UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW,	)	
Plaintiff,	)	
v.	)	Civil Action No. 18-1841 (ABJ)
U.S. DEPARTMENT OF JUSTICE,	)	
Defendant.	)	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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

Respectfully submitted,

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DEFENDANT'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Local Rule 7(h), defendant United States Department of Justice ("DOJ"), on behalf of the Civil Rights Division ("CRT"), submits this statement of material facts as to which there is no genuine issue:

1. By letter dated July 20, 2017, plaintiff made a request under the Freedom of Information Act ("FOIA") for access to all documents that DOJ had received from state or local election officials in response to a June 28, 2017 letter sent from T. Christian Herren, Jr., Chief of the Voting Section, to all states covered by the National Voter Registration Act ("NVRA") and the Help America Vote Act ("HAVA") (referred to herein as the "Letter"). The request also sought access to all communications and documents between any DOJ officer, employee or agent, or any White House liaison to DOJ, and any other person, including but not limited to any officer, employee or agent of the White House or the Presidential Advisory Commission on

Election Integrity, concerning the Letter. Declaration of Tink Cooper ("Cooper Decl."), ¶ 2 & Exh. A.

2. CRT performed a search for responsive records, searching two offices likely to have responsive records, as well as searching for electronic communications from approximately 80 custodians, using broad search terms such as "voting system" and "task force". Cooper Decl. at ¶¶ 4-16.

3. CRT has invoked Exemption 7(A) of the FOIA to withhold law enforcement records the release of which could reasonably be expected to interfere with ongoing enforcement proceedings, as CRT is investigating each state's compliance with the National Voter Registration Act ("NVRA") and the Help America Vote Act ("HAVA"). Cooper Decl. at ¶¶ 17-21.

4. CRT invoked Exemption 5 of the FOIA to protect certain information contained in inter or intra-agency memoranda which is protected from mandatory disclosure by the deliberative process privilege and the attorney work-product doctrine. More specifically, the information withheld consists of candid, predecisional views of government officials regarding the scope and focus of the investigations of states in connection with the NVRA and the HAVA. The information withheld precedes any final investigative or enforcement decisions and disclosure of this predecisional information would harm the effectiveness of the CRT's decisionmaking process by curtailing the free exchange of analyses, theories and recommendations necessary for effective decision-making. Cooper Decl., ¶¶ 22, 25. Certain information was also withheld under the attorney work-product doctrine to protect information created or compiled by attorneys in anticipation of potential enforcement proceedings against any

states found to have violated the NVRA and/or the HAVA. Id. at ¶ 24 .

5. CRT also invoked Exemption 6 and 7(C) of the FOIA, to protect information the release of which would constitute a clearly unwarranted invasion of personal privacy. The information withheld consists of witnesses' names, personal addresses and telephone numbers, and personal, direct telephone numbers, cell phone numbers, and personal email addresses of Department of Justice personnel, the release of which would shed no light on the operations or activities of the government. Cooper Decl., ¶ 27.

6. CRT conducted a line-by-line review of the withheld information and released all reasonably segregable non- exempt information to plaintiff. Cooper Decl., ¶ 28.

Respectfully submitted,

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D.C. BAR # 472845
United States Attorney
for the District of Columbia

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

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT

PRELIMINARY STATEMENT

Plaintiff filed this civil action against defendant United States Department of Justice ("DOJ"), alleging that DOJ's Civil Rights Division ("CRT") violated the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, in connection with plaintiff's request for certain specified information CRT received from state and local election officials in response to a June 28, 2017 letter sent from T. Christian Herren, Jr., Chief of the Voting Section, to all states covered by the National Voter Registration Act ("NVRA") and the Help America Vote Act ("HAVA") (referred to herein as the "Letter"). The request also sought access to all communications and documents between any DOJ officer, employee or agent, or any White House liaison to DOJ, and any other person, including but not limited to any officer, employee or agent of the White House or the Presidential Advisory Commission on Election Integrity concerning the Letter. Declaration of Tink Cooper ("Cooper Decl."), ¶ 2 & Exh. A.

As demonstrated below, and in the accompanying Cooper Declaration and the Vaughn Index describing the withheld information, CRT has satisfied all of its FOIA obligations with respect to plaintiff's request, and given plaintiff all of the records and information to which it is entitled. Therefore, judgment should be entered in favor of defendant based on the entire record, because there is no genuine issue of material fact and defendant is entitled to judgment as a matter of law.

