Knight First Amend. Inst. at Columbia Univ. v. Dep't of Homeland Sec.
No. 1:17-cv-00548-TSC

Defendants' Combined Reply in Support of Their Motion for Summary Judgment and Opposition to Plaintiff's Cross Motion for Summary Judgment

Ex. A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

and

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

Defendants.

No. 1:17-CV-00548-TSC

SUPPLEMENTAL DECLARATION OF JAMES V.M.L. HOLZER IN SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

I, James V.M.L. Holzer, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Chief Privacy and Freedom of Information Act ("FOIA") Officer for the United States Department of Homeland Security ("DHS" or "Department") Privacy Office ("PRIV").

2. I have been employed by DHS PRIV in this capacity since May of 2016. Previously I served as the Director of the Office of Government Information Services within the National Archives and Records Administration, and prior to that I served as the Senior Director of FOIA operations for DHS.

3. As the Deputy Chief FOIA Officer, I am the DHS official responsible for implementing FOIA policy across DHS and responding to requests for records made under the FOIA, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. §552a, and other applicable records access provisions.

4. Through the exercise of my official duties, I have become familiar with plaintiff's FOIA request and request for expedited processing. ECF No. 1-1. I am also familiar with this litigation and have read a copy of Pl.'s Compl. for Injunctive Relief, ECF No. 1, Pl.'s Am. Compl. for Injunctive Relief, ECF No. 10, and Pl's. Corrected Mem. in Supp. of Cross-Mot. for Summ. J. and Opp'n to Def.'s Mot. Summ. J. ("Cross Motion"), ECF No. 50-1.

5. I make the following statements based upon my personal knowledge, my coordination with relevant FOIA personnel responsible for processing the subject request, and information furnished to me in the course of my official duties. This supplemental declaration is submitted in support of the reply in support of defendants' motion for summary judgment and in opposition to plaintiff's cross motion in the above-captioned matter.

6. This declaration incorporates by reference the previously filed declaration and *Vaughn* index, ECF No. 46-3, and the scope is limited to the categories of records contested in plaintiff's cross motion in addition to those categories of records that were inadvertently omitted from DHS's previous *Vaughn* index and declaration.

Records Not Addressed in DHS's Previously Filed Vaughn Index or Declaration

7. Plaintiff states that DHS failed to address the following records in its declaration and *Vaughn* index: DHS-001-00513-000001-262, DHS-001-00513-000-268-70, DHS-001-00513-000281-98, DHS-001-00513-000303-07, DHS-001-00513-000351-715, DHS-001-00513-000739-752, and DHS-001-00513-000978-1103. ECF No. 50-1 at 47 n. 50.

8. DHS's five interim releases made in connection with this litigation did not contain records with a bates prefix of "DHS-001-00513-." The bates-stamp prefix on the records DHS produced was "DHS-001-585-."[1] *See*, Exhibit A.

9. The following records were incorporated into the supplemental *Vaughn* index: DHS-001-00585-001972 to 002051; DHS-001-00585-002105 to 002106; DHS-001-00585-002111 to 002114; DHS-001-00585-002116 to 002123; DHS-001-00585-002125 to 002133; DHS-001-

[1] Pages 567 through 835 mistakenly contained the bates stamp prefix of "DHS-001-548-."

00585-002141 to 002145; DHS-001-00585-002147 to 002151; DHS-001-00585-002155; DHS-001-00585-002273; DHS-001-00585-002283; and DHS-001-00585-002490. These records were inadvertently omitted from the initial *Vaughn* index. ECF No. 46-3.

10. Contrary to plaintiff's contention at ECF No. 50-1 at 47 n. 50, DHS did include bates-stamped record DHS-001-00585-002283 in its *Vaughn* index and the record was released in full. Plaintiff also contends that DHS's initial *Vaughn* index inaccurately "list[s] page DHS-001-00548-00592 as a page released in full, but that page contains Exemption 6 redactions." Pl. Mem. at 40 n.50. Plaintiff is correct that page DHS-001-00548–00592 was released with "Exemption 6 redactions," but the rationale for those redactions, broadened subsequently to be redactions under Exemptions 6 and 7(C), is set forth fully in paragraphs 35-40 of the First Holzer Declaration.

Draft CRCL-Authored Document

11. Plaintiff contests DHS's application of the deliberative process privilege to DHS-001-00585-000298. This record is internal draft briefing material authored by an unidentified CRCL employee for the consideration of the DHS Secretary. The record was a part of the Agency's continuing process of examining its policies guiding the border search of electronic devices, how searches occur, and related civil rights and civil liberties issues. It reflected the subjective observations, opinions, suggestions, and recommendations of CRCL personnel as to what the Secretary should take into consideration when deciding whether or not to modify current policies or procedures. The employee who authored the draft briefing materials did not have the authority to make final agency decisions regarding policies and procedures on behalf of DHS, or an operational component, and the records did not reflect a final agency decision. For these reasons, DHS withheld the briefing material in full per 5 U.S.C. § 552 (b)(5) to protect the integrity of decision-making processes and to avoid the potential harm that could result to the quality of agency decisions if personnel were reluctant or unwilling to participate in the process of assessing, evaluating, and making recommendations out of concerns that their pre-decisional and deliberative thoughts and opinions would be subject to public scrutiny.

Memorandum from the DHS General Counsel to the DHS Secretary

12. Plaintiff also contests DHS's application of the deliberative process to DHS-001-00585-01873 on the grounds that DHS refused "to provide any information about the content of the memorandum or any decision to which it related...." Cross Motion at 14.

13. DHS-001-00585-01873 is an internal DHS memorandum dated July 2, 2012, from the General Counsel to the Secretary. The General Counsel authored the memorandum in response to the Secretary's request for legal advice. The record was a part of the Agency's ongoing process of examining policies relative to the search of electronic devices at the border as well as associated litigation considerations. It reflected the subjective observations, opinions, suggestions, and recommendations of the General Counsel as well as information gathered by the General Counsel from the client agency.

14. Based on the above, DHS withheld the record in full per 5 U.S.C. § 552 (b)(5), the deliberative process privilege, to protect the integrity of the agency's decision-making processes and to avoid harm to the quality of agency decisions that could result if personnel were reluctant or unwilling to participate in the process of assessing, evaluating, and making recommendations out of a concern that their pre-decisional and deliberative thoughts and opinions would be subject to public scrutiny.

15. Plaintiff further alleges DHS failed to release all segregable, non-exempt information from DHS-001-00585-01873. Cross Motion at 43 n. 44. DHS also asserted the attorney-client and work-product privileges to DHS-001-00585-01873 (which plaintiff did not contest). The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. The memorandum constitutes a confidential communication between an attorney (the General Counsel) and his client (the Secretary) relating to a legal matter (the potential impact of policy decisions on prior or anticipated litigation against the Agency arising from searches of electronic devices at the border) for which the client sought professional advice (in this instance, the Secretary made an explicit request of the General Counsel for legal advice). The facts that were included in the memorandum were divulged

to the General Counsel by DHS offices and components and his opinions are based upon and reflect those facts. Consequently, the record was withheld in full in full to encourage full and frank discussions as between client and legal advisor which is critical to a lawyer being able to provide sound legal advice and to avoid the chilling effect that could occur if communications between agency employees and their legal counsel were released.

Civil Rights/Civil Liberties Impact Assessment Border Searches of Electronic Devices

16. The *Civil Rights/Civil Liberties Impact Assessment Border Searches of Electronic Devices* dated December 29, 2011,[2] was composed by CRCL, at the direction of then-Secretary Napolitano, as part of the Agency's continuing process of assessing the impact of Department policies guiding the border search of electronic devices, how those searches occur, and related civil rights and civil liberties issues. The third section of the impact assessment titled *Legal and Policy Analysis* examined the lawfulness of CBP and ICE policies governing searches of electronic devices at the border and concluded that the policies are lawful. With the third section, CRCL also included a discussion of recommendations that should, and recommendations that need not, be taken based on the law and policy review. Those portions of the third section containing an analysis of the Department's legal authority in the context of the Agency's electronic device search policies and the implementation of those policies were redacted. The redactions to the impact assessment released to plaintiffs are the same as those applied to the version published in 2013.

17. As asserted in its first *Vaughn* index, the information described in paragraph 16 is covered by the deliberative process privilege. It contains the legal opinions, recommendations, and preliminary ideas of agency counsel and formed part of the consultative process that led to the recommendations contained within the impact assessment. The redacted material does not reflect final agency actions or policy and in point of fact, the impact assessment makes clear that its purpose is to "offer[] policy advice to Department and Component leadership about how to

[2] The impact assessment is numbered DHS-001-00585-00894 to DHS-001-00585-00917. Contrary to plaintiff's assertion at ECF No. 50-1, pg. 19 of 49, fn. 5, DHS did not withhold this document in full. No portion of DHS-001-00585-00903 was withheld under the deliberative process privilege. This privilege was asserted to portions of DHS-001-00585-00904 to DHS-001-00585-00908 and DHS-001-00585-00911 to DHS-001-00585-00913.

improve accountability, oversight, and notice about redress," DHS-001-00585-00895, and that the recommendations contained within the assessment were intended as advice to the Secretary and "…do not purport to state the current position of the Department." DHS-001-00585-00898. Thus the redacted portions reflect issues that authorities have determined to be, in their judgment, worthy of discussion or consideration by the Secretary in advance of a final agency decision. To release the redacted information could undermine the agency's deliberative process by discouraging the expression of candid opinions and inhibiting the frank exchange of information and ideas between agency counsel, DHS offices and the Secretary.

18. The redacted information is also covered under the attorney-client privilege. As discussed in paragraph 15 the attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. The redacted portions of the third section reflect confidential communications between attorneys within the Office of the General Counsel and the Secretary regarding the Department's legal authority as it relates to electronic device search policies and the implementation of those policies. Attorneys within the Office of the General Counsel, to include attorneys providing legal advice to CRCL, authored and cleared the legal analysis contained within the redacted portions of the assessment, which had been requested by the Secretary.[3] These communications constitute more than mere legal conclusions but present the legal perspectives of DHS attorneys reviewing these issues and includes certain factual information presented to the attorneys in order to obtain this legal advice. As such, DHS withheld those portions of the record containing legal analysis in order to encourage full and frank discussions between the Secretary and the Office of the General Counsel. But for this privilege, a chilling effect could occur if communications between agency employees and their legal counsel

[3] The General Counsel is the final legal authority within the Department and is the head of and supervises the Office of the General Counsel, which constitutes the consolidated legal staff of the Department and its organizational elements. All attorneys whose duties include providing legal advice to officials in any office or organizational element of the Department shall be part of the Office of the General Counsel under the supervision of the General Counsel. Department of Homeland Security, Delegation Number 0400.2; *Delegation to the General Counsel*.

