out of the United States. As a fundamental law enforcement tool, there is a great need to defend TECS against any threatened or real risk of threat or compromise, not only to ensure the continuance of CBP's mission, but also to assist the other law enforcement agencies which TECS may support, and to protect and facilitate legitimate trade and travel.

24. In addition to computer and system codes, exemption (b)(7)(E) has also been applied to information explaining law enforcement techniques and procedures. Much of this information may be found in narrative portions of the TECS records, which describe law enforcement techniques and procedures utilized by CBP law enforcement officers, but not disclosed to Plaintiff or to the general public. Disclosure of law enforcement techniques and procedures would be debilitating and detrimental to both CBP and the law enforcement community, and it would enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate other countermeasures, thereby corrupting the integrity of ongoing investigations.

D. ATS Records.

25. ATS is a decision-support tool that compares traveler, cargo, and conveyance information against law enforcement, intelligence, and other enforcement data using risk-based targeting scenarios and assessments. ATS supports all CBP mission areas, and the data and rules specific to those areas.⁴ ATS-P, a module of ATS, maintains the official records for Passenger Name Records (PNR) collected by CBP from airlines or their travel reservation systems. PNR records include data regarding persons traveling to and from the United States on commercial air carriers, to the extent collected by the carrier.

⁴ See Privacy Act of 1974; U.S. Customs and Border Protection-006 – Automated Targeting System, System of Records, 77 Fed. Reg. 30297 (May 22, 2012).

26. CBP's FOIA Division searched ATS for responsive records by running a query with Plaintiff's name and date of birth. On November 12, 2015, as part of its initial production, CBP's FOIA Division released 220 pages of partially redacted PNR records to Plaintiff, labeled CBP000493 through CBP000712.

Exemptions Applicable to ATS Records.

27. CBP redacted certain information in the ATS records pursuant to the FOIA exemptions found in 5 U.S.C. §§ 552(b)(4), (b)(6), and (b)(7)(C).

28. Exemption (b)(4) has been applied to confidential business information of air carriers. Disclosure of such information could cause substantial competitive harm to the airlines that provide the information, and may impair the Government's relations with air carriers and the ability to collect such information in the future.

29. Exemptions (b)(6) and (b)(7)(C) have been applied to personally identifiable information and other identifying details of third party individuals, as well as identity and other personal documents of third party individuals that would identify those individuals if released. This information includes third-party travelers and airline employees.

E. Records from CBP's New York Field Office.

30. During processing of the Request, CBP FOIA became aware that additional responsive records, not captured by the previously described searches, were reasonably likely to exist in files located within CBP's New York field office. These records, which relate to an encounter between Plaintiff and CBP on August 1, 2010, at JFK International Airport, were reasonably likely to include paper and electronic correspondence between CBP and Plaintiff, correspondence internal to CBP, in addition to other documents.

31. Personnel within CBP's New York field office were tasked with searching paper files related to Plaintiff and performing an electronic search using search criteria reasonably tailored to identify all records that may be responsive to the Request. Individuals within the New York field office reviewed paper files known or reasonably believed to include records relating to Plaintiff or the August 1, 2010 encounter. The electronic search included several custodians deemed reasonably likely to have information related to Plaintiff or the August 1, 2010 encounter, used the timeframe of August 1, 2010 through October 31, 2010 so as to capture all known or reasonably likely to exist records concerning Plaintiff or the August 1, 2010 encounter, and utilized search terms that included "Poitras," "Laura Poitras," and the name and email address of Plaintiff's legal counsel related to the August 1, 2010 encounter, "David B. Smallman" and "dbs@smallmanlaw.com." On February 17, 2016, CBP's FOIA Division released 223 pages of partially redacted records to Plaintiff, labeled CBP000713 through CBP000935.

Exemptions Applicable to the New York Field Office Records.

32. CBP redacted certain information in the New York field office records pursuant to the FOIA exemptions found in 5 U.S.C. §§ 552(b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

33. **CBP000713 through 934.** Records labeled CBP000713 through CBP000934 consist mostly of communications between CBP personnel and Plaintiff's legal counsel, which were released in full. But these records also include some communications among CBP attorneys, and between CBP attorneys and other employees or personnel of CBP. Exemption (b)(5) has been applied to communications of CBP attorneys who were acting in their capacity as legal counsel for CBP, where the communications were for the purpose of rendering legal services, as such communications are privileged. The communications also reflect deliberative

processes and conclusions, including with respect to CBP inspections, processes, and legal authorities, and have been withheld under exemption (b)(5) for that reason as well.

34. Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released. Government employees, including CBP law enforcement officers and other personnel, have a protectable privacy interest in their identities that would be threatened by disclosure. Release of this information would constitute a clearly unwarranted invasion of privacy and would not shed light on the actions of CBP. As such, there is no public interest in the disclosure of this information.

35. **CBP000935.** CBP released CBP000935, a Certification of Data Destruction, with redactions made under exemptions (b)(6), (b)(7)(C), and (b)(7)(E). For purposes of these records, CBP has asserted these exemptions on behalf of both CBP and U.S. Immigration and Customs Enforcement (ICE), per ICE's request.

36. Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees and other personally identifiable information that would identify those individuals if released. Government employees, including CBP and ICE law enforcement officers, have a protectable privacy interest in their identities that would be threatened by disclosure. Release of this information would constitute a clearly unwarranted invasion of privacy and would not shed light on the actions of CBP or ICE. As such, there is no public interest in the disclosure of this information.

37. Exemption (b)(7)(E) has been applied to information explaining law enforcement techniques and procedures utilized by CBP and ICE that are not generally known or publicly

disclosed, including information explaining methods regarding data destruction. Disclosure of law enforcement techniques and procedures would be debilitating and detrimental to both CBP and the law enforcement community, and it would enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate other countermeasures, thereby corrupting the integrity of ongoing investigations.

Records Withheld in Full

38. In addition to the records identified above, CBP withheld in full 3,182 pages of records collected from CBP's New York field office under exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). The withheld records are divided into 26 separate documents, and are identified in the enclosed *Vaughn* index.

39. **Documents 1 through 20.** As explained below, the majority of these records, and specifically those identified on the *Vaughn* index as documents 1 through 20, consist of internal emails within CBP from several different custodians. Several of these documents include a compilation of multiple email strings collected from a particular custodian and combined into a single PDF. In other words, while these records have been consolidated into 20 "documents" for purposes of this Declaration and corresponding *Vaughn* index, several of the PDFs consist of multiple email chains collected from a particular custodian consolidated into a single electronic file. The number of pages within each document is noted on the *Vaughn* index.

40. These documents, however, do not consist entirely of unique emails, but instead contain many duplicates. Duplicate email files were captured for three reasons. First, since multiple electronic searches, with different search terms, were performed for each custodian, email files were frequently captured from the same custodian multiple times (where the same file responded to multiple search terms). Second, the same email files were frequently captured from

multiple custodians, to the extent multiple custodians were each recipients of the same email. And third, emails were captured not only when first transmitted, but also each time the email was replied to or forwarded, as each reply or forward creates a new email chain that is separately captured.

41. Because documents 1 through 20 consist of communications among CBP legal counsel, and between CBP legal counsel and agency employees and other personnel, the documents have been withheld in full under exemption (b)(5), as they consist of attorney-client privileged communications. In the context of these communications, CBP attorneys were acting within their capacity as legal counsel for CBP, and the communications were for the purpose of rendering legal services. As such, the communications are privileged. The communications also reflect deliberative processes and conclusions, including with respect to CBP inspections, processes, and legal authorities, and have been withheld under exemption (b)(5) for that reason as well.

42. As a note, documents 1 through 20 do have imbedded within them email communications with Plaintiff's legal counsel that, standing alone, are not privileged, but which were subsequently forwarded to form the basis of privileged communications. However, copies of all such emails were released to Plaintiff and may be found within CBP000713-CBP000934. As such, CBP has produced to Plaintiff at least one copy of all non-privileged email communications, including emails between CBP personnel and Plaintiff's counsel, which CBP identified within its records.

43. While documents 1 through 20 have been withheld in full under exemption (b)(5), certain portions of those records are also subject to exemptions (b)(6), (b)(7)(C), and (b)(7)(E). Exemptions (b)(6) and (b)(7)(C) have been applied to relevant portions of these documents to

names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released. Government employees, including CBP law enforcement officers and other personnel, have a protectable privacy interest in their identities that would be threatened by disclosure. Release of this information would constitute a clearly unwarranted invasion of privacy and would not shed light on the actions of CBP. As such, there is no public interest in the disclosure of this information.

44. Exemption (b)(7)(E) has been applied to information explaining law enforcement techniques and procedures, including email communications with and between CBP personnel describing techniques and processes used during CBP inspections and other law enforcement functions. Such emails include those sent from and to CBP attorneys, and emails transmitted between non-attorney CBP personnel and subsequently forwarded to CBP attorneys. Such information is not generally known or publicly disclosed. Disclosure of law enforcement techniques and procedures would be debilitating and detrimental to both CBP and the law enforcement community, and it would enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate other countermeasures, thereby corrupting the integrity of ongoing investigations.

45. **Document 21.** Document 21 consists of a screenshot of a CBP law enforcement system and has been withheld in full under exemption (b)(7)(E). The information in document 21 includes computer codes and other information that would reveal the techniques, procedures, and results of specific law enforcement database queries, and such information is not generally known or publicly disclosed. Disclosure of law enforcement techniques and procedures would be debilitating and detrimental to both CBP and the law enforcement community, and it would

enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate other countermeasures, thereby corrupting the integrity of ongoing investigations.

46. **Document 22.** Document 22 is an internal CBP report, and has been withheld in full under exemptions (b)(5) and (b)(7)(E). Exemption (b)(5) was applied because the report was attached and transmitted as part of an attorney-client communication between CBP attorneys and other CBP personnel.

47. Exemption (b)(7)(E) was applied because document 22 consists entirely of law enforcement techniques and procedures not generally known or publicly disclosed. Disclosure of law enforcement techniques and procedures would be debilitating and detrimental to both CBP and the law enforcement community, and it would enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate other countermeasures, thereby corrupting the integrity of ongoing investigations.

48. Exemptions (b)(6) and (b)(7)(C) have also been applied to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released. Government employees, including CBP law enforcement officers and other personnel, have a protectable privacy interest in their identities that would be threatened by disclosure. Release of this information would constitute a clearly unwarranted invasion of privacy and would not shed light on the actions of CBP. As such, there is no public interest in the disclosure of this information.

49. **Documents 23 through 26.** Documents 23 through 26 are documents and memoranda prepared by and internal to CBP legal counsel related to the 2010 encounter between

Plaintiff and CBP, and which have been withheld in full under exemption (b)(5) and, for Documents 23, 24, and 25, exemption (b)(7)(E). Exemption (b)(5) was applied because the documents are protected by the attorney-client privilege and the attorney work-product doctrine, and because they reflect deliberative processes and conclusions, including with respect to CBP inspections, processes, and legal authorities.

50. Exemption (b)(7) has been applied in full to Documents 23, 24, and 25, and in part to Document 26, because the documents consist of law enforcement techniques and procedures, including narrative discussions of such techniques and procedures, not generally known or publicly disclosed. Disclosure of law enforcement techniques and procedures would be debilitating and detrimental to both CBP and the law enforcement community, and it would enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate other countermeasures, thereby corrupting the integrity of ongoing investigations.

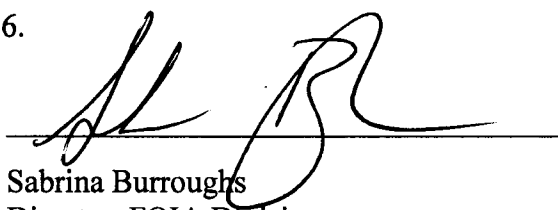
51. Exemptions (b)(6) and (b)(7)(C) have also been applied to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released. Government employees, including CBP law enforcement officers and other personnel, have a protectable privacy interest in their identities that would be threatened by disclosure. Release of this information would constitute a clearly unwarranted invasion of privacy and would not shed light on the actions of CBP. As such, there is no public interest in the disclosure of this information.

F. Non-Segregability of Exempted Information.

52. After careful review, I have determined that all information withheld from the records provided to Plaintiff is exempt from disclosure pursuant to the FOIA exemptions identified, or is not reasonably segregable because it is so intertwined with protected material that segregation is not possible or its release would reveal the underlying protected material. I have conducted a line-by-line review of the records determined to be responsive, to identify information exempt from disclosure or for which a discretionary waiver of exemption could apply, and I am satisfied that all reasonably segregable portions of the relevant record have been released to the Plaintiff in this matter. I have determined that any further release of the exempted materials could reasonably lead to the disclosure of protected information, including techniques or procedures for law enforcement investigations, personal information of individuals other than Plaintiff, or other items that are properly protected by the exemptions asserted.

I declare under a penalty of perjury that the information provided is true and correct to the best of my information, knowledge, and belief.

Signed this 31 day of May 2016.



Sabrina Burroughs
Director, FOIA Division
Office of the Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security

EXHIBIT A

David L. Sobel

Attorney-at-Law

RECEIVED

Suite 410
1818 N Street, N.W.
Washington, DC 20036

2014 JAN 30 PM 1:34

OFFICE OF DIVERSITY
AND CIVIL RIGHTS

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

January 24, 2014

BY CERTIFIED MAIL -- 70131710000104259922

U. S. Customs & Border Protection (CBP)
FOIA Officer
90 K Street NE, 9th Floor
Washington, D.C. 20229-1181

Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras. A "privacy waiver" form executed by Ms. Poitras and authorizing disclosure of responsive records to me is attached to this request. This request includes, but is not limited to, redacted material CBP provided to Ms. Poitras in response to request 2008F2660.

I request disclosure of all agency records concerning, naming, or relating to Ms. Poitras. In the event that you determine that some responsive material might be exempt from disclosure under FOIA, please indicate the specific exemption or exemptions upon which the agency relies. Ms. Poitras agrees to incur legally assessable processing fees not to exceed \$100.

As the FOIA requires, I will anticipate your response to this request within twenty working days. Please feel free to contact me at the e-mail address or telephone number indicated above if you wish to discuss this request.

Thank you for your prompt attention.

Sincerely,



David L. Sobel

encl.

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

PRIVACY WAIVER AUTHORIZING DISCLOSURE TO A THIRD PARTY

Use this form to authorize the U.S. Department of Homeland Security ("DHS") to disclose information and/or records about you to a third party. Taking this action is entirely voluntary; you are under no obligation to consent to the release of your information to any third party. **Authority:** Privacy Act of 1974 (5 U.S.C. § 552a); DHS Privacy Act Regulations (6 C.F.R. § 5.21(d)).

STEP 1 Provide information about yourself and identify the third party that you intend to receive your information and/or records (the "Recipient").	
Your Full Name: Laura Poitras	Your Alien Registration Number (if applicable):
Your Current Address: 135 Hudson St., 3F, NYC 10013	Date of Birth: 2/2/64 Country of Birth: US
Recipient's Name: David L. Sobel, Esq.	Recipient's Phone Number: 202-246-6180
Recipient's Mailing Address (required if requesting disclosure by mail): 1818 N Street, NW, Suite 410, Washington, DC 20036	
Recipient's Organization, if the waiver will apply to it (e.g. news media, congressional office, law firm):	

STEP 2 Specify what information and/or records DHS is authorized to share with the Recipient.

- | | | |
|---|--|---|
| <input type="checkbox"/> Identifying Data (Date of Birth, etc.) | <input type="checkbox"/> Family Data | <input type="checkbox"/> Travel/Border Crossing |
| <input type="checkbox"/> Immigration Case | <input type="checkbox"/> Detention Information | <input type="checkbox"/> Medical Information |
| <input type="checkbox"/> Alien File (A-File) | <input type="checkbox"/> Criminal History | <input type="checkbox"/> Criminal Case |

AND/OR

The following information/records (describe): _____

OR

ALL information and/or Records Requested by the Recipient

For Aliens Only: If you have applied for or received any of the immigration benefits below, you are legally entitled to confidentiality. (See reverse for more information.) If you want DHS to share information about these benefits with the Recipient, you must waive your confidentiality rights by checking the appropriate boxes below. Waiver of these rights is not required; however, if you do not waive these rights DHS may be unable to disclose to the Recipient some or all of the information you identified above.

- I waive my right to confidentiality and authorize disclosure to the Recipient regarding these immigration benefits:
- | | | |
|---|--|---|
| <input type="checkbox"/> Temporary Protected Status (TPS) | <input type="checkbox"/> T Visa (for trafficking victims) | <input type="checkbox"/> U Visa (for victims of certain crimes) |
| <input type="checkbox"/> Seasonal Agricultural Worker | <input type="checkbox"/> Battered Spouse/Child Seeking Hardship Waiver | <input type="checkbox"/> Violence Against Women Act (VAWA) |
| <input type="checkbox"/> Asylum
(confidentiality applies even if petition is denied) | | |

STEP 3 Sign the statement below authorizing DHS to disclose your information and/or records to the Recipient.

I certify under penalty of perjury that the information above is accurate. I authorize DHS, its components, offices, employees, contractors, agents, and assignees, to disclose the information or records specified above to the Recipient. I understand this may include and is not limited to reports, evaluations, and notes of any kind, contained in any record keeping system maintained by or on behalf of DHS; that DHS retains the discretion to decide if particular records or information are within the scope of this Waiver; and that DHS has no control over how the Recipient will use or disseminate my information. I agree to release and hold harmless DHS, its components, offices, employees, contractors, agents, and assignees, from any and all claims of action or damages of any kind arising from, or in any way connected to, the release or use of any information or records pursuant to this Waiver.

