

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

JUDICIAL WATCH, INC.

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

Civil Action No. 17-cv-205 (CRC)

PLAINTIFF'S STATUS REPORT

Plaintiff Judicial Watch, Inc. (“Judicial Watch”), through undersigned counsel, submits the following Status Report to the Court. The parties were not able to reach an agreement over the production schedule of the remaining records to be produced in this case and as Defendant, through counsel, advised that it does not intend to file a joint status report with Plaintiff, Plaintiff submits this report individually with its proposed document production schedule, consistent with the parties’ joint status report filed on March 28, 2017 (ECF 9).

1. Pursuant to the Court’s minute order entered on March 15, 2017, the parties submitted to the Court a joint status report on March 28, 2017 with an initial production schedule of federal records at issue in this case.¹ (ECF 9).

2. At the time of the parties’ filing of the joint status report, the State Department, by counsel, represented that it had not completed processing its search for responsive records and asked for an additional 10 weeks to complete processing the search and provide an estimated

¹ At issue in this lawsuit is Plaintiff’s request under the Freedom of Information Act (“FOIA”) for federal records about the processing and search for records of a previous FOIA request Plaintiff submitted to Defendant on May 13, 2014. (FOIA Request No. F-2014-08848) (“underlying FOIA request”). More specifically, Plaintiff seeks records about when the State Department knew in the underlying FOIA request that its response to the Court and Plaintiff about the completeness of its search and production did not include any of Secretary Clinton’s emails. *See* Joint Status Report, March 28, 2017, ¶ 1, n. 1 (ECF No. 9).

time frame for when it could complete its production of all non-exempt responsive records. Additionally, agency counsel represented that the State Department would produce records in two intervals during that time frame, an initial document production would be made on May 5, 2017 and a second document production to be made on June 5, 2017. Plaintiff did not object.

3. Consistent with the March 28, 2017 joint status report, the State Department produced responsive records on May 5, 2017 and June 5, 2017. The State Department's two productions included a total of 22 documents released in full. During the course of approximately 10 weeks, Defendant processed and reviewed only 108 documents in response to Plaintiff's FOIA request (as 86 documents were withheld in full) – an average of 10 documents per week or 4 documents per business day. *See* Ex. 1.

4. On May 26, 2017, agency counsel informed undersigned counsel that the State Department's "searches have uncovered in excess of 3,100 potentially responsive documents." Upon Plaintiff's request, again through counsel, the State Department disclosed on June 1, 2017 that the documents consist of approximately 51,329 potentially responsive pages.

5. Since May 26, 2017, the parties conferred through counsel to possibly reach an agreement for the production schedule of the remaining responsive documents, however, the State Department's proposals far exceed any reasonable schedule for the parties to be able to reach an agreement. Therefore, Plaintiff submits its individual status report herein.

6. On May 26, 2017, the State Department initially proposed to process 300 pages of potentially responsive documents per month. A production schedule consistent with Defendant's initial proposal would carry out the rolling production of responsive documents by more than an additional 30 months – December 2019. On June 1, 2017, the State Department revised its proposal to process 200 potentially responsive documents per month. This amended proposal

too however, would extend the rolling production over an additional 16 months – October 2018. The State Department did not cite to any reason for the undue delay in processing Plaintiff's FOIA request or the ability to suddenly process the records in half the time it initially proposed.

7. Plaintiff submitted the FOIA request at issue more than six (6) months ago. Compt.at ¶ 5. The State Department's failures to produce any records prior to Plaintiff's filing of this lawsuit or to demonstrate even a reasonable effort in processing and producing responsive records since the Court's minute order that was entered on March 15, 2017 are evidence of Defendant's slow dragging strategy in this case. *Supra*, ¶ 3.

8. Plaintiff seeks records about potential agency wrongdoing, which goes to the heart of the public's right to know under FOIA, making the State Department's processing of responsive records in a timely manner imperative in this case.

9. Considering the critical issues surrounding this case and the records sought herein, Plaintiff respectfully submits that the Court order the State Department to produce all non-exempt responsive records in three monthly productions, with a final production on or before September 30, 2017. Ten months since Plaintiff's FOIA request is more than sufficient time for the State Department to complete its production of all responsive, non-exempt records in this case. Therefore, Plaintiff proposes that the Court order the State Department to complete its production of all non-exempt responsive records according to the following schedule:

July 5, 2017	Defendant's 3rd monthly document production
August 5, 2017	Defendant's 4th monthly document production
September 5, 2017	Defendant's 5th monthly document production
September 30, 2017	Defendant's final document production

10. Plaintiff also recommends that the parties submit a joint status report within fifteen (15) days of the State Department's final document production with a status and recommendations for further proceedings. Accordingly, Plaintiff also proposes that the Court order the parties to file a joint status report on or before October 15, 2017 with a status of the case and further proceedings.

Dated: June 5, 2017

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca

Ramona R. Cotca, D.C. Bar No. 501159

Judicial Watch, Inc.

425 Third Street, SW, Suite 800

Washington, DC 20024

(202) 646-5172

rcotca@judicialwatch.org

Counsel for Plaintiff

Exhibit 1



United States Department of State

Washington, D.C. 20520

May 5, 2017

Case No.: F-2016-17249
Segments: IPS-0001L, IPS-
0002, IPS-0004, IPS-0005,
IPS-0006, S/ES-0001

Ms. Ramona R. Cotca
Judicial Watch, Inc.
425 Third Street S.W.,
Suite 800
Washington, D.C. 20024

Dear Ms. Cotca:

I refer to your request dated December 2, 2016, seeking the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552. The Department has reviewed 71 documents responsive to your request and determined that 18 may be released in full and 53 must be withheld in full. All released material is enclosed. The review of potentially responsive documents for your request remains ongoing.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made excisions, the applicable exemptions are marked on each document. All non-exempt material that is reasonably segregable from the exempt material has been released. The Department withheld the 53 documents in full under FOIA Exemptions 5 and 6, 5 U.S.C. §§ 552(b)(5) and (b)(6).

If you have any questions, you may contact Department of Justice Senior Counsel Robert Prince at Robert.Prince@usdoj.gov or (202) 305-2654. Please refer to the case number, F-2016-17249, and the civil action number, 1:17-cv-000205, in all correspondence about this case.

Sincerely,

Eric F. Stein

Eric F. Stein, Director
Office of Information Programs and Services

Enclosure: As stated

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

- (b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

- (b)(2) Related solely to the internal personnel rules and practices of an agency

- (b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

- (b)(4) Trade secrets and confidential commercial or financial information

- (b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

- (b)(6) Personal privacy information

- (b)(7) Law enforcement information whose disclosure would:
- (A) interfere with enforcement proceedings
 - (B) deprive a person of a fair trial
 - (C) constitute an unwarranted invasion of personal privacy
 - (D) disclose confidential sources
 - (E) disclose investigation techniques
 - (F) endanger life or physical safety of an individual

- (b)(8) Prepared by or for a government agency regulating or supervising financial institutions

- (b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

- NR Material not responsive to a FOIA request excised with the agreement of the requester

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RELEASE IN FULL

JUDICIAL WATCH

Plaintiff,

v.

U.S. Department of State,

Defendant.

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No. 1:14-cv-01242-RCL

**DECLARATION OF JOHN F. HACKETT
REGARDING EXEMPTIONS TAKEN IN RESPONSIVE DOCUMENTS**

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare and state as follows:

I. I am the Director of the Office of Information Programs and Services ("IPS") of the United States Department of State (the "Department"). In this capacity, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other applicable records access provisions. I have been employed by the Department in this capacity since June 2015. Prior to assuming this role, I served as the Acting Director of IPS since April 2014 and Deputy Director since April 2013. As the IPS Director, I am authorized to classify and declassify national security information. I make the following statements based upon my personal knowledge, which in turn is based on a personal review of the records in the case file established for processing the subject request and upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject request, and I am in charge of coordinating the agency's search and recovery efforts with respect to that request.

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2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the FOIA, the Privacy Act, and the mandatory declassification review requirements of the Executive Order governing classified national security information), by members of Congress, by other government agencies, and those made pursuant to judicial process such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. This declaration explains the Department's search for records responsive to the FOIA request at issue in this litigation.

**I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S
REQUEST AND THE SEARCH FOR RESPONSIVE DOCUMENTS**

4. By letter dated May 13, 2014, Judicial Watch ("Plaintiff") submitted a FOIA request to the Department requesting that "the Office of the Secretary produce the following within twenty (20) business days:

1) Copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11 2012 attack on the U.S. consulate in Benghazi, Libya.

2) Any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency.

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See Ex. A (Plaintiff's FOIA request, F-2014-08848).¹

5. In correspondence with counsel for the Department, Plaintiff further clarified that its request does not seek all records relating to the attacks of September 11, 2012 in Benghazi, but rather only "talking points and updates to those talking points, not general intelligence updates about the Benghazi attacks (unless those updates were sent in furtherance of developing or updating talking points)." See Ex. B (Email from Ramona Cotca, Sep. 4, 2014) (confirming scope of request).

6. When the Department receives a FOIA request, IPS evaluates the request to determine which offices, overseas posts, or other records systems within the Department may reasonably be expected to contain the records requested. This determination is based on the description of the records requested and requires a familiarity with the holdings of the Department's records systems, applicable records-disposition schedules, and the substantive and functional mandates of numerous Department offices and Foreign Service posts and missions. Factors such as the nature, scope, and complexity of the request itself are also relevant.

7. Each office within the Department, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission. These files consist generally of working copies of documents, information copies of documents maintained in the Central Foreign Policy

¹ This request was identically worded to a request previously made by the Plaintiff and directed toward the United States Mission to the United Nations ("USUN/W"). This previous request was the subject of related litigation, 1:13-cv-00951, which the parties settled after the Department produced 98 documents totaling 1,439 pages responsive to that request. See Ex. C at 1 (*Judicial Watch v. State*, (D.D.C. 13-951), FOIA Request Letter (Dkt No. 8-1)).

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Records collection, and other documents prepared by or furnished to the office in connection with the performance of its official duties, as well as electronic copies of documents and e-mail messages.

8. Plaintiff's request specified that it sought records only from the Office of the Secretary. Therefore, the Department tasked only the Executive Secretariat to search for agency records responsive to Plaintiff's avowed construction of its request that were generated between September 11, 2012, and September 23, 2014, the day that the search was conducted.²

The Executive Secretariat ("S/ES")

9. The Office of the Executive Secretariat Staff ("S/ES-S") is responsible for coordination of the work of the Department internally, serving as the liaison between the Department's bureaus and the offices of the Secretary, the Deputy Secretary, and the Under Secretaries. It is responsible for coordinating search responses for the Office of the Secretary of State ("S"), the Office of the Deputy Secretary of State ("D"), the Office of Policy Planning ("S/P"), the Office of the Under Secretary for Political Affairs ("P"), and the Counselor of the Department ("C").

10. On September 9, 2014, a Management Analyst who was knowledgeable of both the request and S/ES-S records systems conducted a search of S/ES-S electronic records systems reasonably likely to contain responsive records. These systems include the Secretariat Tracking

² The immediate Office of the Secretary is comprised of the Secretary's Chief of Staff, the Counselor of the Department, Deputy Chief of Staff, the Secretary's secretary, the Executive Assistant, special assistants, the Secretary's scheduler, staff assistant, and personal assistants. This staff handles all of the day-to-day matters of the Secretary, including meetings at the Department, functions in Washington and throughout the country, and travel around the world.

