

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

AMERICAN CENTER FOR LAW AND JUSTICE,	)	
	)	
Plaintiff,	)	Case No. 16-cv-2188-RJL
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF JUSTICE,	)	
	)	
	)	
950 Pennsylvania Avenue, N.W.,	)	
Washington, DC 20530-0001	)	
	)	
Defendant.	)	

**REPLY IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT  
AND OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rules of Civil Procedure 7(b) and (d), Defendant United States Department of Justice (“Defendant” or “Department”), submits this reply in further support of its Motion for Summary Judgment (ECF No. 21) (“Motion”) and opposition to Plaintiff’s the cross-motion for summary judgment submitted by Plaintiff American Center for Law and Justice (“Plaintiff”) (ECF No. 23).

Plaintiff makes five contentions in its Cross-Motion for Summary Judgment and Memorandum in Opposition to Defendant’s Motion for Summary (“Cross-Motion”). None refutes the grounds for summary judgment set forth in the Motion.

**I. Defendant's Declarations and the Redacted Documents Produced to Plaintiff are Sufficient to Meet Defendant's Burden on its Motion for Summary Judgment.**

Plaintiff first contends that the Declaration of Vanessa R. Brinkmann submitted with Defendants' Motion (ECF No. 21-1) ("First Brinkmann Declaration") is insufficient to meet Defendant's burden.<sup>1</sup> Plaintiff makes two arguments under this contention, but neither has merit.

Plaintiff initially argues that, absent an index, no declaration can meet the movant's burden. Cross-Mot. at 4-5. That is simply untrue. "Submission of a *Vaughn* index is not mandatory. In cases where a sworn declaration is sufficient to identify the applicability of an exemption . . . that protects an entire category of withheld information, there is no need for additional clarification. Rather, an agency's submissions suffice 'so long as they give the reviewing court a reasonable basis to evaluate the claim of privilege.'" *Williams & Connolly LLP v. Office of the Comptroller of the Currency*, 39 F. Supp. 3d 82, 94 (D.D.C. 2014) (internal citations omitted); *see also Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 146 (D.C. Cir. 2006); *Pub. Inv'rs Arbitration Bar Ass'n v. SEC*, 930 F. Supp. 2d 55, 71 (D.D.C. 2013); *Harrison v. Fed. Bureau of Prisons*, 611 F. Supp. 2d 54, 68 (D.D.C. 2009).

Plaintiff then argues that the First Brinkmann Declaration specifically is insufficient to allow meaningful review. Cross-Mot. at 5-6. Plaintiff admits that the Declaration identifies "all documents to which Plaintiff maintains a specific challenge to the assertion to the deliberative process privilege," but argues that it is insufficient because it does not describe each document separately or separately explain the application of the deliberative process privilege to each

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<sup>1</sup> Although Plaintiff does not explicitly limit its arguments to the purported deficiencies in the Brinkmann Declaration, Plaintiff does not mention—much less identify any purported inadequacies in—the Hardy Declaration. *See* Opp. at 5-6. Plaintiff has therefore conceded that the Hardy Declaration provides the court with a reasonable basis to evaluate Defendant's assertion of FOIA Exemption 6 as to the information withheld in the document addressed in that declaration. *See Hopkins v. Women's Div., Bd. of Glob. Ministries*, 238 F. Supp. 2d 174, 178 (D.D.C. 2002).

document.<sup>2</sup> Cross-Mot. at 5-6. This argument elevates form over substance and is unsupported by the relevant law. It is not always necessary to describe every document or separately explain the basis of Defendant's assertion of a privilege. The First Brinkmann Declaration identified three interrelated categories of information over which it asserted the deliberative process privilege. *See* 1<sup>st</sup> Brinkmann Decl. ¶ 11. This is entirely consistent with the D.C. Circuit's statement that it does not "require[] repetitive, detailed explanations for each piece of withheld information" because "categories may be sufficiently particularized to carry the agency's burden of proof." *Judicial Watch, Inc. v. FDA*, 449 F.3d 141 (D.C. Cir. 2006).

Moreover, the "redacted pages that were produced to [P]laintiff, [along with the First Brinkmann Declaration,] provide a sufficient basis for the Court to ascertain whether the redactions were legally appropriate and therefore qualify as a sufficient *Vaughn* index." *Taylor v. DOJ*, 257 F. Supp. 2d 101, 106-107 (D.D.C. 2003) (collecting cases). Examining "the un-redacted responsive material provides sufficient context to serve as a basis for review." *Physicians for Human Rights v. U.S. Dep't of Defense*, 675 F. Supp. 2d 149, 172 (D.D.C. 2009); *see also Schoenman v. FBI*, 763 F. Supp. 2d 173, 188 n.7 (D.D.C. 2011). Plaintiff put these documents into the record by attaching them as an exhibit to its Cross-Motion.<sup>3</sup> The unredacted portions of each challenged document (all of which are e-mails) shows precisely the type of

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<sup>2</sup> Plaintiff also states that the Brinkmann Declaration "fails to identify each document," but that is clearly not accurate given Plaintiff's own admission earlier in the same sentence the declaration "identifie[s] in a footnote all documents" as to which Plaintiff challenges Defendant's assertion of a privilege. Opp. at 5; *see also* 1<sup>st</sup> Brinkmann Decl. ¶ 9 n. 3. To the extent this statement refers to the documents subject to Plaintiff's "general" segregability challenge but which Plaintiff does not challenge specifically, that issue is addressed in the section of this brief on segregability, § III, *infra*.

<sup>3</sup> Plaintiff's Exhibit A to its Cross-Motion is comprised of documents produced in response to the FOIA request at issue in this case, but the documents themselves appear to have a different source or to have been somehow modified. Notably, many pages of the exhibit lack the document identification numbers printed on the versions Defendant produced to Plaintiff. To ensure the accuracy of the documents at issue, Defendant attaches all of the documents over which Defendant asserted the deliberative process privilege that Plaintiff has challenged in this case in the order they were produced and in the form in which they were produced. Opp.-Reply Ex. A.

information that would be included in a *Vaughn*: subject, creator/sender, recipient(s), and date of creation. *See generally* Cross-Mot. Ex. A.

Finally, contrary to Plaintiff's claim that Defendant "fail[ed] to identify or distinguish early drafts of press statements and talking points from final versions," the documents themselves make precisely this distinction. *See e.g., id.* at 1 (referring to the talking points as the "final version"); *id.* at 19 (attaching a documents titled "Top Line TPs (Final).docx"); *id.* at 31, 40, 48, (seeking further edits on "DRAFT: Statement/Talking Points"). In conjunction with the First Brinkmann Declaration, the documents themselves provide all the information Plaintiff claims is missing and more than enough for the Court to assess the propriety of Defendant's assertion of the deliberative process privilege. Even were that not the case, the Second Brinkmann Declaration provides this information for every document Defendant produced as to which it asserted the deliberative process privilege, even if Plaintiff did not challenge the privilege assertion. 2d Brinkmann Decl. ¶ 31.

Ultimately, Plaintiff fails to identify any information necessary to support Defendant's deliberative process privilege assertions that the Court does not already have before it.

## **II. Talking Points and Press Guidance are Protected from Disclosure by the Deliberative Process Privilege.**

Plaintiff next contends that final drafts of internal talking points are not subject to the deliberative process privilege.<sup>4</sup> Cross-Mot. at 6-8. As explained in Defendant's Motion, it is

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<sup>4</sup> Under this point, Plaintiff also argues that Defendant fails to meet its burden as to non-final drafts of talking points because the Brinkmann Declaration does not identify which documents contained final and non-final drafts of the talking points. Opp. at 7. This is merely a repetition of the argument it made under the prior contention concerning the purported insufficiency of the Brinkmann Declaration, not an argument that draft talking points are somehow not protected by the deliberative process privilege. *See id.* at 6 (arguing that the First Brinkmann Declaration "fail[ed] to identify or distinguish early drafts of press statements and talking points from final versions"). Initially, as discussed above, whether a document contains a draft or final version of Defendants' talking points is readily discernable from the documents themselves and, now, from paragraph 31 of the Second Brinkmann Declaration.

well-established that intra-agency guidance on how to respond to media inquiries, including final versions of talking points, are deliberative and pre-decisional and therefore protected by the privilege. Mot. at 5-6; *see Freedom Watch, Inc. v. NSA*, 49 F. Supp. 3d 1, 8 (D.D.C. 2014); *Competitive Enter. Inst. v. EPA*, 12 F. Supp. 3d 100, 118 (D.D.C. 2014) (citing cases). Again, the relevant decision here is what agency officials will say publicly. *ACLU v. United States Dep't of Homeland Sec.*, 738 F. Supp. 2d 93, 112 (D.D.C. 2010). Thus, final, internal talking points are pre-decisional because they are created “when a public statement was anticipated” and deliberative “in that they reflect a discourse that occurred during the decision-making process concerning” what to say in that statement. *Id.*; *see also*; *see also Sierra Club v. U.S. Dep't of Interior*, 384 F. Supp. 2d 1, 19 (D.D.C. 2004).

Plaintiff does not respond to this analysis at all, nor does Plaintiff provide any analysis of its own as to why final drafts of internal talking points are not pre-decisional or deliberative. *See generally* Cross-Mot. at 6-8. Instead, Plaintiff describes (with imperfect accuracy) various documents produced by Defendant to support its position that the talking points redacted from certain documents were finalized.<sup>5</sup> *See* Cross-Mot. at 7-8. Defendant does not contest that final, internal drafts of the talking points were redacted. Rather, Defendant continues to contend that such information is protected by the deliberative process privilege. By failing to even attempt to

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More importantly, as set forth in this section, Defendant’s assertion of the deliberative process privilege over talking points is proper regardless of whether the version withheld is subject to further revision.