Email Communications

19. This email chain[4] contains communications between attorneys within the Office of the General Counsel at DHS Headquarters and the U.S. Customs and Border Protection (CBP) Office of the Chief Counsel (OCC) in response to a request from the Deputy Secretary to prepare legal analysis for the Secretary, and talking points for use by the Secretary during a scheduled meeting with the Attorney General, relative to the legal authorities surrounding technology at the border and legal and policy considerations associated with enhancements to agency practices. DHS redacted those portions of the email chain containing draft language under consideration by agency counsel for inclusion in the memorandum talking points. DHS withheld the material under the deliberative process, the attorney-work product, and the attorney-client privileges.

20. Plaintiff asserts that DHS provided insufficient information to support its application of the attorney-client privilege in two respects. First, plaintiff alleges that the DHS *Vaughn* index must include the subject matter, number of pages, author, date created, and identities of all persons to whom the original or any copies of the documents (in this case the email chain) were shown or provided. Second, plaintiff alleges that DHS must demonstrate confidentiality at both the time of the communication, that the confidentiality has been maintained since, and the advice given was primarily legal in nature.

21. As stated above, the communications between agency counsel stemmed from a request by the Deputy Secretary to prepare a legal analysis for the Secretary and talking points for use by the Secretary during a scheduled meeting with the Attorney General, relative to the legal authorities surrounding technology at the border and legal and policy considerations associated with enhancements to agency practices. The emails and draft documents included therein were legal in nature and confidentiality was indeed expected in the handling of the records as evidenced by the fact the communications occurred only between attorneys from the Office of the General Counsel at Headquarters and the Office of the Chief Counsel and were marked "Attorney Work Product / Attorney-Client Privileged." The communications totaled seventeen

[4] DHS-001-00585-000117 to DHS-001-00585-000133

pages, as reflected in the bates numbering, and occurred on February 12 and 13, 2017. At the time of the communication and since, confidentiality has been maintained.

22. Plaintiff next asserts that DHS provided insufficient information to support its application of the attorney work-product privilege in that DHS failed to identify the author or origin of the withheld information and that the explanation of the contents of the documents and the litigation in anticipation of which they were prepared were insufficient. Again, counselors within the Office of the General Counsel authored the communications which analyzed the legal implications of enhancements to agency practices related to the search of electronic devices at the border. Future litigation on that topic was reasonably foreseeable.

Redactions Applied Per 5 U.S.C. § 552 (b)(7)(E)

23. As explained in the previously filed declaration, the records withheld per 5 U.S.C. § 552 (b)(7) were created and used by DHS in fulfillment of its mission to protect Americans from terrorism and other homeland security threats, and to secure the nation's air, land, and sea borders, and by CRCL to investigate and resolve civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel, prior to invoking Exemption (b)(7).

24. 5 U.S.C. § 552 (b)(7)(E) 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.

25. To effectuate its mission, DHS depends upon the use of sensitive investigative techniques and methods that are not known to the general public. These law enforcement techniques and procedures are utilized by the law enforcement officers of DHS to carry out the mission. A disclosure of the techniques and procedures for law enforcement investigations or prosecutions or the disclosure of guidelines for law enforcement investigations or prosecutions would compromise the ability of DHS to perform its law enforcement mission.

26. DHS asserted Exemption (b)(7)(E) to portions of 1) a CRCL form memorializing the facts and circumstances surrounding their decision to close their investigation without issuing

recommendation to a component, 2) requests to components from CRCL for information and/or documents necessary for CRCL to investigate complaints received by the public, 3) a decision memorandum from the Officer for Civil Rights and Civil Liberties to the DHS Secretary on the subject of proposed increased safeguards addressing border electronic device searches, and 4) email communications between CRCL employees regarding the status of a law enforcement investigation involving an individual who filed a complaint with CRCL.

27. Per Exemption (b)(7)(E) DHS redacted the following: descriptions of the nature of the law enforcement interest in an individual; descriptions of the particular inspection techniques utilized; descriptions of pertinent information uncovered during the course of an inspection; criteria for utilizing particular inspection methods; information regarding law enforcement alerts or lookouts; information regarding available law enforcement capabilities or techniques; descriptions of the handling, maintenance and storage of law enforcement information obtained from a border inspection; and descriptions of the law enforcement records consulted or created as part of certain inspections.

28. This information, either standing alone or combined with other available information, would disclose techniques, procedures, or guidelines for law enforcement investigation. This in turn would risk circumvention of the law by revealing non-public law enforcement techniques, capabilities or vulnerabilities, the circumstances in which such techniques, capabilities, or vulnerabilities may be encountered, and/or the nature of the law enforcement interest in a particular circumstance. With this information wrongdoers could devise methods of evading detection and apprehension thereby diluting the effectiveness of the law enforcement techniques and strategies.

Retention Memoranda and Email Communications

29. DHS withheld portions of retention memoranda and email communications per 5 U.S.C. 552 (b)(5).

30. The two retention memoranda were authored by OGC and issued to U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, and the U.S. Customs and Border Protection, Office of the Chief Counsel. Both memoranda, issued by the Acting

Associate General Counsel of the Legal Counsel Division at OGC Headquarters, were on the topic of retaining complaints for investigation that CRCL received and described how CRCL intended to conduct its investigations in light of the nature of the allegations against the agency. The memoranda were internal to DHS and sent during the deliberative and consultative process of deciding how the agency would proceed with its investigatory efforts. The memoranda were antecedent to a final agency decision as to how the investigation would be carried out and whether any findings or recommendations would result. The memoranda contain the opinions, conclusions, and recommendations of OGC attorneys on behalf of their client CRCL, for the consideration by CBP and ICE attorneys, and reflect the give-and-take of the consultative process and the weighing of the merits of various positions.

31. The email communications occurred between OGC counsel and client CRCL. In these instances, CRCL sought legal advice from OGC as to how/whether to proceed with compliant investigations in light of ongoing federal litigation. The communications were internal to DHS and sent during the deliberative and consultative process of deciding how/whether the agency would proceed with investigatory efforts while litigation was pending. The emails were antecedent to a final agency decision as to how/if an investigation would proceed. The emails also contain the opinions, conclusions, and recommendations of OGC attorneys and CRCL personnel and reflect the give-and-take of the consultative process and the weighing of the merits of various positions.

32. DHS withheld the records to avoid the potential harm that could result if the material became public. DHS has an interest in encouraging open and frank discussions between its offices and components; it cannot fulfill their missions absent the exchange of information, ideas, and candid opinions. Releasing the communications would expose internal deliberations, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of DHS personnel, and ultimately have a chilling effect on intra-agency deliberations. In these instances, because the records contain legal advice, the release of the redacted portions could also dissuade agency officials from seeking the views of agency

counsel. For the above reasons, the memoranda were withheld under the deliberative process privilege.

33. For the reasons set forth in paragraphs 30-32, the redacted portions of the memoranda and email communications were both pre-decisional and deliberative and therefore withheld under the deliberative process privilege.

34. Additionally, both the memoranda and the email communications constitute communications between the client and counsel for the purpose of securing legal advice or services. Both types of records were created with, and contain, information obtained through discussions between agency counsel and agency clients.

35. The facts contained within the memoranda and emails were redacted because the privilege applies to facts that are divulged to the attorney by the client and they encompass the opinion given by the attorney based upon, and thus reflecting, those facts.

36. In this instance, the attorney-client communications contained with the memoranda and emails were withheld to encourage a full and frank discussion between the client and the legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel.

37. Finally, the attorney work-product privilege was applied to the memoranda and the emails because they contain the notes, questions, litigation strategy and thoughts, of agency counsel. The records were created by agency counsel in anticipation of and in preparation for ongoing and future litigation regarding the search of electronic devices at the border and is therefore exempt from disclosure so as to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny.

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

Executed this 11th day of June, 2020.

James V.M.L. Holzer

James V.M.L. Holzer
Deputy Chief Privacy and FOIA Officer
DHS Privacy Office

Knight First Amend. Inst. at Columbia Univ. v. Dep't of Homeland Sec.
No. 1:17-cv-00548-TSC

Supplemental Declaration of James V.M.L. Holzer in Support of Defendants' Reply in Support of Their Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment

Ex. A

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

December 1, 2017

Jenner & Block, LLP
Scott Wilkens
1099 New York Ave, NW
Suite 900
Washington, DC 200001

Re: 17-cv-00548 (2017-HQFO-00585)
Knight First Amendment Institute v. DHS
First Interim Release

Dear Mr. Wilkens:

This is our first interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 15, 2017.

For this month's production DHS reviewed 56 documents consisting of 653 pages of which 120 pages are released in full; 97 pages are withheld in full pursuant to FOIA exemption 5; 43 pages are released in part pursuant to FOIA exemption 5 and 6; 41 pages were duplicates and 237 pages were non-responsive. DHS also located 125 pages that need to be referred to other components for review and release, 51 pages to CBP (Customs and Border Protection) and 74 pages to the (DOJ) Department of Justice. The 260 pages for release are bates stamped DHS-001-585-000001 to DHS-01-585-000260.

Sincerely,

Kevin L. Tyrrell
Director FOIA Appeals and Litigation

Enclosure

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 28, 2018

Jenner & Block, LLP
Scott Wilkens
1099 New York Ave, NW
Suite 900
Washington, DC 200001

Re: 17-cv-00548 (2017-HQFO-00585)
Knight First Amendment Institute v. DHS
Second Interim Release

Dear Mr. Wilkens:

This is our second interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 15, 2017.

For this month's production DHS reviewed 633 pages of which 14 pages are released in full; 283 pages are withheld in full pursuant to FOIA exemptions 5; 9 pages are released in part pursuant to FOIA exemption 5 and 6; 5 pages were duplicates and 106 pages were non-responsive. DHS also located 149 pages that need to be referred to other components for review and release, 139 pages to CBP (Customs and Border Protection) and 10 pages to the (ICE) Immigration and Customs Enforcement. The 306 pages for release are bates stamped DHS-001-00585-000261 to DHS-001-00585-000566.

