IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VERN McKINLEY,	)	
	)	
Plaintiff,	)	Civil Action No. 10-cv-01165 (HHK)
	)	
v.	)	
	)	
FEDERAL HOUSING FINANCE AGENCY,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff Vern McKinley, by counsel and pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, hereby cross-moves for summary judgment against Defendant Federal Housing Finance Agency. As grounds therefor, Plaintiff respectfully refers the Court to the accompanying Plaintiff's Memorandum of Law in Opposition to Defendant Federal Housing Finance Agency's Motion For Summary Judgment and in Support of Plaintiff's Cross-Motion for Summary Judgment and Plaintiff's Response to Defendant's Statement of Material Facts Not in Dispute and Plaintiff's Statement of Material Facts Not in Genuine Dispute in Support of Plaintiff's Cross-Motion for Summary Judgment.

Dated: December 16, 2010

Respectfully submitted,

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
Washington, DC 20024
(202) 646-5172

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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	)	
Defendant.	)	
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PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT FEDERAL HOUSING FINANCE AGENCY'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff Vern McKinley, by counsel and pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, respectfully submits this memorandum of law in opposition to the motion for summary judgment of Defendant Federal Housing Finance Agency ("FHFA") and in support of Plaintiff's cross-motion for summary judgment. As grounds thereof, Plaintiff states as follows:

I. Introduction.

In July 2008, a report prepared by Lehman Brothers estimated that the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") might need as much as $75 billion in additional capital to avoid a financial collapse.[1] The stock of both Fannie Mae and Freddie Mac fell by nearly 20 percent in one day.[2] To address the advanced stage of Fannie Mae's and Freddie Mac's capital problems in

[1] David S. Hilzenrath, *Shares of Fannie Mae, Freddie Mac Plummet: Report Raises Alarm About Firms' Capital*, Washington Post, July 8, 2008 (available at http://www.washingtonpost.com/wp-dyn/content/article/2008/07/07/AR2008070701487.html).

[2] *Id*.; *see also*, Henry M. Paulson, *On the Brink: Inside the Race to Stop the Collapse of the Global Financial System*, 142 (2010).

September 2008, the two primary options available to the federal government were for FHFA to place Fannie Mae and Freddie Mac into either conservatorship or receivership. Conservatorship is a process designed to restore a weak financial institution to sound financial health while preserving and conserving assets. Receivership entails a liquidation of the institution through the sale of assets and payment of claimants.

Henry M. Paulson, Secretary of the Department of the Treasury, initially concluded that the best option for Fannie Mae and Freddie Mac would be to have FHFA place them into receivership. This would have allowed for a downsizing of Fannie Mae and Freddie Mac and for addressing their long-term position in the market. According to Secretary Paulson, FHFA ultimately placed Fannie Mae and Freddie Mac into conservatorship because it allowed for a rapidly implemented "time out" not unlike Chapter 11 bankruptcy, so that Fannie Mae and Freddie Mac could avoid defaulting on their debts.[3]

Once the decision was made to place Fannie Mae and Freddie Mac into conservatorship, Ben S. Bernanke, Chairman of the Board of Governors of the Federal Reserve System, described "the catastrophe that would occur if we did not take these actions" in a meeting with the boards of Fannie Mae and Freddie Mac.[4] Yet, this catastrophe scenario has not been detailed publicly. Defendant asserts that the review conducted prior to the decision to place Fannie Mae and Freddie Mac into conservatorship and the rationale for that decision were explained by FHFA Director James B. Lockhart. Defendant Federal Housing Finance Agency's Memorandum in Support of its Motion for Summary Judgment ("Def's Mem.") at 3 (referencing Director Lockhart's statement of September 7, 2008 for that proposition). Although the statement does

[3] *Id*. at 162 – 166.
[4] *Id.* at 16.

reference the placement of Fannie Mae and Freddie Mac into conservatorship, it does not even mention receivership, let alone detail why the option of conservatorship was chosen over receivership. Presumably, the justification for placing Fannie Mae and Freddie Mac in conservatorship over receivership had something to do with the perceived systemic impact of the receivership option.[5] As with so many of the decisions made during the recent financial crisis, the details of this analysis have not been released publicly. Defendant has refused to release any information in this regard.