Your Signature: <i>Laura Poitras</i>	Witness Signature: <i>Mathilde Bonnefoy</i>
Date: <i>Jan 9 2014</i>	Witness Name: <i>Mathilde Bonnefoy</i>

*Privacy Waiver is valid for 90 days from date of signature

*Witness may not be the Recipient or employed by Recipient's employer

EXHIBIT B



U.S. Customs and
Border Protection

SENT BY ELECTRONIC MAIL TO: sobel@att.net

November 12, 2015

David L. Sobel
1818 N Street NW, #410
Washington, D.C. 20036

Re: Freedom of Information Act Request No. CBP-2014-019068

Mr. Sobel:

A search of CBP databases produced records responsive to your Freedom of Information Act (FOIA) request number **CBP-2014-019068**.

CBP has determined that the responsive records are partially releasable, pursuant to Title 5 U.S.C. § 552, and has applied the appropriate exemptions. An explanation of relevant exemptions, and other information which may be pertinent to your request, is attached for your reference.

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177, following the procedures outlined in the DHS regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Please notate file number **CBP-2014-019068** on any future correspondence to CBP related to this request.

Sincerely,

A handwritten signature in cursive script that reads "Christie Sharpe".

Christie Sharpe
Branch Chief
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office

**Definitions of the Exemptions
Under the Freedom of Information Act (5 U.S.C. § 552)**

Pursuant to Title 5 U.S.C. § 552 (b), the disclosure requirement of the Freedom of Information Act does not apply to matters that are –

- (1)(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national security defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempt from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or, establishes particular criteria for withholding or refers to particular kinds of matters to be withheld;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) records of information compiled for law enforcement purposes, but only to the extent that the production of such records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings,
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority, or any private institution which furnished information on a confidential basis, and for a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or

prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

- (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (8) contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; or
 - (9) geological and geophysical information and data, including maps, concerning wells.

Regarding Government Terrorist Watch List Information

To the extent that your FOIA request can be interpreted as a request for records that may be maintained by CBP regarding whether a particular person is or has ever been listed in the government terrorist watch list, please be advised that the U.S. Government, through the FOIA mechanism, neither confirms nor denies whether a particular person is on the terrorist watch list. Maintaining the confidentiality of government watch lists is necessary to achieve the counterterrorism and national security objectives of the U.S. Government. If the U.S. Government routinely revealed who has or has not been listed on the terrorist watch list, terrorists would be able to take actions to avoid detection by government authorities. Thus, pursuant to the FOIA Exemption 7(E), 5 U.S.C. § 552 (b)(7)(E), CBP can neither confirm or deny the existence of certain records which would tend to indicate whether a particular person is or ever was listed on the terrorist watch list. If you have questions or seek resolution regarding difficulties that you experienced during travel screening at transportation hubs—like airports and train stations—or during processing at a U.S. border, including watch list issues, problems at ports of entry or situations where you believe that you have been unfairly or incorrectly delayed, denied boarding or identified for additional screening at our nation’s transportation hubs please address these issues to the single point of contact for DHS, the Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP). Additional information regarding DHS TRIP is available at www.dhs.gov/trip. Please note: this is a standard notice being issued in response to every individual who requests through FOIA “all records” on a particular person that may be maintained by the agency, as well as all FOIA requests related to travel difficulties. This notice should not be taken as an indication that records do or do not exist with respect to your particular request.

Administrative Appeal

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of CBP’s FOIA response letter, within 60 days of the date of the letter, to: U.S. Customs and Border Protection, Office of Regulations and Rulings, FOIA Appeals, Policy and Litigation Branch, 90 K Street, NE, Washington, D.C. 20229, following the

procedures outlined in the Department of Homeland Security regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Judicial Review

In the event that the FOIA Appeals, Policy and Litigation Branch, should (1) fail to issue a determination of your appeal within 20 business days of its receipt (plus 10 additional business days, if you are notified in writing that an extension of time is required and applicable), or (2) deny your appeal, you may obtain judicial review pursuant to Title 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you (your client) reside(s) or have (has) a principal place of business, or in which the agency records are situated, or in the United States District Court for the District of Columbia.

EXHIBIT C



U.S. Customs and
Border Protection

SENT BY ELECTRONIC MAIL TO: sobel@att.net

November 12, 2015

David L. Sobel
1818 N Street NW, #410
Washington, D.C. 20036

Re: Freedom of Information Act Request No. CBP-2014-019068

Mr. Sobel:

A search of CBP databases produced records responsive to your Freedom of Information Act (FOIA) request number **CBP-2014-019068**. Enclosed with this letter are additional records responsive to your request.

CBP has determined that the responsive records are partially releasable, pursuant to Title 5 U.S.C. § 552, and has applied the appropriate exemptions. CBP has also identified 3,180 pages of records (consisting of many duplicates) which have been withheld in full pursuant to 5 U.S.C. § 552, including but not limited to exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). An explanation of relevant exemptions, and other information which may be pertinent to your request, is attached for your reference.

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177, following the procedures outlined in the DHS regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Please notate file number **CBP-2014-019068** on any future correspondence to CBP related to this request.

Sincerely,

A handwritten signature in cursive script that reads "Christie Sharpe".

Christie Sharpe
Branch Chief
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office

**Definitions of the Exemptions
Under the Freedom of Information Act (5 U.S.C. § 552)**

Pursuant to Title 5 U.S.C. § 552 (b), the disclosure requirement of the Freedom of Information Act does not apply to matters that are –

- (1)(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national security defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempt from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or, establishes particular criteria for withholding or refers to particular kinds of matters to be withheld;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) records of information compiled for law enforcement purposes, but only to the extent that the production of such records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings,
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority, or any private institution which furnished information on a confidential basis, and for a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or

prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

- (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (8) contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; or
 - (9) geological and geophysical information and data, including maps, concerning wells.

Regarding Government Terrorist Watch List Information

To the extent that your FOIA request can be interpreted as a request for records that may be maintained by CBP regarding whether a particular person is or has ever been listed in the government terrorist watch list, please be advised that the U.S. Government, through the FOIA mechanism, neither confirms nor denies whether a particular person is on the terrorist watch list. Maintaining the confidentiality of government watch lists is necessary to achieve the counterterrorism and national security objectives of the U.S. Government. If the U.S. Government routinely revealed who has or has not been listed on the terrorist watch list, terrorists would be able to take actions to avoid detection by government authorities. Thus, pursuant to the FOIA Exemption 7(E), 5 U.S.C. § 552 (b)(7)(E), CBP can neither confirm or deny the existence of certain records which would tend to indicate whether a particular person is or ever was listed on the terrorist watch list. If you have questions or seek resolution regarding difficulties that you experienced during travel screening at transportation hubs—like airports and train stations—or during processing at a U.S. border, including watch list issues, problems at ports of entry or situations where you believe that you have been unfairly or incorrectly delayed, denied boarding or identified for additional screening at our nation’s transportation hubs please address these issues to the single point of contact for DHS, the Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP). Additional information regarding DHS TRIP is available at www.dhs.gov/trip. Please note: this is a standard notice being issued in response to every individual who requests through FOIA “all records” on a particular person that may be maintained by the agency, as well as all FOIA requests related to travel difficulties. This notice should not be taken as an indication that records do or do not exist with respect to your particular request.

Administrative Appeal

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of CBP’s FOIA response letter, within 60 days of the date of the letter, to: U.S. Customs and Border Protection, Office of Regulations and Rulings, FOIA Appeals, Policy and Litigation Branch, 90 K Street, NE, Washington, D.C. 20229, following the

procedures outlined in the Department of Homeland Security regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Judicial Review

In the event that the FOIA Appeals, Policy and Litigation Branch, should (1) fail to issue a determination of your appeal within 20 business days of its receipt (plus 10 additional business days, if you are notified in writing that an extension of time is required and applicable), or (2) deny your appeal, you may obtain judicial review pursuant to Title 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you (your client) reside(s) or have (has) a principal place of business, or in which the agency records are situated, or in the United States District Court for the District of Columbia.

EXHIBIT D

Documents Partially Released With Redactions

Bates Range	Document Description	Pages	Exemption(s)	Description of Material Withheld
CBP000001 – CBP000029	Type: TECS Border Crossing Information records	29	(b)(6), (b)(7)(C), (b)(7)(E)	<p>Exemptions 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C) have been applied to terminal identification numbers of the TECS users who retrieved the TECS records, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to protect the computer screen transaction code, computer program transaction code, computer function codes (i.e., “PF codes” or “navigation keys”) and information that would reveal the results of specific law enforcement database queries (the “RSLT” column).</p> <p>Exemption (b)(7)(E) has also been applied to information explaining law enforcement techniques and procedures.</p>
CBP000030 – CBP000200; CBP000456 – CBP000492	Type: TECS Advanced Passenger Information System records	171	(b)(6), (b)(7)(C), (b)(7)(E)	<p>Exemptions 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C) have been applied to terminal identification numbers of the TECS users who retrieved the TECS records, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to protect the computer screen transaction code, computer program transaction code, computer function codes (i.e., “PF codes” or “navigation</p>

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				<p>keys”) and information that would reveal the results of specific law enforcement database queries (the “RSLT” column).</p> <p>Exemption (b)(7)(E) has also been applied to information explaining law enforcement techniques and procedures.</p>
<p>CBP000201 – CBP000455</p>	<p>Type: TECS records</p>	<p>255</p>	<p>(b)(6), (b)(7)(C), (b)(7)(E)</p>	<p>Exemptions 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C) have been applied to government fax and phone numbers, names of government employees, terminal identification numbers of the TECS users who retrieved the TECS records, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to protect the computer screen transaction code, computer program transaction code, computer function codes (i.e., “PF codes” or “navigation keys”) and information that would reveal the results of specific law enforcement database queries (the “RSLT” column).</p> <p>Exemption (b)(7)(E) has also been applied to information explaining law enforcement techniques and procedures. Much of this information may be found in narrative portions of the TECS records, which describe law enforcement techniques and procedures utilized by CBP law enforcement officers, but not disclosed to Plaintiff or to the general public.</p>
<p>CBP000493 – CBP000712</p>	<p>Automated Targeting System Passenger Name Records</p>	<p>220</p>	<p>(b)(4), (b)(6), (b)(7)(C)</p>	<p>Exemption (b)(4) has been applied to confidential business information of air carriers.</p> <p>Exemptions (b)(6) and (b)(7)(C) have</p>

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				been applied to personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000713 – CBP000738	Records located within CBP’s New York field office: correspondence with legal counsel “Re: Detention Notice No. 344225”, and attachments.	26	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000739 – CBP000750	Records located within CBP’s New York field office: electronic correspondence with legal counsel “Re: Detention Notice No. 344225” and attachments.	12	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000751 – CBP000762	Records located within CBP’s New York field office: correspondence with legal counsel “Re: Detention Notice No. 344225” and attachments.	12	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000763 – CBP000815	Records located within CBP’s New York field office: multiple electronic correspondence with legal counsel “Re: Laura Poitras/ Detention Notice No. 344225”.	53	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.

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CBP000816 – CBP000832	Records located within CBP’s New York field office: electronic correspondence with legal counsel “ FWD: Laura Poitras/ Detention Notice No. 344225”.	17	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000833 – CBP000882	Records located within CBP’s New York field office: multiple electronic correspondence with legal counsel “Re: Laura Poitras/ Detention Notice No. 344225”.	50	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000883 – CBP000900	Records located within CBP’s New York field office: electronic correspondence with legal counsel “RE: Laura Poitras/ Detention Notice No. 344225”.	18	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000901 – CBP000904	Records located within CBP’s New York field office: multiple electronic correspondence with legal counsel “Re: Detention Notice No. 344225/Laura Poitras/ Professional Journalist”.	4	(b)(5), (b)(6), (b)(7)(C)	Exemption (b)(5) has been applied to attorney-client privileged communications. Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000905 – CBP000919	Records located within CBP’s New York field office: multiple	15	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees,

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	electronic correspondence with legal counsel “Re: Laura Poitras/ Detention Notice No. 344225”.			personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000920 – CBP000934	Records located within CBP’s New York field office: multiple electronic correspondence with legal counsel “Re: Laura Poitras/ Detention Notice No. 344225”.	15	(b)(6), (b)(7)(C)	Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.
CBP000935	Certification of Data Destruction	1	(b)(6), (b)(7)(C), (b)(7)(E)	<p>CBP asserted the following exemptions on behalf of both CBP and U.S. Immigration and Customs Enforcement (ICE).</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information explaining law enforcement techniques and procedures utilized by CBP and ICE that are not generally known or publicly disclosed.</p>

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Documents Withheld in Full

Document No.	Document Description	Pages	Exemption(s)	Description of Material Withheld
Document 1	Office of Chief Counsel (OCC) Email Communication	2	(b)(5), (b)(6), (b)(7)(C)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p>
Document 2	OCC Email Communication	304	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third</p>

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				<p>party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages: 1-12; 25-26; 46; 49-50; 52-54; 57-58; 60-62; 127-130; 137-141; 148-150; 153-154; 189; 247; 249-250; 255; 257-259; 261-262; 264; 284; 286-301; 303-304.</p>
<p>Document 3</p>	<p>OCC Email Communication</p>	<p>17</p>	<p>(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)</p>	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p>

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				Pages: 1-10; 17.
Document 4	OCC Email Communication	468	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages: 1-11; 15-18, 28-31; 57; 60-61; 63-65; 67-70; 72; 75; 79-84; 103-104; 117; 126-128; 131-134; 147; 152; 160; 165; 179-196; 206-210; 217-219; 222; 224-236; 238-239; 248-249; 251-256; 279; 282; 285; 373-376; 378; 381; 383; 385; 387-388; 390; 392-405; 417; 424-442; 444-468.</p>
Document 5	OCC Email Communication	13	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents</p>

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				<p>consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1-11.</p>
Document 6	OCC Email Communication	54	(b)(5), (b)(6), (b)(7)(C)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify</p>

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				those individuals if released.
Document 7	OCC Email Communication	67	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages: 56-67.</p>
Document 8	OCC Email Communication	83	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have</p>

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				<p>been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1, 10, 12.</p>
Document 9	OCC Email Communication	4	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemptions (b)(5) and (b)(7)(E).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p>

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Document 10	OCC Email Communication	150	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1-12; 23-24; 29; 33; 46; 48-49; 52; 54-59; 62-63; 75; 77-78; 147-150.</p>
Document 11	OCC Email Communication	33	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have</p>

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				<p>been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1-12; 23, 25.</p>
Document 12	OCC Email Communication	101	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and</p>

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				<p>processes used during CBP inspections.</p> <p>Pages 1-16; 27-28; 35-38; 53; 56; 60-61; 63-68; 79-80; 94.</p>
Document 13	OCC Email Communication	394	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1-22; 35-36; 38-39; 54, 60; 62; 65-66; 68-70; 73-76; 78; 128-133; 151-154; 164-168; 172-174; 177-180; 217; 324-325; 328; 330; 333; 335; 337; 339; 342; 344; 346; 371-374; 376; 379; 381-387; 389; 391; 393-394.</p>
Document 14	OCC Email Communication	767	(b)(5), (b)(6), (b)(7)(C),	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged</p>

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			(b)(7)(E)	<p>communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1-87; 90-101; 115-125; 129-131; 146; 148; 150; 160; 167; 171-172; 174-175; 178; 181-182; 184-186; 189-195; 197-201; 211-232; 256; 269-270; 297; 300; 313-321; 326-329; 359; 366-373; 378; 392-417; 427-431; 438-441; 444-448; 450-451; 454-466; 501; 504; 507; 617; 619-626; 629-653; 655-659; 661-676; 679-689; 703; 705-707; 716-767.</p>
Document 15	OCC Email Communication	39	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP,</p>

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				<p>and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1-4; 14-18; 25-27; 32-33.</p>
Document 16	OCC Email Communication	84	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes</p>

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				<p>information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 4-5; 6-7; 8-10; 12-13; 15; 17; 19-28; 38-42; 46-49; 52; 55-59; 67-70; 72-73; 79-80.</p>
Document 17	OCC Email Communication	50	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 5-8; 18-22; 32-34; 37-38; 39; 41.</p>
Document 18	OCC Email Communication	91	(b)(5), (b)(6), (b)(7)(C),	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged</p>

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			(b)(7)(E)	<p>communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 10-18; 20-25; 35-39; 50-54; 58-61; 67-70; 72-73; 76; 78.</p>
Document 19	OCC Email Communication	142	(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and</p>

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				<p>other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1; 64; 67; 70.</p>
<p>Document 20</p>	<p>OCC Email Communication</p>	<p>295</p>	<p>(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)</p>	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied to attorney-client privileged communications. The documents consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflect deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied to information on the following pages listed hereafter, which includes information explaining law enforcement techniques and procedures, including techniques and processes used during CBP inspections.</p> <p>Pages 1-22; 26-29; 36-38; 75-86; 109; 112; 115; 200-203; 205; 208; 210; 212; 215-216; 218; 220; 222-241; 253;</p>