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and Retrieval System ("STARS"),³ the Secretariat Telegram Processing System ("STePS"),⁴ the Cable Archiving Retrieval System ("CARS"),⁵ and the Top Secret files ("TS"). These systems' search capabilities are wildcard-based, meaning that common variations of the keywords being searched would be retrieved (e.g., a search for "directive" would produce "directive's").

11. On September 23, in furtherance of this process, S/ES-S also searched the state.gov email accounts of three individuals—Cheryl Mills (Counselor and Chief of Staff to former Secretary Clinton), Jacob Sullivan (Deputy Chief of Staff for Policy to former Secretary Clinton), and Huma Abedin (Deputy Chief of Staff for Operations to former Secretary Clinton)—within the Office of the Secretary. These individuals were selected by members of the Office of the Secretary based on their understanding of which staff members within the Office of the Secretary during former Secretary Clinton's tenure worked on issues related to the Benghazi attacks and whose records may therefore reasonably be expected to contain responsive records.

12. For both the databases and the email records, S/ES used the search terms "Ambassador" or "Rice" or "USUN/W" or "September 11, 2012" or "attack" or "Benghazi" or "Libya" or "talking points" or "TPs" or "updates."

³ STARS is an automated system used to track, control, and record documents containing substantive foreign policy information passing to, from, and through the offices of the Secretary of State, the Deputy Secretary of State, and other Department principal officers. Original documents are indexed, scanned, and stored as images in STARS. Information in STARS covers the period 1988 to the present.

⁴ STePS is designed to distribute cables among the Department's principals.

⁵ CARS is designed to provide access to a contemporary portion of the Department's telegram archive deemed to be of general interest.

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13. During searches of the email records, as well as the STePs and CARS databases, the search terms were applied to each document, as well as attachments that contain searchable text. During the search of STARS, the search terms were applied to a descriptive abstract attached to each document. Each STARS abstract was created by a Technical Information Specialist when the document was added to the database; this abstract is designed to capture the subject matter of the related document. For documents from the time period relevant to the FOIA request, the abstracts are the only portions of the STARS database whose text may be searched. Similarly, during the TS search, the search terms were applied to an index of TS files. Each TS index entry, along with key words and a topic description, was added by a Management Analyst into the index. This index, rather than the full text of the TS files themselves, can be searched.

14. The use of "or" between the search terms indicates that this was a disjunctive search; the terms listed would have retrieved any documents that contain (for email, STePs, CARS records), or whose abstracts or indexes contain (for STARS and TS records), the word "Ambassador," for example, even if the document, abstract, or index contained none of the other search terms. These searches were completed on September 23, 2014, and returned a number of records, which were then reviewed for responsiveness.

15. In addition, to guard against the possibility that a particular document was overlooked, the Management Analyst also reviewed each of the documents that were produced to Plaintiff from USUN/W, rather than the Office of the Secretary, in the related litigation described in footnote 1 above. The Management Analyst examined each sender or recipient of each

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document produced in that litigation; documents with a recipient or sender who was in the Office of the Secretary at the time the email was sent were treated as responsive.

16. As a result of the searches of email records, database records, and records produced in the prior related litigation as described in this paragraph, the Management Analyst found four documents responsive to Plaintiff's FOIA request, all of which had been previously produced to Plaintiff in the related litigation described in footnote 1. By letter dated November 11, 2014, the Department released one document in full and three documents in part. *See* Ex. D (Letter of Nov. 12, 2014).

17. After the searches in this case had been completed and the four responsive documents delivered to the Plaintiff, the Department received approximately 55,000 pages of hard copy emails and attachments to emails, arranged in chronological order, from former Secretary Clinton.⁶ These records were provided by her in response to an earlier request from the Department of State that, if former Secretaries or their representatives were "aware or [were to] become aware in the future of a federal record, such as an email sent or received on a personal email account while serving as Secretary of State, that a copy of this record be made available to the Department." *See* Ex. E (Text of Letter to Former Secretaries of State Concerning the Federal Records Act of 1950). The Deputy Directory of S/ES-S applied the same search terms described above, *see* ¶ 12, to two PDFs containing scanned images of a subset of these documents, specifically, the documents that were sent or received on or after September

⁶ Former Secretary Clinton did not use a state.gov email account.

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11, 2012, through the end of former Secretary Clinton's tenure on January 31, 2013. For each PDF, the Deputy Director entered a search term individually into the Find command in Adobe Reader and navigated to each occurrence of the search term in the PDF. The Deputy Director reviewed for responsiveness each individual document that contained an occurrence of the search term. This process was repeated for each search term listed above in Paragraph 12. No responsive records were found.

18. Earlier this year, the Department sent letters to Ms. Mills, Mr. Sullivan, and Ms. Abedin, whose state.gov accounts were searched in response to this FOIA request. In those letters, the Department asked those individuals to make available to the Department any federal records that they may have in their possession, such as emails concerning official government business sent or received on a personal email account while serving in their official capacities with the Department, if there is any reason to believe that those records may not otherwise be preserved in the Department's recordkeeping system.

19. All three individuals have responded to those letters, through counsel, to inform the Department that they have begun the process of searching for and providing the Department documents in their possession that may potentially be federal records. That process is ongoing.

20. On June 26, 2015, counsel for Ms. Mills and counsel for Mr. Sullivan provided the Department with a number of documents in response to the letters. An attorney in the Department's Office of the Legal Adviser has reviewed these newly received documents and discovered one responsive document among those that had been provided by Mr. Sullivan, a two-message email chain that mentioned the talking points in the course of a larger discussion,

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which it has determined should be withheld in full pursuant to FOIA Exemption 5. *See* ¶¶ 25-27, *infra*.

21. The earlier message in that email chain is a forward of an email that was sent to, among other people, former Secretary Clinton. A Department attorney has determined that it was among the 55,000 pages provided to the Department by former Secretary Clinton. This earlier message had been reviewed by Staff in the Office of the Secretary during the process described above in Paragraph 17 but deemed unresponsive because the references to "talking points" contained therein appeared to be about a separate set of talking points being developed within the Office of the Secretary for future use. It was not clear from the face of the earlier message that one of the references to "talking points" was to those that had been given to Ambassador Rice. A Department attorney has determined that the copy of the earlier message included in the document received from Mr. Sullivan is identical to the copy received from former Secretary Clinton. However, the later message in the email chain, which was not sent to former Secretary Clinton, made it clear that one portion of the earlier message had, indeed, been discussing the talking points given to Ambassador Rice.

II. EXEMPTIONS CLAIMED

FOIA Exemption 5—Deliberative Process Privilege

22. 5 U.S.C. § 552(b)(5) states that the FOIA does not apply to:

inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency....

23. Exemption 5, 5 U.S.C. § 552(b)(5), protects from disclosure information that is normally privileged in the civil discovery context, including information that is protected by the

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deliberative process. The deliberative process privilege protects the confidentiality of candid views and advice of U.S. Government officials in their pre-decisional deliberations related to policy formulation and administrative direction.

24. For example, certain information withheld in this case reflects drafts of materials being prepared for senior Department officials, together with suggested revisions being offered by Department employees.⁷ Disclosure of material containing such deliberations or material on which such deliberations are based could reasonably be expected to chill the open and frank exchange of ideas and recommendations in which Department officials are involved. It would severely hamper the ability of responsible Department officials to formulate and carry out executive branch programs. Information in one document in this case, as detailed below, has been withheld on the basis of this exemption. Disclosure of this information, which is pre-decisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussion and the expression of recommendations and judgments regarding current problems and preferred courses of action by Department personnel with respect to materials being prepared for senior Department officials. The withheld information is, accordingly, exempt from release under Exemption 5, 5 U.S.C. § 552(b)(5) pursuant to the deliberative process privilege.

FOIA Exemption 6—Personal Privacy

25. 5 U.S.C. § 552 (b)(6) states that the FOIA does not apply to

⁷ Four documents were withheld in part pursuant to various FOIA exemptions. Counsel for Plaintiff has confirmed via email that Plaintiff is not challenging any of the redactions in the documents produced to it. Ex. F (Email from Ramona Cotica, June 15, 2015). Therefore, this declaration only addresses the exemptions that apply to the document that was provided by Mr. Sullivan on June 26, 2015, which has been withheld in full.

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personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy..."

26. Courts have interpreted the language of Exemption 6 broadly to encompass all personal information that applies to an individual, without regard to whether it was located in a particular type of file. The Department withheld only the domain names in the personal email addresses of Jacob Sullivan, Cheryl Mills, and Philippe Reines under Exemption 6.

27. Inasmuch as the information withheld is personal to an individual, there is clearly a privacy interest involved. I am required, therefore, to determine whether there exists any public interest in disclosure and to weight any such interest against the extent of the invasion of privacy.

28. In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), the Supreme Court laid down two rules for determining public interest in disclosure of information involving a privacy interest: (1) whether disclosure would serve the "core purpose" for which Congress enacted the FOIA, i.e., to show "what the government is up to," and (2) that public interest means the interest of the public in general, not particular interests of the person or group seeking the information. Accordingly, the identity of the requester as well as the purpose for which the information is sought is irrelevant in making the disclosure determination.

29. As for all of the information withheld pursuant to Exemption 6, I have concluded that (1) disclosure of the information withheld would result in a clearly unwarranted invasion of personal privacy; and (2) disclosure of the information would not serve the "core purpose" of the FOIA, i.e., it would not disclose information about "what the government is up to."

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Accordingly, I have determined that the privacy interests clearly outweigh any public interest in disclosure of the withheld information.

Document Description

30. Document C05831334, which is discussed above, *see* ¶¶ 20-21, is a three-page intra-agency email exchange consisting of two messages. The earlier message is from Jacob Sullivan to former Secretary Clinton's non-state.gov email address and Cheryl Mills (who is listed on the "Cc" address line) and has the subject "Key Points." It was sent on September 29, 2012 at 11:09 AM. The later message is from Cheryl Mills to Jake Sullivan and Philippe Reines (Deputy Assistant Secretary of State for Strategic Communications and Senior Communications Advisor to Secretary Clinton) and has the subject "Fwd: REVISED Key Points." It was sent on September 29, 2012 at 1:18 PM. The bodies of the messages consist of drafts, composed by advisors to former Secretary Clinton, of a proposed future communication from the former Secretary to a member of the U.S. Senate concerning various issues related to the attacks of September 11, 2012 in Benghazi. A portion of each draft consisted of a summary of the talking points that had been sent to Ambassador Rice (although, as explained above, *see* ¶¶ 20-21, the Department did not realize that the earlier message included a reference to those talking points until the Department received and reviewed the second message in the email chain). The Department has withheld the email chain in full under FOIA Exemption 5 pursuant to the

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deliberative process privilege and the domain names associated with the private email addresses of Ms. Mills, Mr. Sullivan, and Mr. Reines under Exemption 6.⁸

31. As non-final drafts, the bodies of these messages consist in their entirety of information that is pre-decisional and deliberative in nature. Release of this material could reasonably be expected to chill the frank deliberations that occur when senior staff are preparing points or other draft remarks for use by senior Department officials in addressing a matter of public controversy. The material is therefore exempt under FOIA Exemption 5, 5 U.S.C. § 552(b)(5) pursuant to the deliberative process privilege.

32. Inasmuch as the information withheld under Exemption 6 in the email chain identifies a specific individual, a personal privacy interest exists in the information. Therefore, I am now required to determine whether there exists any public interest in disclosure and, if a public interest is implicated, to weigh any such interest against the privacy interest to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy.