Because the public remains uninformed of why Defendant chose to place Fannie Mae and Freddie Mac into conservatorship, Plaintiff, on May 23, 2010, sent a FOIA request to Defendant seeking access to:

> Any and all communications and records concerning or relating to the assessment of an impact on systemic risk in addressing Fannie Mae and Freddie Mac, and in particular how the FHFA and the Department of the Treasury determined that conservatorship was the preferred option to avoid any systemic risk of placing Fannie Mae and Freddie Mac into receivership.

FOIA Request, attached as Exhibit A to the Declaration of David A. Lee. Defendant failed to respond to Plaintiff's FOIA request within the statutorily allotted time period, and Plaintiff filed suit on July 12, 2010. Def's Mem. at 4. Subsequently, Defendant notified Plaintiff that it had located three records responsive to Plaintiff's request and that each record was being withheld in its entirety pursuant to Exemption 5. *Id*. Upon reviewing the declarations and *Vaughn* Index submitted by Defendant in support of its Motion for Summary Judgment, Plaintiff has elected

[5] *See*, Federal Housing Finance Agency, *Questions and Answers on Conservatorship*, Undated (available at http://www.fhfa.gov/webfiles/35/FHFACONSERVQA.pdf) ("The goals of the conservatorship are to help restore confidence in the Company, enhance its capacity to fulfill its mission, and mitigate the systemic risk that has contributed directly to the instability in the current market.").

not to challenge Defendant's withholding of Document Number 1. However, Plaintiff does challenge Defendant's withholding of Document Numbers 2 and 3.

II. Argument.

A. Summary Judgment Standard.

FOIA generally requires complete disclosure of requested agency information unless the information falls into one of FOIA's nine clearly delineated exemptions. 5 U.S.C. § 552(b); *see also Department of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (discussing the history and purpose of FOIA and the structure of FOIA exemptions). In light of FOIA's goal of promoting a general philosophy of full agency disclosure, the exemptions are to be construed narrowly. *United States Department of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989). "[T]he strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents." *United States Department of State v. Ray*, 502 U.S. 164, 173 (1991).

In FOIA litigation, as in all litigation, summary judgment is appropriate only when the pleadings and declarations demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Civ. P. 56(c). In FOIA cases, agency decisions to "withhold or disclose information under FOIA are reviewed *de novo*." *Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp. 2d 252, 256 (D.D.C. 2004). In reviewing a motion for summary judgment under FOIA, the court must view the facts in the light most favorable to the requester. *Weisberg v. United States Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984).

For an agency to prevail on a claim of exemption, it may rely on affidavits or declarations if they "describe the documents and the justifications for nondisclosure with reasonably specific

detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). The court may require an *in camera* inspection of the withheld records to "insure that agencies do not misuse the FOIA exemptions to conceal non-exempt information." *Carter v. U.S. Department of Commerce*, 830 F.2d 388, 393 (D.C. Cir. 1987) (*quoting Allen v. Central Intelligence Agency*, 636 F.2d 1287, 1298 (D.C. Cir. 1980)).

Finally, an agency must demonstrate that, even where particular exemptions properly apply, all non-exempt material has been segregated and disclosed. *Sussman v. U.S. Marshals Service*, 494 F.3d 1106, 1116 (D.C. Cir. 2007); *Shurberg Broadcasting of Hartford v. Federal Communications Commission*, 617 F. Supp. 825, 828 (D.D.C. 1985). A segregability determination is absolutely essential to any FOIA decision. *See Summers v. Department of Justice*, 140 F.3d 1077, 1081 (D.C. Cir. 1998).