<sup>5</sup> Some examples of Plaintiffs’ inaccurate descriptions of the documents include: (1) the unsupported assertion that they included redactions to “final, agreed-upon press statements,” Opp. at 7; *but see* Opp. Ex. A (containing no redactions of statements released to the press); and (2) the claim that talking points were “circulated . . . to numerous government officials including some outside the DOJ,” Opp. at 7 (citing Opp. Ex. A at 26, 28, 35); *but see* Opp. Ex. A at 26, 28, 25 (including only officials of offices within the Department and of the Federal Bureau of Investigation, a component of the Department).

rebut that contention, Plaintiff has conceded it. *See Hopkins v. Women's Div., Bd. of Glob. Ministries*, 238 F. Supp. 2d 174, 178 (D.D.C. 2002).

### **III. Defendant has Met Its Burden to Show that it Produced All Reasonably Segregable Information.**

At the end of the section of its brief concerning the deliberative process privilege, Plaintiff makes a contention on an unrelated issue—whether Defendant produced reasonably segregable factual information contained within the talking points it redacted.<sup>6</sup> Cross-Mot. at 8-9. Plaintiff cites cases standing for the proposition that there can be reasonably segregable facts in talking points, but does not provide any reason to believe that there was such information in the talking points here. *See id.*

To meet its burden on segregability, the government must “show with ‘reasonable specificity’ why document[s] cannot be further segregated.” *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002). “To demonstrate that the withholding agency has disclosed all reasonably segregable material, the agency must supply ‘a detailed justification for [its] decision that non-exempt material is not segregable.’ The agency, however, is not required to provide so much detail that the exempt material effectively would be disclosed.” *James Madison Project v. CIA*, 607 F. Supp. 2d 109, 130 (D.D.C. 2009) (quoting *Mead Data Cent., Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1976)) (alteration in original). The justification can be comprised of an agency declaration and either a *Vaughn* index or “other facts . . . that would establish that it released all reasonably segregable, non-exempt material.” *Nat’l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 207 (D.D.C. 2013). In evaluating this

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<sup>6</sup> Notably, Plaintiff does not argue that Defendant improperly withheld non-exempt, segregable information from other parts of its production. *See generally* Opp. at 8-9. As such, Plaintiff has waived any such argument. *See Hopkins*, 238 F. Supp. 2d at 178.

information, the government is “entitled to a presumption that [it] complied with the obligation to disclose reasonably segregable material,” *Hodge v. FBI*, 703 F.3d 575, 582 (D.C. Cir. 2013) (quoting *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007)).

Here, Defendant met its burden to show that there were no reasonably segregable facts in the talking points through the agency’s declarations and the unredacted portions of the documents containing the talking points. “[N]ot all material is amenable to segregation” because otherwise “non-exempt information may be . . . ‘inextricably intertwined’ with exempt information.” *In Def. of Animals v. NIH*, 543 F. Supp. 2d 83, 107 (D.D.C. 2008) (quoting *Trans-Pacific Policing Agreement v. United States Customs Serv.*, 177 F.3d 1022, 1027 (D.C. Cir. 1999)). Talking points are, in large part, guidance concerning what facts to emphasize and deemphasize in communicating with the press. Revealing the facts emphasized and deemphasized would therefore reveal the guidance itself. In other words, “[t]he selection of facts and source material is itself a part of the deliberative process inherent to preparation of talking points and statements. 1st Brinkmann Decl. ¶ 17. Thus, after a “line-by-line review of the[] documents” containing the talking points, the Department’s Office of Information Policy concluded that talking points had to be withheld in full because “the nature of these records prevented segregation.” *Id.* ¶ 18; *see also* 2d Brinkmann Decl. ¶¶ 31, 32 (stating that the same methods used to segregate factual information in the documents discussed in the First Brinkmann Declaration were used to segregate factual information from all documents responsive to Plaintiff’s FOIA request).

This conclusion is supported by the information revealed in the unredacted portions of the documents containing the talking points. In another case assessing the segregability of non-exempt information in talking points, Judge Bates of this Court noted that “context, such as the

[document]'s author, recipient, [and] purpose or use, is [necessary] to assess the exemption claim.” *Citizens for Responsibility & Ethics v. U.S. Dep’t of Homeland Sec.*, 648 F. Supp. 2d 152, 161 (D.D.C. 2009). In conjunction with the First Brinkmann Declaration, the unredacted portions of the e-mails containing the talking points provided to Plaintiff provide all this context and more. For example, two sets of draft talking points are redacted from the first document in Plaintiff’s Cross-Motion Exhibit A. *See* Cross-Mot. Ex. A at 1-7. The “from,” “to,” and “Cc” lines of the e-mail show the authors and recipients of the talking points. *See id.* at 2, 5. Likewise, the “Sent” and “Subject” lines show the date and time of creation as well as the general subject matter. *See id.* at 2 (“DRAFT: Statement/Talking Points”). The purpose of the talking points generally is set out in the First Brinkmann Declaration: how “to respond[] to media and related inquiries concerning the June 27, 2016 meeting” between then-Attorney General Lynch and former President Bill Clinton. 1st Brinkmann Decl. ¶ 11. And, finally, the unredacted text of the e-mail gives further context as to the talking points’ use. *See, e.g.*, Cross-Mot. Ex. A at 2 (“I would like to close this out for the AG to use NOW.”).

In short, Defendant has provided all the information needed to support its declarant’s sworn statement that “all reasonably segregable, nonexempt information . . . has been disclosed to Plaintiff.” 1st Brinkmann Decl. ¶ 18; *see also* 2d Brinkmann Decl. ¶ 32.

#### **IV. The Deliberative Process Privilege Is Not a Qualified Privilege in the FOIA Cases.**

Having failed to show that Defendant improperly asserted the deliberative process privilege, Plaintiff contends that the deliberative process privilege is a qualified privilege that Plaintiff can overcome here with a sufficient showing of need. Cross-Mot. at 10-11. Plaintiff’s contention, however, is once again flatly contradicted by controlling case law. “While the deliberative process privilege is generally a qualified privilege in civil litigation against the



government, . . . the privilege is not qualified in the FOIA context.” *Judicial Watch, Inc. v. U.S. Dep’t of Treasury*, 796 F. Supp. 2d 13, 25–26 (D.D.C. 2011); *see also Davidson v. U.S. Dep’t of State*, 206 F. Supp. 3d 178, 198 (D.D.C. 2016). Thus, while Defendant strongly disputes Plaintiff’s innuendos suggesting that the Department withheld facts that were not made publicly available elsewhere or involved improprieties, Defendant need not address this point further.

#### **V. Defendant Conducted an Adequate Search for Responsive Documents.**

Plaintiff’s last contention is that Defendant failed to conduct an adequate search for documents in response to its FOIA request. Cross-Mot. at 11-12. Plaintiff admits that, a month after receiving the final production of documents in this case, it “had no reason to believe that a search – especially one conducted by the Justice Department – had been anything but thorough and adequate.” Cross-Mot. Southerland Decl. ¶ 4. Plaintiff raised the adequacy of the search for the first time (and without providing Defendant any advance notice) in its Cross-Motion, after a single e-mail concerning the July 27, 2016 meeting was produced by the Federal Bureau of Investigation (“FBI”) in a different FOIA matter that had not been produced by Defendant. *Id.* ¶¶ 5-7. Given that Defendant could not have known that the adequacy of its search would be at issue in this case, it did not address the matter in the declarations accompanying its Motion. *See* 1<sup>st</sup> Brinkmann Decl. ¶ 8. Defendant therefore submits the Second Declaration of Vanessa R. Brinkmann, which details the Department’s search for documents responsive to Plaintiff’s FOIA request, in conjunction with this filing.

As is evident from that declaration, the Department’s search was more than reasonable, despite the inadvertent failure to locate one responsive e-mail. An agency’s search is adequate if “it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Oglesby v. U.S. Dep’t of*

*Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.”

*Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011)

(quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Steinberg v. DOJ*, 23 F.3d 548, 551

(D.C. Cir. 1994) (quoting *Weisberg v. Dep’t. of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist)

were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009)

(quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require

that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982).

“Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will

suffice . . . .” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are

afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s

search was not made in good faith.’” *Riccardi v. U.S. Dep’t of Justice*, 32 F. Supp. 3d 59, 63

(D.D.C. 2014) (quoting *Defenders of Wildlife v. U.S. Dep’t of Interior*, 314 F.Supp.2d 1, 8

(D.D.C. 2004)).

As set forth in the Second Brinkmann Declaration, the Department satisfied its obligations under the FOIA because it engaged in a good faith search for the requested records,

using methods that were reasonably expected to produce the information requested, and looking in all locations likely to contain responsive records.

The Department's Office of Information Policy ("OIP") processed Plaintiff's FOIA request. 1st Brinkmann Decl. ¶¶ 5-7. OIP is responsible for processing FOIA requests seeking its own records as well as those of the Department's "Offices of the Attorney General, Deputy Attorney General, Associate Attorney General and the Offices of Legislative Affairs, Legal Policy, and Public Affairs." 2d Brinkmann Decl. ¶ 1. Upon receipt of a FOIA request, OIP determines which Department offices are likely to have responsive records based on the nature of the records sought, OIP's familiarity with the types of records maintained by each office, discussions with knowledgeable personnel, and any necessary additional research. *Id.* ¶ 9. OIP then gathers potentially responsive documents from those offices by electronic searches and asks potential custodians to provide any responsive documents that would not be located through an electronic search. *Id.* ¶ 10. Once documents are gathered, OIP reviews them to identify ones actually responsive to a FOIA request. *Id.* Additional searches and document collections may be conducted at any time, if it appears that there are responsive documents that may not have been gathered during the initial collection. *Id.* ¶ 11.