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				260-266; 268; 270-295.
Document 21	CBP Internal System Printout	12	(b)(7)(E)	<p>Document withheld in full under exemption (b)(7)(E).</p> <p>Exemption (b)(7)(E) has been applied as the document consists entirely of law enforcement techniques, procedures, and results of specific law enforcement database queries not generally known or publicly disclosed.</p>
Document 22	Internal CBP Report	3	(b)(5) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Document withheld in full under exemptions (b)(5) and (b)(7)(E).</p> <p>Exemption (b)(5) has been applied as the document was attached to and transmitted as part of an attorney-client privileged communication.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied as the document consists entirely of law enforcement techniques and procedures not generally known or publicly disclosed.</p>
Document 23	OCC Internal Memorandum	1	(b)(5), (b)(6) (b)(7)(C) (b)(7)(E)	<p>Document withheld in full under exemptions (b)(5) and (b)(7)(E).</p> <p>Exemption (b)(5) has been applied because the document is an internal legal memoranda protected by the attorney-client privilege and the attorney work-product doctrine. The documents also consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflects</p>

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				<p>deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied as the document consists of law enforcement techniques and procedures not generally known or publicly disclosed.</p>
Document 24	OCC Internal Memorandum	2	(b)(5), (b)(6) (b)(7)(C) (b)(7)(E)	<p>Document withheld in full under exemptions (b)(5) and (b)(7)(E).</p> <p>Exemption (b)(5) has been applied because the document is an internal legal memoranda protected by the attorney-client privilege and the attorney work-product doctrine. The documents also consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflects deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied as the document consists of law enforcement techniques and procedures not generally known or</p>

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				publicly disclosed.
Document 25	OCC Internal Memorandum	2	(b)(5), (b)(6) (b)(7)(C) (b)(7)(E)	<p>Document withheld in full under exemptions (b)(5) and (b)(7)(E).</p> <p>Exemption (b)(5) has been applied because the document is an internal legal memoranda protected by the attorney-client privilege and the attorney work-product doctrine. The documents also consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflects deliberative processes and conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied as the document consists of law enforcement techniques and procedures not generally known or publicly disclosed.</p>
Document 26	OCC Internal Memorandum	4	(b)(5), (b)(6) (b)(7)(C) (b)(7)(E)	<p>Document withheld in full under exemption (b)(5).</p> <p>Exemption (b)(5) has been applied because the document is an internal legal memoranda protected by the attorney-client privilege and the attorney work-product doctrine. The documents also consist of attorney-client privileged communications among CBP attorneys, and between CBP attorneys other employees or agents of CBP, and reflects deliberative processes and</p>

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				<p>conclusions.</p> <p>Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names of government employees, personally identifiable information and other identifying details of third party individuals, and identity and other personal documents of third party individuals that would identify those individuals if released.</p> <p>Exemption (b)(7)(E) has been applied as the document consists of law enforcement techniques and procedures not generally known or publicly disclosed.</p>
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 5: Declaration of Regina Ann McCoy (TSA)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,)
Praxis Films)
205 Hudson Street)
New York, NY 10013,)

Plaintiff,)

v.)

Civil Action No. 1:15-cv-01091

DEPARTMENT OF HOMELAND)
SECURITY)
Washington, D.C. 20528,)

DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530, and)

OFFICE OF THE DIRECTOR OF)
NATIONAL INTELLIGENCE)
Washington, D.C. 20511,)

Defendants.)

DECLARATION OF REGINA ANN McCOY

I, REGINA ANN McCOY, make this Declaration under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am the Freedom of Information Act (FOIA) Officer for the Transportation Security Administration (TSA) within the Department of Homeland Security (DHS). As FOIA Officer, I oversee the FOIA Branch of TSA's Office of Civil Rights & Liberties, Ombudsman & Traveler Engagement. My duty station is the TSA headquarters in Arlington, VA. I began

working for the TSA FOIA Branch in May 2013, and I became the Branch Operations Manager in September 2014. I have held my current position as FOIA Officer since July 2015.

2. The statements made in this declaration are based on my personal knowledge and information made available to me in the performance of my official duties as TSA's FOIA Officer.

3. In the course of performing my official duties as FOIA Officer, I oversee the processing of requests for TSA records made under the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. I am familiar with TSA's obligations under both statutes and the various exemptions to their disclosure requirements.

4. The normal business practice for processing and responding to FOIA requests includes contacting requesters to clarify the scope of their requests, tasking TSA program offices with conducting reasonable, thorough searches for responsive records, coordinating the review of any responsive records to identify and redact Sensitive Security Information (SSI), reviewing responsive records to identify and redact any other information that is exempt from disclosure under the FOIA, and providing responsive records to requesters.

5. I have reviewed the TSA FOIA Branch's entire administrative file regarding Plaintiff Laura Poitras's FOIA request as well as her Complaint in this action.

6. By letter dated January 24, 2014, Plaintiff submitted a FOIA request to TSA through her counsel, Mr. David Sobel. The letter requested "disclosure of all agency records concerning, naming, or relating to Ms. Poitras." A true and correct copy of this letter is attached as Exhibit A.

7. Upon receiving Plaintiff's FOIA request, the TSA FOIA Branch assigned it case number 2014-TSPA-00168 for processing. By letter dated February 6, 2014, the FOIA Branch acknowledged receipt of Plaintiff's FOIA request and informed Plaintiff's counsel that the request was "too broad in scope or does not specifically identify the records" sought. The letter also provided Plaintiff's counsel with the following instruction: "You must describe the records with as much information as possible to enable us to locate them, if they exist, with a reasonable amount of effort." A true and correct copy of this letter is attached as Exhibit B.

8. The instruction provided in the FOIA Branch letter dated February 6, 2014, is consistent with DHS FOIA regulations, which require that FOIA requesters "must describe the records that [they] seek in enough detail to enable Department personnel to locate them with a reasonable amount of effort," and "whenever possible . . . should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record." 6 C.F.R. § 5.3(b). DHS FOIA regulations also provide that if a "request does not reasonably describe the records" sought, "the agency's response to [the] request may be delayed." *Id.*

9. Plaintiff's counsel responded to the FOIA Branch by letter dated March 19, 2014. This letter provided information about "difficulties Ms. Poitras encountered while traveling on international flights" on seven different trips during the period from July 2006 to May 2007. The letter also stated that from "June or July 2006" to October 2006, Ms. Poitras received boarding passes for domestic flights that were "marked with 'SSSS.'" The letter did not provide any exact dates or request production of any specific records or types of records. The letter also did not identify any specific systems of records or TSA program offices that should be searched. The

letter did identify three domestic airports at which TSA has offices: John F. Kennedy International Airport (JFK), La Guardia Airport (LGA), and Newark Liberty International Airport (EWR). The letter concluded, "I believe this information should assist the agency in locating responsive records." A true and correct copy of the letter is attached as Exhibit C.

10. Upon receiving Plaintiff's counsel's letter of March 19, 2014, TSA's FOIA Branch responded with a letter dated March 26, 2014. The FOIA Branch again informed Plaintiff's counsel that more information was needed to process Plaintiff's request: "We determined your request is too broad in scope or does not specifically identify the records you seek. You must describe the records with as much information as possible to enable us to locate them, if they exist, with a reasonable amount of effort." The FOIA Branch erroneously labeled its acknowledgement letter with the incorrect case number 2014-TSFO-00269. Plaintiff's FOIA case had in fact previously been assigned case number 2014-TSPA-00168. A true and correct copy of the FOIA Branch letter dated March 26, 2014, is attached as Exhibit D.

11. The FOIA Branch has no record of ever receiving a response to its letter of March 26, 2014, from Plaintiff or her counsel.

12. On July 14, 2015, the FOIA Branch received notice of this lawsuit and a copy of Plaintiff's Complaint. In paragraph 19, the Complaint identified one additional domestic airport, Washington Dulles International Airport (IAD), that was not mentioned in Plaintiff's counsel's letter of March 19, 2014. The Complaint also identified several exact dates on which Plaintiff allegedly traveled by air. The first travel date alleged was July 12, 2006. Compl. ¶ 15. The most recent travel date alleged was April 5, 2012. Compl. ¶ 24. The Complaint did not allege any exact travel dates before July 12, 2006, or after April 5, 2012.

13. Based on the information in Plaintiff's counsel's letter of March 19, 2014, and Plaintiff's Complaint, the FOIA Branch construed Plaintiff's FOIA request as seeking only records from the time period of June 2006 through April 2012. *See* Compl. at ¶ 3 (alleging that "[b]etween July 2006 and April 2012, Plaintiff traveled frequently for work" and "was subject to secondary security screening on more than fifty (50) occasions"); ¶ 12 (alleging that "[b]eginning in June or July 2006," Plaintiff "was subjected to increased security screening at security checkpoints"). Only records from this period were considered responsive to Plaintiff's FOIA request.

14. Based on the information provided in Plaintiff's counsel's letter of March 19, 2014, and Plaintiff's Complaint, the FOIA Branch tasked six different TSA offices with searching for potentially responsive records. Because Plaintiff's counsel's letter specifically identified three domestic airports – JFK, LGA, and EWR – the FOIA Branch tasked TSA's offices at these airports with conducting a search. And because Plaintiff's Complaint additionally mentioned travel through IAD, the FOIA Branch also tasked TSA's office at that airport with conducting a search.

15. Because Plaintiff's counsel's letter mentioned that Plaintiff's boarding passes had been marked with "SSSS" and Plaintiff had received additional screening at airport security checkpoints, the FOIA Branch also tasked TSA's Office of Intelligence and Analysis (OIA) with conducting a search. OIA operates TSA's Secure Flight Program, which pre-selects certain airline passengers to receive additional security screening and directs air carriers to mark these passengers' boarding passes to indicate that they should receive additional screening at airport security checkpoints.

16. Finally, because Plaintiff's counsel's letter stated that Plaintiff had encountered "difficulties" while traveling on international flights, the FOIA Branch tasked the DHS Traveler Redress Inquiry Program (DHS TRIP) with conducting a search. DHS TRIP is an interagency program administered by TSA to serve as a single point of contact for individuals who have inquires or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs or when crossing U.S. borders.

17. Using the language of Plaintiff's counsel's original letter of January 24, 2104, attached as Exhibit A, the FOIA Branch tasked OIA, DHS TRIP, and TSA's offices at JFK, LGA, EWR, and IAD with searching for all "records concerning, naming, or relating to" Plaintiff.

18. After conducting a search, DHS TRIP located 21 pages of records that were responsive to Plaintiff's FOIA request.

19. After conducting searches, TSA's offices at JFK, LGA, EWR, and IAD did not locate any records responsive to Plaintiff's FOIA request.

20. The remaining TSA office tasked with searching for responsive records, OIA, also reported the result of its search to the FOIA Branch. As explained below and in the Declaration of Douglas E. Blair also submitted to the Court in this case, TSA can neither confirm nor deny that OIA located any records responsive to Plaintiff's FOIA request. Confirming or denying the existence of such records would reveal SSI that cannot be disclosed.

Responsive DHS TRIP Records

21. To determine whether any information in the 21 pages of responsive DHS TRIP records was SSI, the FOIA Branch submitted the records to TSA's SSI Program for review. The

SSI Program redacted all SSI from the records pursuant to 5 U.S.C. § 552(b)(3), 49 U.S.C. § 114(r), and 49 C.F.R. Part 1520.

22. Under 5 U.S.C. § 552(b)(3), information is exempt from disclosure under the FOIA if another statute specifically provides for such an exemption. A statute specifically providing an exemption for particular information must either (i) leave no discretion, or (ii) establish particular criteria for determining what information is exempt from disclosure under the FOIA. And, if enacted after the date of enactment of the OPEN FOIA Act of 2009, a statute providing an exemption from disclosure for particular information also must specifically cite to 5 U.S.C. § 552(b)(3).

23. TSA has determined, and courts have uniformly affirmed, that 49 U.S.C. § 114(r) is a statute that meets the requirements of 5 U.S.C. § 552(b)(3) to specifically exempt particular information from disclosure under the FOIA. 49 U.S.C. § 114(r)(1) provides that “[n]otwithstanding section 552 of title 5, the [TSA Administrator] shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107-71) or under chapter 449 of [title 49] if the [Administrator] decides that disclosing the information would (A) be an unwarranted invasion of personal privacy; (B) reveal a trade secret or privileged or confidential commercial or financial information; or (C) be detrimental to the security of transportation.”

24. Under its authority granted by 49 U.S.C. § 114(r)(1), TSA has promulgated regulations at 49 C.F.R. part 1520 setting forth the types of information for which disclosure would (A) be an unwarranted invasion of personal privacy; (B) reveal a trade secret or privileged or confidential commercial or financial information; or (C) be detrimental to the security of

transportation. The regulations designate these types of information as “Sensitive Security Information (SSI).” 49 C.F.R. § 1520.9 expressly prohibits the public disclosure of SSI.

25. 49 C.F.R. § 1520.5(b)(9)(ii) expressly designates as SSI “information and sources of information used by a passenger or property screening program or system, including an automated screening system.” This provision covers “information used by a computerized passenger screening system, including lists of individuals identified as threats to transportation or national security.” Protection of Sensitive Security Information, 69 Fed. Reg. 28,066, 28,071 (May 18, 2004) (interim final rule adding 49 C.F. R. § 1520.5(b)(9)(ii)). Information that reveals an individual’s status with respect to a Federal government watchlist (i.e., whether the individual is or is not on a watchlist) is SSI under this provision.

26. TSA’s SSI Program determined that information designated as SSI by 49 C.F.R. § 1520.5(b)(9)(ii) appeared on six of the 21 pages of responsive DHS TRIP records. The SSI Program redacted the SSI from these six pages because the public disclosure of SSI is expressly prohibited by 49 U.S.C. § 114(r) and 49 C.F.R. § 1520.9. No other SSI was identified in the 21 pages of responsive DHS TRIP records. TSA’s final determinations as to what constitutes SSI are exclusively reviewable by a United States Court of Appeals under 49 U.S.C. § 46110.¹

27. After the SSI Program completed its redaction of SSI, TSA’s FOIA Branch reviewed the 21 pages of responsive DHS TRIP records and determined that no other

¹ Although section 46110 states that it applies to TSA final orders issued pursuant to “subsection (1) or (s) of section 114,” subsection (s) of section 114 has been recodified as subsection (r). *See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. E, § 568(a), 121 Stat. 1844, 2092 (Dec. 26, 2007).*

information was exempt from disclosure under the FOIA. The FOIA Branch then produced the 21 pages of redacted records to Plaintiff's counsel on November 12, 2015.

Result of OIA's Search for Responsive Records

28. After conducting its search for responsive records, OIA reported the result to the FOIA Branch. To determine whether the result of OIA's search could be disclosed to Plaintiff, the FOIA Branch consulted with the SSI Program. The SSI Program determined that TSA cannot disclose whether OIA located any records responsive to Plaintiff's FOIA request because acknowledging the existence or non-existence of responsive records would reveal whether Plaintiff was or was not on a Federal government watchlist. As explained above, an individual's status with respect to a watchlist is SSI that cannot be disclosed. The SSI Program's determination is further explained in the Declaration of Douglas E. Blair also submitted to the Court in this case.

29. In lieu of informing Plaintiff of the result of OIA's search for responsive records, the FOIA Branch's final response letter to Plaintiff's counsel dated November 12, 2015, explained as follows: "To the extent you have requested records maintained by TSA that indicate status on a Federal Watch List, TSA can neither confirm nor deny whether any such records exist regarding your client, Ms. Laura Poitras." A true and correct copy of the final response letter is attached as Exhibit E.

DATED: May 24, 2016
Arlington, VA

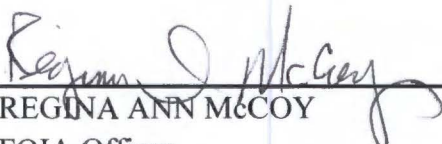

REGINA ANN MCCOY
FOIA Officer
Transportation Security Administration

EXHIBIT A

David L. Sobel
Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

January 24, 2014

BY CERTIFIED MAIL -- 70131710000104259946

Transportation Security Administration
Freedom of Information Act Branch
601 S. 12th Street
11th Floor, East Tower, TSA-20
Arlington, VA 20598-6020

Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras. A "privacy waiver" form executed by Ms. Poitras and authorizing disclosure of responsive records to me is attached to this request.

I request disclosure of all agency records concerning, naming, or relating to Ms. Poitras. In the event that you determine that some responsive material might be exempt from disclosure under FOIA, please indicate the specific exemption or exemptions upon which the agency relies. Ms. Poitras agrees to incur legally assessable processing fees not to exceed \$100.

As the FOIA requires, I will anticipate your response to this request within twenty working days. Please feel free to contact me at the e-mail address or telephone number indicated above if you wish to discuss this request.

Thank you for your prompt attention.

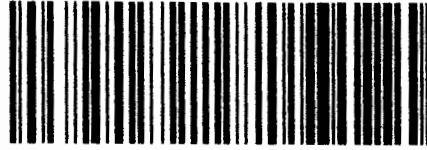
Sincerely,



David L. Sobel

encl.