B. Defendant Improperly Applies the Attorney Work Product Doctrine.

Defendant withholds Document Numbers 1 and 2 in their entirety by claiming that they are exempt from disclosure pursuant to the attorney work product doctrine. In order to properly withhold material pursuant to the attorney work product doctrine, Defendant must demonstrate that the material was "prepared by an attorney in contemplation of litigation" and "set[s] forth the attorney's theory of the case and his litigation strategy." *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 154 (1975) Importantly, "it is firmly established that there is no privilege at all unless the document was initially prepared in contemplation of litigation, or in the course of preparing for trial." *Coastal States Gas Corporation v. Department of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980). While there is no requirement that actual litigation be

pending, it is absolutely necessary that "at the very least some articulable claim, likely to lead to litigation, must have arisen." *Id.*

Defendant asserts, and Plaintiff does not contest, that Document Numbers 2 and 3 were prepared at a time when the possibility of legal challenges by the Board of Directors and management of Fannie Mae and Freddie Mac existed. Declaration of Alfred M. Pollard ("Pollard Decl.") at ¶ 14; Def's Mem. at 12. Plaintiff also does not contest that the discussion of what Defendant "could expect in terms of judicial review of a legal challenge" in Document Number 2 is exempt from disclosure pursuant to the attorney work product doctrine. *Id*. Rather, Plaintiff argues that Defendant should be allowed to withhold only the limited portion of Document Number 2 that was actually prepared in the contemplation of, and related to, any litigation.

As stated above, Plaintiff sent a FOIA request seeking access to records "concerning or relating to the assessment of an impact on systemic risk in addressing Fannie Mae and Freddie Mac." In sending his request, Plaintiff specifically sought information about the adverse impact on systemic risk of placing Fannie Mae and Freddie Mac into receivership instead of conservatorship. Any information responsive to Plaintiff's FOIA request would primarily include the impact of, or externalities caused by, that action. For example, responsive material might detail the expected contagion of the weakening or failure of institutions with exposure to Fannie Mae or Freddie Mac. The responsive material, therefore, would not include details or discussion of any potential future litigation.

Defendant improperly claims that Document Numbers 2 and 3 may be withheld in their entirety pursuant to the attorney work product doctrine. Not everything prepared by an attorney may be withheld pursuant to the attorney work product doctrine. *Coastal States*, 617 F.2d at 864

(*quoting Jordan v. U.S. Department of Justice*, 591 F.2d 753, 775 (D.C. Cir. 1978)) ("The work-product rule does not extend to every written document generated by an attorney; it does not shield from disclosure everything that a lawyer does. Its purpose is more narrow, its reach more modest."). Although the two responsive records were produced by attorneys in Defendant's Office of General Counsel (Pollard Decl. at ¶¶ 12-13), these records are not similar to the records at issue in "other cases in which application of the agency attorney work product doctrine has been upheld." Def's Mem. at 14. In *Delaney, Migdail & Young*, the records at issue were memoranda that "outlined the types of legal challenges likely to be mounted against a proposed program and the potential defenses available to the agency." *Id*. at 14. Defendant currently is withholding two responsive records that are not alleged to outline types of legal challenges and potential responses to such challenges. Instead, Defendant is withholding in their entirety two records that

> were created for meetings with senior executives at FHFA to discuss various *policy options* that the agency could take with regard to the Enterprises and were provided to these senior *policymakers in order to assist their decision-making*.

Id. at 17 (emphasis added). Defendant itself admits that these records primarily focus on the policy of conservatorship over receivership, not the litigation implications of one over the other.

More specifically, in its *Vaughn* Index, Defendant asserts that Document Number 2 "analyze[s] the features, strengths, and weaknesses of two alternate approaches for FHFA in dealing with the Enterprises." FHFA – Final *Vaughn* Index ("*Vaughn* Index"), attached as Exhibit A to the Declaration of Frank A. Wright, at p. 1. Moreover, the *Vaughn* Index lists the issues assessed in the three-page record as:

- The purpose behind both alternatives;

- Analyses of the ability of each to address substantive issues and operational matters;
- Analysis of the public perception of each alternative;
- Analyses of the potential demands upon FHFA;
- Analysis of the potential for judicial review;
- Analysis of potential responses from the Enterprises; and
- Analysis of the potential challenges for FHFA under either approach.