Following those procedures in connection with Plaintiff's FOIA request, OIP determined that the Offices of the Attorney General, Deputy Attorney General, and Public Affairs were the likely locations for documents pertaining to the July 27, 2016 meeting between then-Attorney General Lynch and former President Clinton, including responses to press inquiries concerning the meeting. *Id.* ¶ 12. OIP then searched the electronic records of sixteen officials (including Attorney General Lynch) within those three offices for every use of the term "Clinton" for almost a month before the meeting and almost three weeks after (*i.e.*, the date on which OIP

began searching for documents relating to the meeting).<sup>7</sup> *Id.* ¶ 17 & n. 5. OIP selected that search term because any discussion of the meeting would be likely to reference the former president. *Id.* This yielded more than 4,200 potentially responsive documents. *Id.* ¶ 17.

Following discussions between the parties, Plaintiff agreed to narrow its FOIA request to exclude certain categories of information that accounted for a disproportionate number of potentially responsive documents but were unlikely to contain the information it sought. *Id.* ¶ 18. From the documents potentially responsive to the narrowed request, OIP identified and produced 419 pages to Plaintiff. *Id.* ¶ 19.

Plaintiff's only stated basis for questioning the reasonableness of the search here is the existence of the single email that Defendant did not produce but the FBI produced in response to another FOIA request. Cross-Mot. at 11-12. Once again, the reasonableness of a search is "not by the fruits of the search, but by the appropriateness of the methods used to carry out the search." *Ancient Coin Collectors Guild*, 641 F.3d at 514 (quoting *Iturralde*, 315 F.3d at 315). In this case, the failure to locate a single document in an e-mail chain (the rest of which was located and produced) does not undercut the reasonableness of Defendant's search. After learning of the discrepancy, OIP investigated how it had occurred. 2d Brinkmann Decl. ¶ 24. The investigation determined that OIP's search should have located the document but it was excluded as the result of a software glitch. *Id.* ¶ 25. Additional searches were conducted after the glitch was corrected but located only the e-mail identified by Plaintiff and duplicative or nonresponsive documents. *Id.* ¶¶ 26-27.

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<sup>7</sup> OIP also reviewed Attorney General Lynch's official calendars, which include detailed information about the Attorney General's daily activities, but did not locate any additional responsive documents. 2d Brinkmann Decl. ¶ 20. OIP did not review other non-electronically searchable documents because none of the custodians likely to have such responsive documents indicated that there were any such documents. *Id.* ¶¶ 15-17.

This sort of “technical failing[] support[s] neither the allegation that the [agency]’s search procedures were inadequate, nor an inference that it acted in bad faith.” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1202 (D.C. Cir. 1991). For example, in *Institute for Policy Studies v. CIA*, 885 F. Supp. 2d 120 (D.D.C. 2012), the court found that a database error that resulted in missed documents in a FOIA response did not rebut the agency’s declaration that it searched in good faith, particularly as the agency “swore under oath that they went back to correct the error.” *Id.* at 136. That is precisely what the Second Brinkmann Declaration does: attest to a technical error in Defendant’s search of which the Department was unaware at the time and swear that it has been corrected. 2d Brinkmann Decl. ¶¶ 24-27.

Defendant has documented in detail its good faith efforts and use of reasonable methods to search responsive documents. The existence of one email not captured by Defendant’s search does not undercut the reasonableness of that search. As such, it has met its burden to show it conducted an adequate search. *See Oglesby*, 920 F.2d at 68.

### **CONCLUSION**

For the foregoing reasons and those set forth in Defendant’s Motion, the Court should deny Plaintiff’s Cross-Motion and grant summary judgment to Defendant.

Dated: January 12, 2018

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

JESSIE K. LIU  
United States Attorney

ELIZABETH J. SHAPIRO  
Deputy Branch Director

/s/ Gary D. Feldon

Gary D. Feldon

(D.C. Bar No. 987142)

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Avenue, Room 7217

Washington, DC 20001

Tel: (202) 514-4686

Fax: (202) 616-8460

E-mail: Gary.D.Feldon@usdoj.gov

*Counsel for Defendant*

*United States Department of Justice*



senior leadership offices and, when appropriate, with other components within the DOJ and/or other Executive Branch agencies.

2. I make the statements herein based on my personal knowledge, as well as on information that I acquired while performing my official duties.

3. This declaration supplements and incorporates by reference my November 3, 2017 declaration, filed as ECF No. 22-1.

4. In my declaration dated November 3, 2017, I provided a description of plaintiff's July 15, 2016 FOIA request and OIP's responses thereto, and an explanation of the information withheld by OIP in response to plaintiff's FOIA request. Specifically, that declaration addressed the withholding of information pursuant to Exemption 5 of the FOIA within eleven documents identified by plaintiff.<sup>1</sup> These withholdings consisted of talking points, draft press statements, and internal communications among DOJ staff concerning how to respond to the press. *See* ¶ 3, 5-7, 9-17.

5. My November 3, 2017 declaration did not address the records searches conducted by OIP in response to plaintiff's request, inasmuch as plaintiff at that time was not challenging the adequacy of OIP's search. *See* ¶ 8.

6. In its Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment (ECF No. 23), plaintiff now states that it is challenging the adequacy of OIP's records search. *See* Cross-Mot. at 11-12. Plaintiff

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<sup>1</sup> These eleven documents were identified in the August 1, 2017 production by OIP as: Document ID Nos. 0.7.9269.5105, 0.7.9269.5130, 0.7.9269.5166, 0.7.9269.5186, 0.7.9269.5275, 0.7.9269.5278, 0.7.9269.5280, 0.7.9269.5447, 0.7.9269.6094, 0.7.9269.6298, 0.7.9269.6923



bases this challenge on the release of a single email by the FBI on December 1, 2017; this email, which concerned the Clinton/Lynch meeting, was sent to three FBI officials from Shirlethia Franklin, an official within the Office of the Attorney General. *Id.* Plaintiff argues that this email, which was not provided to plaintiff in OIP's interim or final responses, renders OIP's records search as inadequate. *Id.*

7. Plaintiff's Cross-Motion for Summary Judgment and Opposition also states that plaintiff maintains a "standing objection to all withholdings made by the DOJ" in response to its request, despite having identified specific challenges to the eleven documents addressed in my prior declaration. *Id.* at 5 n.1.

8. This supplemental declaration responds to plaintiff's new challenge to the adequacy of OIP's records search and its assertion of a "standing" objection to withholdings beyond the eleven documents it previously identified. Each of these topics will be addressed in turn.

### **Adequacy of OIP's Records Search**

#### **Description of OIP's Standard Search Methods**

9. As noted in paragraph 1 above, OIP processes FOIA requests on behalf of itself and six senior leadership offices of the Department of Justice. OIP makes determinations upon receipt of a FOIA request, both as to the appropriate senior leadership office or offices in which to conduct initial records searches, as well as the records repositories and search methods to use in conducting records searches on behalf of the designated senior leadership offices. Assessments of where responsive records are likely maintained are based on a review of the content of the request itself and the nature

of the records sought therein, as well as our familiarity with the types and location of records that each senior leadership office maintains, discussions with knowledgeable personnel in the senior leadership offices, and any research that OIP staff may conduct on the topic of the request. Potentially responsive records may be located in email systems, computer hard drives, and/or hard copy (paper files).

10. When processing a FOIA request implicating records maintained by one or more of the senior leadership offices, OIP typically initiates records searches by sending a search notification email to the specific office(s), which notifies the office(s) of the receipt of the request and that OIP will conduct an electronic search of certain staff members within that office. Once the search notification has been issued to the appropriate office, individual staff members, as the custodians of their own records, advise OIP if they have potentially responsive records, including records which would not be captured by OIP's electronic search. OIP then commences a search that encompasses the email, computer hard drive, and/or paper files maintained by applicable staff in that office, using terms and date ranges relevant to the subject of the FOIA request.<sup>2</sup>

11. OIP's initial determination regarding relevant leadership offices, search methods, and/or records custodians is not always final. In order to ensure that reasonably thorough records searches are conducted, during the course of processing a given FOIA request, OIP continually assesses whether other (both current and former) staff members'

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<sup>2</sup> OIP's standard search procedures have since been modified slightly, in that OIP now will commence email searches of relevant custodians once a search notification is sent, rather than waiting for staff members to respond to the notification; however, for purposes of this request, the above description accurately reflects the process OIP took to search for responsive records.

records should be searched, or whether supplemental or alternative search methods (such as targeted inquiries to knowledgeable leadership office staff regarding the existence of records not identified via “keyword” searches) should be used, and will initiate such additional searches as appropriate. This assessment is based on OIP’s review of records that are located in the initial records searches, discussions with Department personnel, or other pertinent factors. In sum, OIP records searches are conducted in an efficient and comprehensive manner, and the various search steps undertaken by OIP staff in response to a given request work in tandem to achieve a complete records search.