Sincerely,

Angela Washington
Director, FOIA Disclosure

Enclosure

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

October 31, 2018

Jenner & Block, LLP
Scott Wilkens
1099 New York Ave, NW
Suite 900
Washington, DC 200001

Re: 17-cv-00548 (2017-HQFO-00585/2017-HQLI-00013)
Knight First Amendment Institute v. DHS
Third Interim Release

Dear Mr. Wilkens:

This is our third interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 15, 2017.

For this month's production DHS reviewed 322 pages of which 91 pages are released in full; 20 pages are released in part pursuant to FOIA exemption 5 and 6; and 158 pages are withheld in full pursuant to FOIA exemptions 5. DHS also located 53 pages that are being referred to Customs and Border Protection (CBP) for processing and direct response to you. The 269 pages for release are bates stamped DHS-001-00585-00567 to DHS-001-00585-00835.

Sincerely,

Bradley E. White
Acting, Director FOIA
Litigation

Enclosure

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

November 30, 2018

Jenner & Block, LLP
Scott Wilkens
1099 New York Ave, NW
Suite 900
Washington, DC 200001

Re: 17-cv-00548 (2017-HQFO-00585/2017-HQLI-00013)
Knight First Amendment Institute v. DHS
Forth Interim Release

Dear Mr. Wilkens:

This is our forth interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 15, 2017.

For this month's production DHS reviewed 1603 pages. Of those 1603 pages, 64 pages are released in full; 22 pages are released in part pursuant to FOIA exemption 5 and 6; and 980 pages are withheld in full pursuant to FOIA exemptions 5. There are also 24 pages that are marked as duplicate. DHS also located 487 pages that are being referred to Customs and Border Protection (CBP) and 26 pages being referred to Immigration Customs Enforcement (ICE) for processing and direct response to you. The 1090 pages for release are bates stamped DHS-001-00585-00836 to DHS-001-00585-01925.

Sincerely,

Bradley E. White
Acting, Director FOIA
Litigation

Enclosure

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

May 10, 2019

Jenner & Block, LLP
Scott Wilkens
1099 New York Ave, NW
Suite 900
Washington, DC 200001

Re: 17-cv-00548 (2017-HQFO-00585/2017-HQLI-00013)
Knight First Amendment Institute v. DHS
Fifth Interim Release

Dear Mr. Wilkens:

This is our fifth interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 15, 2017.

For this month's production DHS reviewed 3,956 pages. Of those 3,956 pages, 424 pages are released in full; 940 pages are released in part pursuant to FOIA exemption 5 and 6; and 41 pages are withheld in full pursuant to FOIA exemptions 5. There are also 809 pages that are marked as duplicate and 94 pages marked non-responsive. DHS also located 649 pages that are being referred to Customs and Border Protection (CBP); 293 pages being referred to Immigration Customs Enforcement (ICE); 7 pages are being referred to U.S. Department of Health & Human Services; and 2 pages referred to the Department of State for processing and direct response to you. There are 697 pages that were sent to other agencies for consultation The 1,364 pages for release are bates stamped DHS-001-00585-001926 to DHS-001-00585-003289.

Sincerely,

Bradley E. White
Acting, Director FOIA
Litigation

Enclosure

Knight First Amend. Inst. at Columbia Univ. v. Dep't of Homeland Sec.
No. 1:17-cv-00548-TSC

Supplemental Declaration of James V.M.L. Holzer in Support of Defendants' Reply in Support of Their Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment

Attachment

SUPPLEMENTAL *VAUGHN* INDEX
KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY v. U.S DEPARTMENT OF HOMELAND SECURITY, et al.
CIVIL ACTION NO. 17-548

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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
44-94 96-104 107-114 134-143 151 194-203 228-230 231-240 251-260 485 491 519-520 546-555 594 633-634 660-693 729-730 733 759-799 826-862 894-896 898 901-902 909-910 914-917 1839-1846 1874 1903 1911-1924 1929 **1977**	Records released in full. *The prefix for bates numbers 567 through 835 is DHS-001-548. **An error occurred in the processing of pages 241-250. Pages 251-260, released in full, are legible duplicate versions of pages 241-250. ***An error occurred in the processing of pages 74-83 and 231-240. DHS released these documents in full at https://www.dhs.gov/sites/default/files/publications/privacy_pia_cbp_laptop.pdf ****DHS released pages 228-230 in full online at https://www.dhs.gov/xlibrary/assets/crcl/crcl-assessment-fast.pdf *****Supplemental entries are in bold text.**

SUPPLEMENTAL *VAUGHN* INDEX
KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY v. U.S DEPARTMENT OF HOMELAND SECURITY, et al.
CIVIL ACTION NO. 17-548

BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
1980	
1986	
1989	
2009	
2011	
2015-2017	
2038	
2052-2104	
2109	
2115	
2124	
2134-2140	
2143-2145	
2176	
2180-2181	
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2157	
2161-2163	
2170	
2176	
2258-2259	
2264	
2266	
2270-2271	
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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
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2316-2320	
2323	
2326-2327	
2329	
2335	
2338	
2340	
2346	
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2353-2356	
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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
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2467-2468	
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2483-2484	
2486-2487	
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2500	
2503-2504	
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2515-2546	
2549-2557	
2562	
2565	
2576-2585	
2590-2595	
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2601-2605	
2608-2609	
2614-2647	
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2653	
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3183 3189 3191 3194 3198 3203 3206-3209 3211 3233-3235 3250 3262 3268 3276	
1-2 16 33-34 95 105-106 115-133 144-150 152 157-164 261 447-450 462-484 544-545 593 731-732 758 822-825 1833-1835 1932-1940 **1984-1985**	Email Communications and Written Correspondence 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, signatures, email and physical addresses, and facsimile and telephone numbers of government employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).

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1990 **2004** **2024-2029** **2050-2051** **2105-2106** **2119-2120** 2222-2224 2229 2232 2287 2569 2586-2589 2656 2658 2803-2806	
160-163 462 484 463-483 486-490 731-732	Email Communications and Spreadsheets Between CRCL and CBP 5 U.S.C. 552 (b)(5) These records, consisting of internal email communications and draft spreadsheets, were generated during discussions between CRCL and CBP regarding the possibility of developing an agreed upon methodology for sampling data relative to border searches of electronic devices to determine whether civil rights or civil liberties concerns might exist. Because the communications were antecedent to any final decision on how best to sample the data and a determination that civil rights/civil liberties concerns might indeed exist, the records are pre-decisional. These records are also deliberative in that they reflect the opinions, proposals, recommendations, and the give-and-take between CRCL and CBP that occurred during the consultative process. To expose these intra-agency deliberations would have a chilling effect and ultimately impede the frank and candid exchange of ideas and information within the agency. The free-flow of information within DHS is critical to the agency's ability to effectively evaluate and address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Finally, a release of these records would pose a substantial risk of confusing the public by disclosing positions and recommendations that were not adopted by the agency.
117-133	Email Communications Between the DHS Office of the General Counsel and the CBP Office of Chief Counsel 5 U.S.C. 552 (b)(5)

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	These internal email communications between attorneys with the DHS Office of the General Counsel (OGC) and the CBP Office of Chief Counsel (OCC) were generated during the deliberative and consultative process of drafting a memorandum containing recommendations and legal advice to the DHS Secretary on the topic of border searches of electronic devices. The communications were antecedent to the drafting of a final memorandum or final agency decision and are therefore pre-decisional. The records contain the opinions, conclusions, and recommendations of agency personnel subordinate to the Secretary and reflect the give-and-take that occurred between the counselors as they discussed and weighed the merits of various positions. For these reasons the materials are deliberative. To expose these intra-agency deliberations would have a chilling effect and ultimately impede the frank and candid exchange of ideas and information within the agency as well as dissuade agency officials from seeking the views of agency counsel. For the above reasons, the communications were withheld under the deliberative process privilege. These records are also being withheld under the attorney-client privilege. The attorney-client privilege protects communications between attorneys and their clients that rest on confidential information obtained from the client. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to the facts that are divulged to the attorney and encompasses the opinions given by the attorney based upon those facts. The email communications contain information obtained by agency counsel from their clients while securing legal advice or services. Because sound legal advice and advocacy depend upon agency counsel being fully informed by the client, DHS is shielding these attorney-client communications to encourage full and frank discussions between the client and the legal advisor and avoid any chilling effect on interactions and communications between agency employees and their legal counsel that could result if the records were released. These records are also being withheld under the attorney work-product privilege which protects from disclosure attorney-work product material, including notes, questions, litigation strategy and thoughts by an agency attorney or the agency's litigation counsel. In this instance the records were created not only with the intention of providing legal advice to the Secretary, but they were created by agency counsel in anticipation of and in preparation for ongoing and future litigation involving the search of electronic devices at the border. DHS asserted the attorney-work product to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny.
157-164	Email Communications 5 U.S.C. 552 (b)(5) Within the email communications between CRCL and CBP personnel, DHS redacted discussions of proposed methods for conducting a study of border searches of electronic devices to determine whether civil rights or civil liberties concerns might exist. Because the communications were antecedent to any final decision on conducting a study, the records are pre-decisional. These records are also deliberative in that they reflect the opinions, proposals, recommendations, and the give-and-take between CRCL and CBP that occurred during the consultative process.