Id. Based on this description, only one of the above issues is directly related to any potential litigation: analysis of the potential for judicial review.

Similarly, in its *Vaughn* Index, Defendant asserts that Document Number 3 "assess[es] and analyze[s] the issues and options for FHFA's efforts to address the problems of a troubled regulated entity." *Id*. More specifically, Defendant describes the issues covered in Document Number 3 as:

- The ramifications of choosing either conservatorship or receivership and the factors that would support either choice;
- The factors that would trigger either a conservatorship or receivership;
- The powers and authorities of FHFA under either a conservatorship or receivership;
- Issues for the agency in implementing a conservatorship or receivership;
- The operational requirements that might be required in implementing a conservatorship or receivership;
- The steps that could be required before implementing a conservatorship or receivership;
- The steps that could be required during the implementation of a conservatorship or receivership;
- The impact on officers and directors of implementing a conservatorship or receivership; and
- Alternatives to conservatorship and receivership that might be available to FHFA, including the possibility of an informal order or cease and desist order.

Id. Based on this description, none of the issues addressed in this ten-page record is related to any potential litigation.

Because Defendant describes Document Numbers 2 and 3 as memoranda prepared to assist "senior policymakers" with analyzing various "policy options" (Def's Mem. at 17), Defendant's withholding of these two records in their entirety is improper. As the U.S. Court of

Appeals for the District of Columbia Circuit ("D.C. Circuit") has stated, the purpose of the attorney work product doctrine "is not to protect any interest of the attorney, who is no more entitled to privacy or protection than any other person, but to protect the adversary trial process itself." *Coastal States*, 617 F.2d at 864. Moreover, the privilege must be construed narrowly to avoid abuse. *Id*. at 865 ("The mere fact that [documents] deal with specific factual situations is not sufficient; if an agency were entitled to withhold any document prepared by any person in the Government with a law degree simply because litigation might someday occur, the policies of the FOIA would be largely defeated."). Defendant cannot shield responsive records from production simply because they were prepared by attorneys. Because Defendant has broadly claimed attorney work product over records prepared for policymakers (Def's Mem. at 17), Defendant should produce Document Numbers 2 and 3 and solely withhold the limited portions of the responsive records that do, in fact, fall under the scope of the attorney work product doctrine.

C. Defendant Improperly Withholds Material under the Deliberative Process Privilege.

Defendant also asserts that Document Numbers 2 and 3, in their entirety, are protected from disclosure pursuant to the deliberative process privilege. Def's Mem. at 15. It is Defendant's burden to show that both responsive records should be withheld in whole or in part pursuant to the deliberative process privilege. *Wilderness Society v. United States Department of the Interior*, 344 F. Supp. 2d 1, 9 (D.D.C. 2004). In order to withhold material pursuant to the deliberative process privilege, Defendant must demonstrate that the material would "reveal 'advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'" *In re Sealed Case*, 121 F.3d 729, 737

(D.C. Cir. 1997). Further, the material must be "predecisional and it must be deliberative" and "not shield documents that simply state or explain a decision the government has already made or protect material that is purely factual." *Id*. (citations omitted).

As the D.C. Circuit has explained, "The privilege is meant to protect predecisional communications from disclosure so as to prevent injury to the quality of agency decisions." *Horowitz v. Peace Corps*., 428 F.3d 271, 276 (D.C. Cir. 2005). In reviewing the claim of deliberative process privilege, courts therefore "focus less on the nature of the materials sought and more on the effect of the materials' release." *Dudman Communications Corp. v. Department of Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987). Since its decision in *Dudman*, the D.C. Circuit considers the key question to be:

> [W]hether the disclosure of materials would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.