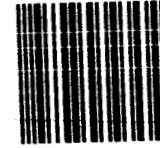
David L. Sobel
Attorney-at-Law
1818 N Street, N.W., Suite 410
Washington, DC 20036



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Transportation Security Administration
Freedom of Information Act Branch
601 S. 12th Street
11th Floor, East Tower, TSA-20
Arlington, VA 20598-6020

205986020



MAIL ENTRY # 901
JAN 28 2014

Visual Screening

JAN 28 2014

Quality Assurance

EXHIBIT B

U.S. Department of Homeland Security
 Transportation Security Administration
 Freedom of Information Act Branch
 601 S. 12th Street
 Arlington, VA 20598-6020



**Transportation
 Security
 Administration**
 FEB 06 2014

Freedom of Information Act/Privacy Act Request Acknowledgement

Requester Name and Address: Mr. David L. Sobel sobel@att.net	Request Date: 1-24-14
	Date Received: 2-6-14
	Case Number: 2014-TSPA-00168
	Fee Waiver Requested Expedited Requested

Mr.: Sobel

Your request has been received in this office for processing. Please see below to learn if we need additional clarification and/or documentation in order to continue processing your request. If the first box is checked, nothing more is required from you. If other boxes are checked and we do require supplemental information, you have 30 calendar days to respond. If you do not respond within 30 days, we will administratively close your case; however, you may resubmit your request at any time. If you have any questions, please contact this office at (571) 227-2300 or foia@tsa.dhs.gov.

No additional information is needed; we entered your request in our processing queue.

Because you have asked for copies of records about yourself, we must verify your identity to ensure

that your personal information is released only to you. Enclosed is the appropriate form that can be used to satisfy this requirement.

Because you have submitted a third party request, we must receive a statement from the subject of

the request verifying his/her identity and certifying his/her agreement that records concerning him/her may be released to you. Enclosed is the appropriate form that can be used to satisfy this requirement.

We determined your request is too broad in scope or does not specifically identify the records you

seek. You must describe the records with as much information as possible to enable us to locate them, if they exist, with a reasonable amount of effort.

Your request for expedited processing is denied because you do not qualify under one of the two

required categories: 1) Circumstances in which the lack of expedited treatment could pose an imminent threat to life or physical safety, or 2) A particular urgency existed to inform the public about government activity beyond the public's right to know.

Please be advised that the FOIA does not require federal agencies to answer questions or create

records in response to a FOIA request. Please modify your request ensuring you specifically describe the records you seek.

**

After careful review of your FOIA request, we determined that your request is too broad in scope or did not specifically identify the records which you are seeking. Please provide a description of the nature of your contacts with TSA to assist in the scope of the search. Examples of such contacts would be employment by TSA, application for or possession of a TSA credential, or a fine or citation by TSA. Additionally, if none of these apply and your only contact with the agency has been as a traveler passing through security checkpoints, please let us know. For this reason, the Department of Homeland Security (DHS) regulation, 6 CFR Part 5, §5.3(b), requires that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

EXHIBIT C

David L. Sobel

Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

March 19, 2014

BY FAX -- 571-227-1406

Transportation Security Administration
Freedom of Information Act Branch
601 S. 12th Street
11th Floor, East Tower, TSA-20
Arlington, VA 20598-6020

Re: Freedom of Information Act Request – 2014-TSPA-00168

Dear Sir or Madam:

I previously submitted a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, on behalf of my client, Laura Poitras. A “privacy waiver” form executed by Ms. Poitras and authorizing disclosure of responsive records to me was attached to that request, which was assigned the above processing number.

On February 6, 2014, your office sent me the attached letter requesting additional information. In response to that request, I am providing the following information concerning difficulties Ms. Poitras encountered while traveling on international flights:

July 2006: Jerusalem – Newark

Ms. Poitras encountered difficulties boarding her flight in Newark. Her boarding pass was marked with “SSSS.” When returning, she waited 30 minutes while Jerusalem officials got permission for her to get a boarding pass. Ms. Poitras was held for two hours waiting for approval to enter the county.

August 2006: Sarajevo FF – NYC JFK

Ms. Poitras was removed from the terminal in Vienna and taken to a police inspection area. All of her bags were searched. She was told by security that she had a “Threat Score” of 400 points. Ms. Poitras was taken into Customs and held for two hours.

November 2006: Paris – NYC JFK

Ms. Poitras was taken into Customs and held for 30 minutes while calls were made seeking approval to allow her to enter the country.

TSA FOIA Office
March 19, 2014
Page two

December 2006: Dubai – NYC JFK

Ms. Poitras was taken into Customs and held while calls were made seeking approval to allow her to enter the country. She was asked about when she had “last been to Atlanta,” and was told her file indicated a criminal record.

March 2007: London – NYC JFK

Ms. Poitras was taken into Customs and held while calls were made seeking approval to allow her to enter the country.

March 2007: Canada – NYC LGA

Ms. Poitras was taken into Customs and held while calls were made seeking approval to allow her to enter the country.

May 2007: Yemen – NYC JFK

Ms. Poitras was taken aside and questioned. All of her notebooks, receipts, business cards, etc. were taken and photocopied.

In addition to the above-described instances, beginning in June or July 2006, in order for Ms. Poitras to receive a boarding pass for domestic flights, phone calls needed to be made to clear her. Her boarding pass was marked with “SSSS” and she was pulled aside and searched at security checkpoints. These actions ended in October 2006 with respect to Ms. Poitras’ domestic flights.

I believe this information should assist the agency in locating responsive records. Thank you for your prompt attention.

Sincerely,

A handwritten signature in black ink that reads "David L. Sobel". The signature is written in a cursive style with a large initial "D" and "S".

David L. Sobel

encl.

TRANSMISSION VERIFICATION REPORT

TIME : 03/19/2014 21:51
NAME : 3600 FAX
FAX : 202-237-7727
TEL : 202-237-6727
SER.# : U62513M0J141313

DATE, TIME 03/19 21:49
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DURATION 00:02:00
PAGE(S) 04
RESULT OK
MODE STANDARD

David L. Sobel
Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

March 19, 2014

BY FAX -- 571-227-1406

Transportation Security Administration
Freedom of Information Act Branch
601 S. 12th Street
11th Floor, East Tower, TSA-20
Arlington, VA 20598-6020

Re: Freedom of Information Act Request – 2014-TSPA-00168

Dear Sir or Madam:

I previously submitted a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, on behalf of my client, Laura Poitras. A “privacy waiver” form executed by Ms. Poitras and authorizing disclosure of responsive records to me was attached to that request, which was assigned the above processing number.

On February 6, 2014, your office sent me the attached letter requesting additional information. In response to that request, I am providing the following information concerning difficulties Ms. Poitras encountered while traveling on international flights:

July 2006: Jerusalem – Newark

Ms. Poitras encountered difficulties boarding her flight in Newark. Her boarding pass was marked with “SSSS.” When returning, she waited 30 minutes while Jerusalem officials got... Ms. Poitras was held for two hours waiting for...

EXHIBIT D

U.S. Department of Homeland Security
 Transportation Security Administration
 Freedom of Information Act Branch
 601 S. 12th Street
 Arlington, VA 20598-6020



Transportation
 Security
 Administration

3/26/14

Freedom of Information Act/Privacy Act Request Acknowledgement

Requester Name and Address:

David L Sobel
 sobel@att.net
 Attorney
 1818 N Street, N.W.

Washington, DC 20036

Request Date: January 24, 2014

Date Received: March 26, 2014

Case Number: 2014-TSFO-00269

Fee Waiver Requested: n/a Expedited Requested: n/a

Mr. Sobel:

Your request has been received in this office for processing. Please see below to learn if we need additional clarification and/or documentation in order to continue processing your request. If the first box is checked, nothing more is required from you. If other boxes are checked and we do require supplemental information, you have 30 calendar days to respond. If you do not respond within 30 days, we will administratively close your case; however, you may resubmit your request at any time. If you have any questions, please contact this office at (571) 227-2300 or foia@tsa.dhs.gov.

No additional information is needed; we entered your request in our processing queue.

Because you have asked for copies of records about yourself, we must verify your identity to ensure

that your personal information is released only to you. Enclosed is the appropriate form that can be used to satisfy this requirement.

Because you have submitted a third party request, we must receive a statement from the subject of

the request verifying his/her identity and certifying his/her agreement that records concerning him/her may be released to you. Enclosed is the appropriate form that can be used to satisfy this requirement.

We determined your request is too broad in scope or does not specifically identify the records you

seek. You must describe the records with as much information as possible to enable us to locate them, if they exist, with a reasonable amount of effort.

Your request for expedited processing is denied because you do not qualify under one of the two

required categories: 1) Circumstances in which the lack of expedited treatment could pose an imminent threat to life or physical safety, or 2) A particular urgency existed to inform the public about government activity beyond the public's right to know.

Please be advised that the FOIA does not require federal agencies to answer questions or create

records in response to a FOIA request. Please modify your request ensuring you specifically describe the records you seek.

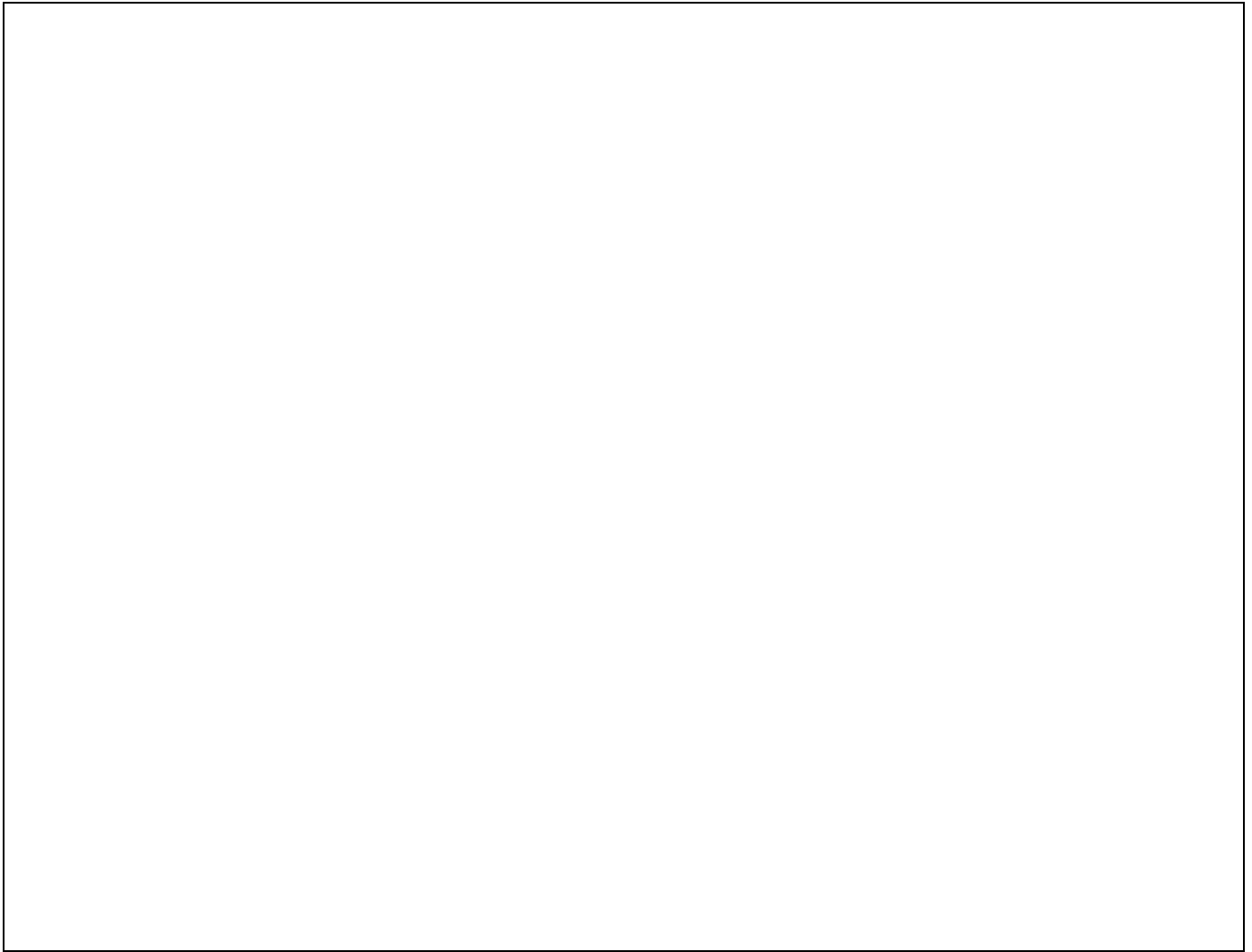


EXHIBIT E

U.S. Department of Homeland Security
Freedom of Information Act Branch
601 South 12th Street
Arlington, VA 20598-6020



Transportation
Security
Administration

November 12, 2015

3700.1

**Case Number: 2014-TSPA-00168
2014-TSFO-00269**

David Sobel
Attorney-at-Law
1818 N Street, NW
Suite 410
Washington, DC 20036

Dear Mr. Sobel:

This letter responds to your Freedom of Information Act/Privacy Act (FOIA/PA) request dated January 24, 2014, addressed to the Transportation Security Administration (TSA) FOIA Branch, requesting information regarding your client, Ms. Laura Poitras.

On February 6, 2014, we acknowledged receipt of your request, assigned your request case number 2014-TSPA-00168, and informed you that your request was too broad in scope and did not specifically identify the records you were seeking. We asked you to resubmit your request with a reasonable description of the records you were seeking to facilitate processing. You replied with a letter dated March 19, 2014, in which you provided additional information. We acknowledged receipt of this letter on March 26, 2014. Our March 26 acknowledgement letter erroneously identified your FOIA request case number as 2014-TSFO-00269.

The processing of your request identified certain materials that will be released to you. Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Please refer to the Applicable Exemptions list at the end of this letter that identifies the authority for withholding the exempt material, which is indicated by a mark appearing in the block next to the exemption. An additional enclosure with this letter explains these exemptions in more detail.

To the extent you have requested records maintained by TSA that indicate status on a Federal Watch List, TSA can neither confirm nor deny whether any such records exist regarding your client, Ms. Laura Poitras. In response to a FOIA/PA request, TSA cannot confirm or deny that an individual is or was on a Federal Watch List because placement on a Watch List is based on classified and sensitive law enforcement and intelligence information. Neither confirming nor denying the existence of records indicating placement on a Federal Watch List protects the operational counterterrorism and intelligence collection objectives of the Federal government and the personal safety of those involved in counterterrorism investigations. Federal Watch Lists remain effective tools in the government's counterterrorism and transportation security efforts because their contents are not disclosed.

The Federal Watch Lists include the No-Fly and Selectee Lists, which have been designated as “Sensitive Security Information” (SSI) under the governing regulations, which may be found at 49 C.F.R. Part 1520. Under 49 U.S.C. § 114(r) and the implementing regulation at 49 C.F.R. § 1520.15(a), and notwithstanding the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a), or any other laws, records containing SSI are not available for public inspection or copying, and TSA does not release such records to persons without a “need to know” as defined in 49 C.F.R. § 1520.11. In addition, Exemption (b)(3) of the FOIA allows the withholding of records specifically prohibited from disclosure by another Federal statute if the statute “requires that the matters be withheld from the public as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3).

The rules and regulations of the Transportation Security Administration applicable to Freedom of Information Act and Privacy Act requests are contained in the Code of Federal Regulations, Title 6, Part 5. They are published in the Federal Register and are available for inspection by the public.

Fees

There are no fees associated with processing this request because the fees incurred do not exceed the minimum threshold necessary for charge.

Administrative Appeal

In the event that you wish to appeal this determination, an administrative appeal may be made in writing to Kimberly Walton, Assistant Administrator, Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement (CRL/OTE), Transportation Security Administration, 601 South 12th Street, East Building, E7-121S, Arlington, VA 20598-6033. Your appeal **must be submitted within 60 days** from the date of this determination. It should contain your FOIA request number and, to the extent possible, the reasons why you believe the initial determination should be reversed. In addition, the envelope in which the appeal is mailed should be prominently marked “FOIA Appeal.” Please note that the Assistant Administrator’s determination of the appeal will be administratively final.

If you have any questions pertaining to your request, please feel free to contact the FOIA Branch at 1-866-364-2872 or locally at 571-227-2300.

Sincerely,



Regina McCoy
FOIA Officer

Summary:

Number of Pages Released in Part or in Full: 21

**APPLICABLE EXEMPTIONS
FREEDOM OF INFORMATION ACT AND/OR PRIVACY ACT**

Freedom of Information Act (5 U.S.C. 552)

(b)(1) (b)(2) (b)(3) (b)(4) (b)(5) (b)(6)

(b)(7)(A) (b)(7)(B) (b)(7)(C) (b)(7)(D) (b)(7)(E) (b)(7)(F)

Privacy Act (5 U.S.C. 552a)

(d)(5) (j)(2) (k)(1) (k)(2) (k)(5) (k)(6)

Enclosures

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

Transportation Security Administration (TSA) FOIA Branch applies FOIA exemptions to protect:

Exemptions

Exemption (b)(1): Records that contain information that is classified for national security purposes.

Exemption (b)(2): Records that are related solely to the internal personnel rules and practices of an agency.

Exemption (b)(3): Records specifically exempted from disclosure by Title 49 U.S.C. Section 114(r), which exempts from disclosure Sensitive Security Information (SSI) that “would be detrimental to the security of transportation” if disclosed.