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	To expose these intra-agency deliberations would have a chilling effect and ultimately impede the frank and candid exchange of ideas and information within the agency. The free-flow of information within DHS is critical to the agency's ability to effectively evaluate and address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Finally, a release of these records would pose a substantial risk of confusing the public by disclosing positions and recommendations that were not adopted by the agency.
165-188 204-227 262-289 299-446 492-518 521-532 556-566 635-659 694-701 705-728 734-757 883-888 942-1819 1823-1832 1835 1847-1872 1875-1902 2146	Draft Documents Relating to a Civil Rights/Civil Liberties Impact Assessment for Border Searches of Electronic Devices 5 U.S.C. 552 (b)(5) These records include email communications and drafts generated by CRCL personnel during the process of preparing an impact assessment examining DHS policies guiding the border search of electronic devices, how searches occur, and related civil rights and civil liberties issues. The agency released a final version titled *Civil Rights/Civil Liberties Impact Assessment Border Searches of Electronic Devices* online at https://www.dhs.gov/sites/default/files/publications/crcl-border-search-impact-assessment_01-29-13_1.pdf. For this reason, the records are pre-decisional. These records, prepared by CRCL staff and circulated within DHS, reflect the give-and-take of the editorial process and contain the thoughts, recommendations, proposed courses of action, and opinions that CRCL employees believed the CRCL Officer should take into consideration about legal and policy matters concerning border searches of electronic devices. Additionally, the records reflect the exercises in judgment of CRCL personnel as to the relevance and importance of those facts, issues, and advice that should be included or excised from the final assessment. For the above reasons the drafts are deliberative. The release of the drafts would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Additionally, a release of these records would allow the public to compare the multiple versions and internal discussion to the final product which would pose a substantial risk of confusing the public by disclosing positions and recommendations that were not adopted by the agency or incorporated into the final version.
290-297 863-874	Comment Matrices 5 U.S.C. 552 (b)(5) The matrices were created by CRCL personnel during the process of drafting an impact assessment examining DHS policies guiding the border search of electronic devices, how searches occur, and related civil rights and civil liberties issues. The agency released a final

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	version titled *Civil Rights/Civil Liberties Impact Assessment Border Searches of Electronic Devices* online at https://www.dhs.gov/sites/default/files/publications/crcl-border-search-impact-assessment_01-29-13_1.pdf. The matrices identify the name of the component/office commenting on the draft assessment, the language within the assessment under consideration, the proposed comments/edits to said language by ICE, CBP and CRCL personnel, and CRCL's impressions and responses to the proposed comments/edits. The matrices were prepared to assist CRCL staff in organizing, tracking, reconciling, and resolving the edits and comments received from each component/office. The matrices reflect the give-and-take of the editorial process and contain the thoughts, recommendations, and opinions of DHS employees about legal and policy matters concerning the impact assessment on border searches of electronic devices. Additionally, the records reflect the exercise in judgment of CRCL personnel as to the relevance and importance of facts, issues, and advice that should be included or excised from the impact assessment. For the above reasons the matrices are pre-decisional and deliberative. To release the matrices would expose the internal deliberations of DHS, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of DHS personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Additionally, to release the matrices would allow the public to compare draft language to the final impact assessment and thereby pose a substantial risk of confusing the public by disclosing positions that were not adopted by the agency or incorporated into the final impact assessment.
889-892	Comment Matrix 5 U.S.C. 552 (b)(5) The matrix was a working document utilized by CRCL to organize ideas during the process of deciding whether to recommend to senior DHS leadership that edits/updates be made to current agency directives governing border searches of electronic devices. The matrix was created antecedent to any CRCL decision to recommend edits/updates and antecedent to any final agency decision by senior DHS leadership whether to modify any agency directive. For these reasons the matrix is pre-decisional. The matrix reflects the give-and-take of the editorial process and contain the thoughts, recommendations, and opinions of CRCL employees about current directives and whether CRCL should initiate discussions with operational components or recommend edits to the directives to senior DHS leadership. For the above reasons the matrix is deliberative. Releasing the matrix would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will

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	be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
1836-1838	Comment Matrix 5 U.S.C. 552 (b)(5) The matrix was a working document utilized by CRCL to organize ideas during the process of evaluating and weighing the merits of various recommendations under consideration by operational components and the effectiveness of proposed corrective actions relative to border searches of electronic devices. The matrix was created antecedent to any final agency decision to adopt the recommendations or corrective actions under consideration. For these reasons the matrix is pre-decisional. The matrix reflects the give-and-take of the evaluative process and contain the thoughts, recommendations, and opinions of CRCL employees. For the above reasons the matrix is deliberative. Releasing the matrix would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
3-15 17-32 35-43	Office of the General Counsel Draft Training Scenario Proposal 5 U.S.C. 552 (b)(5) This record is a draft proposal for a training scenario that was authored by the OGC and under consideration for use in training DHS personnel. It was created antecedent to a final agency decision to utilize the training scenario and the scenario was not put into final form. For this reason, the record is pre-decisional. The record was prepared by and circulated amongst OGC staff for comments and edits as part of the drafting and revision process. The record reflects the give-and-take of the editorial process and contains the thoughts, recommendations, and opinions of OGC personnel and for these reasons, the record is deliberative. Releasing the draft training scenarios would expose the internal deliberations of OGC, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of OGC personnel, and ultimately have a chilling effect on intra-agency deliberation which, in turn, would negatively impact the quality of OGC's training materials intended to benefit DHS employees. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be

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	hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
567-591	CRCL Authored Draft PowerPoint Presentation 5 U.S.C. 552 (b)(5) This draft PowerPoint presentation was intended to train DHS personnel on CRCL's *Civil Rights/Civil Liberties Impact Assessment Border Searches of Electronic Devices*, a final version is available online at https://www.dhs.gov/sites/default/files/publications/crcl-border-search-impact-assessment_01-29-13_1.pdf. The draft presentation was not put into final form. For this reason, the draft is pre-decisional. The presentation reflects the give-and-take of the editorial process and contains the thoughts, recommendations, and opinions of DHS employees about legal and policy matters concerning the impact assessment of border searches of electronic devices and effective training materials. For these reasons the presentation is deliberative. To release the draft presentation would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations which, in turn, would negatively impact the quality of CRCL's training materials intended to benefit DHS employees. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
597-632	CRCL Authored Draft PowerPoint Presentation 5 U.S.C. 552 (b)(5) This draft PowerPoint presentation was intended to train DHS personnel on countering violent extremism. The draft presentation was not put into final form. For this reason, the draft is pre-decisional. The draft presentation was prepared by, and circulated amongst, CRCL staff for comments and edits as part of the drafting and revision process and reflects the give-and-take of the editorial process. It contains the thoughts, recommendations, and opinions of CRCL employees about the content to be included in training materials on countering violent extremism. For the above reasons the drafts are deliberative. To release the draft presentation would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on

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	intra-agency deliberations which, in turn, would negatively impact the quality of CRCL's training materials intended to benefit DHS employees. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
800-821	Draft Document Titled *Guidance Regarding the Use of Race for Law Enforcement Officers* 5 U.S.C. 552 (b)(5) This draft record was created as a training tool for DHS personnel. The draft predates the finalized training materials that were released at https://www.dhs.gov/xlibrary/assets/training/xus/crcl/racelawofficers/Guidance_Race_LEO/profiling_title_0.htm. For this reason, the draft is pre-decisional. The draft presentation was prepared by, and circulated amongst, CRCL staff for comments and edits as part of the drafting and revision process and reflects the give-and-take of the editorial process. It contains the thoughts, recommendations, and opinions of CRCL employees about the content to be included in training materials on countering violent extremism. For the above reasons the drafts are deliberative. To release the draft presentation would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations which, in turn, would negatively impact the quality of CRCL's training materials intended to benefit DHS employees. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Furthermore, because the record differs from the final training materials, its release would allow the public to compare the draft and final version thereby posing a substantial risk of confusing the public by disclosing positions that were not adopted by the agency or incorporated into the final training materials.
1820-1822	Informal Notations 5 U.S.C. 552 (b)(5) This record contains informal notations, authored by an unidentified CRCL employee, on the topic of analytic data support in connection with ongoing CRCL efforts surrounding border searches of electronic devices. The notations reflect the thoughts, recommendations, and opinions of an unknown CRCL employee about what future steps should or should not be taken relative to a data analysis and the potential strengths and weakness of various types of data. The record does not represent a final agency position and for these reasons is both pre-decisional and deliberative.

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	The release of this material would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Release of the notes would pose a substantial risk of confusing the public by disclosing the thoughts, recommendations, and opinions of a CRCL employee on the topic of analytic data support that were not adopted by the agency.
451-461	Handwritten Notes 5 U.S.C. 552 (b)(5) These handwritten notes, authored by an unidentified CRCL employee, contain notations regarding the draft impact assessment of border searches of electronic devices. They are dated prior to the release of the final version of the *Civil Rights/Civil Liberties Impact Assessment Border Searches of Electronic Devices*, available online at https://www.dhs.gov/sites/default/files/publications/crcl-border-search-impact-assessment_01-29-13_1.pdf. For this reason, the notes are pre-decisional. The record reflects the thoughts, recommendations, and opinions of an unknown CRCL employee relative to the drafting of the impact assessment of border searches of electronic devices. For this reason, the handwritten notes are deliberative. The release of this material would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Release of the notes would pose a substantial risk of confusing the public by disclosing the thoughts, recommendations, and opinions of an unknown CRCL employee that were not incorporated into the final impact assessment.
449-450	Bi-Weekly Report 5 U.S.C. 552 (b)(5) This bi-weekly report was created to keep senior CRCL leadership apprised of ongoing projects and matters within CRCL's purview. DHS redacted those portions of the bi-weekly report containing the CRCL employee's opinions on making future recommendations to CBP on the topic of searches of electronic devices at the border. For this reason, the report is pre-decisional.

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	The report, prepared by a CRCL staff member and circulated amongst senior CRCL leadership, contains the thoughts, recommendations, and opinions of a CRCL employee and for this reason, the report is deliberative. To release the bi-weekly report would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
447-448	Email Communication 5 U.S.C. 552 (b)(5) The purpose of this email was to keep senior CRCL leadership informed on the progress of data monitoring efforts relative to the search of electronic devices at the border. The email reflects discussions between CRCL employees opining on how to interpret the results of data analysis and proposing next steps to be taken at an upcoming meeting between CBP and CRCL personnel. For these reasons the email is pre-decisional and deliberative. Releasing this communication would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
298	Draft Document 5 U.S.C. 552 (b)(5) This draft document, authored by an unidentified CRCL employee, contains the employee's evaluation of and opinions about the effectiveness of DHS policies in safeguarding the rights of the public during searches of electronic devices at the border. The document does not represent a final agency decision and is both pre-decisional and deliberative. To release the document would expose the internal deliberations of a CRCL employee, impede the frank and candid exchange of ideas and information within the agency, reveal the evaluation and opinions of a CRCL employee, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Release of the document would pose a substantial risk of confusing the public by

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	disclosing the thoughts, recommendations, and opinions of a CRCL employee regarding the effectiveness of DHS policies that were not adopted by the agency.
533-537	Memorandum from CRCL to Homeland Security Investigations (HSI) 5 U.S.C. 552 (b)(5) This memorandum from CRCL to HSI contains suggestions for how best to analyze data relative to searches of electronic devices at the border in order to determine whether civil rights or civil liberties concerns might exist. Because the communications were antecedent to any final decision on conducting a study, the records are pre-decisional. These records are also deliberative in that they reflect the opinions, proposals, recommendations, and the give-and-take between CRCL and HSI that occurred during the consultative process. To expose these intra-agency deliberations would have a chilling effect and ultimately impede the frank and candid exchange of ideas and information within the agency. The free-flow of information within DHS is critical to the agency's ability to effectively evaluate and address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Finally, a release of these records would pose a substantial risk of confusing the public by disclosing positions and recommendations that were not adopted by the agency.
189-193 538-543 1906-1910	Memorandum from the CRCL Officer to the DHS Secretary 5 U.S.C. 552 (b)(5) This memorandum from the CRCL Officer to the DHS Secretary sought the Secretary's approval of multiple CRCL recommendations relative to CBP searches of electronic devices. The memorandum is not signed by the Secretary. For this reason, the memorandum is pre-decisional. The memorandum reflects the thoughts, recommendations, and opinions of the CRCL Officer. The Officer did not have the decision-making authority to compel the Secretary or CBP to adopt the recommendations and proposals contained therein and the memorandum does not represent a final DHS policy or opinion. For these reasons the memorandum is deliberative. To release the document would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the evaluation and opinions of CRCL, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Release of the document would pose a substantial risk of confusing the public by disclosing the thoughts, recommendations, and opinions of CRCL that were not adopted by the agency.