Horowitz, 428 F.3d at 276 (*quoting Dudman Comm. Corp.*, 815 F.2d at 1568); *see also, Formaldehyde Institute v. Department of Health and Human Services*, 889 F.2d 1118, 1123-24 (D.C. Cir. 1989) ("The pertinent issue is what harm, if any, the [document's] release would do to [an agency's] deliberative process."). Therefore, in order to succeed on a deliberative process privilege claim under Exemption 5, Defendant must demonstrate that the withheld material at issue "would actually inhibit candor in the decision making process if available to the public." *Army Times Pub. Co. v. Department of the Air Force*, 998 F.2d 1067, 1072 (D.C. Cir. 1993). Similarly, Defendant "cannot meet its statutory burden of justification by conclusory allegations of possible harm." *Mead Data*, 556 F.2d at 258. Defendant must "show by specific and detailed proof that disclosure would defeat, rather than further, the purposes of the FOIA." *Id.* Such can

be done through declarations or testimony. In *Horowitz*, the D.C. Circuit concluded that the withheld records were properly withheld pursuant to the deliberative process privilege only after reviewing testimony that showed "making [the withheld] documents publicly available would deter [individuals] from creating them and deprive such officials of the benefit of review and comment from other departments." *Horowitz*, 428 F.3d at 276-277. Similarly, in *Formaldehyde Institute*, the D.C. Circuit held that the withheld records were properly exempt from disclosure pursuant to the deliberative process privilege only after it reviewed indisputable evidence "that disclosure of reviewers' comments would seriously harm the deliberative process." 889 F.2d at 1124. In that case, the government agency produced declarations asserting that

> release of reviewers' editorial comments would very likely have a chilling effect on either the candor of potential reviewers of government-submitted articles or on the ability of the government to have its work considered for review at all. Furthermore, a government author is likely to be less willing to submit her work to a refereed journal at all if critical reviews could come to light somewhere down the line.

Id.

Completely absent from Defendant's brief, its *Vaughn* Index, and the declarations is any demonstration that disclosure of the two withheld records "would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." *Horowitz*, 428 F.3d at 276. Since "harm cannot be merely presumed," Defendant has failed to satisfy its burden to show that both responsive records should be withheld pursuant to the deliberative process privilege. *Judicial Watch, Inc.*, 297 F. Supp. 2d at 259. Defendant must therefore produce Document Numbers 2 and 3 to Plaintiff pursuant to FOIA.

D. *In Camera* Review of the Withheld Records Is Appropriate.

Defendant has failed to satisfy its statutory burden to justify its withholding of the two responsive records. However, the Court has "the option to conduct *in camera* review." *Juarez v. DOJ*, 518 F.3d 54, 59-60 (D.C. Cir. 2008); *Allen*, 636 F.2d at 1298 ("Where the agency fails to meet that burden, a not uncommon event, the court may employ a host of procedures that will provide it with sufficient information to make its *de novo* determination, including *in camera* inspection.")

The D.C. Circuit has held, "[*I*]*n camera* review may be particularly appropriate when ... the agency affidavits are insufficiently detailed to permit meaningful review of exemption claims." *Quinon & Strafer v. Federal Bureau of Investigation*, 86 F.3d 1222, 1228 (D.C. Cir. 1996). Moreover, the Court has explained that "when the dispute turns on the contents of the withheld documents, and not the parties' interpretations of those documents, *in camera* review may be more appropriate." *Id.* Finally, in instances in which sufficiently detailed justifications are impossible because they would reveal the very information sought to be protected, "*in camera* inspection permits the courts . . . to fulfill their statutory obligation to conduct a meaningful de novo review." *Id.*

Defendant has insufficiently provided enough detail to permit a proper analysis of its claims of withholding. Therefore, *in camera* review is appropriate in this case. If the Court does not have sufficient information to determine whether Document Numbers 2 and 3 should be produced, Plaintiff requests that the Court conduct an *in camera* review of the thirteen pages at issue.