#### OIP’s Records Searches Conducted in Response to Plaintiff’s Request<sup>3</sup>

12. In accordance with the methods set forth in paragraphs 9-11, OIP conducted searches in the Offices of the Attorney General (OAG), Deputy Attorney General (ODAG), and Public Affairs (PAO) for records pertaining and related to the Clinton/Lynch meeting. OIP determined that OAG, ODAG, and PAO were the leadership offices most likely to maintain responsive records pertaining to the Clinton/Lynch meeting and, specifically, pertaining to President Clinton.<sup>4</sup>

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<sup>3</sup> In addition to the request from ACLJ, OIP received, around the same time, numerous other FOIA requests pertaining to the Clinton/Lynch meeting. Thus, OIP’s searches for records pertaining to the Clinton/Lynch meeting were broadly conducted in response to these many different requests. Records retrieved through these broad searches were then reviewed, as relevant, for each request.

<sup>4</sup> Because plaintiff sought records pertaining to the activities of former Attorney General Lynch, OAG and ODAG were identified by OIP as likely records repositories, because searches of these offices would encompass records maintained by the Attorney General, her deputy, and their respective staff. PAO, as the Department component serving as the principal point of contact for the media, was also identified as a records repository since the plaintiff specifically sought records about press related to the Clinton/Lynch meeting.

*Electronic Searches of OAG, ODAG, and PAO Officials*

13. Email and other electronic records are searched by OIP using a sophisticated electronic system which remotely searches through a given custodian's entire email collection and electronic computer files to isolate and locate potentially responsive records within that collection of digital records, using search parameters that are provided by OIP staff. This same system then serves as the review platform by which OIP staff review the records retrieved using those initial search parameters.

14. In response to OIP's search notification email described in paragraph 10, officials within OAG indicated that they might have potentially responsive records – specifically, emails – pertaining to the Clinton/Lynch meeting, and requested that OIP conduct a search of their emails (including the official Department of Justice email account of Attorney General Lynch).<sup>5</sup>

15. In response to OIP's search notification email described in paragraph 10, one official within ODAG indicated that he might have potentially responsive records – specifically, emails – pertaining to the Clinton/Lynch meeting, and requested that OIP conduct a search of his emails.

16. In response to OIP's search notification email described in paragraph 10, seven officials within PAO indicated that they might have potentially responsive records

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<sup>5</sup> The account name "Elizabeth Carlisle" in the documents produced by OIP denote emails to or from former Attorney General Loretta Lynch's official Department of Justice email account. The Attorney General is the only senior leadership office official whose email account does not use his/her name. This practice is consistent with that of former Attorneys General and protects the privacy and security of the Attorneys General, allowing them to conduct official business efficiently via email. In processing FOIA/PA requests on behalf of OAG, OIP routinely searches the email account(s) of the current and former Attorneys General, and processes records located therein consistent with standard FOIA procedures.

– specifically, emails – pertaining to the Clinton/Lynch meeting, and requested that OIP conduct a search of their emails.

17. None of the custodians within OAG, ODAG, and PAO indicated they had potentially responsive records in any format other than emails.

18. OIP then conducted comprehensive searches of the email accounts of the sixteen custodians within OAG, ODAG, and PAO who indicated they might have potentially responsive email records. In conducting these electronic searches, OIP searched records from June 1, 2016, to July 15, 2016,<sup>6</sup> using the broad search term “Clinton,”<sup>7</sup> as opposed to (for example) searching for “Clinton” in the same sentence as “airplane” or “Lynch.” These searches returned a combined total of approximately 4,200 potentially responsive items (“search hits”), consisting of approximately 2,200 separate documents and 2,000 associated attachments.

19. On January 26, 2017, following OIP’s initial review and assessment of the above-referenced search hits, plaintiff agreed to narrow OIP’s searches to exclude the

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<sup>6</sup> The date range used in OIP’s search corresponds to the earliest date (i.e. June 1, 2016) requested among the numerous FOIA requests received by OIP on the Clinton/Lynch meeting, and the date of OIP’s search initiation for these requests (i.e. July 15, 2016). Because this date range extended back nearly a month prior to the Clinton/Lynch meeting, and forward nearly three weeks beyond the meeting, OIP determined that the date range of June 1, 2016 to July 15, 2016 was reasonably likely to encompass records relevant to ACLJ’s July 15, 2016 request. Moreover, the search cut-off date of July 15, 2016 is consistent with DOJ FOIA regulations. *See* 28 C.F.R. § 16.4(a).

<sup>7</sup> ACLJ requested records containing the names of DOJ officials, staff, or employees who participated in any decision of whether clearance, authorization, or permission should be granted or would be granted to President Clinton to board former Attorney General Lynch’s airplane. ACLJ also requested records containing the names of any persons present in the passenger compartment of former Attorney General Lynch’s airplane during the Clinton/Lynch meeting. Use of the search term “Clinton” within OIP’s searches of the sixteen custodians in OAG, ODAG, and PAO was reasonably likely to locate such documents because any such document regarding the Clinton/Lynch meeting, including a discussion of who was present, would have likely mentioned President Clinton.

following material: Congressional hearing testimony; news clips and articles regarding the Clinton/Lynch meeting; White House press briefings that reference the Clinton/Lynch meeting; miscellaneous emails from private citizens to the DOJ public mailbox regarding the Clinton/Lynch meeting; and emails that included the names “Bill Clinton” and “President Clinton” but were not about President Clinton or any meetings between President Clinton and Attorney General Lynch (*e.g.*, speaking invitations to Attorney General Lynch noting that past presenters included President Clinton).

20. An attorney-advisor, using the electronic search and review platform identified above, then individually reviewed these narrowed search hits, reducing the universe to 413 pages containing records responsive to plaintiff’s FOIA request – which were provided to plaintiff via an interim response on July 3, 2017, and a final response on August 1, 2017.

21. OIP also manually reviewed the official calendars of Attorney General Lynch for the date range of June 20, 2016, through July 1, 2016<sup>8</sup> for any references to the Clinton/Lynch meeting. The official calendars include detailed information about the Attorney General’s daily activities, including the subjects, attendees, times, and locations of scheduled meetings, travel, and events. Accordingly, any scheduled meetings attended

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<sup>8</sup> This date range includes the date of the Clinton/Lynch meeting, June 27, 2016, and several days before and after the meeting. As noted previously, OIP’s searches were broadly crafted in order to respond to numerous related requests on the Clinton/Lynch meeting. OIP had already obtained the Attorney General’s calendars for the time period June 20 - July 1, 2016 by the time the search for plaintiff’s request was conducted; accordingly, OIP searched this entire date range, *i.e.* June 20 – July 1, 2016, for records responsive to plaintiff’s request (even though the Clinton/Lynch meeting, if scheduled, would logically be included only on the official calendar for June 27, 2016).

by Attorney General Lynch would be included in her official calendar. No calendar entries responsive to plaintiff's request were identified from this search.

Additional Steps Taken to Assess Existence of Potentially Responsive Records

22. As noted above, in a similar FOIA request submitted to the Federal Bureau of Investigation (FBI), which later resulted in litigation, plaintiff sought, *inter alia*, all records relating to or concerning the meeting between Attorney General Lynch and former President Bill Clinton on June 27, 2016. On December 1, 2017, the FBI released records responsive to plaintiff's FOIA request. Among the documents released was an email from Shirlethia Franklin, an official within the Office of the Attorney General, to three officials in the FBI regarding the Clinton/Lynch meeting. *See Cross-Mot.* at 11-12.

23. Ms. Franklin's email – "FYI – stepping out to deal with this" – was not provided to plaintiff in response to the request processed by OIP, as it was not located in OIP's search of OAG emails. The remaining portion of that same email chain, however, was located, processed, and released to plaintiff, in part, in OIP's August 1, 2017 final response. As such, the FBI release included only one single OAG email within a larger email chain that was not located in OIP's search of OAG emails.

24. Upon learning that the FBI located an OAG email which OIP's search of OAG emails had not uncovered, OIP undertook several steps to ensure the quality of its original search, to locate the email in question, and to ensure that no other relevant emails were excluded.

25. As an initial matter, OIP determined that our original records search should have located this email.<sup>9</sup> Therefore, OIP reached out to the Department of Justice, Justice Management Division's (JMD) Office of the Chief Information Officer (OCIO), which conducts the searches of senior leadership email accounts for us using the sophisticated e-discovery platform described above. After further research by JMD's OCIO, it was determined that a technical glitch occurred in the e-discovery software's retrieval of data from OAG custodians' email accounts, which resulted in a failure to collect a small number of emails from three custodians' email accounts, including Ms. Franklin's.

26. Upon learning of this technical glitch, JMD's OCIO conducted another search of all of the senior leadership email accounts included in OIP's original search. OCIO confirmed that this new search successfully retrieved the data from all custodians' accounts, and identified a small number of emails which had not been retrieved in the original search.

27. An OIP attorney-advisor then reviewed the results of this new search. This search successfully retrieved the one missing email from Ms. Franklin as well as additional emails which, upon review, were determined to be duplicative and/or not responsive to plaintiff's request.

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<sup>9</sup> The combination of records custodians, which included Ms. Franklin, and the search term "Clinton," should have identified the email in question, which came from Ms. Franklin's account, and included the term "Clinton."



Summary of OIP's Records Searches

28. As a result of the records searches conducted for plaintiff's request in OAG, ODAG, and PAO, OIP identified a total of sixteen officials who may have maintained potentially responsive records. OIP then searched the emails of the identified officials, using the broadest possible search term ("Clinton"), and manually reviewed the calendars of then-Attorney General Lynch for any responsive records.