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544-545	Email Communications 5 U.S.C. 552 (b)(5) These email communications reflect discussions between CRCL employees regarding the role NSEERS data should play in an ongoing data analysis relative to searches of electronic devices at the border, how data should be interpreted, weighs the benefits and shortfalls of various hypothesis, and discusses the utility of continuing with data analysis efforts. The communication does not represent a final agency decision and is both pre-decisional and deliberative. To release the discussion between CRCL employees would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the evaluation and opinions of CRCL, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. Release of the document would pose a substantial risk of confusing the public by disclosing the suggestions and proposed options of CRCL regarding how to analyze data that were not adopted by the agency.
144-150	Email Communications and Draft Response to the Center for Democracy and Technology 5 U.S.C. 552 (b)(5) Through the DHS Executive Secretariat process, CRCL had been tasked to draft a written response on behalf of the DHS Secretary to concerns received from the Center for Democracy and Technology. The draft written response prepared by CRCL, as part of the Executive Secretariat process, was circulated within DHS for comments and edits as part of an ongoing revision process. The email communications and draft written response pre-date a final agency response to the Center for Democracy and Technology and for these reasons the records are pre-decisional. The emails and draft response reflect the give-and-take of the editorial and Executive Secretariat process and contain the thoughts, recommendations, and opinions of CRCL employees about how best to respond to the inquiry from the Center for Democracy and Technology and what language should be included or excised from the final response. For these reasons the materials are deliberative. The release of the materials would expose the internal deliberations of CRCL and the DHS Executive Secretariat process, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of DHS personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public. To release the draft records would

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	pose a substantial risk of confusing the public by disclosing positions that were not adopted by the agency or incorporated into the final response to the Center for Democracy and Technology.
153-156	Draft Briefing Book Materials 5 U.S.C. 552 (b)(5) These briefing book materials, prepared by the Office of Partnership and Engagement, were sent to relevant headquarter offices through the Executive Secretariat process for review, comments, and edits in advance of a meeting between former Secretary Kelly and Microsoft. The materials were prepared to summarize issues and advise the Secretary. The draft briefing book materials were part of an ongoing revision process, contain redline edits and comments from headquarters offices, and reflect the personal opinions of the writers rather than the policy of the agency. The release of the briefing materials would expose the internal deliberations of the DHS Executive Secretariat process, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of DHS personnel, and ultimately have a chilling effect on intra-agency deliberations. The free-flow of information is critical to the agency being able to effectively evaluate matters; without it the agency will be hindered in its ability to deliberate on the best way to address complaints, identify policy concerns, and propose and adopt solutions that ultimately impact DHS and the public.
702-704	Written Findings Authored by the CBP, Office of Internal Affairs (OIA), Management Inspections Division (MID) 5 U.S.C. 552 (b)(5) From this record, DHS redacted those portions containing recommendations from MID to the CBP Office of Field Operations (OFO) developed upon completion of a review of CBP policies and procedures regarding border searches of electronic devices. This internal record, generated at the request of OFO and in advance of any final agency decision, served the purpose of assisting OFO in the process of evaluating the implementation of CBP policies and procedures and assessing the adequacy of program controls and management oversight. The record reflects the thoughts, opinions, and recommendations of MID personnel who did not have the decision-making authority to compel OFO to adopt the recommendations contained therein. For these reasons the material is both pre-decisional and deliberative. DHS asserted Exemption 5 to avoid the potential chilling effect on intra-agency deliberations that could result if the deliberative material became public. If the thoughts, opinions, and recommendations of members of the inspections division were made public, CBP offices would be reluctant or unwilling to cooperate with inspections or make requests of MID for assistance out of a concern that pre-decisional thoughts, opinions, and recommendations would be subject to public scrutiny. This in turn would impede the frank and candid exchange of ideas and information, to the detriment of both DHS and members of the public, that is critical to the agency's ability to effectively evaluate and deliberate on issues, identify policy concerns, and propose and adopt solutions.

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758	Email Communication 5 U.S.C. 552 (b)(5) The email was part of an ongoing deliberation between CBP and CRCL as to whether CBP would accept and adopt recommendations CRCL had made regarding the search of electronic devices at the border and proposing new techniques for the Commissioner's consideration regarding data analysis techniques. The email communication reflects the thoughts, recommendations, and opinions of the Acting Officer. The Acting Officer did not have the decision-making authority to compel CBP to adopt the recommendations and proposal contained therein and the communication does not represent a final DHS policy or opinion. For the above reasons the email communication is pre-decisional and deliberative. DHS withheld the records to avoid the potential harm that could result if the material became public. DHS has an interest in encouraging open and frank discussions between its offices and components; it cannot fulfill their missions absent the exchange of information, ideas, and candid opinions. Releasing the email would expose the internal deliberations between CRCL and CBP, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations.
822-825	Memorandum Authored by the Office of the General Counsel 5 U.S.C. 552 (b)(5) This document dated August 10, 2011, and titled *Notice to Preserve Documents and E-mail* was prepared by an OGC attorney-advisor and distributed within DHS in connection with ongoing litigation. The document contains information gathered and developed by OGC legal staff in anticipation of the discovery process. The document is being withheld per (b)(5) to protect the integrity of the deliberative or decision-making processes within the agency which exempts from mandatory disclosure the opinions, conclusions, and recommendations included within inter-agency or intra-agency documents. The release of this information would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel resulting in a chilling effect on intra- and inter-agency communications. The deliberative-process privilege protects the internal deliberations of the government by exempting recommendations, analyses, and discussions undertaken to aid agency decision making, specifically here, deliberations in furtherance of legal and policy decisions. The privilege also prevents the premature disclosure of proposed policies, serves to avoid public confusion generated by rationales or decisions not ultimately adopted by an agency, and maintains the integrity of agency decision-making processes by encouraging open and candid discussions. This document is also withheld under the attorney-client privilege because it contains communications between clients and their attorneys securing legal advice or services. The document was created with information obtained through discussions between attorneys and their clients to assist in provisioning of information from DHS to the DOJ attorneys responsible for representing DHS in

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	litigation. The attorney-client privilege also protects communications from attorneys to their clients that rest on confidential information obtained from the client. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to facts that are divulged to the attorney and encompasses the opinion given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure to encourage a full and frank discussion between the client and the legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel, including both DHS agency counsel and DOJ attorneys. Furthermore, the attorney work-product privilege applies to the document. This privilege protects from disclosure attorney-work product material, including notes, questions, litigation strategy and thoughts, by an agency attorney or the agency's litigation counsel. The withheld information was created by agency counsel in anticipation of and in preparation for ongoing and future litigation regarding searches of electronic devices at the border and is therefore exempt from disclosure so as to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny.
875-882 893	Draft Recommendation Memoranda from the CRCL Officer to the DHS Secretary 5 U.S.C. 552 (b)(5) The draft document was ultimately intended to assist the DHS Secretary in the ongoing process of assessing, evaluating, and formulating agency policies and practices regarding the search of electronic devices at the border. The records were prepared by CRCL staff on behalf of their Officer and circulated within CRCL for comments and edits as part of a continuing process of revisions. They reflect the give-and-take of the editorial process and contain the thoughts, recommendations, and opinions of CRCL employees about legal and policy matters concerning border searches of electronic devices. The records also reflect the exercise in judgment of CRCL personnel as to the relevance and importance of facts, issues, and advice that should be included or excised from the draft in support of the recommendations, proposals, and opinions contained therein. The CRCL employees who prepared the draft documents did not have decision making authority to compel CBP, ICE, or the DHS Secretary to adopt the recommendations contained therein. The drafts did not represent a final DHS policy or opinion on the search of electronic devices at the border. For the above reasons the drafts are pre-decisional and deliberative. DHS withheld the records to avoid the potential harm that could result if the material became public. DHS has an interest in encouraging open and frank discussions between its offices and components; it cannot fulfill their missions absent the exchange of information, ideas, and candid opinions. Releasing the drafts would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations.