Exemption (b)(4): Records that contain trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

Exemption (b)(5): Inter- or intra-agency records that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege:

- Deliberative process privilege – Under the deliberative process privilege, disclosure of these records would injure the quality of future agency decisions by discouraging the open and frank policy discussions between subordinates and superiors.
- Attorney work-product privilege – Records prepared by or at the direction of a TSA attorney.
- Attorney-client privilege – Records of communications between an attorney and his/her client relating to a matter for which the client has sought legal advice, as well as facts divulged by client to attorney and any opinions given by attorney based on these.

Exemption (b)(6): Records that contain identifying information that applies to a particular individual when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” This requires the balancing of the public’s right to disclosure against the individual’s right to privacy.

Exemption (b)(7)(A): Records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information...could reasonably be expected to interfere with law enforcement proceedings.

Exemption (b)(7)(C): Records containing law enforcement information when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy” based upon the traditional recognition of strong privacy interests ordinarily appropriated in law enforcement records.

Exemption (b)(7)(E): Records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Exemption (b)(7)(F): Records containing law enforcement information about a person, in that disclosure of information about him or her could reasonably be expected to endanger his or her life or physical safety.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

Transportation Security Administration (TSA) FOIA Branch applies Privacy Act exemptions to protect:

Exemptions

Exemption (d)(5): Information compiled in reasonable anticipation of civil action or proceeding; self-executing exemption.

Exemption (j)(2): Principal function criminal law enforcement agency records compiled during course of criminal law enforcement proceeding.

Exemption (k)(1): classified information under an Executive Order in the interest of national defense or foreign policy.

Exemption (k)(2): Non-criminal law enforcement records; criminal law enforcement records compiled by non-principal function criminal law enforcement agency; coverage is less broad where individual has been denied a right, privilege, or benefit as result of information sought.

Exemption (k)(5): Investigatory material used only to determine suitability, eligibility, or qualifications for federal civilian employment or access to classified information when the material comes from confidential sources.

Exemption (k)(6): Testing or examination material used to determine appointment or promotion of federal employees when disclosure would compromise the objectivity or fairness of the process.

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 6: Declaration of Douglas E. Blair (TSA)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,)
Praxis Films)
205 Hudson Street)
New York, NY 10013,)

Plaintiff,)

v.)

Civil Action No. 1:15-cv-01091

DEPARTMENT OF HOMELAND)
SECURITY)
Washington, D.C. 20528,)

DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530, and)

OFFICE OF THE DIRECTOR OF)
NATIONAL INTELLIGENCE)
Washington, D.C. 20511,)

Defendants.)

DECLARATION OF DOUGLAS E. BLAIR

I, DOUGLAS E. BLAIR, make this Declaration under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am the Chief of the Sensitive Security Information (SSI) Program Section of the Office of Law Enforcement & Federal Air Marshal Service at the Transportation Security Administration (TSA). My duty station is the TSA headquarters in Arlington, VA.

2. The statements made in this declaration are based on my personal knowledge and information made available to me in the performance of my official duties as Chief of the SSI Program.

3. Pursuant to 49 U.S.C. § 114(r), the Administrator of TSA is vested with the authority to determine what information constitutes SSI and to prohibit its disclosure.¹ That authority has been delegated from the Administrator to the Chief of the SSI Program pursuant to a TSA Management Directive signed by the Administrator on November 4, 2015. The SSI Program serves as the primary point of contact for issues involving SSI for all TSA offices, the Department of Homeland Security (DHS) Office of Security, all other DHS component agencies, and transportation security stakeholders.

4. The SSI Program conducts assessments and reviews of TSA and DHS records, and upon request, records of other “covered persons” identified in 49 C.F.R. § 1520.7, to determine which information contained therein is SSI in accordance with 49 C.F.R. Part 1520. After determining that records contain SSI, the SSI Program works to ensure that the records are appropriately marked and stored at all times and properly redacted prior to release to non-covered parties. The prohibition on public release of SSI is not discretionary; it is mandatory under 49 C.F.R. § 1520.15(a). The SSI Program also determines whether specific information should no longer be protected as SSI in accordance with 49 C.F.R. § 1520.5(c).

5. In the course of performing my official duties as Chief, I supervise and approve the SSI Program’s review of TSA records that have been identified as responsive to Freedom of Information Act (FOIA) requests received by the agency. The SSI Program is responsible for reviewing such records to identify SSI for redaction prior to their release.

¹ 49 U.S.C. § 114 refers to TSA’s Administrator as “the Under Secretary of Transportation for Security” because TSA was originally a part of the Department of Transportation. The functions of TSA and the Under Secretary of Transportation for Security were transferred to the Department of Homeland Security pursuant to Section 403(2) of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2178 (Nov. 25, 2002) (codified at 6 U.S.C. § 203(2)). The Under Secretary is now known as the Administrator of TSA. 49 C.F.R. § 1500.3.

6. I have reviewed the SSI Program's entire administrative file regarding the review of the results of TSA's search for records responsive to Plaintiff Laura Poitras's FOIA request.

7. Exemption 3 of FOIA, 5 U.S.C. § 552(b)(3), allows the withholding of information "specifically exempted from disclosure by statute . . . if that statute – (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld[.]"

8. Pursuant to 49 U.S.C. § 114(r) and implementing regulations found at 49 C.F.R. Part 1520, information designated as SSI is exempt from disclosure under FOIA Exemption 3 if TSA determines that disclosure would "(A) be an unwarranted invasion of personal privacy; (B) reveal a trade secret or privileged or confidential commercial or financial information; or (C) be detrimental to the security of transportation." 49 U.S.C. § 114(r)(1). TSA's determinations as to what constitutes SSI are exclusively reviewable by the United States Courts of Appeals under 49 U.S.C. § 46110.²

9. The SSI Program, under my supervision, reviewed the 21 pages of records produced to Plaintiff in response to her FOIA request. I have also personally reviewed the records. I have determined that all portions of the records redacted pursuant to Exemption 3 are SSI under 49 U.S.C. § 114(r) and 49 C.F.R. § 1520.5(b)(9)(ii). Because the redacted information is SSI, it may not be publicly disclosed under 49 U.S.C. § 114(r) and 49 C.F.R. § 1520.15(a). I

² Although Section 46110 states that it applies to TSA final orders issued pursuant to "subsection (1) or (s) of section 114," subsection (s) of section 114 has been recodified as subsection (r). *See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. E, § 568(a), 121 Stat. 1844, 2092 (Dec. 26, 2007).*

have also determined that release of the redacted information would be detrimental to the security of transportation.

10. All redactions applied to the responsive records pursuant to Exemption 3 cover information revealing Plaintiff's status with respect to a Federal watchlist (i.e., whether Plaintiff was or was not on the watchlist). This information is used by a passenger screening program or system, which means that it is SSI under 49 C.F.R. § 1520.5(b)(9)(ii). *See* Protection of Sensitive Security Information, 69 Fed. Reg. 28,066, 28,071 (May 18, 2004) (interim final rule adding 49 C.F.R. § 1520.5(b)(9)(ii)) ("This is intended to cover . . . lists of individuals identified as threats to transportation or national security."). The SSI Program did not redact any other information from the records responsive to Plaintiff's FOIA request.

11. In addition to redacting SSI from responsive records as described above, the SSI Program also reviewed the result of a search for responsive records conducted by TSA's Office of Intelligence and Analysis (OIA). The SSI Program determined that TSA cannot disclose whether OIA located any records concerning Plaintiff because acknowledging the existence or non-existence of such records would reveal SSI.

12. OIA generally maintains a record concerning a particular airline passenger only when the passenger was on a Federal government watchlist at the time of a flight.³ Accordingly, revealing that OIA has a record of a passenger would generally confirm that the passenger was on a watchlist. And revealing that OIA does not have a record of a passenger would generally

³ OIA's Secure Flight Program retains a record of a passenger for only seven days after the completion of the passenger's directional travel unless the passenger is a match or potential match to an individual on a Federal watchlist. "Records for individuals confirmed as a positive match to an individual on the watchlist will be retained for 99 years after completion of the individual's directional travel to support law enforcement and intelligence activities." Secure Flight Program, 73 Fed. Reg. 64,018, 64,041 (Oct. 28, 2008) (final rule).

confirm that the passenger was not on a watchlist. As explained above, under 49 U.S.C. § 114(r) and TSA's SSI regulations, TSA cannot disclose a passenger's status with respect to a watchlist. TSA can therefore neither confirm nor deny that OIA located any records responsive to Plaintiff's FOIA request.

13. Neither confirming nor denying that OIA located any responsive records is consistent with the Federal government's policy regarding watchlist information and the practice of other Federal agencies that maintain watchlist information when responding to FOIA requests. The Terrorist Screening Center (TSC), which maintains the Federal government's "consolidated and integrated terrorist watchlist," 49 U.S.C. § 44903(j)(2)(C), has explained why the government cannot disclose that someone is or is not on the watchlist: "Because the contents of the consolidated terrorist watchlist are derived from classified and sensitive law enforcement and intelligence information, the TSC cannot confirm or deny whether an individual is on the watchlist. The watchlist remains an effective tool in the government's counterterrorism efforts because its contents are not disclosed. The nondisclosure of the watchlist information protects the government's operational counterterrorism and intelligence collection objectives, as well as the personal safety of those involved in counterterrorism investigations." TSC Redress Procedures, available at: https://www.fbi.gov/about-us/nsb/tsc/tsc_redress (last accessed May 19, 2016).

14. In lieu of informing Plaintiff of the results of OIA's search for responsive records, the FOIA Branch's final response letter to Plaintiff's counsel dated November 12, 2015, explained as follows: "To the extent you have requested records maintained by TSA that indicate status on a Federal Watch List, TSA can neither confirm nor deny whether any such records exist

regarding your client, Ms. Laura Poitras.” As explained above, the SSI Program appropriately determined that this response was necessary to prevent the disclosure of SSI.

DATED: May 19, 2016
Arlington, VA

A handwritten signature in black ink, appearing to read 'Douglas E. Blair', written over a horizontal line.

DOUGLAS E. BLAIR
Chief, SSI Program Section
Division of Security Services &
Assessments
Office of Law Enforcement &
Federal Air Marshal Service
Transportation Security Administration
U.S. Department of Homeland Security

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 7: Declaration of Jill A. Eggleston (USCIS)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF)
 HOMELAND SECURITY,)
)
 AND)
)
 DEPARTMENT OF JUSTICE)
)
 AND)
)
 OFFICE OF THE DIRECTOR OF)
 NATIONAL INTELLIGENCE)
)
 Defendants.)

Civil Action No. 1:15-cv-01091-KBJ

DECLARATION OF JILL A. EGGLESTON

I, JILL A. EGGLESTON, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury:

1. I am the Associate Center Director in the Freedom of Information and Privacy Act (FOIA/PA) Unit, National Records Center (NRC), United States Citizenship and Immigration Services (USCIS), within the United States Department of Homeland Security (DHS). I have held the position of Associate Center Director since February 4, 2008. I am also an attorney, licensed to practice law by the State of Kansas. Prior to joining DHS, I served for more than 19 years as Associate General Counsel for the Defense Finance and Accounting Service (DFAS) of the U.S. Department of Defense (DoD). As part of my duties with the DFAS, among other things, I provided legal advice to the agency on the release of information sought under the FOIA and the Privacy Act.
2. As the Chief FOIA Officer for the USCIS, I supervise over 150 information access professionals who are responsible for the orderly processing of all public, congressional, judicial, and inter-/intra-agency requests or demands for access to USCIS records and information pursuant to the FOIA, Privacy Act, Executive Orders, departmental directives, regulations and compulsory legal process.

3. Through the exercise of my official duties as Associate Center Director, I am personally familiar with USCIS's standard process for responding to FOIA requests, including search procedures for locating agency records. More specifically, I am personally familiar with USCIS's procedures and actions taken in response to the FOIA request at issue in this litigation. I was responsible for overseeing and coordinating the search conducted by USCIS in response to this request.
4. This declaration is submitted in support of USCIS's motion for summary judgment in this matter. This Declaration describes, generally, agency procedures for processing FOIA requests for access to agency records and, more specifically, agency action taken in response to the Plaintiff's FOIA request. The statements contained in this declaration are based on my personal knowledge, my review of relevant documents kept by USCIS in the course of ordinary business, and upon information provided to me by other USCIS employees in the course of my official duties.

USCIS'S STANDARD FOIA OPERATING PROCEDURES

5. The USCIS routinely and consistently processes FOIA requests in compliance with DHS implementing regulations found at 6 C.F.R. Part 5 and Management Directive No. 0460.1:^[1]
 - a) after determining the nature, scope, and contours of a valid FOIA request, a preliminary search is conducted to locate potentially responsive records;
 - b) because FOIA requests are generally processed by the NRC on a first-in/first-out basis, the request is logged in the approximate order of its receipt into a computerized case tracking and retrieval system which automatically assigns a control number and tracks the file created;
 - c) an acknowledgement letter is contemporaneously mailed to the requester, advising of the control number, processing fee arrangement, processing options, and contact information, and addressing any collateral requests made by requester;

^[1] The DHS requirements for submitting a FOIA request for an individual's records include the following:

1. All FOIA requests must be submitted in writing and signed by the requester. 6 C.F.R. § 5.3(a).
2. If the requester seeks records about him/herself the requester must verify identity by submitting, in writing, a statement containing his/her full name, current address, date of birth and place of birth. This statement must be signed and the signature must either be notarized or submitted under 28 U.S.C. § 1746 (penalty of perjury in lieu of notarized signature). This signature must be submitted along with the FOIA request. 6 C.F.R. §§ 5.3(a), 5.21(d).
3. The FOIA request must reasonably describe the records that are being sought. 6 C.F.R. § 5.3(b).

- d) during any abeyance in processing, periodic system inquiries are conducted to maintain updated information concerning the disposition of agency records that are subject to the pending FOIA request;
 - e) if relevant records are in the possession of an office or agency other than the responding office, a request for the production of the records is sent to the records' custodian(s) at that time;
 - f) during the course of processing, the FOIA request and any responsive records are subjected to rigorous analyses to arrive at the proper final agency determination; and finally;
 - g) the NRC sends its response to the requester, granting or denying, in whole or in part, access to requested records, and advising of any additional rights that may have vested in the requester by virtue of the final agency determination.
6. In an effort to process FOIA requests in a manner designed to be fair and expeditious, the USCIS has adopted a policy of processing such requests on a first-in/first-out basis. This process is further enhanced by the implementation of a regulation providing for expedited processing of requests under given circumstances, and the adoption of a multi-track system of processing which not only allows the agency to process requests on a first-in/first-out basis within each track, but also permits the USCIS to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records. The NRC's first-in/first-out and multi-track processing is consistent with the requirements set forth in Open America v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976) and Exner v. FBI, 612 F.2d 1202, 1980 U.S. App. LEXIS 20856, February 4, 1980.

PROCESSING OF PLAINTIFF LAURA POITRAS' FOIA REQUEST

7. On or about January 29, 2014, USCIS received a FOIA request, dated January 24, 2014, from attorney David L. Sobel requesting disclosure of all agency records concerning, naming, or relating to his client, Laura Poitras, a United States citizen by birth. *See attached* Exh. A. This FOIA request was given control number NRC2014009650. A search was conducted of a number of USCIS databases and systems for any records on Laura Poitras, but no responsive records were located. On January 30, 2014, USCIS sent a final action letter to the requestor advising that no responsive records were located. USCIS further advised the requester that if he had reason to believe that responsive records exist and could provide additional information, USCIS would conduct a second search. Exh. B.
8. On or about March 31, 2014, USCIS received a letter from Mr. Sobel, dated March 19, 2014, in which he provided information about several detentions or encounters between United States Customs and Border Protection (CBP) and Ms. Poitras at airports in Newark and New York City. Exh. C. Based on this additional information,

USCIS conducted another search and still found no USCIS records. On April 2, 2014, USCIS informed the requestor that it had conducted another search, but still found no responsive records. USCIS further advised the requester that if he is seeking information regarding CBP (e.g. entry and exit information), he could request that information by writing to the CBP's FOIA Division address, which was provided in the correspondence. Exh. D.

9. On or about May 12, 2014, USCIS received an administrative appeal, dated May 6, 2014. Exh. E. On July 7, 2014, USCIS upheld the finding of no USCIS records, reiterated that entry and exit records belong to CBP, and once again provided Mr. Sobel with the address of CBP's FOIA Division. Exh. F.
10. In searching for records about individuals, USCIS FOIA searches records maintained by USCIS in a Privacy Act system of records officially known as the "Alien File, Index, and National File Tracking System of Records," (DHS/USCIS/ICE/CBP - 001, 78 Fed. Reg. 69864 (November 21, 2013)). A USCIS FOIA/Privacy Act processor conducted an electronic search of the aforementioned system of records for "Laura Poitras" based upon her name, date of birth, and description of sought after record. USCIS FOIA/Privacy Act processors have three primary tools to discover if information about a particular person exists in the Alien File/Index, and National File Tracking System of Records: (a) the Central Index System (CIS), which is a repository of electronic data that summarizes the history of an immigrant's interaction with USCIS, Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP), for any person who has an Alien Number; (b) the Computer-Linked Application Information Management System (CLAIMS), which stores and retrieves data relating to any application or petition, such as employment authorization, petitions for relatives or employees, naturalization, and immigrant visas, to include the history and status of those petitions or applications.; and (c) the Person-Centric Query System (PCQS), which is a composite service that allows a system or a person to submit a single query for all transactions involving an immigrant across a number of USCIS, CBP, ICE and Department of State (DoS) systems; the PCQS returns a consolidated and correlated view of the immigrant's past interactions with the government as he or she passed through the U.S. immigration system.
11. Not every individual who comes into contact with CBP or DoS is assigned an Alien number, and it is not unusual for an individual to encounter one of these agencies without generating a record in the Alien File/Central Index System of records. For example, if CBP questions an individual but does not make an arrest, or if DoS issues a non-immigrant visa, neither of those actions will result in the issuance of an Alien Number. In such circumstances, although USCIS may sometimes be able to see that records exist in a DoS or CBP system of records, USCIS FOIA does not have access to those systems of records, and in such cases, provides the requester with the address of the DoS and/or CBP FOIA addresses.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed in Lee's Summit, Missouri, on this 2nd day of June 2016.