33. Any individual, including a U.S. Government employee, has a privacy interest in his or her personal email address because the release of this information could result in harassment or unwanted attention. Moreover, the release of the domain name of a personal email address would not shed light on government operations. The domain names of the personal email addresses in the email chain are therefore exempt under FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

⁸ The Department does not seek to protect the non-state.gov email address of former Secretary Clinton ("hdr22@clintonemail.com"), which is in the earlier email in the email chain.

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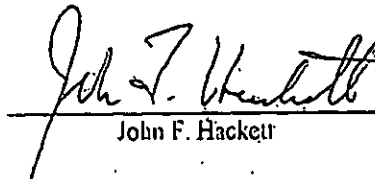
34. The Department conducted a line-by-line review of the email chain and determined that there was no reasonably segregable, non-exempt material that could be released, other than the information disclosed in the preceding two paragraphs.

CONCLUSION

35. In summary, the Department conducted a thorough search of all Department records systems within the Office of the Secretary that were reasonably likely to maintain records responsive to Plaintiff's FOIA request and located five responsive documents, one of which it released in full, three of which it released in part, and one of which it withheld in full.

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

Executed this 7th day of July 2015, Washington, D.C.


John F. Hackett

NO DISCERNIBLE CLASSIFICATION

Grulkowski, Bryan A

From: Jaramillo, Edgar E
Sent: Wednesday, July 09, 2014 6:19 PM
To: Wasser, Jonathon D; Finney, Clarence N
Cc: Jaramillo, Edgar E
Subject: Freedom of Information Act Request F-2014-08848 (Requester: Bailey, Kate) - ACTION REQUIRED
Attachments: [Untitled].pdf

RELEASE IN FULL

THIS IS AN ACTION MESSAGE

To SESCR:

Please be advised that your office/bureau has been tasked to conduct a search of official State Department records in response to a Freedom of Information Act Request F-2014-08848 submitted by Bailey, Kate. A tasker consisting of a copy of the transmittal form (DS-1748) the request Letter and related material is attached.

Please forward this search tasker to all individuals in your office/bureau that may have records responsive to this request. The attached DS-1748 form also provides instructions on how to conduct a search. After completing the search, the Researcher should complete all applicable sections of the form, sign and date the DS-1748, and attach it to copies of any responsive documents found. The completed package should be forwarded in paper format to your bureau's FOIA Point-of-Contact, if forwarded to you, or the IPS FOIA Analyst mentioned below. If you have any questions, please contact Edgar Jaramillo at extension 48472.

Edgar E. Jaramillo | A/GIS/IPS/CR/EAN | Phone: 202.261.8472 ex 48472 | Fax: 202.261.8588 |
Europe, South Central Asia, Africa & Near Eastern Affairs | FOIA Office www.foia.state.gov



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This email is UNCLASSIFIED.

Grulkowski, Bryan A

NO DISCERNIBLE CLASSIFICATION

1



UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS

U.S. Department of State
SEARCH TASKER

RELEASE IN FULL

The Department has a statutory responsibility to reply to FOIA requests in a timely manner. Failure to do so could result in litigation against the Department.			
Case Number F-2012-38774	Requester Name Bziley, Kate	Date Tasked (mm-dd-yyyy) 7/9/14	
Response Due to IPS By (mm-dd-yyyy) 8/9/14	Office Tasked with Search SESCA	Other Bureaus/Offices Receiving Request	
FROM Analyst Name Edgar Jarama-16	Office A/GIS/IPS/ EAW	Telephone Number 48472	Room 7013 SA-2
Expedited Handling? <input type="checkbox"/> Yes <input type="checkbox"/> No	Litigation Action? <input type="checkbox"/> Yes <input type="checkbox"/> No	Requester Category <input checked="" type="checkbox"/> News Media, Scientific or Educational <input type="checkbox"/> Commercial <input type="checkbox"/> Other (Specify) _____	
Department's Search and Review Fees Please contact the Analyst if you reach the fee limit.		Fee Waiver? <input type="checkbox"/> Yes <input type="checkbox"/> No Amount Requester Agreed to Pay (Fee Limit) _____	
Administrative/Clerical	GS 1-8, FS 9-6	\$21.00 per hour	
Professional	GS 9-13, FS 6-3	\$41.00 per hour	
Executive	GS 14- SES, FS 2-SFS	\$76.00 per hour	
NOTE - Please contact the Analyst if you reach the fee limit.			
Case Type <input type="checkbox"/> Mandatory Review <input checked="" type="checkbox"/> FOIA <input type="checkbox"/> FOIA Referral <input type="checkbox"/> Privacy <input type="checkbox"/> Privacy Referral <input type="checkbox"/> Other (Description) _____			Contract Number (If a Request for a Contract)
Action Requested			
<ol style="list-style-type: none"> 1. Please search your files for documents responsive to the attached request. After documents have been retrieved and copied, arrange them in chronological order, and forward them to the analyst at the above office. Send all responsive documents, regardless of classification or sensitivity. Please do not make any excisions to the documents - unless you have delegated REVIEW authority. 2. Please provide the Lot and Box number for any retired files responsive to this request. If retirement manifests (Form DS-693) are not available in your office, please call the analyst as soon as possible. 3. Fill in the following boxes as a record of this search. PLEASE NOTE- The cut-off date for retrieving documents responsive to the search is the timeframe specified by the requester or the date the search is initiated by your office. 4. Include all e-mails and any attachments. 5. Contact the Analyst if you have questions about the search or documents retrieved. Provide additional comments in the Comments field on page 2. 6. Please complete the form in its entirety even if no responsive documents are located. 7. For the Preferred Format of Transmission of Responsive Records, see the Guidance. Send one copy of records in one format only to the Analyst named above. The Search Office must clear the chosen format with the Analyst, unless sending paper copies (IPS's Preferred Format). 			
Description of Search			
Time Period Searched (mm-dd-yyyy) Beginning Date _____ Ending Date _____		Number of Documents Retrieved	Number of Pages Retrieved
Retired Records Manifest Number (Please provide for IPS to search if Retired Records are available.)			
Does your search cover the date range specified in the request? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, why? _____			
Please list all the search terms and/or keywords you used in the search.		Please list the search terms and/or keywords that were successful.	
Type(s) of Records Searched <input type="checkbox"/> Electronic <input type="checkbox"/> Paper	Names of File Systems or Systems of Records or Databases Searched		
Electronic Files - Did you search: (Check all that apply.)		Paper Files - How are your paper files organized?	
	Unclassified	Classified	N/A
E-mails			
Archived E-mails			
Word Documents/Spreadsheets			
Shared Databases and Drives			
Other (Specify) _____			
		Electronic Files - How are your electronic files organized?	

Searcher Comments (To be Completed by Search Office)

Analyst Comments (To be Completed by Analyst)

Certification

Name

Grade

Search Time

I attest to the accuracy of the search performed for this request.

Signature

Date (mm-dd-yyyy)

GUIDANCE FOR CONDUCTING SEARCHES IN RESPONSE TO FOIA REQUESTS

The Office of Information Programs and Services (A/GIS/IPS) coordinates the Department's processing of document requests made under the Freedom of Information Act (FOIA), (5 U.S.C. §552). IPS, located in SA-2, identifies and tasks bureaus, offices and posts to conduct searches. The FOIA imposes short deadlines for responses to requests. Please make every effort to comply with the DUE DATE. The FOIA requester can challenge the timeliness of responses, the adequacy of searches, and the propriety of withholdings through an administrative appeal process and/or by filing suit in federal court. If you have questions, please call or email the IPS analyst named on the tasker.

PRACTICAL GUIDELINES

1. The SEARCH TASKER summarizes the search requirements. Limit your search to the subject and time frame set forth in the requester's letter which is attached to the tasker. The cut-off date for retrieving responsive documents is the timeframe specified in the letter or the date you initiate the search if a timeframe is not specified. When your search is complete, fill in the SEARCH section of the tasker. "Search time" should not include time spent copying.
2. Aside from exceptions noted below, provide all responsive documents, regardless of originating agency, and regardless of whether you believe that the documents should be withheld because of their sensitivity. Do not provide document originals - provide copies only, sorted in chronological order.
3. Top Secret, Restricted Data and Codeword (SCI) Documents: Handle and transport information according to Department Procedures. For more information, contact the Bureau of Diplomatic Security's Office of Information Security, review 12 FAM 500s, and this Department Notice.
4. Cables - Do not provide copies of cables, unless: (a) they bear marginal notes; (b) are channel cables; (c) are classified Top Secret; (d) were originated by other agencies; or (e) are post-to-post cables. (IPS will retrieve other relevant DOS cables from the electronic archives.)
5. Computer Files - You must search for relevant e-mails, memos, letters, etc. from your office's computer files. Include all e-mails, including all of the e-mail attachments.
6. Website - If you have responsive material on your website, please provide the web address.
7. Retired Records - If responsive material has been retired, please provide a copy of your bureau/ office's retired file manifest (form DS-693). Indicate on the manifest which files may contain responsive material. IPS will retrieve the necessary boxes and conduct the search.
8. The FOIA generally does not require that federal agencies create documents to respond to requests. However, if the request is for information that exists in electronic form, we are required to compile that information in a way responsive to the request if it would not be unduly burdensome.
9. The tasker and responsive documents should be returned through the designated FOIA contact officer for your bureau. (Offices in HST and SA-1 may call or email the IPS analyst to arrange possible hand delivery or pickup.) If more than one office within the bureau has responsive documents, the FOIA contact officer should compile search details as found on the Search Tasker from around their office. The FOIA contact officer will then coordinate the entire response for the bureau and return it to IPS as one package. If a particular office within the bureau needs more time, the contact officer should send what is available and notify IPS of the pending search. The FOIA contact officer should record requests as they are received and completed in a database or log book so that all requests and segments thereof are recorded and tracked.
10. Format of Responsive Material: Paper (print out and physically send) is the preferred format for responding to the Search Tasker. On a case by case basis, you may contact the Case Analyst to discuss the possibility of using electronic format. The decision to forward records electronically is based on the quantity of records located or the format in which the requester requested the records, if it can be accommodated.

NOTES

The FOIA allows the Department to withhold classified material as defined in E.O. 13526, as amended, as well as other sensitive information that falls under one of the nine FOIA "exemptions," 5 U.S.C. §552 (b). The documents are subjected to a two-level review by officers (retired FSOs) who are familiar with the pertinent subject matter and/or geographic area, as well as the FOIA exemptions and in accordance with sensitivity guidelines worked out with the bureaus. In addition, proposed declassification of potentially sensitive material less than five years old will normally be cleared with the offices, and reviewers will consult with offices regarding older information deemed possibly still sensitive. You are encouraged to register your concerns about the sensitivity of the material provided in a cover memo or email. Doing so will speed up the review and reduce the need for consultation.



**Judicial
Watch**
*Because no one
is above the law!*

F-2014-08848

RELEASE IN FULL

May 13, 2014

VIA CERTIFIED MAIL

Office of Information Programs and Services
A/GIS/IPS/RI
U. S. Department of State
Washington, D. C. 20522-8100

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that Office of the Secretary of State produce the following within twenty (20) business days:

- 1) Copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11 2012 attack on the U.S. consulate in Benghazi, Libya.
- 2) Any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency.