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918-941	This document is an exact duplicate of 894-917
897 899-900 903-908 911-913	Civil Rights/Civil Liberties Impact Assessment Border Searches of Electronic Devices dated December 29, 2011. This document was released in part at https://www.dhs.gov/sites/default/files/publications/crcl-border-search-impact-assessment_06-03-13_1.pdf 5 U.S.C. 552 (b)(5) DHS redacted legal analyses proffered by CRCL to the DHS Secretary relative to CBP's border search authority, authority to search electronic devices at the border, and First Amendment considerations. As stated at page four, CRCL's recommendations and the arguments in favor of those recommendations were intended to advise the Secretary "and do not purport to state the current position of the Department." For this reason, the redacted material is pre-decisional and deliberative. The release of this information would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel resulting in a chilling effect on intra-agency communications. The deliberative-process privilege protects the internal deliberations of the government by exempting recommendations, analyses, and discussions undertaken to aid agency decision making, specifically here, an assessment of policies guiding the border search of electronic devices. The privilege also prevents the premature disclosure of proposed policies, serves to avoid public confusion generated by rationales or decisions not ultimately adopted by an agency, and maintains the integrity of agency decision-making processes by encouraging open and candid discussions. 5 U.S.C. 552 (b)(7)(E) From this law enforcement record, DHS redacted information that, either standing alone or combined with other available information, would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing non-public law enforcement techniques, capabilities or vulnerabilities, the circumstances in which such techniques, capabilities, or vulnerabilities may be encountered, and/or the nature of the law enforcement interest in particular circumstances. Redacted information includes: unique record numbers/codes, descriptions of the nature of the law enforcement interest in an individual, descriptions of the particular inspection techniques utilized, identification of specialized law enforcement units and third-party agencies, descriptions of the circumstances in which CBP may coordinate inspections with specialized law enforcement units and third-party agencies, descriptions of pertinent information uncovered during the course of an inspection, criteria for utilizing particular inspection methods, information regarding law enforcement alerts or lookouts, information regarding available law enforcement capabilities or techniques, descriptions of the handling, maintenance and storage of law enforcement or national security information obtained from a border inspection, and descriptions of the law enforcement records consulted or created as part of certain inspections. DHS also redacted information that, when aggregated, could reveal inspection trends that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law. For example, redacted information could reveal circumstances or locations where certain inspection techniques or types of investigations are more common or where certain vulnerabilities exist, allowing potential adversaries to deduce the nature of CBP's law enforcement interest in certain inspections, employ

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	countermeasures to conceal harmful or illicit material, and/or target locations where they may face a decreased risk of detection (a practice known as "port shopping"). Redacted information includes: port locations/codes, reason for search, and descriptions of the particular inspection techniques utilized. Third, DHS redacted information that, either standing alone or when combined with other information, would disclose techniques or procedures for law enforcement investigations and risk circumvention of the law by enabling access to and/or manipulation of law enforcement databases and information. For example, disclosure of this information could enable unauthorized users to view sensitive, non-public law enforcement information and to navigate computer systems and alter, add, or delete information. Redacted information includes: unique record numbers, computer system codes/commands, network addresses and URLs. Finally, DHS redacted subject-specific information that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing investigatory details, by forming a basis for comparison for the handling of different inspections, and/or by revealing the nature of the law enforcement interest in particular individual(s). Redacted information includes: reason for search, the type of search, whether the individual was notified of the search, the reason why the individual was or was not notified, information regarding the nature of the law enforcement interest in a particular inspection, status of the inspection or investigation, information supplied by other government agencies, information regarding law enforcement alerts and lookouts, and results of the search.
1834	Email Communication Between CRCL Employees 5 U.S.C. 552 (b)(5) This email contains discussions between CRCL employees on how best to proceed in the ongoing efforts to revise public-facing language relative to DHS TRIP and part of the process of assessing, evaluating, and formulating agency policies and practices. The email reflects the give-and-take of the editorial and decision process and contains the thoughts, recommendations, and opinions of CRCL employees about legal and policy matters and proposed language to inform the public. The discussions also reflect the exercise in judgment of CRCL personnel as to the relevance and importance of facts, issues, and advice that should be taken into consideration when evaluating the recommendations, proposals, and opinions contained therein. The CRCL employees who prepared the draft documents did not have final decision-making authority on the public-facing language relative to DHS TRIP and the communications do not represent a final DHS position. For the above reasons the drafts are pre-decisional and deliberative. DHS withheld the records to avoid the potential harm that could result if the material became public. DHS has an interest in encouraging open and frank discussions between its offices and components; it cannot fulfill their missions absent the exchange of information, ideas, and candid opinions. Releasing the drafts would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling

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	effect on intra-agency deliberations. Moreover, the release of the communications could pose a substantial risk of confusing the public by disclosing positions and language that was not adopted by the agency or incorporated into the DHS TRIP materials.
1873	Legal Memorandum from the DHS General Counsel to the DHS Secretary 5 U.S.C. 552 (b)(5) This memorandum from the DHS General Counsel provides legal advice to the Secretary for his consideration. The memorandum was antecedent to the making of any final agency decision and is therefore pre-decisional. The memorandum contains the advisory opinions, conclusions, and recommendations of the General Counsel for the Secretary's consideration and reflects the give-and-take of the consultative process wherein the General Counsel discussed and weighed the merits of various positions. For these reasons the memorandum is deliberative. Disclosure of the memorandum would discourage the open and frank exchange of ideas between agency personnel resulting in a chilling effect on intra/inter-agency communications. In this instance, because the record contains legal advice, its release could dissuade agency officials from seeking the views of agency counsel. For the above reasons, the memorandum was withheld under the deliberative process privilege. Because the memorandum reflects communications between the client and counsel securing legal advice or services, the document is being withheld under the attorney-client privilege. The memorandum was created with information obtained through discussions between agency counsel and agency clients to assist in provisioning information to the Secretary. The attorney-client privilege also protects communications from attorneys to their clients that rest on confidential information obtained from the client. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to facts that are divulged to the attorney and encompasses the opinion given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure to encourage a full and frank discussion between the client and the legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel. Furthermore, the attorney work-product privilege applies to the document. This privilege protects from disclosure attorney-work product material, including notes, questions, litigation strategy and thoughts, by an agency attorney. The withheld information was created by agency counsel in anticipation of and in preparation for ongoing and future litigation regarding the search of electronic devices at the border and is therefore exempt from disclosure so as to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny.
1904-1905 1925	Email Communication Between the CRCL Officer and CBP Commissioner 5 U.S.C. 552 (b)(5)

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	This email, part of an ongoing deliberative process between agency offices and components, is a communication between the CRCL Officer and the CBP Commissioner regarding recommendations CRCL had proposed regarding the search of electronic devices at the border and whether those recommendations would be accepted and adopt by CBP. The email communication reflects the thoughts, recommendations, and opinions of the Officer. The Officer did not have the decision-making authority to compel CBP to adopt the recommendations and proposals contained therein and the communication does not represent a final DHS policy or opinion. For the above reasons the email communication is pre-decisional and deliberative. DHS withheld the email communication to avoid the potential harm that could result if the material became public. DHS has an interest in encouraging open and frank discussions between its offices and components; it cannot fulfill their missions absent the exchange of information, ideas, and candid opinions. Releasing the email would expose the internal deliberations between CRCL and CBP, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra/inter-agency deliberations.
592 595-596 **1991-1994** **2010** **2012-2014** **2018-2023** **2030-2034** **2111-2114** **2125-2127** 2156 2158-2160 2164-2167 2196-2210 2217-2220 2224-2228 2233-2247 2260 2272-**2273** 2282 2286 2290	Civil Rights and Civil Liberty Complaints Submitted by the Public to CRCL 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, email and physical addresses, complaint numbers, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).

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1926-1927 1930-1931 1968-1971 **1987-1988** **2006-2008** **2117-2118** **2121-2123** 2182-2183 2193-2194 2257 2265 2269 2274 2306 2309 2374 2394-2395 2400 2448 2466 2482 2485 2501-2502 2606-2607 2673	Communications between CRCL and Complainants Acknowledging Receipt of Complaints and Providing or Requesting Additional Information 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, email and physical addresses, complaint numbers, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).

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1932-1940 2757-2758 2765-2766 2781 2785-2786 2807-2808 2864 2904-2905 2941 2943 2996-2997 3011-3012 3034-3035 3040 3210 3231-3232	Notifications from CRCL to Complainants that Complaints Would Not be Investigated 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, email and physical addresses, complaint numbers, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).
2000-2001 2263 2499	Notifications from CRCL to Complainants that Complaints Were Referred to Components for Investigation 5 U.S.C. 552(b)(6) & (b)(7)(C)

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2479-2480 2803-2806	From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, email and physical addresses, complaint numbers, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6). 5 U.S.C. 552 (b)(5) From the email communication on pages 2804-2805 DHS redacted discussions between CRCL employees on how best to respond to a complaint received from the public. The email reflects the give-and-take of the editorial and decision process and contains the thoughts, recommendations, and opinions of CRCL employees on proposed response language. For this reason, the communications are pre-decisional and deliberative. DHS withheld the records to avoid the potential harm that could result if the material became public. DHS has an interest in encouraging open and frank discussions between its offices and components; it cannot fulfill their missions absent the exchange of information, ideas, and candid opinions. Releasing the communications would expose the internal deliberations of CRCL, impede the frank and candid exchange of ideas and information within the agency, reveal the reasoning and recommendations of CRCL personnel, and ultimately have a chilling effect on intra-agency deliberations. Moreover, the release of the communications could pose a substantial risk of confusing the public by disclosing language that was not adopted by the agency or incorporated into written response to the complainant.
1972-1975 **1997-1999** **2128-2133**	CRCL Authored Forms Titled *Complaint Closure Without Recommendations* 5 U.S.C. 552(b)(6) & (b)(7)(C)

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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
2171-2173 2188-2189 2250-2253 2261-2262 2277-2279 2288-2289 2331-2334 2396-2398 2422-2424 2497-2498 2563-2564 2654-2655 2676-2679	From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, email and physical addresses, complaint numbers, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6). **5 U.S.C. 552 (b)(7)(E)** **From the law enforcement records numbered 1972, 1974, 1997, 1998 and 2128, DHS redacted information that, either standing alone or combined with other available information, would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing non-public law enforcement techniques, capabilities or vulnerabilities, the circumstances in which such techniques, capabilities, or vulnerabilities may be encountered, and/or the nature of the law enforcement interest in particular circumstances. Redacted information includes: unique record numbers/codes, descriptions of the nature of the law enforcement interest in an individual, descriptions of the particular inspection techniques utilized, identification of specialized law enforcement units and third-party agencies, descriptions of the circumstances in which CBP may coordinate inspections with specialized law enforcement units and third-party agencies, descriptions of pertinent information uncovered during the course of an inspection, criteria for utilizing particular inspection methods, information regarding law enforcement alerts or lookouts, information regarding available law enforcement capabilities or techniques, descriptions of the handling, maintenance and storage of law enforcement or national security information obtained from a border inspection, and descriptions of the law enforcement records consulted or created as part of certain inspections.**

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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
	DHS also redacted information that, when aggregated, could reveal inspection trends that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law. For example, redacted information could reveal circumstances or locations where certain inspection techniques or types of investigations are more common or where certain vulnerabilities exist, allowing potential adversaries to deduce the nature of CBP's law enforcement interest in certain inspections, employ countermeasures to conceal harmful or illicit material, and/or target locations where they may face a decreased risk of detection (a practice known as "port shopping"). Redacted information includes: port locations/codes, reason for search, and descriptions of the particular inspection techniques utilized. **Third, DHS redacted information that, either standing alone or when combined with other information, would disclose techniques or procedures for law enforcement investigations and risk circumvention of the law by enabling access to and/or manipulation of law enforcement databases and information. For example, disclosure of this information could enable unauthorized users to view sensitive, non-public law enforcement information and to navigate computer systems and alter, add, or delete information. Redacted information includes: unique record numbers, computer system codes/commands, network addresses and URLs.** **Finally, DHS redacted subject-specific information that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing investigatory details, by forming a basis for comparison for the handling of different inspections, and/or by revealing the nature of the law enforcement interest in particular individual(s). Redacted information includes: reason for search, the type of search, whether the individual was notified of the search, the reason why the individual was or was not notified, information regarding the nature of the law enforcement interest in a particular inspection, status of the inspection or investigation, information supplied by other government agencies, information regarding law enforcement alerts and lookouts, and results of the search.**
1995-1996 2168-2169 2187 2248 2310-2311 2420 2461-2462 2495-2496 2699-2700	CRCL Authored Close Letters to Complainants 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, email and physical addresses, complaint numbers, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C).