JILL A. EGGLESTON

Associate Center Director

Freedom of Information Act and Privacy Act Unit

USCIS National Records Center

88873
01/29/14
140278

David L. Sobel
Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

January 24, 2014

BY CERTIFIED MAIL -- 70131710000104259915

U.S. Citizenship & Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, Mo. 64064-8010

Re: Freedom of Information Act Request

Dear Sir or Madam:

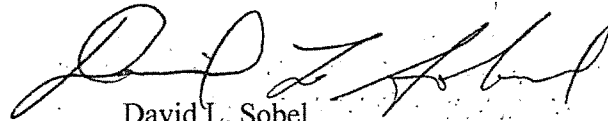
This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras. A "privacy waiver" form executed by Ms. Poitras and authorizing disclosure of responsive records to me is attached to this request.

I request disclosure of all agency records concerning, naming, or relating to Ms. Poitras. In the event that you determine that some responsive material might be exempt from disclosure under FOIA, please indicate the specific exemption or exemptions upon which the agency relies. Ms. Poitras agrees to incur legally assessable processing fees not to exceed \$100.

As the FOIA requires, I will anticipate your response to this request within twenty working days. Please feel free to contact me at the e-mail address or telephone number indicated above if you wish to discuss this request.

Thank you for your prompt attention.

Sincerely,



David L. Sobel

encl.

Exhibit A



**U.S. Citizenship
and Immigration
Services**

January 30, 2014

NRC2014009650

David L. Sobel
Attorney at Law
1818 N. St., NW, Ste. 410
Washington, DC 20036

Dear David L. Sobel:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office January 30, 2014 regarding Laura Poitras.

We have completed a search of our Central Index System (CIS) and Computer Linked Applications Information Management System (CLAIMS). No records responsive to your request were located. If you have reason to believe that responsive records do exist, and you can provide us with additional information, we will conduct another search. Please forward the additional information to the address listed above and reference the control number which appears on this correspondence. If, after the second search no responsive records are located, you will be notified. At that time you may appeal the determination by following the directions set forth below.

In the event you wish to appeal this determination, you may write to the USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you should have any additional questions about your request, please direct your inquiries to this office. You may also fax any correspondence to (816) 350-5785.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill A. Eggleston".

Jill A. Eggleston
Director, FOIA Operations

David L. Sobel
Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

March 19, 2014

BY FAX – (816) 350-5785

Jill A. Eggleston, Director, FOIA Operations
U.S. Citizenship & Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, Mo. 64064-8010

Re: Freedom of Information Act Request – NRC2014009650

Dear Ms. Eggleston:

In the attached letter, you requested additional information to assist the agency in searching for responsive records. In response to that request, I am providing the following information concerning difficulties my client, Ms. Poitras, encountered while traveling on international flights:

July 2006: Jerusalem – Newark

Ms. Poitras encountered difficulties boarding her flight in Newark. Her boarding pass was marked with "SSSS." When returning, she waited 30 minutes while Jerusalem officials got permission for her to get a boarding pass. Ms. Poitras was held for two hours waiting for approval to enter the country.

August 2006: Sarajevo FF – NYC JFK

Ms. Poitras was removed from the terminal in Vienna and taken to a police inspection area. All of her bags were searched. She was told by security that she had a "Threat Score" of 400 points. Ms. Poitras was taken into Customs and held for two hours.

November 2006: Paris – NYC JFK

Ms. Poitras was taken into Customs and held for 30 minutes while calls were made seeking approval to allow her to enter the country.

Exhibit C

Jill A. Eggleston
March 19, 2014
Page two

December 2006: Dubai – NYC JFK

Ms. Poitras was taken into Customs and held while calls were made seeking approval to allow her to enter the country. She was asked about when she had “last been to Atlanta,” and was told her file indicated a criminal record.

March 2007: London – NYC JFK

Ms. Poitras was taken into Customs and held while calls were made seeking approval to allow her to enter the country.

March 2007: Canada – NYC LGA

Ms. Poitras was taken into Customs and held while calls were made seeking approval to allow her to enter the country.

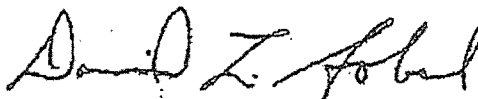
May 2007: Yemen – NYC JFK

Ms. Poitras was taken aside and questioned. All of her notebooks, receipts, business cards, etc. were taken and photocopied.

In addition to the above-described instances, beginning in June or July 2006, in order for Ms. Poitras to receive a boarding pass for domestic flights, phone calls needed to be made to clear her. Her boarding pass was marked with “SSSS” and she was pulled aside and searched at security checkpoints. These actions ended in October 2006 with respect to Ms. Poitras’ domestic flights.

I believe this information should assist the agency in locating responsive records. Thank you for your prompt attention.

Sincerely,



David L. Sobel

encl.



**U.S. Citizenship
and Immigration
Services**

April 2, 2014

NRC2014035155

David L. Sobel
Attorney at Law
1818 N. St., NW, Ste. 410
Washington, DC 20036

Dear David L. Sobel:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office April 02, 2014 regarding Laura Poitras.

We have completed a search of our Central Index System (CIS) and Computer Linked Applications Information Management System (CLAIMS). No records responsive to your request were located. If you have reason to believe that responsive records do exist, and you can provide us with additional information, we will conduct another search. Please forward the additional information to the address listed above and reference the control number which appears on this correspondence. If, after the second search no responsive records are located, you will be notified. At that time you may appeal the determination by following the directions set forth below.

In the event you wish to appeal this determination, you may write to the USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you are seeking information regarding U.S. Customs and Border Protection (Entry and Exit Information), you may request further information from that agency at the following address:

U.S. Customs and Border Protection
FOIA Division
90 K Street, NE, 9th Floor
Washington, DC 20229-1181

If you should have any additional questions about your request, please direct your inquiries to this office. You may also fax any correspondence to (816) 350-5785.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill A. Eggleston".

Jill A. Eggleston
Director, FOIA Operations

Exhibit D

David L. Sobel
Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

APPEALS

MAY 12 2014

May 6, 2014

RECEIVED

U.S. Citizenship & Immigration Services
FOIA/PA Appeals Office
150 Space Center Loop, Suite 500
Lee's Summit, Mo. 64064-2139

Re: Freedom of Information Act Appeal – NRC2014009650 & NRC2014035155

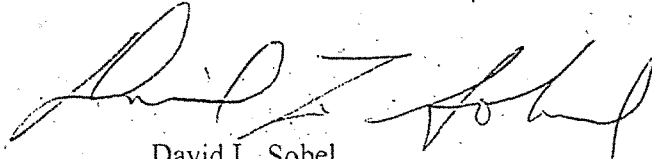
This letter constitutes an administrative appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras.

By letter dated January 24, 2014, I requested agency records concerning Ms. Poitras. In the attached letter, the agency requested additional information to assist it in conducting a search. By letter dated March 19, 2014, I provided the requested information. In a second letter dated April 2, 2014 (also attached), the agency again invited me to provide additional information, with no acknowledgement that I had already done so. For some reason, the agency has now assigned two different request numbers to my request, and both are noted above.

The information previously provided suggests a strong likelihood that the agency maintains records responsive to my request. As such, I hereby appeal the agency's contrary determination.

As the FOIA requires, I will anticipate your response to this appeal within twenty working days.

Sincerely,



David L. Sobel

encl.

Exhibit E



**U.S. Citizenship
and Immigration
Services**

July 7, 2014

APP2014000698

David L. Sobel
Attorney at Law
1818 N. St., NW, Ste. 410
Washington, DC 20036

Dear Mr. Sobel:

Re: NRC2014035155

You appealed the action of the National Records Center regarding your request for access to records pertaining to Laura Poitras, dated April 02, 2014.

After careful consideration of your appeal, we have decided to affirm the initial action in this case. You specifically requested a copy of the complete alien file. We have determined that the National Records Center conducted multiple searches, however no responsive records could be found. Therefore, it has been determined that the NRC response is correct. A new search may be submitted to the National Records Center for records responsive to your initial request. With supplemental information provided, a second search may be more successful. Any additional information you can provide regarding the subject will assist in the possible location of the file.

Entry and exit records fall under the purview of the Customs and Border Protection Service. If you wish, you may request those records from CBP using the directions at the following website:

http://www.cbp.gov/xp/cgov/admin/fl/foia/making_a_request/

or you may contact Customs and Border Protection Services at:

U.S. Customs and Border Protection

Sabrina Burroughs
Director, FOIA Division
Office of Diversity and Civil Rights
Freedom of Information Act (FOIA) Division
90 K Street NE, 9th Floor
Washington, DC 20229-1181

Exhibit F

APP2014000698

Page 2

If you are dissatisfied with our action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B). The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan D. Hughes". The signature is fluid and cursive, with the first name "Alan" and last name "Hughes" clearly distinguishable.

Alan D. Hughes, Associate Counsel
Commercial and Administrative Law Division
Department of Homeland Security
Citizenship and Immigration Services

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 8: Declaration of Fernando Pineiro (ICE)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY, et al.

Defendants.

Civil Action
No. 15-1091 (KBJ)

**DECLARATION OF FERNANDO PINEIRO
IN SUPPORT OF THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Freedom of Information Act ("FOIA") Officer of the Freedom of Information Act Office ("ICE FOIA Office") at U.S. Immigration and Customs Enforcement ("ICE"). I have held this position since December 29, 2013. Prior to this position, I was the FOIA Officer for three years at the Office for Civil Rights and Civil Liberties ("CRCL") at the U.S. Department of Homeland Security ("DHS").

2. The ICE FOIA Office is responsible for processing and responding to all FOIA, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

3. As the Deputy FOIA Officer of the ICE FOIA Office, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me

regarding the processing of FOIA and Privacy Act requests received by ICE. In connection with my official duties and responsibilities, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of the FOIA and the Privacy Act. In that respect, I am familiar with ICE's processing of the FOIA request dated January 24, 2014 made on behalf of Laura Poitras that forms the subject of this litigation.

4. I make this declaration in my official capacity in support of Defendant in the above-captioned action. My statements are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business activities, and information provided to me by other ICE employees in the course of my official duties.

II. PROCEDURAL HISTORY OF THE PLAINTIFFS' FOIA REQUEST AND THE INSTANT LITIGATION

5. On June 13, 2015, Plaintiff filed a Complaint in the United States District Court for the District of Columbia for injunctive relief, attorneys' fees, and other appropriate relief. Plaintiff alleges her FOIA request was delivered to ICE on January 24, 2014, and that ICE failed to timely respond to Plaintiff's request and wrongfully withheld records.

6. On August 10, 2015, counsel for the defendants provided the ICE Office of the Principal Legal Advisor (agency counsel) a copy of Plaintiff's FOIA request dated January 24, 2014. **A true and complete copy of Plaintiffs' FOIA request provided to ICE is attached to this declaration as Exhibit A.**

7. ICE has no record of receiving Plaintiff's FOIA request prior to August 10, 2016 as noted above after commencement litigation in this case.

8. Plaintiff's FOIA request dated January 24, 2014 sought "disclosure of all agency records concerning, naming, or relating to Ms. Poitras." *See* Exh. A.

9. Plaintiff's letter dated January 24, 2014 indicates it was sent by certified mail with a tracking number 70131710000104259908.

10. On August 10, 2015, counsel for the defendants also provided a copy of a US Postal Service delivery tracking report, sent by Plaintiff, for a certified mail tracking number 70131710000104259908. The U.S. Postal Service tracking report indicates that a certified mail delivery with tracking number 70131710000104259908 was delivered on January 28, 2014 to a location in Washington, DC, with postal zip code 20526. **A true and complete copy of the tracking confirmation Plaintiff provided to counsel for defendants is attached to this declaration as Exhibit B.**

11. The ICE FOIA Office address is 500 12th St., SW, Stop 5009, Washington, DC 20536. The U.S. Postal Service certified mail tracking number Plaintiff provided indicates delivery to a postal zip code that is different than the ICE FOIA Office's postal zip code.¹

12. In a letter dated September 14, 2015, the ICE FOIA Office responded to Plaintiff's FOIA request. The ICE FOIA Office's letter stated, in part: "ICE conducted comprehensive searches of the ICE Offices of Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI), for records responsive to your request. No records responsive to your request were found." **A true and complete copy of the ICE FOIA Office's September 14, 2015 letter is attached as Exhibit C.**

III. INFORMATION REGARDING ICE'S STANDARD PROCEDURES FOR INITIATING SEARCHES IN RESPONSE TO FOIA REQUESTS AND SEARCHES CONDUCTED IN RESPONSE TO PLAINTIFF'S COMPLAINT

13. The ICE FOIA Office receives FOIA requests by mail, email, and fax.

¹ The ICE FOIA Office is located at ICE Headquarters in Southwest Washington, DC, at 500 12th St. SW, Washington, DC 20536. The Postal zip code 20526 shown on Plaintiff's tracking confirmation is located in Northwest Washington, DC.

14. When the ICE FOIA Office receives a FOIA request, the intake staff evaluates it to determine if it is a proper FOIA request per DHS FOIA regulation 6 C.F.R. § 5.3. Generally, a FOIA request is considered proper and in compliance with DHS regulations if it reasonably describes the records sought and the records are under the purview of ICE.

15. If a FOIA request does not reasonably describe the records sought, the ICE FOIA Office will seek clarification from the requestor by post, e-mail, or telephone.

16. If the requested information is under the purview of a DHS component other than ICE, the ICE FOIA Office will refer the request to the appropriate DHS component for processing and a direct response to the requestor.

17. If the FOIA request seeks records under the purview of a government agency other than DHS, ICE FOIA informs the requester to contact the other government agency directly and ICE administratively closes the FOIA request.

18. All FOIA requests received by the ICE FOIA Office are entered into FOIAXpress and assigned a case tracking number. FOIAXpress is the ICE FOIA Office's electronic case management system.

19. Based upon the requestor's description of the records being sought and ICE FOIA's knowledge of the various program offices' missions, the ICE FOIA Office identifies the program office(s) likely to possess responsive records and tasks the appropriate program office(s) to conduct the necessary searches.

20. ICE records are maintained by leadership offices and/or within ICE directorates, namely, Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), Office of Professional Responsibility (OPR), and/or Management and Administration (M&A).

21. Program offices within the leadership offices and the ICE directorates are staffed with designated points of contact who are the primary people responsible for communications between that program office and the ICE FOIA Office. Each point of contact is a person with detailed knowledge about the operations of their particular program office.

22. Upon receipt of a FOIA request, the ICE FOIA Office will identify which program offices, based on their experience and knowledge of ICE's program offices, within ICE are reasonably likely to possess records responsive to that request, if any, and to initiate searches within those program offices. Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the points of contact within each of those program offices with a copy of the FOIA request and instructs them to conduct a search for responsive records. The points of contact then review the FOIA request along with any case-specific instructions, if any, that may have been provided, and based on their experience and knowledge of their program office practices and activities, forward the request and instructions, if any, to the individual employee(s) or component office(s) within the program office that they believe are reasonably likely to have responsive records, if any. In conformity with the ICE FOIA Office's instructions, the individuals and component offices are directed to conduct searches of their file systems, including both paper files and electronic files, which in their judgment, based on their knowledge of the manner in which they routinely keep records, would be most reasonably likely be the files to contain responsive documents. Once those searches are completed, the individuals and component offices provide any potentially responsive records to their program office's point of contact, who in turn, provides the records

to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness and then reviews and processes any responsive records.

23. ICE employees maintain records in several ways. ICE program offices use various systems to maintain records, such as investigative files, records regarding the operation of ICE programs, and administrative records. ICE employees may store electronic records on their individual computer hard drives, their program office's shared drive (if the office uses one), DVDs, CDs, or USB storage devices. The determination of whether or not these electronic locations must be searched in response to a particular FOIA tasking, as well as how to conduct any necessary searches, is necessarily based on the manner in which the employee maintains his/her files.

24. Additionally, all ICE employees have access to email. ICE uses the Microsoft Outlook email system. Each ICE employee stores their files in the way that works best for that particular employee. ICE employees use various methods to store their Microsoft Outlook email files: some archive their files monthly, without separating by subject; others archive their email by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive.

25. Records received by the ICE FOIA Office from the program office points of contact are assigned to a FOIA processor who makes a determination as to whether the records are responsive to the FOIA request, or not. If the records are responsive, the FOIA processor will redact information pursuant to the FOIA or Privacy Act, as appropriate, while simultaneously ensuring that all reasonably segregated non-exempt information is released.