ARGUMENT

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

To prevail in a FOIA case, a requester must show that an agency has "(1) 'improperly' (2) 'withheld' (3) 'agency records.'" Department of Justice v. Tax Analysts, 492 U.S. 136, 142 (1989) (*quoting* Kissinger v. Reporters Comm. For Freedom of Press, 445 U.S. 136, 150 (1980)); see 5 U.S.C.§ 552(a)(4)(B). The agency must establish that it has conducted a search reasonably calculated to uncover all responsive records. See, e.g., Baker & Hostetler LLP v. Department of Commerce, 473 F.3d 312, 318 (D.C. Cir. 2006); Valencia-Lucena v. United States Coast Guard, 180 F.3d 321, 325-26 (D.C. Cir. 1999); Truitt v. Department of State, 897 F.2d 540, 542 (D.C. Cir. 1990).

Although the adequacy of the search is "dependent upon the circumstances of the case," Truitt, 897 F.2d at 542, the agency "must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." Oglesby v. Department of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). In this connection, it is axiomatic that the fundamental question is not "'whether there might

exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate.'" Steinberg v. Department of Justice, 23 F.3d 548, 551 (D.C. Cir. 1994) (*quoting* Weisberg v. Department of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984)); accord Nation Magazine v. Customs Service, 71 F.3d 885, 892 n.7 (D.C. Cir. 1995).

The FOIA does not require that an agency search every division or field office on its own initiative in response to a FOIA request when responsive documents are likely to be located in one place. Kowalczyk v. Department of Justice, 73 F.3d 386, 388 (D.C. Cir. 1996). Nor does the FOIA require that an agency search every record system. Oglesby, 920 F.2d at 68.

The "[f]ailure to turn up [a specified] document does not alone render [a] search inadequate." Nation Magazine, 71 F.3d at 892, n.7. Nor is the issue before the Court "whether there might be any further documents," Kowalczyk, 73 F.3d at 388; rather, it is whether the search was adequate. Weisberg, 745 F.2d at 1485. In order to prove that its search was reasonable, the agency is entitled to rely upon affidavits, provided that they are relatively detailed, nonconclusory, and submitted in good faith. Id. at 1486; Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) ("affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by the FOIA"). The affidavits must show "that the search method was reasonably calculated to uncover all relevant documents," and should "explain how the search was conducted." Oglesby, 920 F.2d at 68.

Here, Ms. Cooper explains that CRT's search was directed at the two offices within CRT likely to possess all the materials regarding the Commission and the Letter. Cooper Decl., ¶ 4. CRT's practice in responding to FOIA requests is that:

> Each Division Section has a Deputy Chief who serves as a contact point regarding issues related to public disclosures such as under FOIA. The Deputy Chief of the particular Section then ascertains all individual attorneys or personnel that may have been involved in developing the records related to a specific enforcement action and supervises a search designed to locate all responsive records. The Section staff searches both paper and electronic records as necessary to locate any existing records that might be responsive to the request. A search of an individual's computer files customarily includes a search of the email systems.

Id. at ¶ 5. This practice was followed in the instant case. Id.

In addition, CRT routinely contacts the Office of the Assistant Attorney General, ("OAAG") or the Deputy Assistant Attorney General who supervises the offices tasked with searching for responsive records, to ensure all individuals who may have responsive records are identified so they can be tasked with searching for the records. Id. at ¶¶ 6-8. This also was done in this case, and it was determined that the OAAG and the Voting Section had responsive records and both offices searched for responsive electronic and hard copy responsive records. Id. at ¶ 10.

CRT also performed a search in its Division-wide email system called "0365". Cooper Decl., ¶ 11. CRT identified almost 80 custodians who might have responsive records and developed broad search terms to use in connection with those custodians. Id.

The Cooper Declaration makes clear that CRT performed an adequate search. The division identified all the places where responsive records might reasonably be found and performed a broad enough search to retrieve any responsive records. Accordingly, DOJ is entitled to summary judgment on the search performed here.