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA... The presumption of disclosure should be applied to all decisions involving FOIA.¹

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

¹ Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

MAY 21 2014

Department of State

May 13, 2014

Page 2 of 3

cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

Department of State

May 13, 2014

Page 3 of 3

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,



Kate Bailey
Judicial Watch

NO DISCERNIBLE CLASSIFICATION

Grulkowski, Bryan A

From: Jaramillo, Edgar E
Sent: Wednesday, July 09, 2014 6:23 PM
To: Wasser, Jonathon D; Finney, Clarence N
Cc: Jaramillo, Edgar E
Subject: CORRECTION: Freedom of Information Act Request F-2014-08848 (Requester: Bailey, Kate) - ACTION REQUIRED
Attachments: [Untitled].pdf

RELEASE IN FULL

THIS IS AN ACTION MESSAGE

To SESCR:

Please be advised that your office/bureau has been tasked to conduct a search of official State Department records in response to a Freedom of Information Act Request F-2014-08848 submitted by Bailey, Kate. A tasker consisting of a copy of the transmittal form (DS-1748) the request Letter and related material is attached.

Please forward this search tasker to all individuals in your office/bureau that may have records responsive to this request. The attached DS-1748 form also provides instructions on how to conduct a search. After completing the search, the Researcher should complete all applicable sections of the form, sign and date the DS-1748, and attach it to copies of any responsive documents found. The completed package should be forwarded in paper format to your bureau's FOIA Point-of-Contact, if forwarded to you, or the IPS FOIA Analyst mentioned below. If you have any questions, please contact Edgar Jaramillo at extension 48472.

Edgar E. Jaramillo | A/GIS/IPS/CR/EAN | Phone: 202.261.8472 ex 48472 | Fax: 202.261.8588 |
Europe, South Central Asia, Africa & Near Eastern Affairs | FOIA Office www.foia.state.gov



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This email is UNCLASSIFIED.

Grulkowski, Bryan A

NO DISCERNIBLE CLASSIFICATION

1



UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS

U.S. Department of State

SEARCH TASKER

RELEASE IN FULL

The Department has a statutory responsibility to reply to FOIA requests in a timely manner. Failure to do so could result in litigation against the Department.			
Case Number F-2014-08848		Requester Name Bziley, Mike	
Date Tasked (mm-dd-yyyy) 7/9/14		Response Due to IPS By (mm-dd-yyyy) 8/9/14	
Office Tasked with Search SESCR		Other Bureaus/Offices Receiving Request	
FROM Analyst Name Edgar Jr. J. 16		Office A/GIS/IPS/ EAU	Telephone Number 48472
Room 7013 SA-2			
Expedition Handling? <input type="checkbox"/> Yes <input type="checkbox"/> No		Litigation Action? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Requester Category <input checked="" type="checkbox"/> News Media, Scientific or Educational <input type="checkbox"/> Commercial <input type="checkbox"/> Other (Specify) _____			
Department's Search and Review Fees Please contact the Analyst if you reach the fee limit.		Fee Waiver? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Amount Requester Agreed to Pay (Fee Limit)			
Administrative/Clerical	GS 1-8, FS 9-6	\$21.00 per hour	
Professional	GS 9-13, FS 6-3	\$41.00 per hour	
Executive	GS 14- SES, FS2-SFS	\$76.00 per hour	
NOTE - Please contact the Analyst if you reach the fee limit.			
Case Type <input type="checkbox"/> Mandatory Review <input checked="" type="checkbox"/> FOIA <input type="checkbox"/> FOIA Referral <input type="checkbox"/> Privacy <input type="checkbox"/> Privacy Referral <input type="checkbox"/> Other (Description) _____			Contract Number (If a Request for a Contract)
<p>Action Requested:</p> <ol style="list-style-type: none"> Please search your files for documents responsive to the attached request. After documents have been retrieved and copied, arrange them in chronological order, and forward them to the analyst at the above office. Send all responsive documents, regardless of classification or sensitivity. Please do not make any excisions to the documents - unless you have delegated REVIEW authority. Please provide the Lot and Box number for any retired files responsive to this request. If retirement manifests (Form DS-693) are not available in your office, please call the analyst as soon as possible. Fill in the following boxes as a record of this search. PLEASE NOTE: The cut-off date for retrieving documents responsive to the search is the timeframe specified by the requester or the date the search is initiated by your office. Include all e-mails and any attachments. Contact the Analyst if you have questions about the search or documents retrieved. Provide additional comments in the Comments field on page 2. Please complete the form in its entirety even if no responsive documents are located. For the Preferred Format of Transmission of Responsive Records, see the Guidance. Send one copy of records in one format only to the Analyst named above. The Search Office must clear the chosen format with the Analyst, unless sending paper copies (IPS's Preferred Format). 			
Description of Search			
Time Period Searched (mm-dd-yyyy)		Number of Documents Retrieved	Number of Pages Retrieved
Beginning Date _____ Ending Date _____			
Retired Records Manifest Number (Please provide for IPS to search if Retired Records are available.)			
Does your search cover the date range specified in the request? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, why? _____			
Please list all the search terms and/or keywords you used in the search.		Please list the search terms and/or keywords that were successful.	
Type(s) of Records Searched <input type="checkbox"/> Electronic <input type="checkbox"/> Paper	Names of File Systems or Systems of Records or Databases Searched		
Electronic Files - Did you search? (Check all that apply.)		Paper Files - How are your paper files organized?	
	Unclassified	Classified	N/A
E-mails			
Archived E-mails			
Word Documents/Spreadsheets			
Shared Databases and Drives			
Other (Specify) _____			
		Electronic Files - How are your electronic files organized?	

Searcher Comments (To be Completed by Search Office)		
Analyst Comments (To be Completed by Analyst)		
CERTIFICATION		
Name	Grade	Search Time
I attest to the accuracy of the search performed for this request		
Signature	Date (mm-dd-yyyy)	
GUIDANCE FOR CONDUCTING SEARCHES IN RESPONSE TO FOIA REQUESTS		
<p>The Office of Information Programs and Services (A/GIS/IPS) coordinates the Department's processing of document requests made under the Freedom of Information Act (FOIA), (5 U.S.C. §552). IPS, located in SA-2, identifies and tasks bureaus, offices and posts to conduct searches. The FOIA imposes short deadlines for responses to requests. Please make every effort to comply with the DUE DATE. The FOIA requester can challenge the timeliness of responses, the adequacy of searches, and the propriety of withholdings through an administrative appeal process and/or by filing suit in federal court. If you have questions, please call or email the IPS analyst named on the tasker.</p>		
PRACTICAL GUIDELINES		
<ol style="list-style-type: none"> 1. The SEARCH TASKER summarizes the search requirements. Limit your search to the subject and time frame set forth in the requester's letter which is attached to the tasker. The cut-off date for retrieving responsive documents is the timeframe specified in the letter or the date you initiate the search if a timeframe is not specified. When your search is complete, fill in the SEARCH section of the tasker. "Search time" should not include time spent copying. 2. Aside from exceptions noted below, provide all responsive documents, regardless of originating agency, and regardless of whether you believe that the documents should be withheld because of their sensitivity. Do not provide document originals - provide copies only, sorted in chronological order. 3. Top Secret, Resinted Data and Codeword (SC/I) Documents: Handle and transport information according to Department Procedures. For more information, contact the Bureau of Diplomatic Security's Office of Information Security, review 12 FAM 500s, and this Department Notice. 4. Cables - Do not provide copies of cables, unless: (a) they bear marginal notes; (b) are channel cables; (c) are classified Top Secret; (d) were originated by other agencies; or (e) are post-to-post cables. (IPS will retrieve other relevant DOS cables from the electronic archives.) 5. Computer Files - You must search for relevant e-mails, memos, letters, etc. from your office's computer files. Include all e-mails, including all of the e-mail attachments. 6. Website - If you have responsive material on your website, please provide the web address. 7. Retired Records - If responsive material has been retired, please provide a copy of your bureau/ office's retired file manifest (form DS-693). Indicate on the manifest which files may contain responsive material. IPS will retrieve the necessary boxes and conduct the search. 8. The FOIA generally does not require that federal agencies create documents to respond to requests. However, if the request is for information that exists in electronic form, we are required to compile that information in a way responsive to the request if it would not be unduly burdensome. 9. The tasker and responsive documents should be returned through the designated FOIA contact officer for your bureau. (Offices in HST and SA-1 may call or email the IPS analyst to arrange possible hand delivery or pickup.) If more than one office within the bureau has responsive documents, the FOIA contact officer should compile search details as found on the Search Tasker from around their office. The FOIA contact officer will then coordinate the entire response for the bureau and return it to IPS as one package. If a particular office within the bureau needs more time, the contact officer should send what is available and notify IPS of the pending search. The FOIA contact officer should record requests as they are received and completed in a database or log book so that all requests and segments thereof are recorded and tracked. 10. Format of Responsive Material: Paper (print out and physically send) is the preferred format for responding to the Search Tasker. On a case by case basis, you may contact the Case Analyst to discuss the possibility of using electronic format. The decision to forward records electronically is based on the quantity of records located or the format in which the requester requested the records, if it can be accommodated. 		
FOIA NOTES		
<p>The FOIA allows the Department to withhold classified material as defined in E.O. 13526, as amended, as well as other sensitive information that falls under one of the nine FOIA "exemptions," 5 U.S.C. §552 (b). The documents are subjected to a two-level review by officers (retired FSOs) who are familiar with the pertinent subject matter and/or geographic area, as well as the FOIA exemptions and in accordance with sensitivity guidelines worked out with the bureaus. In addition, proposed declassification of potentially sensitive material less than five years old will normally be cleared with the offices, and reviewers will consult with older information deemed possibly still sensitive. You are encouraged to register your concerns about the sensitivity of the material provided in a cover memo or email. Doing so will speed up the review and reduce the need for consultation.</p>		



**Judicial
Watch**
*Because no one
is above the law!*

F-2014-08848

May 13, 2014

VIA CERTIFIED MAIL

Office of Information Programs and Services
A/GIS/IPS/RL
U. S. Department of State
Washington, D. C. 20522-8100

RELEASE IN FULL

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

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- 1) Copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11 2012 attack on the U.S. consulate in Benghazi, Libya.
- 2) Any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency.

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

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¹ Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

Department of State

May 13, 2014

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Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(I) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(I) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

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shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

Department of State

May 13, 2014

Page 3 of 3

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).

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In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,



Kate Bailey
Judicial Watch

Jaramillo, Edgar E

From: Jaramillo, Edgar E
Sent: Tuesday, July 08, 2014 11:17 AM
To: Logg, Cristina A
Subject: RE: F-2012-38774

Ok. Thank you.

This email is UNCLASSIFIED.

RELEASE IN FULL

From: Logg, Cristina A
Sent: Tuesday, July 08, 2014 10:00 AM
To: Jaramillo, Edgar E
Subject: RE: F-2012-38774

I never tasked S/ES-CR in F-2012-38774. I only tasked USUN/NY.

Thank you,
Cristina

This email is UNCLASSIFIED.

From: Jaramillo, Edgar E
Sent: Monday, July 07, 2014 5:30 PM
To: Logg, Cristina A
Subject: F-2012-38774

Cristina,

I have received case # F-2014-08848 very similar to your case above regarding Benghazi. Did you receive any documents from SESCO regarding these requests?

Edgar E. Jaramillo
Freedom of Information Act Office
A/GIS/IPS/CR/EAN
Europe, South Central Asia, Africa & Near Eastern Affairs
202-261-8472

This email is UNCLASSIFIED.



**Judicial
Watch**
*Because no one
is above the law*

F-2014-08848

May 13, 2014

RELEASE IN FULL

VIA CERTIFIED MAIL

Office of Information Programs and Services
A/GIS/TPS/RL
U. S. Department of State
Washington, D. C. 20522-8100

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that Office of the Secretary of State produce the following within twenty (20) business days:

- 1) Copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11 2012 attack on the U.S. consulate in Benghazi, Libya.
- 2) Any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency.