29. When OIP learned of a responsive email that was not located in its initial search, but should have been, OIP communicated directly with the OCIO in the DOJ's Justice Management Division (JMD). As mentioned above, the OCIO uses a sophisticated electronic system to remotely search through a given custodian's entire email collection and electronic computer files to isolate and locate potentially responsive records within that collection of digital records, using search parameters that are provided by OIP staff. The OCIO determined that a technical glitch occurred during the preliminary search, resulting in the one email not being retrieved, and conducted a new search of the original custodians' accounts using the same broad search term. OCIO confirmed that all data were successfully retrieved in this second search, which identified the missing email. Based on my discussions with OCIO, OIP has no reason to believe that any additional potentially responsive records exist which were not located in this remedial search. Moreover, I note that OIP's original records search – as detailed in paragraphs 12-21 above – would have, if not for the technical glitch which has now been repaired, located the OAG email missing from OIP's original response. As such, the identification of this missing email does not undermine the adequacy of OIP's original

records search, which would have identified this email if not for a technical glitch which has now been corrected.

30. Based on my experience with the Department, my familiarity with the records maintained by the leadership offices, discussions with knowledgeable staff, as well as my understanding of the scope of plaintiff's request, and information gathered from the documents themselves, I aver that OIP's searched were reasonably calculated to uncover all potentially responsive records and that all files likely to contain relevant documents were searched.

**Explanation of Information Withheld by OIP**

31. By email on August 30, 2017, plaintiff provided a list of specific withholdings taken by OIP under Exemption 5 of the FOIA that it intended to challenge.<sup>10</sup> Based on the understanding that these were the only records plaintiff was challenging, my prior declaration addressed only these specific withholdings. Pursuant to plaintiff's Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment (ECF No. 23), however, plaintiff stated that it maintained a general objection to every withholding, not limited to only those specific records referenced, made by OIP under Exemption 5 of the FOIA.<sup>11</sup> While not specifically addressed in my prior declaration, all other withholdings made pursuant to Exemption 5 fall within the same categories discussed in that declaration and, as such, the justification

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<sup>10</sup> Those specific withholdings were addressed in DOJ's Motion for Summary Judgment, dated November 3, 2017 (ECF No. 21-1).

<sup>11</sup> Plaintiff's September 15, 2017 email, attached as Exhibit B to Plaintiff's Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment (ECF No. 23-3), specifically states plaintiff's objection applies to all withholdings made by OIP pursuant to Exemption 5, only.

for OIP's redactions on the basis of Exemption 5 remains unchanged. Nonetheless, for purposes of clarity, provided herewith is a listing of the specific documents<sup>12</sup> containing redactions made by OIP pursuant to Exemption 5, matched to the categories described in my prior declaration. The designated document categories, discussed in my prior declaration, and those documents corresponding to the designated categories are as follows<sup>13</sup>:

- *Draft and/or Proposed Talking Points*: Document IDs: 0.7.9269.5333; 0.7.9269.5423; 0.7.9269.5485; 0.7.9269.5759; 0.7.9269.5318; 0.7.9269.5310; 0.7.9269.5465; 0.7.9269.5293; 0.7.9269.5458; 0.7.9269.6534; 0.7.9269.5122; 0.7.9269.5137; 0.7.9269.5181; 0.7.9269.8984; 0.7.9269.5105; 0.7.9269.5130; 0.7.9269.5166; 0.7.9269.5186; 0.7.9269.5275; 0.7.9269.6298; 0.7.9269.6923
- *Draft Press Statements*: Document IDs: 0.7.9269.5490; 0.7.9269.5224; 0.7.9269.5348; 0.7.9269.5341; 0.7.9269.5333; 0.7.9269.5423; 0.7.9269.5485; 0.7.9269.5759; 0.7.9269.5318; 0.7.9269.5310; 0.7.9269.5465; 0.7.9269.5293; 0.7.9269.5458; 0.7.9269.5137; 0.7.9269.5181; 0.7.9269.8984; 0.7.9269.5130; 0.7.9269.5166; 0.7.9269.5186; 0.7.9269.5275
- *Internal DOJ Communications Concerning How to Respond to Press Inquiries*: Document IDs: 0.7.9269.5224; 0.7.9269.5348; 0.7.9269.5341; 0.7.9269.5759; 0.7.9269.5318; 0.7.9269.5465; 0.7.9269.5293; 0.7.9269.5458; 0.7.9269.5137; 0.7.9269.5181; 0.7.9269.8984; 0.7.9269.5130; 0.7.9269.5166; 0.7.9269.5186; 0.7.9269.5275; 0.7.9269.5278; 0.7.9269.5280; 0.7.9269.5447; 0.7.9269.6094

#### Segregation of Non-Exempt Information

32. OIP thoroughly reviewed all of the records responsive to plaintiff's request and withheld on the basis of the deliberative process privilege encompassed in

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<sup>12</sup> The Document ID Numbers referenced in this listing correspond to Bates-stamped pages provided to plaintiff by OIP.

<sup>13</sup> This listing accounts for all documents that include Exemption 5 withholdings.

FOIA Exemption 5, only that information which would reveal the Department's pre-decisional decision-making process. OIP conducted a line-by-line review of these documents and released any portions thereof that were not protected by an applicable FOIA exemption, often redacting only portions of sentences or paragraphs within the emails disclosed to plaintiff. With regards to the draft statements and talking points, the very nature of these records prevent segregation inasmuch as the material itself, and selected facts therein, embodies the deliberative process. Therefore, all reasonably segregable, non-exempt information from these documents has been disclosed to plaintiff.

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



Vanessa R. Brinkmann

Executed this 12th day of January 2018.

**DEFENDANT'S REPLY-OPPOSITION EXHIBIT A**

**Carlisle, Elizabeth**

---

**From:** Carlisle, Elizabeth  
**Sent:** Tuesday, June 28, 2016 4:28 PM  
**To:** Newman, Melanie (OPA)  
**Cc:** Pokorny, Carolyn (OAG); Amuluru, Uma (OAG); Franklin, Shirlethia (OAG); Lewis, Kevin S. (OPA)  
**Subject:** Re: Talking points/statement

Thanks to all who worked on this.  
AG

---

**From:** Newman, Melanie (OPA)  
**Sent:** Tuesday, June 28, 2016 01:21 PM  
**To:** Carlisle, Elizabeth  
**Cc:** Pokorny, Carolyn (OAG); Amuluru, Uma (OAG); Franklin, Shirlethia (OAG); Lewis, Kevin S. (OPA)  
**Subject:** RE: Talking points/statement

AG Lynch –

We are holding on the statement for now. Given that there wasn't any follow-up in the press avail, (b) (5)  
(b) (5) We will keep you posted as things develop. Thank you.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

---

**From:** Newman, Melanie (OPA)  
**Sent:** Tuesday, June 28, 2016 3:46 PM  
**To:** Carlisle, Elizabeth  
**Cc:** Pokorny, Carolyn (OAG); Amuluru, Uma (OAG); Franklin, Shirlethia (OAG); Lewis, Kevin S. (OPA)  
**Subject:** RE: Talking points/statement

Final version – Shirlethia is printing now.

(b) (5)



(b) (5)



(b) (5)





(b) (5)




Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)



@MelanieDOJ

---

**From:** Newman, Melanie (OPA)

**Sent:** Tuesday, June 28, 2016 3:42 PM

**To:** Carlisle, Elizabeth

**Cc:** Pokorny, Carolyn (OAG); Amuluru, Uma (OAG); Franklin, Shirlethia (OAG); Lewis, Kevin S. (OPA)

**Subject:** Talking points/statement

(b) (5)



(b) (5)



(b) (5)



Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**Newman, Melanie (OPA)**

---

**From:** Newman, Melanie (OPA)  
**Sent:** Wednesday, June 29, 2016 6:33 AM  
**To:** Pokorny, Carolyn (OAG)  
**Subject:** Re: Fwd:

I know. I saw this. (b) (5)

On Jun 29, 2016, at 1:02 AM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

**The clip I sent earlier mentioned it:**

**Attorney General Loretta Lynch praises Phoenix police training**

**By David Marino Jr. | Cronkite News**

**Tuesday, June 28, 2016**

PHOENIX – U.S. Attorney General Loretta Lynch Tuesday praised Phoenix police training to reduce use of force, saying it is a model for departments across the country.

Lynch's visit, part of a national tour on community policing, was marked by a chance encounter at the airport with former President Bill Clinton and came the same day as a terrorist attack at the Istanbul, Turkey airport.

She took what police called a "sensitive" phone call at the stop at the Phoenix Police Academy but did not say what it involved.

She said she was waiting to be briefed on the [Istanbul Ataturk Airport attack](#) that killed 28 people and wounded 60 people.

Lynch said she ran into former President Bill Clinton at Phoenix Sky Harbor Airport on Monday night. She said investigations of Clinton's wife, Hillary Clinton, regarding the Benghazi attacks and her use of a private email server did not come up.

Grandchildren, Phoenix golf and the Brexit decision for Britain to leave the European Union were the topics of conversation, she said.

She said President Barack Obama's endorsement of Hillary Clinton as the presumptive Democratic nominee for president would not affect the Justice Department's investigation of her use of a private email server while she was Secretary of State.

Lynch said the Justice Department is still investigating the Maricopa County polling debacle during the March presidential preference election. She did not say when the investigation would be done.

Instead, Lynch spoke glowingly of the Phoenix Police Department's mental health programs and so-called "de-escalation" training, referring to using negotiations and other tools to calm confrontations and reduce the chance of violence.

Lynch visited Phoenix as part of a national community policing tour.