II. Pursuant to Exemption 5, CRT Properly Withheld Information Subject to the Deliberative Process Privilege and Work-Product Doctrine

FOIA Exemption 5 protects from disclosure "inter-agency or intra-agency memorandums

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

A. Deliberative Process Privilege

The purpose of the deliberative process privilege is to protect the government's decision-making process, and "rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news." U.S. Dep't of Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8–9 (2001); Abtew, 808 F.3d at 898; Tax Analysts v. IRS, 117 F.3d 607, 617 (D.C. Cir. 1997) (noting that the privilege "reflect[s] the legislative judgment that the quality of administrative decision-making would be seriously undermined if agencies were forced to 'operate in a fishbowl' because the full and frank exchange of ideas on legal or policy matters would be impossible"). Application of the privilege, therefore, serves to "prevent injury to the quality of agency decisions." NLRB, 421 U.S. at 150–51.

To qualify for protection under the deliberative process privilege, the agency must show that the information is both (1) "predecisional" and (2) "deliberative." Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 39 (D.C. Cir. 2002). A document is predecisional if "it was generated before the adoption of an agency policy," and deliberative if "it reflects the give-and-

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

The deliberative process privilege also protects factual materials that are closely intertwined with opinions, recommendations, and deliberations. Ancient Coin Collectors Guild v. U.S. Dep't of State, 641 F.3d 504, 513 (D.C. Cir. 2011) ("[T]he legitimacy of withholding does not turn on whether the material is purely factual in nature or whether it is already in the public domain, but rather on whether the selection or organization of facts is part of an agency's deliberative process."); Mapother v. Dep't of Justice, 3 F.3d 1533, 1538-39 (D.C. Cir. 1993). Whether a document is predecisional does not depend on the agency's ability to identify a specific decision for which the document was prepared. NLRB, 421 U.S. at 151 n.18. Rather, the deliberative process privilege applies as long as the document is generated as part of a continuing process of agency decision- making.

CRT withheld certain information under Exemption 5's deliberative process privilege, consisting of internal CRT emails, memoranda, draft responses, internal analyses and discussions concerning strategies and recommendations about possible litigation against a state for violating the NVRA or the HAVA. Cooper Decl., ¶ 22. All of this information is predecisional, because it concerns analyses, opinions and recommendations about whether the information submitted by states in response to the Letter demonstrates any violation of the NVRA or the HAVA. Id. Thus, given that none of the information at issue constitutes a final decision about any possible violations, it qualifies as predecisional.

The information withheld is also deliberative. As the Cooper Declaration makes clear, these documents contain opinions and recommendations concerning the legal sufficiency of the states' responses to the Letter, and potential violations of the NVRA and the HAVA. Id. at ¶¶ 22-26. Disclosure of this predecisional deliberative information could cause confusion for the public and would cause harm to the agency's decision-making process. Mr. Cooper explains that:

> Release of the deliberative information would greatly harm the agency's deliberative process by prematurely revealing potential statutory violations, and analyses and recommendations concerning these potential violations when no final determination was made as to whether the potential violations were in fact violations that needed to be addressed in the manner suggested by the analyses and recommendations. Release of this information would therefore cause confusion to the states and members of the public and may result in action being taken where no action is warranted, or not the action suggested by a recommendation contained in the documents.

Cooper Decl., ¶ 22.

Additionally, release of this deliberative information would harm the agency's decision-making process because it would chill the needed open and frank discussion about possible

violations of the NVRA and the HAVA and how they should be addressed. Id. at ¶ 25. As the Supreme Court aptly observed, "officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news." Klamath Water Users Protective Ass'n, 532 U.S. at 8–9. In this regard, Ms. Cooper points out that:

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

Cooper Decl., ¶ 25.

Exemption 5's deliberative process privilege was designed specifically to prevent harm to the government's decision-making process. The Cooper Declaration amply demonstrates that the information withheld here is predecisional and deliberative in nature. Its release would harm the agency's decision-making process in ways courts have recognized should be prevented through the application of FOIA Exemption 5.

B. The Attorney Work-Product Doctrine

Within Exemption 5, the attorney work-product doctrine protects against the disclosure of material "prepared in anticipation of litigation or for trial or for another party or by or for that other party's representative." McKinley, 647 F.3d at 341; Judicial Watch, Inc. v. Dep't of Justice, 432 F.3d 366, 369 (D.C. Cir. 2005). The doctrine "shields materials 'prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative.'" Judicial Watch, 432 F.3d at 369 (*quoting* Fed. R. Civ. P. 26(b)(3)). Protected work product is not limited to "the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." FTC v. Grolier, 462

U.S. 19, 25 (1983). The distinction between "fact" and "opinion" work product that is made in civil discovery is irrelevant in the FOIA context. Id. at 27; see also Tax Analysts v. IRS, 117 F.3d 607, 620 (D.C. Cir. 1997) (holding that the work-product privilege "also protects factual materials prepared in anticipation of litigation"). Therefore, "factual material is itself privileged when it appears within documents that are attorney work product," and if a record may be withheld under the attorney work-product protection of Exemption 5, "then segregability is not required." Judicial Watch, 432 F.3d at 371.