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	The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).
2004-2005 2267-2268 2475-2478	Email Communications Between the DHS Office of the General Counsel and the CBP Office of Chief Counsel 5 U.S.C. 552 (b)(5) This record is an internal memorandum from the DHS Office of the General Counsel to the CBP Office of Chief Counsel regarding the referral of a complaint to CBP for investigation. The memorandum was sent during the deliberative and consultative process of deciding how the agency should proceed with investigatory efforts. The memorandum was antecedent to a final agency decision on how to handle the referral. For this reason, the record is pre-decisional. The memorandum contains the advisory opinions, conclusions, and recommendations of OGC attorneys on behalf of their client CRCL, for the consideration by CBP attorneys and their client, the CBP Office of Internal Affairs, and reflects the give-and-take of the consultative process and the weighing of the merits of various positions. For these reasons the materials are deliberative. Disclosure of the memorandum would discourage the open and frank exchange of ideas between agency personnel resulting in a chilling effect on intra/inter-agency communications. In this instance, because the record contains legal advice, its release could dissuade agency officials from seeking the views of agency counsel. For the above reasons, the memorandum was withheld under the deliberative process privilege. Because the memorandum reflects communications between the client and counsel securing legal advice or services, the document is being withheld under the attorney-client privilege. The memorandum was created with information obtained through discussions between agency counsel and agency clients. The attorney-client privilege also protects communications from attorneys to their clients that rest on confidential information obtained from the client. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to facts that are divulged to the attorney and encompasses the opinion given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure to encourage a full and frank discussion between the client and the legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel.

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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
	Furthermore, the attorney work-product privilege applies to the document. This privilege protects from disclosure attorney-work product material, including notes, questions, litigation strategy and thoughts, by an agency attorney. The withheld information was created by agency counsel in anticipation of and in preparation for ongoing and future litigation regarding the search of electronic devices at the border and is therefore exempt from disclosure so as to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny. **5 U.S.C. 552(b)(6)** **From these records, DHS redacted the personally identifiable information of government employees and private citizens referenced within personnel, medical, and similar files. More specifically, DHS redacted the signature of a DHS employees and the name of a private citizen. The release of this personally identifiable information would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).**
2211-2216	DHS TRIP Applications 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, physical addresses, phone numbers, email addresses, passport numbers, birth certificate numbers, driver's license numbers, redress control numbers, and signatures of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives.

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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
	The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).
1976 **1978-1979** **1981-1983** **2002-2003** **2040-2041** 2190-2192 2254-2256 2280-2281	CRCL Requests to Components for Information and Documents 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, signatures, email and physical addresses, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6). **5 U.S.C. 552 (b)(7)(E)** **From the law enforcement records numbered 2002 and 2003, DHS redacted information that, either standing alone or combined with other available information, would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing non-public law enforcement techniques, capabilities or vulnerabilities, the circumstances in which such techniques, capabilities, or vulnerabilities may be encountered, and/or the nature of the law enforcement interest in particular circumstances. Redacted information includes: unique record numbers/codes, descriptions of the nature of the law enforcement interest in an individual, descriptions of the particular inspection techniques utilized, identification of specialized law enforcement units and third-party agencies, descriptions of the circumstances in which CBP may coordinate inspections with specialized law enforcement units and third-party agencies, descriptions of pertinent information uncovered during the course of an**

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	inspection, criteria for utilizing particular inspection methods, information regarding law enforcement alerts or lookouts, information regarding available law enforcement capabilities or techniques, descriptions of the handling, maintenance and storage of law enforcement or national security information obtained from a border inspection, and descriptions of the law enforcement records consulted or created as part of certain inspections. **DHS also redacted information that, when aggregated, could reveal inspection trends that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law. For example, redacted information could reveal circumstances or locations where certain inspection techniques or types of investigations are more common or where certain vulnerabilities exist, allowing potential adversaries to deduce the nature of CBP's law enforcement interest in certain inspections, employ countermeasures to conceal harmful or illicit material, and/or target locations where they may face a decreased risk of detection (a practice known as "port shopping"). Redacted information includes: port locations/codes, reason for search, and descriptions of the particular inspection techniques utilized.** **Third, DHS redacted information that, either standing alone or when combined with other information, would disclose techniques or procedures for law enforcement investigations and risk circumvention of the law by enabling access to and/or manipulation of law enforcement databases and information. For example, disclosure of this information could enable unauthorized users to view sensitive, non-public law enforcement information and to navigate computer systems and alter, add, or delete information. Redacted information includes: unique record numbers, computer system codes/commands, network addresses and URLs.** **Finally, DHS redacted subject-specific information that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing investigatory details, by forming a basis for comparison for the handling of different inspections, and/or by revealing the nature of the law enforcement interest in particular individual(s). Redacted information includes: reason for search, the type of search, whether the individual was notified of the search, the reason why the individual was or was not notified, information regarding the nature of the law enforcement interest in a particular inspection, status of the inspection or investigation, information supplied by other government agencies, information regarding law enforcement alerts and lookouts, and results of the search.**
2177-2179	DOJ *Notices of Referral of Complaint for Appropriate Action* Sent to CRCL 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, signatures, email and physical addresses, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of

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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
	personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).
1928 1941-1942 **2030** **2033** **2116** **2155** 2174-2175 2185-2186 2230 2275 2324-2325 2330 2347-2349 2351-2352 2368-2371 2373 2392-2393 2418-2419 2465 2509-2511	Email Communications between OIG and CRCL 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, signatures, email and physical addresses, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).

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BATES NUMBERS (DHS-001-585-)*	BRIEF DESCRIPTION OF RECORD, REDACTED INFORMATION, STATUTORY EXEMPTION, AND JUSTIFICATION
2558-2561 2610-2613 2648 2650 2652 2667-2669 2695-2697 2759-2760 2772-2775	
1943-1967 **2048-2049** 2267-2268 2322 2328 2336-2337 2357-2358 2426-2427 2446-2447 2475-2478 2481 2492 2492-2494 2506-2507 2513-2514 2566-2568 2570-2575 2671-2672 2680-2681 2704-2705 2737 2771 2776-2777 2779	Email Communications Between CRCL and CBP/ICE Requesting or Providing Information 5 U.S.C. 552(b)(6) & (b)(7)(C) From these records, which were created, gathered, or used for law enforcement purposes, DHS redacted the personally identifiable information of government employees and private citizens referenced in the records. More specifically, DHS redacted the names, signatures, email and physical addresses, phone and facsimile numbers, alien numbers, and dates of birth of DHS employees and private citizens. Disclosure of this personally identifiable information could reasonably be expected to constitute an unwarranted invasion of personal privacy. These individuals have a privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties or in their private lives. The disclosure of this personally identifiable information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Even if a public interest did exist, the privacy rights of the individuals outweighs that public interest. For these reasons the information was withheld per 5 U.S.C. 552 (b)(7)(C). The withholdings described above are also justified under 5 U.S.C. 552 (b)(6). The personally identifiable information pertaining to low-level agency personnel and private citizens contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).

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2870-2871 2874 2881 2955 2979 2983 2987 2995 3193 3058 3061 3064 3075 3089 3097 3105 3110 3115 3117 3119 3160 3161 3277	
2428-2429 2451-2452 2818-2819	CRCL Authored Emails Requesting Translation Services 5 U.S.C. 552(b)(6) & (b)(7)(C) DHS redacted the names, telephone numbers, and email addresses of DHS employees and private citizens. Disclosure of this information, which pertains to low-level agency personnel and members of the public, and which is contained within personnel, medical, and similar files, would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance in their private lives or while conducting official duties. The disclosure of this personally identifiable information serves no public benefit and would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities. Moreover, plaintiff has not established that disclosure of the personally identifiable information would serve a public interest.

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	Consequently, the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist in disclosure. For these reasons the information was withheld per 5 U.S.C. 552 (b)(6).
159 2261 2277 2333 2397 2398 2564 2784 2817 2866	Records Documenting Inspections and Law Enforcement Activities 5 U.S.C. 552 (b)(7)(E) From these law enforcement records, DHS redacted information that, either standing alone or combined with other available information, would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing non-public law enforcement techniques, capabilities or vulnerabilities, the circumstances in which such techniques, capabilities, or vulnerabilities may be encountered, and/or the nature of the law enforcement interest in particular circumstances. Redacted information includes: unique record numbers/codes, descriptions of the nature of the law enforcement interest in an individual, descriptions of the particular inspection techniques utilized, identification of specialized law enforcement units and third-party agencies, descriptions of the circumstances in which CBP may coordinate inspections with specialized law enforcement units and third-party agencies, descriptions of pertinent information uncovered during the course of an inspection, criteria for utilizing particular inspection methods, information regarding law enforcement alerts or lookouts, information regarding available law enforcement capabilities or techniques, descriptions of the handling, maintenance and storage of law enforcement or national security information obtained from a border inspection, and descriptions of the law enforcement records consulted or created as part of certain inspections. DHS also redacted information that, when aggregated, could reveal inspection trends that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law. For example, redacted information could reveal circumstances or locations where certain inspection techniques or types of investigations are more common or where certain vulnerabilities exist, allowing potential adversaries to deduce the nature of CBP's law enforcement interest in certain inspections, employ countermeasures to conceal harmful or illicit material, and/or target locations where they may face a decreased risk of detection (a practice known as "port shopping"). Redacted information includes: port locations/codes, reason for search, and descriptions of the particular inspection techniques utilized. Third, DHS redacted information that, either standing alone or when combined with other information, would disclose techniques or procedures for law enforcement investigations and risk circumvention of the law by enabling access to and/or manipulation of law enforcement databases and information. For example, disclosure of this information could enable unauthorized users to view sensitive, non-public law enforcement information and to navigate computer systems and alter, add, or delete information. Redacted information includes: unique record numbers, computer system codes/commands, network addresses and URLs. Finally, DHS redacted subject-specific information that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing investigatory details, by forming a basis for comparison for the handling of