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA... The presumption of disclosure should be applied to all decisions involving FOIA.¹

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

¹ Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

Department of State

May 13, 2014

Page 2 of 3

cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

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5 U.S.C. § 552(a)(4)(A)(iii).

Department of State

May 13, 2014

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F-2014-08848

May 13, 2014

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A/GIS/TPS/RL
U. S. Department of State
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Sincerely,



Kate Bailey
Judicial Watch

NO DISCERNIBLE CLASSIFICATION

Grulkowski, Bryan A

From: Weetman, Susan C
Sent: Wednesday, August 06, 2014 12:48 PM
To: IPS-FOIA Litigation-DL; Hackett, John
Cc: Bair, James P; Davis, Jonathan E; Smilansky, Gene
Subject: New FOIA lawsuit: Judicial Watch v. Dep't of State (D.D.C. 14-cv-01242-RCL)
Attachments: summons FOIA Judicial Watch v US Dept of State civil act no 14-1242 RCL.PDF

RELEASE IN FULL

Attached is another FOIA lawsuit filed against the Department filed by Judicial Watch. This case is nearly identical to the JW 8 talking points case that Cristina was handling, except here JW is asking for records from the Office of the Secretary and the earlier one asked for records from the US Mission to the UN.

Monica will be handling this case for IPS and Jamie for L/M.

Susan

Susan C. Weetman
Chief, Litigation and Appeals Branch
Programs and Policies Division
Office of Information Programs and Services
U.S. Department of State
A/GIS/IPS/PP/LA
202-261-8420
weetmansc@state.gov

SBU

This email is UNCLASSIFIED.

Grulkowski, Bryan A

NO DISCERNIBLE CLASSIFICATION

1



UNCLASSIFIED WHEN SEPARATED FROM ATTACHMENTS

U.S. Department of State

SEARCH TASKER

RELEASE IN FULL

The Department has a statutory responsibility to reply to FOIA requests in a timely manner. Failure to do so could result in litigation against the Department.

Case Number F-2014-08848	Requester Name Bzile, Kate	Date Tasked (mm-dd-yyyy) 7/9/14
Response Due to IPS By (mm-dd-yyyy) 8/9/14	Office Tasked with Search SESCR	Other Bureaus/Offices Receiving Request
FROM Analyst Name Monica Gentry Edgar J. Smith	Office A/GIS/IPS/ EAD	Telephone Number 202-261-8331 Room 7013 SA-2
Expedition Handling? <input type="checkbox"/> Yes <input type="checkbox"/> No	Litigation Action? <input type="checkbox"/> Yes <input type="checkbox"/> No	Requester Category <input checked="" type="checkbox"/> News Media <input type="checkbox"/> Scientific or Educational <input type="checkbox"/> Commercial <input type="checkbox"/> Other (Specify)
Department's Search and Review Fees Please contact the Analyst if you reach the fee limit:		Fee Waiver? <input type="checkbox"/> Yes <input type="checkbox"/> No
Administrative/Clerical	GS 1-8, FS 9-6	\$21.00 per hour
Professional	GS 9-13, FS 6-3	\$41.00 per hour
Executive	GS 14-SES, FS2-SFS	\$78.00 per hour
NOTE - Please contact the Analyst if you reach the fee limit.		Amount Requester Agreed to Pay (Fee Limit)
Case Type <input type="checkbox"/> Mandatory Review <input checked="" type="checkbox"/> FOIA <input type="checkbox"/> FOIA Referral <input type="checkbox"/> Privacy <input type="checkbox"/> Privacy Referral <input type="checkbox"/> Other (Description)		Contract Number (If a Request for a Contract)
Action Requested		
<ol style="list-style-type: none"> Please search your files for documents responsive to the attached request. After documents have been retrieved and copied, arrange them in chronological order, and forward them to the analyst at the above office. Send all responsive documents, regardless of classification or sensitivity. Please do not make any excisions to the documents - unless you have delegated REVIEW authority. Please provide the Lot and Box number for any retired files responsive to this request. If retirement manifests (Form DS-693) are not available in your office, please call the analyst as soon as possible. Fill in the following boxes as a record of this search. PLEASE NOTE: The cut-off date for retrieving documents responsive to the search is the timeframe specified by the requester or the date the search is initiated by your office. Include all e-mails and any attachments. Contact the Analyst if you have questions about the search or documents retrieved. Provide additional comments in the Comments field on page 2. Please complete the form in its entirety even if no responsive documents are located. For the Preferred Format of Transmission of Responsive Records, see the Guidance. Send one copy of records in one format only to the Analyst named above. The Search Office must clear the chosen format with the Analyst, unless sending paper copies (IPS's Preferred Format). 		
Description of Search		
Time Period Searched (mm-dd-yyyy)	Number of Documents Retrieved	Number of Pages Retrieved
Beginning Date	Ending Date	
Retired Records Manifest Number (Please provide for IPS to search if Retired Records are available.)		
Does your search cover the date range specified in the request? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, why?		
Please list all the search terms and/or keywords you used in the search.		Please list the search terms and/or keywords that were successful.
Type(s) of Records Searched <input type="checkbox"/> Electronic <input type="checkbox"/> Paper	Names of File Systems or Systems of Records or Databases Searched	
Electronic Files - Did you search: (Check all that apply.)	Paper Files - How are your paper files organized?	
Unclassified	Classified	N/A
E-mails		
Archived E-mails		
Word Documents/Spreadsheets		
Shared Databases and Drives		
Other (Specify)		
		Electronic Files - How are your electronic files organized?

Searcher Comments (To be Completed by Search Office)

Analyst Comments (To be Completed by Analyst)

Certification

Name

Grade

Search Time

I attest to the accuracy of the search performed for this request.

Signature

Date (mm-dd-yyyy)

GUIDANCE FOR CONDUCTING SEARCHES IN RESPONSE TO FOIA REQUESTS

The Office of Information Programs and Services (A/GIS/IPS) coordinates the Department's processing of document requests made under the Freedom of Information Act (FOIA), (5 U.S.C. §552). IPS, located in SA-2, identifies and tasks bureaus, offices and posts to conduct searches. The FOIA imposes short deadlines for responses to requests. Please make every effort to comply with the DUE DATE. The FOIA requester can challenge the timeliness of responses, the adequacy of searches, and the propriety of withholdings through an administrative appeal process and/or by filing suit in federal court. If you have questions, please call or email the IPS analyst named on the tasker.

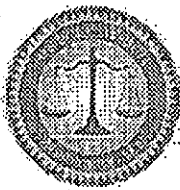
PRACTICAL GUIDELINES

1. The SEARCH TASKER summarizes the search requirements. Limit your search to the subject and time frame set forth in the requester's letter which is attached to the tasker. The cut-off date for retrieving responsive documents is the timeframe specified in the letter or the date you initiate the search if a timeframe is not specified. When your search is complete, fill in the SEARCH section of the tasker. "Search time" should not include time spent copying.
2. Aside from exceptions noted below, provide all responsive documents, regardless of originating agency, and regardless of whether you believe that the documents should be withheld because of their sensitivity. Do not provide document originals - provide copies only, sorted in chronological order.
3. Top Secret, Restricted Data and Codeword (SCI) Documents: Handle and transport information according to Department Procedures. For more information, contact the Bureau of Diplomatic Security's Office of Information Security, review 12 FAM 500s, and this Department Notice.
4. Cables - Do not provide copies of cables, unless: (a) they bear marginal notes; (b) are channel cables; (c) are classified Top Secret; (d) were originated by other agencies; or (e) are post-to-post cables. (IPS will retrieve other relevant DOS cables from the electronic archives.)
5. Computer Files - You must search for relevant e-mails, memos, letters, etc. from your office's computer files. Include all e-mails, including all of the e-mail attachments.
6. Website - If you have responsive material on your website, please provide the web address.
7. Retired Records - If responsive material has been retired, please provide a copy of your bureau/ office's retired file manifest (form DS-693). Indicate on the manifest which files may contain responsive material. IPS will retrieve the necessary boxes and conduct the search.
8. The FOIA generally does not require that federal agencies create documents to respond to requests. However, if the request is for information that exists in electronic form, we are required to compile that information in a way responsive to the request if it would not be unduly burdensome.
9. The tasker and responsive documents should be returned through the designated FOIA contact officer for your bureau. (Offices in HST and SA-1 may call or email the IPS analyst to arrange possible hand delivery or pickup.) If more than one office within the bureau has responsive documents, the FOIA contact officer should compile search details as found on the Search Tasker from around their office. The FOIA contact officer will then coordinate the entire response for the bureau and return it to IPS as one package. If a particular office within the bureau needs more time, the contact officer should send what is available and notify IPS of the pending search. The FOIA contact officer should record requests as they are received and completed in a database or log book so that all requests and segments thereof are recorded and tracked.
10. Format of Responsive Material: Paper (print out and physically send) is the preferred format for responding to the Search Tasker. On a case by case basis, you may contact the Case Analyst to discuss the possibility of using electronic format. The decision to forward records electronically is based on the quantity of records located or the format in which the requester requested the records, if it can be accommodated.

NOTES

The FOIA allows the Department to withhold classified material as defined in E.O. 13526, as amended, as well as other sensitive information that falls under one of the nine FOIA "exemptions," 5 U.S.C. §552 (b). The documents are subjected to a two-level review by officers (retired FSOs) who are familiar with the pertinent subject matter and/or geographic area, as well as the FOIA exemptions and in accordance with sensitivity guidelines worked out with the bureaus. In addition, proposed declassification of potentially sensitive material less than five years old will normally be cleared with the offices, and reviewers will consult with offices regarding older information deemed possibly still sensitive. You are encouraged to register your concerns about the sensitivity of the material provided in a cover memo or email. Doing so will speed up the review and reduce the need for consultation.

F-2014-08848



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Page 3 of 3

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,



Kate Bailey
Judicial Watch

RELEASE IN FULL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PAGE(S)
MISSING

JUDICIAL WATCH, INC.

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

SECOND DECLARATION

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare and state as follows:

1. I am the Director of the Office of Information Management (OIM) of the United States Department of State. I have been in this position since March 2013. I make the following declaration based upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject FOIA request, and I am in charge of coordinating the agency's search and processing efforts with respect to those requests.

2. The purpose of this declaration is to address two issues raised for the first time in Plaintiff's reply in support of its motion for discovery pursuant to Rule 56(d) ("Plaintiff's Reply") (ECF No. 30): (1) an email purporting to list gaps in the email collection received from

FILE

10/14/15
Please include in
the JW (Talking
Points) file
Thank you
Karen

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

Civil Action No. 14-cv-1242 (RCL)

RELEASE IN FULL

SECOND DECLARATION OF JOHN F. HACKETT

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services ("IPS") of the United States Department of State (the "Department"). In this capacity, I oversee the office of the Department responsible for responding to requests for records under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other applicable records access provisions. I have been employed by the Department in this capacity since June 2015. Prior to assuming this role, I served as the Acting Director of IPS since March 2014, and previous to that, I served as the Deputy Director of IPS since April 2013. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject FOIA request, and I am in charge of coordinating the agency's search and processing efforts with respect to those requests.