Here, CRT invoked the attorney work-product doctrine to protect information also covered by the deliberative process privilege. Ms. Cooper explains that:

> The information protected pursuant to the attorney work-product privilege was created by Department attorneys concerning the conduct and strategies of enforcement actions pursuant to the NVRA and the HAVA. These evaluations, analysis, recommendations, and discussions in contemplation of possible litigation against a state for violations of the NVRA or the HAVA reveal the very core of the Department's review of compliance with these statutes, and release of this information would undermine the Department's litigating position should the underlying enforcement actions become the subject of litigation. If CRT determines that a state is not in compliance with the NVRA, CRT can initiate a lawsuit against the state to enforce the NVRA, and release of this information would provide a roadmap of CRT's analysis of any possible violations.

Cooper Decl., ¶ 24.

Because Exemption 5's attorney work-product doctrine was designed to prevent this very problem, and protect the government's work in anticipation of litigation, CRT's invocation of Exemption 5 here should be upheld.

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

Pursuant to Exemption 6, coextensively with Exemption 7(C), CRT withheld the

witnesses' names, personal addresses and telephone numbers, and the personal, direct telephone numbers, cell phone numbers, and personal email addresses of DOJ personnel. Cooper Decl., ¶ 27. The Court need only consider the withholdings under Exemption 6 were it to conclude that Exemption 7(C) did not apply to any withholdings. See Coleman v. Lappin, 607 F.Supp.2d 15, 23 (D.D.C. 2009) ("If the Court determines that information properly is withheld under one exemption, it need not determine whether another exemption applies to that same information." (*citing* Simon v. DOJ, 980 F.2d 782, 785 (D.C. Cir. 1992)).

Exemption 6 permits the withholding of "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The term "similar files" is broadly construed and includes "Government records on an individual which can be identified as applying to that individual." U.S. Dep't of State v. Wash. Post Co., 456 U.S. 595, 602 (1982); Lepelletier v. Fed. Deposit Ins. Corp., 164 F.3d 37, 47 (D.C. Cir. 1999) ("The Supreme Court has interpreted the phrase 'similar files' to include all information that applies to a particular individual."); Govt. Accountability Project v. U.S. Dep't of State, 699 F. Supp. 2d 97, 105-06 (D.D.C. 2010). In assessing the applicability of Exemption 6, courts weigh the "privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of personal privacy." Lepelletier, 164 F.3d at 46; Chang v. Dep't of Navy, 314 F. Supp. 2d 35, 43 (D.D.C. 2004). "[T]he only relevant public interest in the FOIA balancing analysis [is] the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'" Lepelletier, 164 F.3d at 47

(*quoting* U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 497 (1994)) (alterations in original); Beck v. Dep't of Justice, 997 F.2d 1489, 1492 (D.C. Cir. 1993) (*quoting* Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)). "Information that 'reveals little or nothing about an agency's own conduct' does not further the statutory purpose." Beck, 997 F.2d at 1492.

In this case, CRT applied Exemption 6 (in tandem with Exemption 7(C)) to withhold witnesses' names, personal addresses and telephone numbers, and the personal, direct telephone numbers, cell phone numbers, and personal email addresses of DOJ personnel. Cooper Decl., ¶ 27. Third parties and DOJ employees clearly have a privacy interest in their personal phone numbers and email addresses. See, e.g., Nation Magazine, 71 F.3d at 896; Lazardis v. U.S. Dep't of State, 934 F. Supp.2d 21, 34-36 (D.D.C. 2013). CRT balanced this privacy interest against the public interest in disclosure recognized under the FOIA, and concluded that disclosure of the information withheld would reveal nothing about the operations and activities of DOJ. Cooper Decl., ¶ 27. Accordingly, disclosure of this information would constitute a clearly unwarranted invasion of privacy.

IV. Pursuant to Exemption 7, CRT Properly Withheld Information Exempted from Disclosure Under Two Sub-Parts of Exemption 7.