III. Conclusion.

Because the public remains uninformed of why the federal government chose to place Fannie Mae and Freddie Mac into conservatorship instead of receivership, Plaintiff sent a FOIA request to Defendant. There are two records that would educate the public about Defendant's placement of Fannie Mae and Freddie Mac into conservatorship. Because the two responsive records were created to assist policymakers with their decision-making, Defendant improperly claims that the material may be withheld pursuant to the attorney work product doctrine. Moreover, because Defendant has failed to show that the disclosure of the material would expose Defendant's decision-making process in such a way as to discourage candid discussion and thereby undermine Defendant's ability to perform its functions, Defendant improperly claims that the two responsive records may be withheld in their entirety pursuant to the deliberative process privilege. For the foregoing reasons, Defendant's motion for summary judgment should be denied and summary judgment should be entered in Plaintiff's favor.

Dated: December 17, 2010

Respectfully submitted,

Paul J. Orfanedes (D.C. Bar No. 429716)

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
Washington, DC 20024
(202) 646-5172

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PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE AND PLAINTIFF'S STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff Vern McKinley, by counsel and pursuant to Local Civil Rule 7.1(h), respectfully submits this response to Defendant's Statement of Material Facts Not in Dispute and Plaintiff's Statement of Material Facts Not in Genuine Dispute in Support of Plaintiff's Cross-Motion for Summary Judgment:

I. Plaintiff's Response to Defendant's Statement of Material Facts Not in Dispute.

1. Undisputed.

2. Undisputed.

3. Undisputed.

4. Undisputed.

5. Undisputed.

6. Undisputed.

7. Undisputed.

8. Undisputed.

9. Undisputed.

10. Undisputed.

11. Undisputed.

12. Undisputed.

13. Plaintiff lacks knowledge to confirm or deny whether such an event occurred. *See Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d 141, 145 (D.C. Cir. 2006) (noting the "asymmetrical distribution of knowledge" as between a FOIA requester and an agency in FOIA cases).

14. Plaintiff lacks knowledge to confirm or deny whether such an event occurred. *See Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d 141, 145 (D.C. Cir. 2006) (noting the "asymmetrical distribution of knowledge" as between a FOIA requester and an agency in FOIA cases).

15. Plaintiff lacks knowledge to confirm or deny whether such an event occurred. *See Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d 141, 145 (D.C. Cir. 2006) (noting the "asymmetrical distribution of knowledge" as between a FOIA requester and an agency in FOIA cases).

16. Plaintiff lacks knowledge to confirm or deny whether such an event occurred. *See Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d 141, 145 (D.C. Cir. 2006) (noting the "asymmetrical distribution of knowledge" as between a FOIA requester and an agency in FOIA cases).

17. Plaintiff lacks knowledge to confirm or deny whether such an event occurred. *See Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d 141, 145 (D.C. Cir. 2006) (noting the

"asymmetrical distribution of knowledge" as between a FOIA requester and an agency in FOIA cases).

18. Plaintiff lacks knowledge to confirm or deny whether such an event occurred. *See Judicial Watch, Inc. v. Food and Drug Admin.*, 449 F.3d 141, 145 (D.C. Cir. 2006) (noting the "asymmetrical distribution of knowledge" as between a FOIA requester and an agency in FOIA cases).

II. Plaintiff's Statement of Material Facts Not in Genuine Dispute in Support of Plaintiff's Cross-Motion for Summary Judgment.

For its own LCv.R. 7.1(h) statement of material facts not in genuine dispute, Plaintiff respectfully refers the Court to Defendant's statement and Plaintiff's response thereto, set forth above.

Dated: December 16, 2010

Respectfully submitted,

/s/ Michael Bekesha

Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
Washington, DC 20024
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Attorney for Plaintiff

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[PROPOSED] ORDER

Upon consideration of Plaintiff's Cross-Motion for Summary Judgment against Defendant Federal Housing Finance Agency, any opposition thereto, and the entire record herein, it is hereby ORDERED that:

1. Plaintiff's Cross-Motion for Summary Judgment is granted.

SO ORDERED.

DATE:_____

_____
Henry H. Kennedy Jr.
United States District Judge