2. The purpose of this declaration is to address two issues raised for the first time in Plaintiff's reply in support of its motion for discovery pursuant to Rule 56(d) ("Plaintiff's Reply") (ECF No. 30): (1) an email purporting to list gaps in the email collection received from

former Secretary of State Hillary Clinton (the Clinton emails) and (2) media reports of so-called “new” emails from former Secretary Clinton’s clintonemail.com account related to the attacks on September 11, 2012 in Benghazi, Libya. I make these statements based on knowledge provided to me in the course of my official duties.

Alleged Gaps in Emails Provided by Former Secretary Clinton

3. Plaintiff’s Reply includes an email Plaintiff obtained from the Department via a separate FOIA request. (ECF No. 31-1). This email contains, among other things, the following text:

Gaps: . . .

. . .
Dec. 30, 2012 – Feb. 1, 2013 (Sent Messages)¹

Id. at 3. This email was created by Eric Stein, Deputy to the Deputy Assistant Secretary of Global Information Services, on April 15, 2015. The list of gaps was a preliminary assessment based on an examination of paper copies of the Clinton emails. Once the Clinton emails were scanned into the Department’s FOIA system and metadata for each document was entered (including the date the email was sent or received), it became apparent that this preliminary assessment was incorrect. The Clinton emails contain numerous sent messages—at least 243—from December 30, 2012 through January 31, 2013.² Those sent messages were included in the two PDFs containing scanned images of a subset of the Clinton emails that were searched for

¹ The email discusses two other time periods, both of which ended on or before April 12, 2009, and thus are not relevant to Plaintiff’s FOIA request, which seeks records related to talking points about the attacks on September 11, 2012 in Benghazi, Libya.

² Former Secretary Clinton’s last day in office was February 1, 2013. Her successor, John Kerry, was sworn in the same day.

records responsive to the FOIA request at issue in this case, as described in my previous declaration attached to the Department's Motion for Summary Judgment (ECF No. 19-2).³

Media Reports of So-called "New" Clinton Emails Related to the Benghazi Attacks

4. Plaintiff's Reply also links to a news story reporting that the Department recently found "a handful of new emails"⁴ relating to the September 11, 2012 attacks in Benghazi that had not previously been disclosed to Congress. The Bureau of Legislative Affairs provided 925 documents to the Select Committee on Benghazi on September 25, 2015. Among these documents were emails to or from former Secretary Clinton. I have been informed that all such emails produced to the Select Committee on Benghazi on September 25 are contained in the approximately 55,000 pages of emails former Secretary Clinton provided to the Department in December 2014. Those emails provided to the Committee on September 25 that were dated between September 11, 2012 and January 31, 2013 were all included in the two PDFs containing scanned images of a subset of the Clinton emails that were searched for records responsive to the FOIA request at issue in this case, as described in my previous declaration attached. *See* n. 3, *supra*. None of the emails were deemed responsive to the FOIA request.⁵

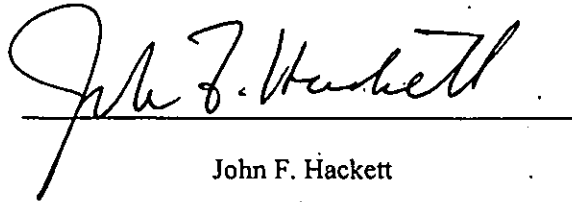
³ In that declaration, I stated that the "two PDFs contain[ed] scanned images of a subset of these documents, specifically, the documents that were sent or received on or after September 11, 2012, through the end of former Secretary Clinton's tenure on January 31, 2013." First Hackett Decl. ¶ 17.

⁴ Justin Fishel, "State Dept. Discovers New Benghazi Emails from Clinton's Private Account," ABC News (Sep. 25, 2015), available at <http://ait.had.bcnews.go.com/Politics/state-dept-discovers-benghazi-emails-clintons-privateaccount/story?id=34047897> (last accessed on Oct. 2, 2015).

⁵ The congressional request discussed in the news report was much broader than Plaintiff's FOIA request. The FOIA request does not seek all records related to the Benghazi attacks, but only those related to talking points about the attack. In contrast, the Congressional request was much broader, including, amongst other requests, any and all documents related to the attacks and two years' of email from ten current and former employees related to Libya.

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

Executed this 14th day of October 2015, Washington, D.C.


John F. Hackett



United States Department of State

Washington, D.C. 20520

RELEASE IN FULL

April 26, 2016

Case No. F-2014-08848

Ms. Kate Bailey
Judicial Watch
425 Third St. SW, Suite 800
Washington, DC 20024

Dear Ms. Bailey:

I refer to our letter dated April 18, 2016, regarding the release of certain Department of State records under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552. The April 18, 2016 letter contained an administrative error, stating that "the Department had determined that one document that had previously been withheld in full in our letter dated November 12, 2014 may be released in part." That letter should have read that "the Department had determined that one document that had previously been withheld in full may be released in part." Paragraphs 20, 21 and 30 of the Declaration of John H. Hackett (ECF No. 19-2), attached to State's motion for summary judgment, explain how the Department came into possession of this document in June 2015 and determined that it was responsive to your FOIA request.

We have completed the processing of your request. If you have any questions, your attorney may contact senior counsel Robert Prince at (202) 305-3654 or Robert.Prince@USDOJ.gov. Please refer to the case number shown above and the civil action number 1:14-cv-1242 in all correspondence about this case.

Sincerely,

Susan A. Weimer for

Eric F. Stein, Acting Co-Director
Office of Information Programs and Services



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Office of Information Programs/Services
A/GIS/IPS/RL
U. S. Department of State
Washington, D. C. 20522-8100

RELEASE IN FULL

20522-8100





United States Department of State

Washington, D.C. 20520

RELEASE IN FULL

MAY 28 2014

Dear Requester,

RE: Records from the Office of the Secretary of State regarding any updates and/or talking points given to Ambassador Rice by the White House or any federal agency regarding the September 11 2012 attack on the U.S. consulate in Benghazi, Libya

This is in response to your request dated 5/13/2014. We have assigned Case Control Number F-2014-08848 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

Unusual circumstances (including the number and location of Department components involved in responding to your request, the volume of requested records, etc.) may arise that would require additional time to process your request.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you have any questions, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch
Office of Information Programs and Services

A handwritten signature in dark ink, appearing to be "RKH", is written over the typed name of the Requester Communications Branch.

Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, DC 20522-8100
Website: www.foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
E-mail: FOIAStatus@state.gov

Fee Waiver Decision Form

Case No. F-2014-08848

Requester: Kate Bailey

Recommendation:

RELEASE IN FULL

Is a fee waiver warranted?

Yes X

No _____

RC/IP Officer: RLH (initials)

Date: MAY 28 2014

Concurrence Regarding Fee Waiver Recommendation:

RC Clearer: RLH Agree / Disagree _____ Date MAY 28 2014

RC Branch Chief (denials only): _____ Agree _____ Disagree _____ Date _____

Fee Waiver Appeals

RC Branch Chief

RL Division Chief

Approval: _____

Approval: _____

Denial: _____

Denial: _____

Date: _____

Date: _____



United States Department of State

Washington, D.C. 20520

June 5, 2017

Case No.: F-2016-17249
Segments: IPS-0010
IPS-0010IC2

Ms. Ramona R. Cotca
Judicial Watch, Inc.
425 Third Street S.W.,
Suite 800
Washington, D.C. 20024

Dear Ms. Cotca:

I refer to our letter dated May 5, 2017, seeking the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552. The Department has reviewed 37 documents responsive to your request and determined that 4 may be released in full and 33 must be withheld in full. All released material is enclosed. The review of potentially responsive documents for your request remains ongoing.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made excisions, the applicable exemptions are marked on each document. All non-exempt material that is reasonably segregable from the exempt material has been released. The Department withheld the 33 documents in full under FOIA Exemptions 5 and 6, 5 U.S.C. §§ 552(b)(5) and (b)(6).

If you have any questions, you may contact Department of Justice Senior Counsel Robert Prince at Robert.Prince@usdoj.gov or (202) 305-2654. Please refer to the case number, F-2016-17249, and the civil action number, 1:17-cv-000205, in all correspondence about this case.

Sincerely,

Eric F. Stein, Director
Office of Information Programs and Services

Enclosure: As stated

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

- (b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:
- 1.4(a) Military plans, systems, or operations
 - 1.4(b) Foreign government information
 - 1.4(c) Intelligence activities, sources or methods, or cryptology
 - 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
 - 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
 - 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
 - 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
 - 1.4(h) Weapons of mass destruction
- (b)(2) Related solely to the internal personnel rules and practices of an agency
- (b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:
- | | |
|----------------|---|
| ARMSEXP | Arms Export Control Act, 50a USC 2411(c) |
| CIA PERS/ORG | Central Intelligence Agency Act of 1949, 50 USC 403(g) |
| EXPORT CONTROL | Export Administration Act of 1979, 50 USC App. Sec. 2411(c) |
| FS ACT | Foreign Service Act of 1980, 22 USC 4004 |
| INA | Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f) |
| IRAN | Iran Claims Settlement Act, Public Law 99-99, Sec. 505 |
- (b)(4) Trade secrets and confidential commercial or financial information
- (b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product
- (b)(6) Personal privacy information
- (b)(7) Law enforcement information whose disclosure would:
- (A) interfere with enforcement proceedings
 - (B) deprive a person of a fair trial
 - (C) constitute an unwarranted invasion of personal privacy
 - (D) disclose confidential sources
 - (E) disclose investigation techniques
 - (F) endanger life or physical safety of an individual
- (b)(8) Prepared by or for a government agency regulating or supervising financial institutions
- (b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

- NR Material not responsive to a FOIA request excised with the agreement of the requester

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RELEASE IN FULL

JUDICIAL WATCH

Plaintiff,

v.

U.S. Department of State,

Defendant.

§
§
§
§
§
§
§
§

No. 1:14-cv-01242-RCL

**DECLARATION OF JOHN F. HACKETT
REGARDING EXEMPTIONS TAKEN IN RESPONSIVE DOCUMENTS**

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services ("IPS") of the United States Department of State (the "Department"). In this capacity, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other applicable records access provisions. I have been employed by the Department in this capacity since June 2015. Prior to assuming this role, I served as the Acting Director of IPS since April 2014 and Deputy Director since April 2013. As the IPS Director, I am authorized to classify and declassify national security information. I make the following statements based upon my personal knowledge, which in turn is based on a personal review of the records in the case file established for processing the subject request and upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject request, and I am in charge of coordinating the agency's search and recovery efforts with respect to that request.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the FOIA, the Privacy Act, and the mandatory declassification review requirements of the Executive Order governing classified national security information), by members of Congress, by other government agencies, and those made pursuant to judicial process such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. This declaration explains the Department's search for records responsive to the FOIA request at issue in this litigation.

**I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S
REQUEST AND THE SEARCH FOR RESPONSIVE DOCUMENTS**

4. By letter dated May 13, 2014, Judicial Watch ("Plaintiff") submitted a FOIA request to the Department requesting that "the Office of the Secretary produce the following within twenty (20) business days:

1) Copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11 2012 attack on the U.S. consulate in Benghazi, Libya.

2) Any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency.

See Ex. A (Plaintiff's FOIA request, F-2014-08848).¹

5. In correspondence with counsel for the Department, Plaintiff further clarified that its request does not seek all records relating to the attacks of September 11, 2012 in Benghazi, but rather only "talking points and updates to those talking points, not general intelligence updates about the Benghazi attacks (unless those updates were sent in furtherance of developing or updating talking points)." See Ex. B (Email from Ramona Cotca, Sep. 4, 2014) (confirming scope of request).