In order to invoke any of the subsections of Exemption 7, an agency must demonstrate as a threshold matter that the records were "compiled for law enforcement purposes." 5 U.S.C. 552(b). To satisfy this requirement, an agency need only "establish a rational nexus between an investigation and one of the agency's law enforcement duties and a connection between an individual or incident and a possible security risk or violation of federal law. "Blackwell v. FBI, 646 F.3d 37, 40 (D.C. Cir. 2011) (*citing* Campbell v. U.S. Dep't of Justice, 164 F.3d 20,

32 (D.C. Cir. 1998)); Tax Analysts v. IRS, 294 F.3d 71, 78 (D.C. Cir. 2002). See also Public Employees for Envtl. Responsibility v. U.S. Section, Int'l Boundary & Water Comm'n, 740 F.3d 195,202-03 (D.C. Cir. 2014) (the key is that the documents were compiled for law enforcement purposes).

The Cooper Declaration explains that all of the records withheld under Exemption 7 "are related to the enforcement of federal laws by CRT, specifically the NVRA and HAVA." Cooper Decl., ¶ 17. These records, therefore, qualify as law enforcement records.

Because the information therefore qualifies as Exemption 7 information, the next consideration is whether it is protected from release by Exemptions 7(A) and 7(C).

A. Exemption 7(A)

Exemption 7(A) exempts from mandatory disclosure law enforcement records or information to the extent their disclosure "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). The enforcement proceedings do not need to be ongoing; a reasonable anticipation that enforcement proceedings may occur is sufficient. Sussman v. United States Marshals Serv., 494 F.3d 1106, 1115 (D.C. Cir. 2007). As the Court of Appeals for this Circuit observed in Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Justice, 746 F.3d 1082 (D.C. Cir. 2014), "Exemption 7(A) reflects the Congress's recognition that 'law enforcement agencies ha[ve] legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it [comes] time to present their case.'" Id. at 1096, (*quoting* NLRB, 437 U.S. at 224).

A determination of the application of Exemption 7(A) necessitates a two-step analysis focusing on: (1) whether a law enforcement proceeding is pending or prospective, and (2)

whether release of the information about it could reasonably be expected to cause some identifiable harm to it. See e.g., Boyd v. Dep't of Justice, 475 F.3d 381, 385-86 (D.C. Cir. 2007); North v. Walsh, 881 F.2d 1088, 1100 (D.C. Cir. 1989). But the foremost consideration remains "to prevent harm [to] the Government=s case in court." NLRB 437 U.S. at 224-25.

The information withheld here pursuant to Exemption 7(A) satisfies the first consideration. CRT has asserted Exemption 7(A) to withhold records pertaining to ongoing investigations into whether states are complying with the requirements of the NVRA and the HAVA. Cooper Decl., ¶ 17. Given that law enforcement proceedings are actually pending, the first prong of Exemption 7(A) clearly has been met, and the analysis then moves to the second consideration of whether there would be any harm from release of the withheld information.

Release of the information withheld here would interfere with these ongoing enforcement proceedings. As the Vaughn Index describes, CRT asserted Exemption 7(A) for e-mails between CRT attorneys in the Voting Rights Section concerning the conduct of the open and ongoing enforcement actions regarding the federal voting rights statutes. Id. at Group 2. CRT also withheld:

> Categories of documents being withheld include multiple emails, letters, and other types of documents provided by the 45 chief election officials of the states and D.C. in response to CRT's June 28, 2017 letter. The states' responses include narrative as well as various additional items such as legislation, draft versions of proposed bills, bills, regulations, codes, policies, guidance, brochures, and election manuals or descriptions regarding voter registration procedures, election processes, convicted felons, and death notices. Other responses from the states include discussion of case law on particular issues such as the NVRA and HAVA. Some states provided supplemental responses in response to CRT's requests for clarification and additional information.

Vaughn Index, Group 4; Cooper Decl., ¶ 19.

Ms. Cooper explains the harm from release as follows:

> Disclosure would reveal the Division's strategy and evaluation of evidence pertaining to the pending enforcement proceedings against the states and the District of Columbia. Harm would result from prematurely releasing information that would reveal investigative strategies regarding the type of information sought from the states, and what data is found to be particularly probative of a state's compliance with federal voting rights statutes and the voter registration list maintenance list requirements. These materials include evaluations, analysis, recommendations and discussions in contemplation of possible litigation against a state for violations of the NVRA or the HAVA. Release at this time of the investigative materials could reveal the scope and focus of the investigations; tip off individuals or states to information of interest to law enforcement; provide subjects the opportunity to alter evidence to avoid detection; and reveal the core of the Department's review of compliance with these statutes.