26. Frequently, the ICE FOIA Office must coordinate between multiple program offices to ensure the program office records are properly redacted and information is correctly

segregated. Once ICE FOIA has completed its coordination efforts and all responsive records have been processed, the ICE FOIA Offices releases the responsive records to the requester.

IV. DESCRIPTION OF ICE'S SEARCH FOR RESPONSIVE RECORDS

27. Prior to receiving a copy of Plaintiff's FOIA request from counsel for the Defendants' on August 11, 2015, the ICE FOIA Office has no record of receiving any request made by or on behalf of the Plaintiff.

28. On August 11, 2015, upon receipt of Plaintiff's FOIA request, the ICE FOIA Office assigned the request case number 2015-ICLI-000310, and entered the case into FOIAXpress.

29. The ICE FOIA Office determined, because of the subject matter of the request, that should ICE have any responsive records, that the ICE Office of Homeland Security Investigations (HSI) would be the office reasonably likely to maintain such records. On August 13, 2015, the ICE FOIA Office tasked HSI, and instructed HSI to conduct a comprehensive search for records responsive to Plaintiff's FOIA request and to provide all records located, if any, during that search to the ICE FOIA Office for review and processing.

30. ICE is the principal investigative arm of DHS and the second largest investigative agency in the federal government. Created in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, ICE now employs more than 20,000 people in offices in every state and in 48 foreign countries.

31. As a component of ICE, HSI is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods in, within, and out of the United States. HSI uses its legal authority to investigate

issues such as immigration crime, human rights violations and human smuggling, weapons and other types of contraband, and financial crimes. In addition to ICE criminal investigations, HSI oversees the agency's international affairs operations and intelligence functions. HSI consists of more than 10,000 employees, of which 6,700 are special agents, assigned to offices at ICE Headquarters in Washington, DC, and more than 200 cities throughout the United States and 48 countries around the world.

32. When HSI receives a FOIA tasking from the ICE FOIA Office, the request is submitted to HSI's Records Disclosure Unit (RDU). Points-of-contact (POCs) in RDU review the substance of the request. Based on the subject matter expertise and knowledge of the program offices' activities within HSI, RDU determines whether it can search for records, or whether it is necessary to forward the FOIA request to specific individuals and component offices to conduct searches of their file systems which in their judgment, based on their knowledge of the manner in which they routinely keep records, would be reasonably likely to have responsive records, if any.

33. Upon receipt of the FOIA request in this case, and based on the nature of the Plaintiff's FOIA request, an RDU POC determined that RDU would search for records itself. The POC tasked a RDU Senior FOIA Analyst to conduct a search for responsive records.

34. Based on his subject matter expertise and knowledge of HSI operations, the Senior FOIA Analyst reasonably determined that if HSI had any records responsive to Plaintiff's FOIA request, those records would be located in the TECS² system.

² TECS was previously an acronym for the legacy Treasury Enforcement Communication System. With the creation of the Department of Homeland Security (DHS) and the migration of Customs systems to DHS, and after various updates, the system is now simply known as TECS, and is not an acronym.

Therefore, the Senior FOIA Analyst conducted a search of the TECS system for responsive records.

35. TECS, principally owned and managed by U.S. Customs and Border Protection (CBP), is an overarching law enforcement information collection, analysis, and sharing environment that securely links telecommunication devices and personal computers to a central system and database. TECS contains HSI's case management database used for storage, tracking, and retrieval of law enforcement investigative information. The TECS also functions as an environment comprised of several modules designed to collect, maintain, and screen data as well as conduct analysis, screening, and information sharing. TECS contains temporary and permanent enforcement, inspection and intelligence records relevant to the anti-terrorism and law enforcement missions of U.S. Customs and Border Protection and numerous other federal agencies to include ICE. 73 Fed. Reg. 77778 (December 19, 2008).

36. The Senior FOIA analyst searched the TECS system using Plaintiff's name and Date of Birth as search terms. The Senior FOIA analyst's search resulted in no HSI records being located. The Senior FOIA analyst noted that based on his search of TECS, it appeared that CBP has responsive records.

37. On August 25, 2015, RDU responded to the ICE FOIA Office by notifying the ICE FOIA Office that HSI's search for records responsive to Plaintiff's request resulted in no HSI records being located.

38. On September 14, 2015, the ICE FOIA Office sent a letter to Plaintiff informing her that ICE's search for records resulted in no records being located.

X. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 6th day of June 2016.



Fernando Pineiro, Deputy FOIA Officer
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendant.

Civil Action
No. 15-cv-01091 (KBJ)

INDEX OF EXHIBITS TO DECLARATION OF FERNANDO PINEIRO

No.	Description
A	Plaintiff's FOIA Request dated January 24, 2014
B	U.S. Postal Service tracking confirmation
C	ICE FOIA Office letter dated September 14, 2015

EXHIBIT A

David L. Sobel

Attorney-at-Law

Suite 410
1818 N Street, N.W.
Washington, DC 20036

(202) 246-6180 (voice)
(202) 237-7727 (fax)
sobel@att.net (e-mail)

January 24, 2014

BY CERTIFIED MAIL -- 70131710000104259908

United States Immigration & Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009

Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of my client, Laura Poitras. A “privacy waiver” form executed by Ms. Poitras and authorizing disclosure of responsive records to me is attached to this request.

I request disclosure of all agency records concerning, naming, or relating to Ms. Poitras. In the event that you determine that some responsive material might be exempt from disclosure under FOIA, please indicate the specific exemption or exemptions upon which the agency relies. Ms. Poitras agrees to incur legally assessable processing fees not to exceed \$100.

As the FOIA requires, I will anticipate your response to this request within twenty working days. Please feel free to contact me at the e-mail address or telephone number indicated above if you wish to discuss this request.

Thank you for your prompt attention.

Sincerely,

David L. Sobel

encl.

EXHIBIT B



Search USPS.com or Track Packages

- Quick Tools**
- Track
 - Enter up to 10 Tracking # Find
 - Find USPS Locations
 - Buy Stamps
 - Schedule a Pickup
 - Calculate a Price
 - Look Up a ZIP Code™
 - Hold Mail
 - Change of Address

[Ship a Package](#)

[Send Mail](#)

[Manage Your Mail](#)

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[Business Solutions](#)

USPS Tracking™



[Customer Service >](#)
Have questions? We're here to help.

Tracking Number: 70131710000104259908

Expected Delivery Day: Saturday, January 25, 2014

Product & Tracking Information

Available Actions

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
January 28, 2014 , 11:14 am	Delivered	WASHINGTON, DC 20526
January 28, 2014 , 10:00 am	Sorting Complete	WASHINGTON, DC 20018
January 28, 2014 , 9:08 am	Arrival at Unit	WASHINGTON, DC 20018
January 25, 2014	Depart USPS Sort Facility	GAITHERSBURG, MD 20898
January 24, 2014 , 10:17 pm	Processed at USPS Origin Sort Facility	GAITHERSBURG, MD 20898
January 24, 2014 , 5:29 pm	Dispatched to Sort Facility	WASHINGTON, DC 20036
January 24, 2014 , 12:30 pm	Acceptance	WASHINGTON, DC 20036

Track Another Package

What's your tracking (or receipt) number?

[Track It](#)

LEGAL

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- [Terms of Use >](#)
- [FOIA >](#)
- [No FEAR Act EEO Data >](#)

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EXHIBIT C

Freedom of Information Act Office

U.S. Department of Homeland Security
500 12th St SW, Stop 5009
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

September 14, 2015

David Sobel

5335 Wisconsin Avenue, NW, Ste. 640
Washington, DC 20015

RE: *Laura Poitras v. Department of Homeland Security, et al., 15-cv-1091-KBJ*
ICE FOIA Case Number 2015-ICFO-91130, ICE FOIA Litigation Number 2015-ICLI-00031

Dear Mr. Sobel:

This letter is in connection with your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 24, 2014, seeking disclosure of all agency records concerning, naming, or relating to Ms. Laura Poitras. This FOIA request is now the subject of litigation in the United States District Court for the District of Columbia.

ICE has considered your request under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Information about an individual that is maintained in a Privacy Act system of records may be accessed by that individual¹ unless the agency has exempted the system of records from the access provisions of the Privacy Act.²

ICE conducted comprehensive searches of the ICE Offices of Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI), for records responsive to your request. No records responsive to your request were found.

If you have any questions about this response, please contact Sam Singer with the United States Department of Justice 202-616-8014.

Sincerely,

A handwritten signature in black ink, appearing to read "Catrina M. Pavlik-Keenan", with the letters "FOR" written in a smaller font to the right of the signature.

Catrina M. Pavlik-Keenan
FOIA Officer

¹ 5 U.S.C. § 552a(d)(1).

² 5 U.S.C. §§ 552a(d)(5), (j), and (k).

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

EXHIBIT 9: Declaration of Kevin L. Tyrrell (DHS)

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

LAURA POITRAS,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, DEPARTMENT OF JUSTICE,
et al.,

Defendants.

Civil Action No. 1:15-cv-01091-KBJ

DECLARATION OF KEVIN L. TYRRELL

I, Kevin L. Tyrrell, make the following declaration in lieu of affidavit pursuant to 28 U.S.C. § 1746.

1. I am the Associate Director of FOIA Appeals and Litigation for the Department of Homeland Security (DHS) Privacy Office. In this capacity, I am the Department official immediately responsible for processing appeals and litigation matters that arise under the Freedom of Information Act, 5 U.S.C. § 552 (the FOIA), the Privacy Act, 5 U.S.C. §552a , and other applicable records-access provisions. I have been employed by the DHS Privacy Office (DHS Privacy) in this capacity since July 2015. Before that, I held the position of FOIA Litigation Specialist. I have been with the Department since July 28, 2014. I make the following statements based upon my personal knowledge, which in turn is based on a personal review of the appropriate records in the case file and coordination with relevant FOIA personnel involved

in processing the subject request, as well as upon information furnished to me in the course of my official duties.

2. Through the exercise of my official duties, I have become familiar with the background of plaintiff's original FOIA request and DHS's response. I have also become familiar with the background of this litigation and have read a copy of the Complaint filed by plaintiff.

The DHS Privacy Office's FOIA Process

3. DHS Privacy partners with privacy staff in every DHS component to assess all new or proposed programs, systems, technologies, or rule-makings for privacy risks, and recommend privacy protections and alternative methods for handling personal information to mitigate privacy risks. DHS Privacy also centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight, and support implementation across the Department.

4. The mission of DHS Privacy is to preserve and enhance privacy protections for all individuals, to promote transparency of Department operations, and to serve as a leader in the privacy community. DHS Privacy (1) evaluates Department legislative and regulatory proposals involving collection, use, and disclosure of personally identifiable information (PII); (2) centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight, and to support implementation across the Department; (3) operates a Department-wide Privacy Incident Response Program to ensure that incidents involving PII are properly reported, investigated and mitigated, as appropriate; (4) responds to complaints of privacy violations and provides redress, as appropriate; and (5) provides training, education, and outreach to build a culture of privacy across the Department and transparency to the public.

5. Each DHS Component maintains its own automated case tracking system which assigns case control numbers to, and tracks the status of, all FOIA and Privacy Act requests received by

that Component. Components log all incoming FOIA and Privacy Act requests into their automated case tracking system, and input information about each request into the system (including, but not limited to, the requester's name and/or organization and, in the case of FOIA requests, the request's topic). All requesters are then notified of the case control numbers assigned to their requests. It is the custom of all Components to refer to the case control numbers in all correspondence with requesters. The automated case tracking systems are text searchable on a field-by-field basis.

6. When any DHS Component receives a referral or tasking from DHS Privacy, it mirrors the actions of DHS Privacy. Component FOIA personnel make a determination regarding which subcomponent or program office may have responsive documents, and then task that office with a search.

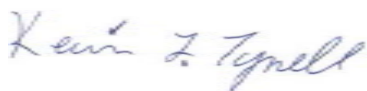
Plaintiff's FOIA Request

7. On January 29, 2014, DHS Privacy received a FOIA request from David Sobel, attorney for requester (Laura Poitras) dated January 24, 2014. The request sought documents disclosing all agency records concerning, naming or relating to Ms. Poitras.

8. On February 3, 2014, an acknowledgment letter was sent to the requester assigned tracking number 2014-HQFO-003000. The requester was informed that, "Based on the limited information you have provided, we cannot conduct an adequate search. The Department of Homeland Security was created January 24, 2003; therefore, no DHS records exist prior to that date. Records created prior to the establishment of DHS by any of the organizational components of DHS would be maintained by those components. Furthermore, DHS does not maintain a central index of records about individuals."

9. On March 20, 2014, DHS Privacy received from Mr. Sobel a letter dated March 5, 2014, clarifying parts of the request and providing further information about the records sought.
10. On March 26, 2014, the requester was notified that, upon further review, it has been determined that “Due to the subject matter of your request, I am transferring this request to the following FOIA Offices for further processing under the FOIA and direct response to you.”
11. The request was transferred via email on March 27, 2014 to U.S. Customs & Border Protection (CBP), FOIA Officer, 90 K Street NE, 9th Floor, Washington, D.C. 20229-1181 and Transportation Security Administration (TSA), FOIA Branch, 601 S. 12th Street, 11th Floor, East Tower, TSA-20, Arlington, VA 20598-6020.
12. As of the date of this declaration, there has not been an appeal filed in regards to the request processed by DHS Privacy 2014-HQFO-00300.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed on June 3, 2016.



Kevin L. Tyrrell
Associate Director, FOIA Appeals and Litigation
Privacy Office
Department of Homeland Security

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

DEFENDANTS' STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to L. Civ. R. 7(h)(1), Defendants submit this statement of material facts as to which Defendants contend there is no genuine dispute:

Plaintiff's Request to the FBI

1. After receiving Plaintiff's FOIA request, the FBI conducted a search for responsive records. Hardy Decl. ¶ 28.
2. The FBI conducted its search using the Central Records System (CRS), which is a comprehensive system that includes administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. *Id.*
3. In conducting the CRS search, the FBI used using variations of Plaintiff's name, together with other identifying information from her request letter, to help locate responsive records. *Id.*
4. The FBI determined that certain responsive records subject to FOIA are protected from disclosure by Exemptions 1, 3, 6, 7(A), 7(C), 7(D), and 7(E).

Plaintiff's FOIA Request to ODNI

5. After receiving the request, ODNI conducted a search of its pertinent non-intelligence holdings. Hudson Decl. ¶ 20.

6. Specifically, ODNI tasked the DNI's Executive Secretariat, Personnel Security, and Human Resource directorates with searching personnel, security, and human resource files for records relating to Plaintiff. *Id.* ¶¶ 20, 23.

7. No responsive documents were located. *Id.* ¶ 23.

8. Based on the parameters of the FOIA request, in which Plaintiff sought ODNI records relating to herself, ODNI determined that the classified system most likely to hold responsive records is the Terrorist Identities Datamart Environment ("TIDE"), which is a consolidated repository of information on international terrorist identities controlled by the National Counterterrorism Center ("NCTC"), a component of ODNI. *Id.* ¶¶ 14, 20.

9. Consistent with standard practice, ODNI did not task NCTC with conducting a search of TIDE because confirming or denying the existence or nonexistence of responsive records in TIDE would reveal classified information. *Id.* ¶ 32.

10. On November 5, 2015, Plaintiff's counsel sent a letter to ODNI clarifying that any responsive records in its unclassified holdings should include "all public source materials that are responsive to [the] pending request." *Id.* ¶ 24.

11. In response to Plaintiff's November 5, 2015 clarification letter, ODNI advised Plaintiff that it would search its unclassified holdings for public source materials relating to Ms. Poitras. *Id.* ¶ 25.

Plaintiff's FOIA Request to CBP

12. After receiving the request, CBP personnel determined that any responsive records subject to FOIA would most likely be located within two computer systems—TECS (including subsystems) and the Automated Targeting System (“ATS”). Burroughs Decl. ¶ 5.

13. CBP searched TECS and ATS using search terms encompassing Plaintiff's name and date of birth. *Id.* ¶¶ 5, 26.

14. In processing the results of CBP's initial searches, the FOIA staff determined that additional responsive records relating to an August 2010 encounter between Plaintiff and CBP at JFK International Airport were likely to be found in CBP's New York field office. *Id.* ¶¶ 5, 30.

15. Accordingly, personnel in CBP's New York field office conducted both paper and electronic searches using criteria reasonably tailored to identify all responsive records. *Id.* ¶ 31.

16. CBP determined that certain responsive records are protected from disclosure by Exemptions 4, 5, 6, 7(C), and 7(E). *Id.* ¶ 7.

17. CBP released records to Plaintiff through two responses, dated November 12, 2015 and February 17, 2015. *Id.* ¶ 6.

Plaintiff's FOIA Request to TSA

18. After receiving the request, and based on subsequent information provided in correspondence from Plaintiff's counsel as well as in Plaintiff's complaint, TSA FOIA personnel determined that six offices within TSA were reasonably likely to have responsive documents: The Department of Homeland Security's Traveler Inquiry Redress

Program (“DHS TRIP”), TSA’s Office of Intelligence and Analysis (“OIA”), and TSA offices at John F. Kennedy International Airport (“JFK”), La Guardia Airport (“LGA”), Newark Liberty International Airport (“EWR”), and Washington Dulles International Airport (“IAD”). McCory Decl. ¶¶ 14-15.