6. When the Department receives a FOIA request, IPS evaluates the request to determine which offices, overseas posts, or other records systems within the Department may reasonably be expected to contain the records requested. This determination is based on the description of the records requested and requires a familiarity with the holdings of the Department's records systems, applicable records disposition schedules, and the substantive and functional mandates of numerous Department offices and Foreign Service posts and missions. Factors such as the nature, scope, and complexity of the request itself are also relevant.

7. Each office within the Department, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission. These files consist generally of working copies of documents, information copies of documents maintained in the Central Foreign Policy

¹ This request was identically worded to a request previously made by the Plaintiff and directed toward the United States Mission to the United Nations ("USUN/W"). This previous request was the subject of related litigation, 1:13-cv-00951, which the parties settled after the Department produced 98 documents totaling 1,439 pages responsive to that request. See Ex. C at 1 (*Judicial Watch v. State*, (D.D.C. 13-951), FOIA Request Letter (Dkt No. 8-1)).

Records collection, and other documents prepared by or furnished to the office in connection with the performance of its official duties, as well as electronic copies of documents and e-mail messages.

8. Plaintiff's request specified that it sought records only from the Office of the Secretary. Therefore, the Department tasked only the Executive Secretariat to search for agency records responsive to Plaintiff's avowed construction of its request that were generated between September 11, 2012, and September 23, 2014, the day that the search was conducted.²

The Executive Secretariat ("S/ES")

9. The Office of the Executive Secretariat Staff ("S/ES-S") is responsible for coordination of the work of the Department internally, serving as the liaison between the Department's bureaus and the offices of the Secretary, the Deputy Secretary, and the Under Secretaries. It is responsible for coordinating search responses for the Office of the Secretary of State ("S"), the Office of the Deputy Secretary of State ("D"), the Office of Policy Planning ("S/P"), the Office of the Under Secretary for Political Affairs ("P"), and the Counselor of the Department ("C").

10. On September 9, 2014, a Management Analyst who was knowledgeable of both the request and S/ES-S records systems conducted a search of S/ES-S electronic records systems reasonably likely to contain responsive records. These systems include the Secretariat Tracking

² The immediate Office of the Secretary is comprised of the Secretary's Chief of Staff, the Counselor of the Department, Deputy Chief of Staff, the Secretary's secretary, the Executive Assistant, special assistants, the Secretary's scheduler, staff assistant, and personal assistants. This staff handles all of the day-to-day matters of the Secretary, including meetings at the Department, functions in Washington and throughout the country, and travel around the world.

and Retrieval System ("STARS"),³ the Secretariat Telegram Processing System ("STePS"),⁴ the Cable Archiving Retrieval System ("CARS"),⁵ and the Top Secret files ("TS"). These systems' search capabilities are wildcard-based, meaning that common variations of the keywords being searched would be retrieved (e.g., a search for "directive" would produce "directive's").

11. On September 23, in furtherance of this process, S/ES-S also searched the state.gov email accounts of three individuals—Cheryl Mills (Counselor and Chief of Staff to former Secretary Clinton), Jacob Sullivan (Deputy Chief of Staff for Policy to former Secretary Clinton), and Huma Abedin (Deputy Chief of Staff for Operations to former Secretary Clinton)—within the Office of the Secretary. These individuals were selected by members of the Office of the Secretary based on their understanding of which staff members within the Office of the Secretary during former Secretary Clinton's tenure worked on issues related to the Benghazi attacks and whose records may therefore reasonably be expected to contain responsive records.

12. For both the databases and the email records, S/ES used the search terms "Ambassador" or "Rice" or "USUN/W" or "September 11, 2012" or "attack" or "Benghazi" or "Libya" or "talking points" or "TPs" or "updates."

³ STARS is an automated system used to track, control, and record documents containing substantive foreign policy information passing to, from, and through the offices of the Secretary of State, the Deputy Secretary of State, and other Department principal officers. Original documents are indexed, scanned, and stored as images in STARS. Information in STARS covers the period 1988 to the present.

⁴ STePS is designed to distribute cables among the Department's principals.

⁵ CARS is designed to provide access to a contemporary portion of the Department's telegram archive deemed to be of general interest.

13. During searches of the email records, as well as the STePs and CARS databases, the search terms were applied to each document, as well as attachments that contain searchable text. During the search of STARS, the search terms were applied to a descriptive abstract attached to each document. Each STARS abstract was created by a Technical Information Specialist when the document was added to the database; this abstract is designed to capture the subject matter of the related document. For documents from the time period relevant to the FOIA request, the abstracts are the only portions of the STARS database whose text may be searched. Similarly, during the TS search, the search terms were applied to an index of TS files. Each TS index entry, along with key words and a topic description, was added by a Management Analyst into the index. This index, rather than the full text of the TS files themselves, can be searched.

14. The use of "or" between the search terms indicates that this was a disjunctive search; the terms listed would have retrieved any documents that contain (for email, STePS, CARS records), or whose abstracts or indexes contain (for STARS and TS records), the word "Ambassador," for example, even if the document, abstract, or index contained none of the other search terms. These searches were completed on September 23, 2014, and returned a number of records, which were then reviewed for responsiveness.

15. In addition, to guard against the possibility that a particular document was overlooked, the Management Analyst also reviewed each of the documents that were produced to Plaintiff from USUN/W, rather than the Office of the Secretary, in the related litigation described in footnote 1 above. The Management Analyst examined each sender or recipient of each

document produced in that litigation; documents with a recipient or sender who was in the Office of the Secretary at the time the email was sent were treated as responsive.

16. As a result of the searches of email records, database records, and records produced in the prior related litigation as described in this paragraph, the Management Analyst found four documents responsive to Plaintiff's FOIA request, all of which had been previously produced to Plaintiff in the related litigation described in footnote 1. By letter dated November 11, 2014, the Department released one document in full and three documents in part. *See* Ex. D (Letter of Nov. 12, 2014).

17. After the searches in this case had been completed and the four responsive documents delivered to the Plaintiff, the Department received approximately 55,000 pages of hard copy emails and attachments to emails, arranged in chronological order, from former Secretary Clinton.⁶ These records were provided by her in response to an earlier request from the Department of State that, if former Secretaries or their representatives were "aware or [were to] become aware in the future of a federal record, such as an email sent or received on a personal email account while serving as Secretary of State, that a copy of this record be made available to the Department." *See* Ex. E (Text of Letter to Former Secretaries of State Concerning the Federal Records Act of 1950). The Deputy Director of S/ES-S applied the same search terms described above, *see* ¶ 12, to two PDFs containing scanned images of a subset of these documents, specifically, the documents that were sent or received on or after September

⁶ Former Secretary Clinton did not use a state.gov email account.

11, 2012, through the end of former Secretary Clinton's tenure on January 31, 2013. For each PDF, the Deputy Director entered a search term individually into the Find command in Adobe Reader and navigated to each occurrence of the search term in the PDF. The Deputy Director reviewed for responsiveness each individual document that contained an occurrence of the search term. This process was repeated for each search term listed above in Paragraph 12. No responsive records were found.

18. Earlier this year, the Department sent letters to Ms. Mills, Mr. Sullivan, and Ms. Abedin, whose state.gov accounts were searched in response to this FOIA request. In those letters, the Department asked those individuals to make available to the Department any federal records that they may have in their possession, such as emails concerning official government business sent or received on a personal email account while serving in their official capacities with the Department, if there is any reason to believe that those records may not otherwise be preserved in the Department's recordkeeping system.

19. All three individuals have responded to those letters, through counsel, to inform the Department that they have begun the process of searching for and providing the Department documents in their possession that may potentially be federal records. That process is ongoing.

20. On June 26, 2015, counsel for Ms. Mills and counsel for Mr. Sullivan provided the Department with a number of documents in response to the letters. An attorney in the Department's Office of the Legal Adviser has reviewed these newly received documents and discovered one responsive document among those that had been provided by Mr. Sullivan, a two-message email chain that mentioned the talking points in the course of a larger discussion,

which it has determined must be withheld in full pursuant to FOIA Exemption 5. See ¶¶ 25-27, *infra*.

21. The earlier message in that email chain is a forward of an email that was sent to, among other people, former Secretary Clinton. A Department attorney has determined that it was among the 55,000 pages provided to the Department by former Secretary Clinton. This earlier message had been reviewed by Staff in the Office of the Secretary during the process described above in Paragraph 17 but deemed unresponsive because the references to “talking points” contained therein appeared to be about a separate set of talking points being developed within the Office of the Secretary for future use. It was not clear from the face of the earlier message that one of the references to “talking points” was to those that had been given to Ambassador Rice. A Department attorney has determined that the copy of the earlier message included in the document received from Mr. Sullivan is identical to the copy received from former Secretary Clinton. However, the later message in the email chain, which was not sent to former Secretary Clinton, made it clear that one portion of the earlier message had, indeed, been discussing the talking points given to Ambassador Rice.

II. EXEMPTIONS CLAIMED

FOIA Exemption 5—Deliberative Process Privilege

22. 5 U.S.C. § 552(b)(5) states that the FOIA does not apply to:

inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency....

23. Exemption 5, 5 U.S.C. § 552(b)(5), protects from disclosure information that is normally privileged in the civil discovery context, including information that is protected by the

deliberative process. The deliberative process privilege protects the confidentiality of candid views and advice of U.S. Government officials in their pre-decisional deliberations related to policy formulation and administrative direction.

24. For example, certain information withheld in this case reflects drafts of materials being prepared for senior Department officials, together with suggested revisions being offered by Department employees. Disclosure of material containing such deliberations or material on which such deliberations are based could reasonably be expected to chill the open and frank exchange of ideas and recommendations in which Department officials are involved. It would severely hamper the ability of responsible Department officials to formulate and carry out executive branch programs. Information in one document in this case, as detailed below, has been withheld on the basis of this exemption.⁷ Disclosure of this information, which is pre-decisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussion and the expression of recommendations and judgments regarding current problems and preferred courses of action by Department personnel with respect to materials being prepared for senior Department officials. The withheld information is, accordingly, exempt from release under Exemption 5, 5 U.S.C. § 552(b)(5) pursuant to the deliberative process privilege.

FOIA Exemption 6—Personal Privacy

25. 5 U.S.C. § 552 (b)(6) states that the FOIA does not apply to

⁷ Four documents were withheld in part pursuant to various FOIA exemptions. Counsel for Plaintiff has confirmed via email that Plaintiff is not challenging any of the redactions in the documents produced to it. Ex. F (Email from Ramona Cotca, June 15, 2015).

personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy..."

26. Courts have interpreted the language of Exemption 6 broadly to encompass all personal information that applies to an individual, without regard to whether it was located in a particular type of file. The Department withheld only the domain names in the personal email addresses of Jacob Sullivan, Cheryl Mills and Philippe Reines under Exemption 6.

27. Inasmuch as the information withheld is personal to an individual, there is clearly a privacy interest involved. I am required, therefore, to determine whether there exists any public interest in disclosure and to weight any such interest against the extent of the invasion of privacy.

28. In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), the Supreme Court laid down two rules for determining public interest in disclosure of information involving a privacy interest: (1) whether disclosure would serve the "core purpose" for which Congress enacted the FOIA, i.e., to show "what the government is up to," and (2) that public interest means the interest of the public in general, not particular interests of the person or group seeking the information. Accordingly, the identity of the requester as well as the purpose for which the information is sought is irrelevant in making the disclosure determination.