Cooper Decl., ¶ 19. Indeed, a release of the withheld information at this time "could reveal the scope and focus of the investigations; tip off individuals to information of interest to law enforcement; and provide subjects the opportunity to alter evidence or their behavior to avoid detection. " Id.

For example, if one state had access to another state's data and information, the first state could then try to manipulate its own data to present a more favorable position to CRT with respect to compliance issues under the NVRA and the HAVA. Id. This clearly would harm CRT's efforts to ensure compliance with these federal statutes.

Thus, the Cooper Declaration satisfies both criteria for the application of Exemption 7(A) and its invocation here should be upheld.

B. Exemption 7(C)

Exemption 7(C) exempts from mandatory disclosure under the FOIA information

compiled for law enforcement purposes when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5. U.S.C. § 552(b)(7) (C). A determination regarding whether information has been properly withheld under this exemption necessitates a balancing of the individual's right to privacy against the public's right of access to information in government files. Sussman, 494 F.3d at 1115; Davis v. Department of Justice, 968 F.2d 1276, 1281 (D.C. Cir. 1992). Where a legitimate privacy interest is implicated, the requester must "(1) show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and (2) show the information is likely to advance that interest." Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 172 (2004). If a document invades a third party's privacy and sheds no light on government functions, it may be withheld under Exemption 7(C). See, e.g., Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 774 (1989).

In this case, Exemption 7(C) was invoked to protect witnesses' names, personal addresses and telephone numbers, and the personal email addresses and phone numbers of DOJ employees. Cooper Decl., ¶ 27. CRT balanced the privacy interests at stake against the public interest in disclosure and concluded that the privacy interests outweighed any interest in disclosure because disclosure would not shed light on the operations and activities of DOJ. Id.

This type of information has traditionally been protected by the Courts, because its release would reveal nothing about the operations and activities of the government and could subject these individuals to harassment in the conduct of the official duties and in their private lives. See, e.g., Nation Magazine, 71 F.3d at 896. Thus, CRT properly invoked Exemption 7(C) to withhold information the release of which would be an unwarranted invasion of privacy.

V. CRT Has Complied with FOIA's Segegability Requirement.

Under the FOIA, if a record contains information exempt from disclosure, any "reasonably segregable," non-exempt information must be disclosed after redaction of the exempt information. 5 U.S.C. § 552(b). Non-exempt portions of records need not be disclosed if they are "inextricably intertwined with exempt portions." Mead Data Cent., Inc. v. Dep't of the Air Force, 566 F.2d 242, 260 (D.C. Cir. 1977). To establish that all reasonably segregable, non-exempt information has been disclosed, an agency need only show "with 'reasonable specificity'" that the information it has withheld cannot be further segregated. Armstrong v. Executive Office of the President, 97 F.3d 575, 578-79 (D.C. Cir. 1996); Canning v. Dep't of Justice, 567 F. Supp.2d 104, 110 (D.D.C. 2008). When an agency demonstrates that it has undertaken a "page-by-page" review of all the documents, and then submits a declaration attesting that the information that is withheld is not reasonably segregable, this is sufficient to show that an entire document, or particular information within a document, cannot be produced. Juarez v. U.S. Dep't of Justice, 518 F.3d 54, 61 (D.C. Cir. 2008); Beltranena v. U.S. Dep't of State, 821 F. Supp. 2d 167, 178–79 (D.D.C. 2011).

The Cooper Declaration states that CRT conducted a line-by-line review of the withheld information to ensure all reasonably segregable information was released, and that no additional reasonably segregable information can be disclosed. Id. at ¶ 28. Release of the withheld information "would reveal the content of the government's evidence, policies, recommendations, focus of investigations, and trial strategies regarding the states and D.C. that are the subjects of the ongoing investigations." Id.

Thus, because CRT carefully reviewed the material withheld and determined that no

additional non-exempt information could be released, this Court should find that the segregability requirement has been met.

CONCLUSION

Accordingly, for all of the reasons set forth above and in the accompanying declaration and Vaughn Index, defendant respectfully submits that this motion for summary judgment should be granted.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW,	)	
Plaintiff,	)	
v.	)	Civil Action No. 18-1841 (ABJ)
U.S. DEPARTMENT OF JUSTICE,	)	
Defendant.	)	

ORDER

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

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

This is a final, appealable order.

_____
UNITED STATES DISTRICT JUDGE