"Let me thank all of you in the Phoenix Police Department for being an example," Lynch said to veteran officers, Phoenix Mayor Greg Stanton and others.

Begin forwarded message:

**From:** <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)>

**Date:** June 28, 2016 at 9:38:43 PM EDT

**To:** "Melanie Newman (OPA)" <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)>

<http://cronkitenews.azpbs.org/2016/06/28/ag-loretta-lynch-praises-phoenix-police-training/>



**Quinn, Richard P. (DO) (FBI)**

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**From:** Quinn, Richard P. (DO) (FBI)  
**Sent:** Wednesday, June 29, 2016 4:55 PM  
**To:** Newman, Melanie (OPA); Kortan, Michael P. (DO) (FBI)  
**Cc:** Lewis, Kevin S. (OPA)  
**Subject:** RE: FLAG

Copy/thanks Melanie.

Richard P. Quinn  
Federal Bureau of Investigation  
Media/Investigative Publicity

(b)(6), (b)(7) (o)  
(C) per FBI (m)

----- Original message -----

From: "Newman, Melanie (OPA)" <Melanie.Newman@usdoj.gov>  
Date: 06/29/2016 4:39 PM (GMT-05:00)  
To: "Quinn, Richard P. (DO) (FBI)" <(b)(6), (b)(7)(C) per FBI (m)>, "Kortan, Michael P. (DO) (FBI)" <(b)(6), (b)(7)(C) per FBI (m)>  
Cc: "Lewis, Kevin S. (OPA) (JMD)" <Kevin.S.Lewis@usdoj.gov>  
Subject: FLAG

I want to flag a story that is gaining some traction tonight. Daily Caller, The Hill and FOX News have picked up [a local Phoenix news report](#) about a casual, unscheduled meeting between former president Bill Clinton and the AG. It happened on Monday night. Our talkers on this are below, along with the transcript from the AG's Phoenix presser, where she was asked about this. Happy to discuss further by phone. Please let me know if you get any questions about this. Thanks.

**TRANSCRIPT**

**REPORTER:** Sources say that you met last night with former president Bill Clinton. Did the topic of Benghazi come up at all, or can you tell us what was discussed?

**ATTORNEY GENERAL LYNCH:** No. Actually, while I was landing at the airport, I did see President Clinton at the Phoenix airport as I was leaving, and he spoke to myself and my husband on the plane. Our conversation was a great deal about his grandchildren. It was primary social and about our travels. He mentioned the golf he played in Phoenix, and he mentioned travels he'd had in West Virginia. We talked about former Attorney General Janet Reno, for example, whom we both know, but there was no discussion of any matter pending before the department or any matter pending before any other body. There was no discussion of Benghazi, no discussion of the state department emails, by way of example. I would say the current news of the day was the Brexit decision, and what that might mean. And again, the department's not involved in that or implicated in that.

(b) (5)



(b) (5)



Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
@MelanieDOJ

**Newman, Melanie (OPA)**

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**From:** Newman, Melanie (OPA)  
**Sent:** Thursday, June 30, 2016 9:08 AM  
**To:** Raimondi, Marc (OPA)  
**Subject:** TPs and transcript

**TALKING POINTS:**

(b) (5)



**LA Presser (Today, June 29):**

**REPORTER:** Madame Attorney General, so was it appropriate for you to meet with former President Clinton while your agency is in the middle of an investigation of his wife's email server?

**ATTORNEY GENERAL LYNCH:** Well, I did see the President at the Phoenix Airport the other night as I was landing, he was headed out. He did come over and say hello, and speak to my husband and myself, and talk about his grandchildren and his travels, and things like that. And so that was the extent of that. And no discussions were held into any cases or things like that. And he didn't raise anything – uh – about that.

**REPORTER:** You don't believe that gives off the appearance of any impropriety while your agency is investigating his wife.

**ATTORNEY GENERAL LYNCH:** My agency is involved in a matter looking at State Department policies and issues. It's being handled by career investigators and career agents, who always follow facts and the law, and do the same thorough and independent examination in this matter that they've done in all. So that's how that'll be handled.

**Phoenix Presser (Tuesday, June 28):**

**REPORTER:** Sources say that you met last night with former president Bill Clinton. Did the topic of Benghazi come up at all, or can you tell us what was discussed?

**ATTORNEY GENERAL LYNCH:** No. Actually, while I was landing at the airport, I did see



**ATTORNEY GENERAL LYNCH:** No. Actually, while I was landing at the airport, I did see President Clinton at the Phoenix airport as I was leaving, and he spoke to myself and my husband on the plane. Our conversation was a great deal about his grandchildren. It was primarily social and about our travels. He mentioned the golf he played in Phoenix, and he mentioned travels he'd had West Virginia. We talked about former Attorney General Janet Reno, for example, whom we both know, but there was no discussion of any matter pending for the department or any matter pending for any other body. There was no discussion of Benghazi, no discussion of the state department emails, by way of example. I would say the current news of the day was the Brexit decision, and what that might mean. And again, the department's not involved in that or implicated in that.

**Newman, Melanie (OPA)**

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**From:** Newman, Melanie (OPA)  
**Sent:** Thursday, June 30, 2016 10:12 AM  
**To:** Lewis, Kevin S. (OPA)  
**Cc:** Stewart, Rebecca L. (PAO); Press  
**Subject:** Re: Interview request

(b) (5)

On Jun 30, 2016, at 10:11 AM, Lewis, Kevin S. (OPA) <[kslewis@jmd.usdoj.gov](mailto:kslewis@jmd.usdoj.gov)> wrote:

(b) (5)

(b) (5)

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**From:** Newman, Melanie (OPA)  
**Sent:** Thursday, June 30, 2016 10:10 AM  
**To:** Lewis, Kevin S. (OPA)  
**Cc:** Stewart, Rebecca L. (PAO); Press  
**Subject:** Re: Interview request

Decline.

On Jun 30, 2016, at 10:09 AM, Lewis, Kevin S. (OPA) <[kslewis@jmd.usdoj.gov](mailto:kslewis@jmd.usdoj.gov)> wrote:

+Mel

---

**From:** Stewart, Rebecca L. (PAO)  
**Sent:** Thursday, June 30, 2016 10:03 AM  
**To:** Press; Lewis, Kevin S. (OPA)  
**Subject:** RE: Interview request

+Melanie

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**From:** Press  
**Sent:** Thursday, June 30, 2016 10:01 AM  
**To:** Lewis, Kevin S. (OPA)  
**Cc:** Stewart, Rebecca L. (PAO)  
**Subject:** FW: Interview request

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**From:** DelPriore, Samantha [<mailto:Samantha.DelPriore@FOXNEWS.COM>]  
**Sent:** Thursday, June 30, 2016 9:57 AM  
**To:** Press  
**Subject:** Interview request

Good morning – Would AG Lynch be available for an interview on our show *On The Record with Greta Van Susteren* on the Fox News Channel tonight to respond to the

meeting she had with Bill Clinton? We air live during the 7pm/et hour but we are happy to pretape to accommodate her schedule. Please let me know if we can set something up. The interview would be one-on-one with Greta.

Thanks,  
Samantha

Samantha Del Priore-Fox  
FOX News Channel  
1211 Avenue of the Americas, 18<sup>th</sup> Floor  
New York, NY 10036  
W: 212-301-5360  
C: (b) (6)  
[Samantha.DelPriore@foxnews.com](mailto:Samantha.DelPriore@foxnews.com)

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox News or Fox Business must not be taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

**Pokorny, Carolyn (OAG)**

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**From:** Pokorny, Carolyn (OAG)  
**Sent:** Friday, July 01, 2016 1:24 PM  
**To:** Amuluru, Uma (OAG)  
**Cc:** Newman, Melanie (OPA); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG)  
**Subject:** RE: More questions

Thanks for the quick response; I will let Rybicki know.

Carolyn Pokorny  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, D.C. 20530  
Email: [carolyn.pokorny@usdoj.gov](mailto:carolyn.pokorny@usdoj.gov)  
Office: (202) 616-2372  
Cell: (b) (6)

---

**From:** Amuluru, Uma (OAG)  
**Sent:** Friday, July 01, 2016 1:23 PM  
**To:** Pokorny, Carolyn (OAG)  
**Cc:** Newman, Melanie (OPA); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG)  
**Subject:** Re: More questions

(b) (5)

On Jul 1, 2016, at 11:20 AM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

FBI is asking for guidance on this question as well.

Carolyn Pokorny  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, D.C. 20530  
Email: [carolyn.pokorny@usdoj.gov](mailto:carolyn.pokorny@usdoj.gov)  
Office: (202) 616-2372  
Cell: (b) (6)

---

**From:** Newman, Melanie (OPA)  
**Sent:** Friday, July 01, 2016 12:02 PM  
**To:** Lewis, Kevin S. (OPA); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Franklin, Shirlethia (OAG)  
**Subject:** Fwd: More questions

Can someone call me?

Begin forwarded message:

**From:** "Levine, Mike" <[Mike.Levine@abc.com](mailto:Mike.Levine@abc.com)>  
**Date:** July 1, 2016 at 12:00:39 PM EDT  
**To:** "Newman, Melanie (OPA)" <[Melanie.Newman@usdoj.gov](mailto:Melanie.Newman@usdoj.gov)>, Kevin Lewis  
<[kevin.s.lewis@usdoj.gov](mailto:kevin.s.lewis@usdoj.gov)>  
**Subject:** More questions

I'm getting lots of questions about this... Any guidance you can offer? thanks

<http://hotair.com/archives/2016/07/01/reporter-fbi-ordered-no-photos-no-pictures-no-cell-phones-during-clintonlynch-meeting/>

Reporter: FBI ordered 'no photos, no pictures, no cell phones' during Clinton/Lynch meeting - Hot Air

[hotair.com](http://hotair.com)

If it was an innocent meeting, why no pictures?