29. As for all of the information withheld pursuant to Exemption 6, I have concluded that (1) disclosure of the information withheld would result in a clearly unwarranted invasion of personal privacy; and (2) disclosure of the information would not serve the "core purpose" of the FOIA, i.e., it would not disclose information about "what the government is up to."

Accordingly, I have determined that the privacy interests clearly outweigh any public interest in disclosure of the withheld information.

Document Description

30. Document C05831334 which is discussed above, *see* ¶¶ 20-21, is a three-page intra-agency email exchange consisting of two messages. The earlier message is from Jacob Sullivan to former Secretary Clinton and Cheryl Mills (who is listed on the "Cc" address line) and has the subject "Key Points." It was sent on September 29, 2012 at 11:09 AM. The later message is from Cheryl Mills to Jake Sullivan and Philippe Reines (Deputy Assistant Secretary of State for Strategic Communications and Senior Communications Advisor to Secretary Clinton) and has the subject "Fwd: REVISED Key Points." It was sent on September 29, 2012 at 1:18 PM. The bodies of the messages consist of drafts, composed by advisors to former Secretary Clinton, of a proposed future communication from the former Secretary to a member of the U.S. Senate concerning various issues related to the attacks of September 11, 2012 in Benghazi. A portion of each draft consisted of a summary of the talking points that had been sent to Ambassador Rice (although, as explained above, *see* ¶¶ 20-21, the Department did not realize that the earlier message included a reference to those talking points until the Department received and reviewed the second message in the email chain). The Department has withheld the email chain in full under FOIA Exemption 5 pursuant to the deliberative process privilege and the domain names associated with the private email addresses of Ms. Mills, Mr. Sullivan, and Mr. Reines under Exemption 6.

31. As non-final drafts, the bodies of these messages consist in their entirety of information that is pre-decisional and deliberative in nature. Release of this material could reasonably be expected to chill the frank deliberations that occur when senior staff are preparing points or other draft remarks for use by senior Department officials in addressing a matter of public controversy. The material is therefore exempt under FOIA Exemption 5, 5 U.S.C. § 552(b)(5) pursuant to the deliberative process privilege.

32. Inasmuch as the information withheld under Exemption 6 in the email chain identifies a specific individual, a personal privacy interest exists in the information. Therefore, I am now required to determine whether there exists any public interest in disclosure and, if a public interest is implicated, to weigh any such interest against the privacy interest to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy.

33. Any individual, including a U.S. Government employee, has a privacy interest in his or her personal email address because the release of this information could result in harassment or unwanted attention. Moreover, the release of the domain name of a personal email address would not shed light on government operations. The domain names of the personal email addresses in the email chain are therefore exempt under FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

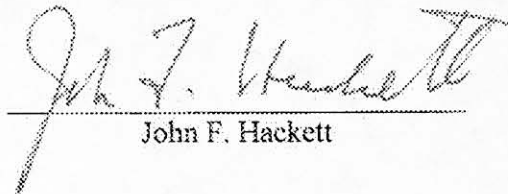
34. The Department conducted a line-by-line review of the email chain and determined that there was no reasonably segregable, non-exempt material that could be released, other than the information disclosed in the preceding two paragraphs.

CONCLUSION

35. In summary, the Department conducted a thorough search of all Department records systems within the Office of the Secretary that were reasonably likely to maintain records responsive to Plaintiff's FOIA request and located five responsive documents, one of which it released in full, three of which it released in part, and one of which it withheld in full.

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

Executed this 7th day of July 2015, Washington, D.C.


John F. Hackett

From: Hackett, John </O=SBUSTATE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=HACKETT, JOHN35D>
Sent: Tuesday, July 7, 2015 12:57 PM
To: Finnegan, Karen M <FinneganKM@state.gov>
Subject: RE: JW (Talking Points)

Please stop by at 1:05pm I am eating. John

RELEASE IN FULL

From: Finnegan, Karen M
Sent: Tuesday, July 07, 2015 12:51 PM
To: Hackett, John
Subject: JW (Talking Points)

John: Let me know if you'd like a readout on my meeting relating to this case. Karen

Karen M. Finnegan
Chief, Programs and Policies Division
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS
Washington, D.C.
(202) 663-2946 (direct)

SBU
This email is UNCLASSIFIED.

From: Hackett, John </O=SBUSTATE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=HACKETT, JOHN35D>
Sent: Monday, January 12, 2015 2:45 PM
To: Weetman, Susan C <WeetmanSC@state.gov>
Subject: RE: Request Letters for JW TPs and Notes

Thanks. John

This email is UNCLASSIFIED.

RELEASE IN FULL

From: Weetman, Susan C
Sent: Monday, January 12, 2015 2:34 PM
To: Hackett, John
Subject: Request Letters for JW TPs and Notes

John,

The request letters for JW Talking Points and Notes cases are attached. Please let me know if you need anything more.

Susan

*Susan C. Weetman
Chief, Litigation and Appeals Branch
Programs and Policies Division
Office of Information Programs and Services
U.S. Department of State
A/GIS/IPS/PP/LA
202-261-8420
weetmansc@state.gov*

This email is UNCLASSIFIED.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RELEASE IN FULL

JUDICIAL WATCH, INC.

Plaintiff,

v.

Civil Action No. 14-cv-1242 (RCL)

U.S. DEPARTMENT OF STATE,

Defendant.

SECOND DECLARATION OF JOHN F. HACKETT

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services ("IPS") of the United States Department of State (the "Department"). In this capacity, I oversee the office of the Department responsible for responding to requests for records under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other applicable records access provisions. I have been employed by the Department in this capacity since June 2015. Prior to assuming this role, I served as the Acting Director of IPS since March 2014, and previous to that, I served as the Deputy Director of IPS since April 2013. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject FOIA request, and I am in charge of coordinating the agency's search and processing efforts with respect to those requests.

2. The purpose of this declaration is to address two issues raised for the first time in Plaintiff's reply in support of its motion for discovery pursuant to Rule 56(d) ("Plaintiff's Reply") (ECF No. 30): (1) an email purporting to list gaps in the email collection received from

former Secretary of State Hillary Clinton (the Clinton emails) and (2) media reports of so-called “new” emails from former Secretary Clinton’s clintonemail.com account related to the attacks on September 11, 2012 in Benghazi, Libya. I make these statements based on knowledge provided to me in the course of my official duties.

Alleged Gaps in Emails Provided by Former Secretary Clinton

3. Plaintiff’s Reply includes an email Plaintiff obtained from the Department via a separate FOIA request. (ECF No. 31-1). This email contains, among other things, the following text:

Gaps: ...

...
Dec. 30, 2012 – Feb. 1, 2013 (Sent Messages)¹

Id. at 3. This email was created by Eric Stein, Deputy to the Deputy Assistant Secretary of Global Information Services, on April 15, 2015. The list of gaps was a preliminary assessment based on an examination of paper copies of the Clinton emails. Once the Clinton emails were scanned into the Department’s FOIA system and metadata for each document was entered (including the date the email was sent or received), it became apparent that this preliminary assessment was incorrect. The Clinton emails contain numerous sent messages—at least 243—from December 30, 2012 through January 31, 2013.² Those sent messages were included in the two PDFs containing scanned images of a subset of the Clinton emails that were searched for

¹ The email discusses two other time periods, both of which ended on or before April 12, 2009, and thus are not relevant to Plaintiff’s FOIA request, which seeks records related to talking points about the attacks on September 11, 2012 in Benghazi, Libya.

² Former Secretary Clinton’s last day in office was February 1, 2013. Her successor, John Kerry, was sworn in the same day.

records responsive to the FOIA request at issue in this case, as described in my previous declaration attached to the Department's Motion for Summary Judgment (ECF No. 19-2).³

Media Reports of So-called "New" Clinton Emails Related to the Benghazi Attacks

4. Plaintiff's Reply also links to a news story reporting that the Department recently found "a handful of new emails"⁴ relating to the September 11, 2012 attacks in Benghazi that had not previously been disclosed to Congress. The Bureau of Legislative Affairs provided 925 documents to the Select Committee on Benghazi on September 25, 2015. Among these documents were emails to or from former Secretary Clinton. I have been informed that all such emails produced to the Select Committee on Benghazi on September 25 are contained in the approximately 55,000 pages of emails former Secretary Clinton provided to the Department in December 2014. Those emails provided to the Committee on September 25 that were dated between September 11, 2012 and January 31, 2013 were all included in the two PDFs containing scanned images of a subset of the Clinton emails that were searched for records responsive to the FOIA request at issue in this case, as described in my previous declaration attached. *See* n. 3, *supra*. None of the emails were deemed responsive to the FOIA request.⁵

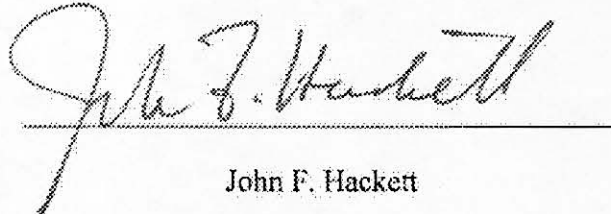
³ In that declaration, I stated that the "two PDFs contain[ed] scanned images of a subset of these documents, specifically, the documents that were sent or received on or after September 11, 2012, through the end of former Secretary Clinton's tenure on January 31, 2013." First Hackett Decl. ¶ 17.

⁴ Justin Fishel, "State Dept. Discovers New Benghazi Emails from Clinton's Private Account," ABC News (Sep. 25, 2015), available at <http://ait.had.bcnnews.go.com/Politics/state-dept-discovers-benghazi-emails-clintons-privateaccount/story?id=34047897> (last accessed on Oct. 2, 2015).

⁵ The congressional request discussed in the news report was much broader than Plaintiff's FOIA request. The FOIA request does not seek all records related to the Benghazi attacks, but only those related to talking points about the attack. In contrast, the Congressional request was much broader, including, amongst other requests, any and all documents related to the attacks and two years' of email from ten current and former employees related to Libya.

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

Executed this 14th day of October 2015, Washington, D.C.

A handwritten signature in dark ink, appearing to read "John F. Hackett", is written over a horizontal line.

John F. Hackett

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

- (b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:
- 1.4(a) Military plans, systems, or operations
 - 1.4(b) Foreign government information
 - 1.4(c) Intelligence activities, sources or methods, or cryptology
 - 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
 - 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
 - 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
 - 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
 - 1.4(h) Weapons of mass destruction
- (b)(2) Related solely to the internal personnel rules and practices of an agency
- (b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:
- | | |
|----------------|---|
| ARMSEXP | Arms Export Control Act, 50a USC 2411(c) |
| CIA PERS/ORG | Central Intelligence Agency Act of 1949, 50 USC 403(g) |
| EXPORT CONTROL | Export Administration Act of 1979, 50 USC App. Sec. 2411(c) |
| FS ACT | Foreign Service Act of 1980, 22 USC 4004 |
| INA | Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f) |
| IRAN | Iran Claims Settlement Act, Public Law 99-99, Sec. 505 |
- (b)(4) Trade secrets and confidential commercial or financial information
- (b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product
- (b)(6) Personal privacy information
- (b)(7) Law enforcement information whose disclosure would:
- (A) interfere with enforcement proceedings
 - (B) deprive a person of a fair trial
 - (C) constitute an unwarranted invasion of personal privacy
 - (D) disclose confidential sources
 - (E) disclose investigation techniques
 - (F) endanger life or physical safety of an individual
- (b)(8) Prepared by or for a government agency regulating or supervising financial institutions
- (b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

- NR Material not responsive to a FOIA request excised with the agreement of the requester