19. Each of those offices conducted searches for responsive documents. *Id.* ¶¶ 18-20.

20. TSA determined that certain responsive records subject to FOIA are protected from disclosure by Exemption 3. *Id.* ¶ 21.

Plaintiff’s FOIA Request to DHS

21. After receiving the request, and following review of a supplemental letter from Plaintiff’s counsel, DHS advised Plaintiff that, due to the subject matter of the request, DHS was transferring the request to the FOIA offices at CBP and TSA. Tyrell Decl. ¶ 10.

22. Plaintiff did not appeal DHS’s decision to transfer the request. *Id.* ¶ 11.

Plaintiff’s FOIA Request to USCIS

23. After receiving the request, USCIS personnel determined that any records maintained by USCIS that were responsive to the request and subject to FOIA would be in the records system known as the “Alien File/Central Index System.” Eggleston Decl. ¶ 10.

24. USCIS conducted a search of the “Alien File/Central Index System” based upon Plaintiff’s name and date of birth, as well as a description of the records she sought. *Id.* No responsive records were located. *Id.*

Plaintiff's FOIA Request to ICE

25. ICE has no record of receiving Plaintiff's FOIA request (which was incorrectly addressed) until it was forwarded to the agency by DOJ counsel after this litigation commenced. Pineiro Decl. ¶¶ 7, 10.

26. Plaintiff's own records suggest the request was sent to the wrong address. *Id.* ¶¶ 10,11.

27. After receiving the request, ICE personnel determined that any responsive records would most likely be found in ICE's Office of Homeland Security Investigations (HSI). *Id.* ¶ 29.

28. Using Plaintiff's name and date of birth, a FOIA analyst conducted a search of TECS system, which contains HSI's case management database, which is used for "storage, tracking, and retrieval of law enforcement and investigative information." *Id.* ¶¶ 34-36.

29. This search of TECS located no responsive records, though the analyst noted that it appeared from his search results that CBP had responsive records. *Id.* ¶ 36.

Withholdings and Responses Under Exemption 1

30. FBI has provided a declaration from an individual who is authorized to classify national security information and who has reviewed the documents at issue and determined that the information withheld is properly classified consistent with the requirements of Executive Order 13526. Hardy Decl. ¶¶ 41-43.

31. The FBI determined that the information at issue is owned by and under the control of the United States. *Id.* ¶ 42.

32. The FBI has determined that the information protected from disclosure falls within the category of information set forth in section 1.4(c) of Executive Order 13526. Hardy Decl. ¶¶ 45-50.

33. The information at issue “contains detailed intelligence activity information gathered or compiled by the FBI on a specific individual or organization of national security interest.” *Id.* ¶ 50.

34. The FBI has determined that the release of this information reasonably could be expected to cause serious damage to the national security. *Id.*

35. Specifically, the FBI has determined that disclosure could “reveal the actual intelligence activity or method utilized by the FBI against a specific target,” “disclose the intelligence-gathering capabilities of the method,” and “provide an assessment of the intelligence source penetration of a specific target during a specific period of time.” *Id.*

36. ODNI has provided a declaration from an individual who is authorized to classify national security information. Hudson Decl. ¶ 3.

37. The declarant has personally reviewed ODNI’s *Glomar* response and determined that the existence or nonexistence of records relating to Ms. Poitras in the agency’s classified holdings is currently and properly classified consistent with the requirements of E.O. 13526. *Id.* ¶ 34.

38. Moreover, the declaration confirms that the information at issue is owned by and under the control of the United States. *Id.* ¶ 14.

39. Further, the declaration demonstrates that the information protected from disclosure falls squarely within the category of information set forth in section 1.4(c) of E.O. 13526.

40. Based on the parameters of the FOIA request, which sought information about a particular individual, ODNI determined that “the system most likely to house responsive records is TIDE.” *Id.* ¶ 18.

41. ODNI can neither confirm nor deny whether there are responsive records in TIDE, because “[e]ither confirmation would reveal sensitive information about intelligence activities and intelligence sources and methods that are protected from disclosure by statute and Executive Order 13526.” *Id.* ¶¶ 18, 34.

42. TIDE records “include a great deal of intelligence information obtained through the collection, operations, and reporting of the [Intelligence Community], implicating the most sensitive sources and methods of intelligence gathering.” *Id.* ¶ 14.

43. ODNI determined that “[c]onfirming or denying whether ODNI does or does not possess TIDE records reflecting an intelligence interest in a particular individual would cause harm to the national security by providing information that adversaries could use to evade detection or monitoring by the U.S. intelligence community.” *Id.* ¶ 28.

44. “If the United States confirms that it is conducting a particular intelligence activity, or that it has gathered information on a particular person, such activities would be compromised, and foreign adversaries and terrorist organizations could use that information to avoid detection.” *Id.* ¶ 28.

Withholdings and Responses Under Exemption 3

45. The FBI has asserted Exemption 3 to protect information pertaining to grand jury proceedings covered by Federal Rule of Criminal Procedure 6(e). Hardy Decl. ¶ 53.

46. The grand jury information withheld consists of “the names and/or identifying information of third parties who were either subpoenaed to provide testimony or actually

provided testimony to the Federal Grand Jury; the company names and/or employees served with Federal Grand Jury subpoenas; information identifying specific records subpoenaed by the Federal Grand Jury; and other information on the internal workings of the Federal Grand Jury.” *Id.*

47. The FBI has also invoked Exemption 3 to protect information covered by section 102A(i)(1) of the National Security Act of 1947, as amended. *Id.* ¶ 54.

48. The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods. *Id.* ¶ 55.

49. Specifically, the FBI has asserted Exemption 3 to protect the “IC’s sources and methods of gathering intelligence,” the disclosure of which has been specifically prohibited by Congress. *Id.* ¶ 56.

50. ODNI has asserted Exemption 3 in support of its *Glomar* response relating to records in its classified holdings, the existence or nonexistence of which would reveal whether or not Plaintiff is of intelligence interest to ODNI or the broader intelligence community. Hudson Decl. ¶ 10, 21.

51. ODNI has determined that confirming the existence or nonexistence of records responsive to Plaintiff’s request in the TIDE database would reveal whether or not ODNI has or once had intelligence interest in Plaintiff or her activities, a properly classified fact that falls squarely within the scope of the National Security Act. Hudson Decl. ¶ 30.

52. TSA has reviewed certain documents and determined that they are exempt from disclosure under Exemption 3. Blair Decl. ¶ 9.

53. TSA has determined that the information at issue is Sensitive Security Information (“SSI”) that is protected by 49 U.S.C. § 114(r), which prohibits the disclosure of information that “would be detrimental to the security of transportation” if released. *Id.* ¶ 9-10.

54. TSA has determined that the information falls within the scope of 49 C.F.R. § 1520.5(b)(9)(ii). The records at issue include information that would tend to confirm or deny whether Plaintiff was or was not on a federal watchlist. *Id.* ¶ 10.

55. Because TSA uses federal watchlists in vetting passengers attempting to board aircrafts, the information at issue is “used by a passenger screening program or system, which means that it is SSI under 49 C.F.R. § 1520.5(b)(9)(ii).” *Id.*

56. The SSI Program reviewed the result of a search for responsive records conducted by TSA’s Office of Intelligence Analysis (“OIA”) and determined that TSA cannot disclose whether OIA located any records concerning Plaintiff because acknowledging the existence or non-existence of such records would reveal SSI. Blair Decl. ¶ 11.

57. Because OIA generally maintains a record relating to a particular airline passenger only when the passenger was on a federal watchlist at the time of a flight, “revealing that OIA has a record of a passenger would generally confirm that the passenger was on a watchlist,” and “revealing that OIA does not have a record of a passenger would generally confirm that the passenger was not on a watchlist.” *Id.* ¶ 12.

Withholdings Under Exemption 4

58. CBP has redacted certain information under Exemption 4 to protect confidential business information of air carriers that appears in Passenger Name Records

found in ATS. This information is collected from airlines or travel reservations systems. Burroughs Decl. ¶¶ 25, 28.

59. CBP has determined that disclosure of such information “could cause substantial competitive harm to the airlines that provide the information, and may impair the Government’s relations with air carriers and the ability to collect such information in the future.” *Id.* ¶ 28.

Withholdings Under Exemption 5

60. CBP has withheld materials protected by the attorney-client privilege. Specifically, CBP has withheld Office of Chief Counsel communications among CBP attorneys, as well as communications between CBP attorneys and other CBP personnel, relating to the 2010 encounter between Plaintiff and CBP at JFK International Airport. Burroughs Decl. ¶¶ 33, 41, 46.

61. These communications involved CBP attorneys who “were acting in their capacity as legal counsel for CBP,” and “the communications were for the purpose of rendering legal services.” *Id.*

62. CBP has also withheld materials protected by the deliberative process privilege. These materials are withheld because they include communications among CBP attorneys, as well as between CBP attorneys and CBP personnel that reflect the agency’s deliberative processes and conclusions concerning “CBP inspections, processes, and legal authorities,” and specifically in relation to the 2010 encounter between Plaintiff and CBP at JFK International Airport. Burroughs Decl. ¶¶ 33, 41.

63. CBP also withheld information protected by the work product doctrine. The CBP declaration explains that CBP withheld internal legal memoranda relating to the 2010 encounter between Plaintiff and CBP. Burroughs Decl. ¶ 49.

64. These memoranda were prepared by CBP attorneys and reflect agency's deliberative processes and conclusions concerning "CBP inspections, processes, and legal authorities." *Id.*

65. The FBI has withheld materials protected by the deliberative process privilege. Specifically, the FBI asserted Exemption 5 to withheld information from an FBI FD-542 (Accomplishment Report form), which is "an intra-agency communication from the New York Field Office ("NY FO")," in which "the NY FO is analyzing, delivering, sorting ideas and providing recommendations of things to consider for this particular investigation." Hardy Decl. ¶ 62.

Withholdings Under Exemption 7

66. In withholding certain information under Exemption 7, the FBI and CBP determined that the records at issue were compiled for law enforcement purposes. Hardy Decl. ¶ 63; Burroughs Decl. ¶ 15.

67. Specifically, the FBI declaration explains that the FBI's records were compiled as part of a criminal investigation into Plaintiff's "potential involvement with anti-coalition forces during her time in Iraq as an independent media representative." Hardy Decl. ¶ 64.

68. For its part, CBP's records include documents that are taken from a database system that contains enforcement, inspection, and intelligence records which are relevant to the agency's anti-terrorism and law enforcement missions. Burroughs Decl. ¶ 15.

Withholdings Under Exemption 7(A)

69. The FBI determined that certain responsive records subject to FOIA must be withheld pursuant to Exemption 7(A) because their disclosure could reasonably be expected to interfere with enforcement proceedings. Hardy Decl. ¶ 76.

70. The FBI has asserted Exemption 7(A) to protect file numbers of pending FBI declarations. *Id.*

71. “The release of the file numbers pertaining to investigative activities of third parties of an on-going FBI investigation could result not only in the acknowledgment of the existence of the investigation, but also in the identification of suspects and thus jeopardize the investigation.” *Id.*

72. As a result, disclosure of this information “would interfere with pending and prospective enforcement proceedings, including investigations and prosecutions.” *Id.*

Withholdings Under Exemption 7(D)

73. FBI has withheld information under Exemption 7(D) after determining that its release could reasonably be expected to reveal information about two categories of sources: confidential information from foreign governments, and information from third parties who provided information under an implied assurance of confidentiality. Hardy Decl. ¶¶ 79-84.

74. The FBI has invoked Exemption 7(D) to protect the “identity as well as the information provided by an intelligence agency of a foreign government with an implicit understanding of confidentiality.” *Id.* ¶ 81.

75. The FBI has also invoked Exemption 7(D) to protect source-identifying information. As the FBI explains, the information protected concerns “an individual

source who is a source symbol numbered information under express grant of confidentiality.” Hardy Decl. ¶ 85.

Withholdings Under Exemption 7(E)

76. FBI and CBP have withheld information under Exemption 7(E), after determining that disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Hardy Decl. ¶¶ 87-95; Burroughs Decl. ¶¶ 21, 24, 37, 44.

77. The FBI withheld eight types of information to protect investigative techniques and methods after determining that their release could help individuals circumvent the law: (1) sensitive file numbers or sub-file names; (2) internal, non-public email or IP addresses; (3) dates or types of investigations; (4) identity or location of FBI or Joint Units, Squads, or Divisions; (5) collection or analysis of information; (6) investigative focus; (7) law enforcement strategies or techniques for addressing the techniques, tactics or procedures (TTPs) used by an organization; (8) monetary payments for investigative techniques. Hardy Decl. ¶¶ 87-95.

78. The information CBP withheld under Exemption 7(E) includes computer screen transaction codes that facilitate access to and navigation through various law enforcement systems. Burroughs Decl. ¶ 21.

79. CBP has also withheld information concerning law enforcement techniques and methods which, if disclosed, could enable individuals to circumvent the law. *See* Burroughs Decl. ¶ 24.

80. For example, CBP withheld narrative information from TECS records describing law enforcement techniques and procedures used by CBP officers, *id.* ¶ 24; information from New York field office records concerning non-public law enforcement techniques and procedures used by CBP and ICE, “including information explaining methods regarding data destruction,” *id.* ¶ 37; and email communications between CBP personnel “describing techniques and processes used during CBP inspections and other law enforcement functions,” *id.* ¶¶ 43-44.

81. In response to Plaintiff’s FOIA request, CBP advised that it could neither confirm nor deny the existence or nonexistence of certain records in its search results which would tend to indicate whether a particular person is or ever was listed on a federal watchlist. *Id.* ¶ 13.

82. Exemption (b)(7)(E) would apply to any such records, if they existed, “given their nexus to the terrorist watch-list, because information related to any such status would disclose law enforcement techniques and procedures which are not publicly known or disclosed.” Burroughs Decl. ¶ 13.

Segregability

83. CBP has conducted a line-by-line review of the records determined to be responsive and determined that all reasonably segregable portions of the responsive records have been released to Plaintiff. Burroughs Decl. ¶ 52.

84. The FBI has reviewed the 256 pages released in part and determined that the protected information was either exempt itself or so intertwined with non-exempt information that segregation of the non-exempt information was not reasonably possible

without revealing exempt information or leaving nothing but meaningless content. Hardy Decl. ¶ 110.

85. With respect to the 83 pages withheld in full (not counting the four duplicate records), FBI FOIA personnel determined that the 83 pages were either fully covered by one more of the cited FOIA exemptions or so intertwined with non-exempt information that no information could reasonably be segregated for release. *Id.* ¶ 110.

June 6, 2016

Respectfully submitted,

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General

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Counsel for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA POITRAS,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,

Defendants.

Case No. 1:15-cv-1091 (KBJ)

**UNOPPOSED MOTION FOR ONE-DAY EXTENSION OF TIME TO SUBMIT EX
PARTE, IN CAMERA DECLARATION IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants respectfully request a one-day extension of time to submit an *ex parte, in camera* declaration in support of the Federal Bureau of Investigation's (FBI) motion for summary judgment in the above-captioned case.

Pursuant to the Court's March 20, 2016 minute order, Defendants are required to submit a motion for summary judgment no later than today, June 6, 2016. Defendants intend to meet that deadline, and will be timely submitting their Motion for Summary Judgment, together with numerous declarations and supporting exhibits. This motion concerns only one of those declarations – an *ex parte, in camera* declaration from the FBI.

Due to an unexpected scheduling conflict, the FBI's declarant will not be able to finalize his *ex parte, in camera* declaration until June 7, 2016. While this conflict will not prevent the timely submission of the FBI's *public* declaration (or any other aspect of the Defendants' public summary judgment filing), due to certain coordination and logistical issues unique to the *ex parte, in camera* filing, the FBI will not be able to

submit the *ex parte, in camera* declaration until tomorrow, June 7, 2016. Defendants therefore respectfully request a one-day extension of time to submit the *ex parte, in camera* declaration in support of the FBI's motion for summary judgment. Undersigned counsel has conferred with Plaintiff's counsel, who does not oppose the motion.

June 6, 2016

Respectfully submitted,

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General

MARCIA BERMAN
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Counsel for Defendant

Certificate of Service

I hereby certify that on June 6, 2016, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system, which will send notice of this filing to all parties.

/s/ Samuel M. Singer
SAMUEL M. SINGER

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

LAURA POITRAS,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY ET AL.,**

Defendants.

Case No. 1:15-cv-1091 (KBJ)

NOTICE OF CLASSIFIED LODGING

Defendants, through undersigned counsel, hereby provide notice that the Federal Bureau of Investigation has lodged for submission classified information in support of Defendants' Motion for Summary Judgment, which was filed on the public docket on June 6, 2016 (ECF No. 14). This *ex parte, in camera* submission includes the classified declaration of David M. Hardy. The submission has been lodged for secure storage and (upon request) secure transmission to the Court with the United States Department of Justice, Litigation Security Group, Washington, D.C., (202) 514-9016. The Court may contact the undersigned counsel, or the Litigation Security Group, to assist in securing delivery of the submission for review at the Court's convenience.

June 7, 2016

Respectfully submitted,

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Counsel for Defendant

Certificate of Service

I hereby certify that on June 7, 2016, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system, which will send notice of this filing to all parties.

/s/ Samuel M. Singer _____

SAMUEL M. SINGER