**Amuluru, Uma (OAG)**

---

**From:** Amuluru, Uma (OAG)  
**Sent:** Friday, July 01, 2016 1:26 PM  
**To:** Pokorny, Carolyn (OAG)  
**Cc:** Newman, Melanie (OPA); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG)  
**Subject:** Re: More questions

(b) (5)

On Jul 1, 2016, at 11:20 AM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

FBI is asking for guidance on this question as well.

Carolyn Pokorny  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, D.C. 20530  
Email: [carolyn.pokorny@usdoj.gov](mailto:carolyn.pokorny@usdoj.gov)  
Office: (202) 616-2372  
Cell: (b) (6)

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**From:** Newman, Melanie (OPA)  
**Sent:** Friday, July 01, 2016 12:02 PM  
**To:** Lewis, Kevin S. (OPA); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Franklin, Shirlethia (OAG)  
**Subject:** Fwd: More questions

Can someone call me?

Begin forwarded message:

**From:** "Levine, Mike" <[Mike.Levine@abc.com](mailto:Mike.Levine@abc.com)>  
**Date:** July 1, 2016 at 12:00:39 PM EDT  
**To:** "Newman, Melanie (OPA)" <[Melanie.Newman@usdoj.gov](mailto:Melanie.Newman@usdoj.gov)>, Kevin Lewis  
<[kevin.s.lewis@usdoj.gov](mailto:kevin.s.lewis@usdoj.gov)>  
**Subject:** More questions

I'm getting lots of questions about this... Any guidance you can offer? thanks

<http://hotair.com/archives/2016/07/01/reporter-fbi-ordered-no-photos-no-pictures-no-cell-phones-during-clintonlynch-meeting/>

Reporter: FBI ordered 'no photos, no pictures, no cell phones' during Clinton/Lynch meeting - Hot Air

[notair.com](http://notair.com)

If it was an innocent meeting, why no pictures?

---

**O'Brien, Alicia C (OLA)**

---

**From:** O'Brien, Alicia C (OLA)  
**Sent:** Monday, July 11, 2016 1:01 PM  
**To:** Herwig, Paige (OAG); Pokorny, Carolyn (OAG)  
**Cc:** Kadzik, Peter J (OLA)  
**Subject:** final  
**Attachments:** Top Line TPs (Final).docx

Alicia C. O'Brien  
Office of Legislative Affairs  
(202) 305-8035  
[Alicia.C.O'Brien@usdoj.gov](mailto:Alicia.C.O'Brien@usdoj.gov)









**From:** Newman, Melanie (OPA)

**Sent:** Wednesday, June 29, 2016 4:34 PM

**To:** Kadzik, Peter J (OLA) <pkadzik@jmd.usdoj.gov>; Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>

**Cc:** Pokorny, Carolyn (OAG) <cpokorny@jmd.usdoj.gov>; Lewis, Kevin S. (OPA) <kslewis@jmd.usdoj.gov>; Franklin, Shirlethia (OAG) <shfranklin@jmd.usdoj.gov>; Amuluru, Uma (OAG) <uamuluru@jmd.usdoj.gov>; Herwig, Paige (OAG) <pherwig@jmd.usdoj.gov>

**Subject:** RE: DRAFT: Statement/Talking Points

I'm going to flag this for FBI public affairs.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Kadzik, Peter J (OLA)

**Sent:** Wednesday, June 29, 2016 4:30 PM

**To:** Newman, Melanie (OPA); Axelrod, Matthew (ODAG)

**Cc:** Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** RE: DRAFT: Statement/Talking Points

Was **Bill Clinton** in Phoenix just to cross paths with AG Lynch?

The American Mirror

Have the Clintons ever held a political event and not invited the media? **Bill Clinton** was in Phoenix on Monday to attend a "Latino Leaders ...

Peter J. Kadzik

Assistant Attorney General

Office of Legislative Affairs

(202) 514-2141

[peter.j.kadzik@usdoj.gov](mailto:peter.j.kadzik@usdoj.gov)

**From:** Newman, Melanie (OPA)

**Sent:** Wednesday, June 29, 2016 4:03 PM

**To:** Axelrod, Matthew (ODAG)

**Cc:** Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG); Kadzik, Peter J (OLA); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** RE: DRAFT: Statement/Talking Points

FOX just called to say that O'Reilly, Greta, and Special Report with Bret Baier will report on this tonight.

Also, FOX will have a reporter at the LA presser and this will ask about it.

Peter – OLA is going to get questions about this and I think the talking points we drafted will be useful for your purposes.

(b) (5)



(b) (5)



We will monitor the press avail, if any local stations pick it up live but Kevin, please send us audio as soon as you can.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Newman, Melanie (OPA)

**Sent:** Wednesday, June 29, 2016 3:47 PM

**To:** Axelrod, Matthew (ODAG)

**Cc:** Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG); Kadzik, Peter J (OLA); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** RE: DRAFT: Statement/Talking Points

<http://thehill.com/blogs/ballot-box/presidential-races/286003-bill-clinton-lynch-met-privately-in-ariz>

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Newman, Melanie (OPA)

**Sent:** Wednesday, June 29, 2016 1:25 PM

**To:** Axelrod, Matthew (ODAG)

**Cc:** Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG); Kadzik, Peter J (OLA); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** RE: DRAFT: Statement/Talking Points

<http://dailycaller.com/2016/06/29/bill-clinton-loretta-lynch-meet-on-airplane-in-phoenix-video/>

still no major news interest at this point.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Newman, Melanie (OPA)

**Sent:** Wednesday, June 29, 2016 10:31 AM

**To:** Axelrod, Matthew (ODAG)

**Cc:** Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG); Kadzik, Peter J (OLA);

Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** RE: DRAFT: Statement/Talking Points

I sent the transcript and link to the news clip to the FOX producer. He had already tracked down the video from the presser. He actually thinks they may not run anything on it today but will keep me posted. He doesn't think it's news. I also talked to the ABC producer, who noted that they aren't interested, even if FOX runs with it.

Given this, we are still holding.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Newman, Melanie (OPA)

**Sent:** Wednesday, June 29, 2016 9:39 AM

**To:** Axelrod, Matthew (ODAG)

**Cc:** Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Franklin, Shirlethia (OAG); Kadzik, Peter J (OLA); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** Re: DRAFT: Statement/Talking Points

(b) (5)

On Jun 29, 2016, at 9:33 AM, Axelrod, Matthew (ODAG) <[maaxelrod@jmd.usdoj.gov](mailto:maaxelrod@jmd.usdoj.gov)> wrote:

It's already public, as reflected in today's clips. (b) (5)



<https://cronkitenews.azpbs.org/2016/06/28/ag-loretta-lynch-praises-phoenix-police-training/>

**From:** Newman, Melanie (OPA)

**Sent:** Wednesday, June 29, 2016 9:29 AM

**To:** Pokorny, Carolyn (OAG)

**Cc:** Lewis, Kevin S. (OPA); Axelrod, Matthew (ODAG); Franklin, Shirlethia (OAG); Kadzik, Peter J (OLA); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** Re: DRAFT: Statement/Talking Points

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED] Interested in other thoughts.

(b) (5)

[REDACTED]

On Jun 29, 2016, at 9:23 AM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

(b) (5)

[REDACTED]

On Jun 29, 2016, at 9:14 AM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Fox News just called. They received a tip from someone on the ground in Phoenix. (b) (5)

[REDACTED]

On Jun 28, 2016, at 4:16 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

(b) (5)

[REDACTED]. I am holding for now.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Lewis, Kevin S. (OPA)

**Sent:** Tuesday, June 28, 2016 4:15 PM

**To:** Axelrod, Matthew (ODAG)

**Cc:** Franklin, Shirlethia (OAG); Newman, Melanie (OPA); Kadzik, Peter J (OLA); Pokorny, Carolyn (OAG); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** Re: DRAFT: Statement/Talking Points

We didn't get any follow up. (b) (5). Our justice reporter didn't follow up either.

Sent from my iPhone

On Jun 28, 2016, at 1:10 PM, Axelrod, Matthew (ODAG) <[maaxelrod@jmd.usdoj.gov](mailto:maaxelrod@jmd.usdoj.gov)> wrote:

(b) (5)

On Jun 28, 2016, at 4:09 PM, Franklin, Shirlethia (OAG) <[shfranklin@jmd.usdoj.gov](mailto:shfranklin@jmd.usdoj.gov)> wrote:

The question was just asked at the press avail. Local reporter noted that "sources say" that the AG met with former President Bill Clinton last night and asked whether Benghazi was discussed. The AG stuck to the talking points. She also received a question about whether POTUS' support of Hillary Clinton has any impact on the Department's investigation, (b) (5).

Melanie, as previously discussed, is the plan to now issue the statement?

Shirlethia

On Jun 28, 2016, at 12:46 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Thanks all!

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Kadzik, Peter J (OLA)

**Sent:** Tuesday, June 28, 2016 3:45 PM

**To:** Pokorny, Carolyn (OAG)

**Cc:** Newman, Melanie (OPA); Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)

**Subject:** Re: DRAFT: Statement/Talking Points

Good here

Sent from my iPhone

On Jun 28, 2016, at 3:38 PM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

None from me.