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	different inspections, and/or by revealing the nature of the law enforcement interest in particular individual(s). Redacted information includes: reason for search, the type of search, whether the individual was notified of the search, the reason why the individual was or was not notified, information regarding the nature of the law enforcement interest in a particular inspection, status of the inspection or investigation, information supplied by other government agencies, information regarding law enforcement alerts and lookouts, and results of the search.
2035-2037 2039 2042-2047 2147-2151	**OGC Authored Retention Memoranda Informing ICE OPLA or CBP OCC that CRCL is Retaining a Complaint for Investigation** **5 U.S.C. 552(b)(6)** **From these records, DHS redacted the personally identifiable information of low-level agency personnel and private citizens contained within personnel, medical, and similar files, the release of which would constitute a clearly unwarranted invasion of personal privacy. These individuals have a substantial privacy interest in controlling information that concerns them and in not being subjected to interference, harassment, embarrassment, or annoyance while conducting official duties and in their private lives. The information would in no way assist the public in understanding how the agency is carrying out its statutory responsibilities and Plaintiff has not established the existence of any public interest. Because the privacy interest in the personally identifiable information outweighs any minimal public interest that could possibly exist the information may be withheld under 5 U.S.C. 552 (b)(6).** **5 U.S.C. 552 (b)(5)** **These records are internal memoranda from the DHS Office of the General Counsel to the CBP Office of Chief Counsel or the ICE Office of the Principal Legal Advisor regarding CRCL's intention to retain complaints for investigation. The memoranda were sent during the deliberative and consultative process of how to proceed with investigatory efforts and were antecedent to a final agency decision on how the complaints would be handled. For this reason, the records are pre-decisional. The memoranda contain the advisory opinions, conclusions, and recommendations of OGC attorneys on behalf of their client CRCL, for the consideration by CBP and ICE attorneys, and reflect the give-and-take of the consultative process and the weighing of the merits of various positions. For these reasons the materials are deliberative. Disclosure of the memoranda would discourage the open and frank exchange of ideas between agency personnel resulting in a chilling effect on intra/inter-agency communications. In this instance, because the records contain legal advice, its release could dissuade agency officials from seeking the views of agency counsel. For the above reasons, the memoranda were withheld under the deliberative process privilege.** **Because the memoranda reflect communications between the client and counsel securing legal advice or services, the documents were also withheld under the attorney-client privilege. The memoranda were created with information obtained through discussions between agency counsel and agency clients. The attorney-client privilege protects communications from attorneys to their clients that rest on confidential information obtained from the client. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to facts that are divulged to the attorney and encompasses the opinion given**

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	by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure to encourage a full and frank discussion between the client and the legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel. Finally, the attorney work-product privilege was applied to the memoranda. This privilege protects from disclosure attorney-work product material, including notes, questions, litigation strategy and thoughts, by an agency attorney. The withheld information was created by agency counsel in anticipation of and in preparation for ongoing and future litigation regarding the search of electronic devices at the border and is therefore exempt from disclosure so as to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny.
2050 2105-2106 2119	Email Communications Between OGC and Client CRCL Discussing the Handling of Complaints in Light of Ongoing Litigation 5 U.S.C. 552 (b)(5) These emails are internal communications between the Office of the General Counsel and their client CRCL. CRCL sought legal advice as how/whether to proceed with complaints received from the public in light of ongoing litigation against the agency. The emails were a part of the deliberative and consultative process of how/whether to proceed with investigatory efforts and were antecedent to a final agency decision on how to handle the complaints. For this reason, the records are pre-decisional. The emails contain the advisory opinions, conclusions, and recommendations OGC attorneys provided client CRCL and reflect the give-and-take of the consultative process and the weighing of the merits of various positions. For these reasons the emails are deliberative. Disclosure of the emails would discourage the open and frank exchange of ideas between agency personnel resulting in a chilling effect on intra/inter-agency communications. In this instance, because the records contain legal advice, its release could dissuade agency officials from seeking the views of agency counsel. For the above reasons, the emails were withheld under the deliberative process privilege. Because the emails reflect communications between the client and counsel securing legal advice or services, the records were also withheld under the attorney-client privilege. The emails were created with information obtained through discussions between OGC and CRCL. The attorney-client privilege protects communications from attorneys to their clients that rest on confidential information obtained from the client. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to facts that are divulged to the attorney and encompasses the opinion given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure to encourage a full and frank discussion between the client and the legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer

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	being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel. Finally, the attorney work-product privilege was applied to the email communications. This privilege protects from disclosure attorney-work product material, including notes, questions, litigation strategy and thoughts, by an agency attorney. The withheld information was created by agency counsel in anticipation of and in preparation for ongoing and future litigation regarding the search of electronic devices at the border and is therefore exempt from disclosure so as to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny.
2141-2142	Decision Memorandum from the Officer for Civil Rights and Civil Liberties to the DHS Secretary on the Subject of *Proposed Increased Safeguards Addressing Border Electronic Device Searches* dated December 29, 2011 5 U.S.C. 552 (b)(7)(E) From this five-page memorandum, DHS redacted portions of two sentences containing information that, either standing alone or combined with other available information, would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing non-public law enforcement techniques, capabilities or vulnerabilities, the circumstances in which such techniques, capabilities, or vulnerabilities may be encountered, and/or the nature of the law enforcement interest in particular circumstances. Redacted information includes: unique record numbers/codes, descriptions of the nature of the law enforcement interest in an individual, descriptions of the particular inspection techniques utilized, identification of specialized law enforcement units and third-party agencies, descriptions of the circumstances in which CBP may coordinate inspections with specialized law enforcement units and third-party agencies, descriptions of pertinent information uncovered during the course of an inspection, criteria for utilizing particular inspection methods, information regarding law enforcement alerts or lookouts, information regarding available law enforcement capabilities or techniques, descriptions of the handling, maintenance and storage of law enforcement or national security information obtained from a border inspection, and descriptions of the law enforcement records consulted or created as part of certain inspections. DHS also redacted information that, when aggregated, could reveal inspection trends that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law. For example, redacted information could reveal circumstances or locations where certain inspection techniques or types of investigations are more common or where certain vulnerabilities exist, allowing potential adversaries to deduce the nature of CBP's law enforcement interest in certain inspections, employ countermeasures to conceal harmful or illicit material, and/or target locations where they may face a decreased risk of detection (a practice known as "port shopping"). Redacted information includes: port locations/codes, reason for search, and descriptions of the particular inspection techniques utilized.

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	Third, DHS redacted information that, either standing alone or when combined with other information, would disclose techniques or procedures for law enforcement investigations and risk circumvention of the law by enabling access to and/or manipulation of law enforcement databases and information. For example, disclosure of this information could enable unauthorized users to view sensitive, non-public law enforcement information and to navigate computer systems and alter, add, or delete information. Redacted information includes: unique record numbers, computer system codes/commands, network addresses and URLs. Finally, DHS redacted subject-specific information that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing investigatory details, by forming a basis for comparison for the handling of different inspections, and/or by revealing the nature of the law enforcement interest in particular individual(s). Redacted information includes: reason for search, the type of search, whether the individual was notified of the search, the reason why the individual was or was not notified, information regarding the nature of the law enforcement interest in a particular inspection, status of the inspection or investigation, information supplied by other government agencies, information regarding law enforcement alerts and lookouts, and results of the search.
2025 2028 2029	Email Communications Between CRCL Employees Regarding Law Enforcement Investigation Involving Individual Who Filed Complaint 5 U.S.C. 552 (b)(7)(E) DHS redacted information from the law enforcement records that, either standing alone or combined with other available information, would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing non-public law enforcement techniques, capabilities or vulnerabilities, the circumstances in which such techniques, capabilities, or vulnerabilities may be encountered, and/or the nature of the law enforcement interest in particular circumstances. Redacted information includes: unique record numbers/codes, descriptions of the nature of the law enforcement interest in an individual, descriptions of the particular inspection techniques utilized, identification of specialized law enforcement units and third-party agencies, descriptions of the circumstances in which CBP may coordinate inspections with specialized law enforcement units and third-party agencies, descriptions of pertinent information uncovered during the course of an inspection, criteria for utilizing particular inspection methods, information regarding law enforcement alerts or lookouts, information regarding available law enforcement capabilities or techniques, descriptions of the handling, maintenance and storage of law enforcement or national security information obtained from a border inspection, and descriptions of the law enforcement records consulted or created as part of certain inspections. DHS also redacted information that, when aggregated, could reveal inspection trends that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law. For example, redacted information could reveal circumstances or locations where certain inspection techniques or types of investigations are more common or where certain vulnerabilities exist, allowing potential adversaries to deduce the nature of CBP's law enforcement interest in certain inspections,

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	employ countermeasures to conceal harmful or illicit material, and/or target locations where they may face a decreased risk of detection (a practice known as "port shopping"). Redacted information includes: port locations/codes, reason for search, and descriptions of the particular inspection techniques utilized. **Third, DHS redacted information that, either standing alone or when combined with other information, would disclose techniques or procedures for law enforcement investigations and risk circumvention of the law by enabling access to and/or manipulation of law enforcement databases and information. For example, disclosure of this information could enable unauthorized users to view sensitive, non-public law enforcement information and to navigate computer systems and alter, add, or delete information. Redacted information includes: unique record numbers, computer system codes/commands, network addresses and URLs.** **Finally, DHS redacted subject-specific information that would disclose techniques, procedures, or guidelines for law enforcement investigations and risk circumvention of the law by revealing investigatory details, by forming a basis for comparison for the handling of different inspections, and/or by revealing the nature of the law enforcement interest in particular individual(s). Redacted information includes: reason for search, the type of search, whether the individual was notified of the search, the reason why the individual was or was not notified, information regarding the nature of the law enforcement interest in a particular inspection, status of the inspection or investigation, information supplied by other government agencies, information regarding law enforcement alerts and lookouts, and results of the search.**

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