Carolyn Pokorny

Office of the Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue N.W.

Washington, D.C. 20530

Email: [carolyn.pokorny@usdoj.gov](mailto:carolyn.pokorny@usdoj.gov)

Office: (202) 616-2372

Cell: (b) (6)

**From:** Newman, Melanie (OPA)

**Sent:** Tuesday, June 28, 2016 3:37 PM

**To:** Pokorny, Carolyn (OAG); Kadzik, Peter J (OLA)

**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)

**Subject:** RE: DRAFT: Statement/Talking Points

Edited to include Peter's comment as well. Also cleaned up Carolyn's edits a little to make it less clunky.  
Any further comments? I would like to close this out for the AG to use NOW. Thanks.

(b) (5)



(b) (5)



(b) (5)



Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Pokorny, Carolyn (OAG)

**Sent:** Tuesday, June 28, 2016 3:33 PM

**To:** Newman, Melanie (OPA); Kadzik, Peter J (OLA)

**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)

**Subject:** RE: DRAFT: Statement/Talking Points

(b) (5)

**From:** Newman, Melanie (OPA)  
**Sent:** Tuesday, June 28, 2016 3:20 PM  
**To:** Kadzik, Peter J (OLA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** RE: DRAFT: Statement/Talking Points

Works for me. Edits reflected below to address your point, as well as additional from folks on the ground.

Please send edits in the next 10 minutes. Thank you.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Kadzik, Peter J (OLA)  
**Sent:** Tuesday, June 28, 2016 3:07 PM  
**To:** Newman, Melanie (OPA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** Re: DRAFT: Statement/Talking Points

(b) (5)

Sent from my iPhone

On Jun 28, 2016, at 2:59 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Edited v. 2:

(b) (5)



(b) (5)



(b) (5)



Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Amuluru, Uma (OAG)  
**Sent:** Wednesday, June 29, 2016 9:42 AM  
**To:** Newman, Melanie (OPA) <mnewman@jmd.usdoj.gov>  
**Cc:** Pokorny, Carolyn (OAG) <cpokorny@jmd.usdoj.gov>; Lewis, Kevin S. (OPA) <kslewis@jmd.usdoj.gov>; Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>; Franklin, Shirlethia (OAG) <shfranklin@jmd.usdoj.gov>; Kadzik, Peter J (OLA) <pkadzik@jmd.usdoj.gov>; Herwig, Paige (OAG) <pherwig@jmd.usdoj.gov>  
**Subject:** Re: DRAFT: Statement/Talking Points

(b) (5)

On Jun 29, 2016, at 6:28 AM, Newman, Melanie (OPA) <mnewman@jmd.usdoj.gov> wrote:

(b) (5)

(b) (5)

On Jun 29, 2016, at 9:23 AM, Pokorny, Carolyn (OAG) <cpokorny@jmd.usdoj.gov> wrote:

(b) (5)

On Jun 29, 2016, at 9:14 AM, Newman, Melanie (OPA) <mnewman@jmd.usdoj.gov> wrote:

Fox News just called. They received a tip from someone on the ground in Phoenix. (b) (5)

On Jun 28, 2016, at 4:16 PM, Newman, Melanie (OPA) <mnewman@jmd.usdoj.gov> wrote:

(b) (5)

I am holding for now.

Melanie R. Newman  
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U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
@MelanieDOJ

**From:** Lewis, Kevin S. (OPA)  
**Sent:** Tuesday, June 28, 2016 4:15 PM  
**To:** Axelrod, Matthew (ODAG)

**Cc:** Franklin, Shirlethia (OAG); Newman, Melanie (OPA); Kadzik, Peter J (OLA); Pokorny, Carolyn (OAG); Amuluru, Uma (OAG); Herwig, Paige (OAG)

**Subject:** Re: DRAFT: Statement/Talking Points

We didn't get any follow up. (b) (5). Our justice reporter didn't follow up either.

Sent from my iPhone

On Jun 28, 2016, at 1:10 PM, Axelrod, Matthew (ODAG) <[maaxelrod@jmd.usdoj.gov](mailto:maaxelrod@jmd.usdoj.gov)> wrote:

(b) (5)

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Melanie, as previously discussed, is the plan to now issue the statement?

Shirlethia

On Jun 28, 2016, at 12:46 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Thanks all!

Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
[@MelanieDOJ](#)

**From:** Kadzik, Peter J (OLA)

**Sent:** Tuesday, June 28, 2016 3:45 PM

**To:** Pokorny, Carolyn (OAG)

**Cc:** Newman, Melanie (OPA); Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)

**Subject:** Re: DRAFT: Statement/Talking Points

Good here

Sent from my iPhone

On Jun 28, 2016, at 3:38 PM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

None from me.

Carolyn Pokorny  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, D.C. 20530  
Email: [carolyn.pokorny@usdoj.gov](mailto:carolyn.pokorny@usdoj.gov)  
Office: (202) 616-2372  
Cell: (b) (6)

**From:** Newman, Melanie (OPA)  
**Sent:** Tuesday, June 28, 2016 3:37 PM  
**To:** Pokorny, Carolyn (OAG); Kadzik, Peter J (OLA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** RE: DRAFT: Statement/Talking Points

Edited to include Peter's comment as well. Also cleaned up Carolyn's edits a little to make it less clunky.  
Any further comments? I would like to close this out for the AG to use NOW. Thanks.

(b) (5)



(b) (5)



(b) (5)



Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920  
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**From:** Pokorny, Carolyn (OAG)  
**Sent:** Tuesday, June 28, 2016 3:33 PM  
**To:** Newman, Melanie (OPA); Kadzik, Peter J (OLA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** RE: DRAFT: Statement/Talking Points

(b) (5)



**From:** Newman, Melanie (OPA)  
**Sent:** Tuesday, June 28, 2016 3:20 PM  
**To:** Kadzik, Peter J (OLA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** RE: DRAFT: Statement/Talking Points

Works for me. Edits reflected below to address your point, as well as additional from folks on the ground.

Please send edits in the next 10 minutes. Thank you.

Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920

Cell: (b) (6)  
@MelanieDOJ

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**Sent:** Tuesday, June 28, 2016 3:07 PM  
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**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** Re: DRAFT: Statement/Talking Points

(b) (5)

Sent from my iPhone

On Jun 28, 2016, at 2:59 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Edited v. 2:

(b) (5)



(b) (5)



(b) (5)



Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
@MelanieDOJ

**From:** Kadzik, Peter J (OLA)  
**Sent:** Wednesday, June 29, 2016 9:35 AM  
**To:** Pokorny, Carolyn (OAG) <cpokorny@jmd.usdoj.gov>; Newman, Melanie (OPA) <mnewman@jmd.usdoj.gov>  
**Cc:** Lewis, Kevin S. (OPA) <kslewis@jmd.usdoj.gov>; Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>; Franklin, Shirlethia (OAG) <shfranklin@jmd.usdoj.gov>; Amuluru, Uma (OAG) <uamuluru@jmd.usdoj.gov>; Herwig, Paige (OAG) <pherwig@jmd.usdoj.gov>  
**Subject:** RE: DRAFT: Statement/Talking Points

(b) (5)

Peter J. Kadzik

Assistant Attorney General  
Office of Legislative Affairs  
(202) 514-2141  
[peter.j.kadzik@usdoj.gov](mailto:peter.j.kadzik@usdoj.gov)

**From:** Pokorny, Carolyn (OAG)  
**Sent:** Wednesday, June 29, 2016 9:34 AM  
**To:** Newman, Melanie (OPA)  
**Cc:** Lewis, Kevin S. (OPA); Axelrod, Matthew (ODAG); Franklin, Shirlethia (OAG); Kadzik, Peter J (OLA); Amuluru, Uma (OAG); Herwig, Paige (OAG)  
**Subject:** Re: DRAFT: Statement/Talking Points

(b) (5)

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(b) (5)

(b) (5)

On Jun 29, 2016, at 9:23 AM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

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On Jun 29, 2016, at 9:14 AM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Fox News just called. They received a tip from someone on the ground in Phoenix. (b) (5)

On Jun 28, 2016, at 4:16 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

(b) (5). I am holding for now.

Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
@MelanieDOJ

**From:** Lewis, Kevin S. (OPA)  
**Sent:** Tuesday, June 28, 2016 4:15 PM  
**To:** Axelrod, Matthew (ODAG)  
**Cc:** Franklin, Shirlethia (OAG); Newman, Melanie (OPA); Kadzik, Peter J (OLA); Pokorny, Carolyn (OAG); Amuluru, Uma (OAG); Herwig, Paige (OAG)  
**Subject:** Re: DRAFT: Statement/Talking Points

We didn't get any follow up. (b) (5). Our justice reporter didn't follow up either.

Sent from my iPhone

On Jun 28, 2016, at 1:10 PM, Axelrod, Matthew (ODAG) <[maaxelrod@jmd.usdoj.gov](mailto:maaxelrod@jmd.usdoj.gov)> wrote:

(b) (5)

On Jun 28, 2016, at 4:09 PM, Franklin, Shirlethia (OAG) <[shfranklin@jmd.usdoj.gov](mailto:shfranklin@jmd.usdoj.gov)> wrote:

The question was just asked at the press avail. Local reporter noted that "sources say" that the AG met with former President Bill Clinton last night and asked whether Benghazi was discussed. The AG stuck to the talking points. She also received a question about whether POTUS' support of Hillary Clinton has any impact on the Department's investigation, (b) (5)

Melanie, as previously discussed, is the plan to now issue the statement?

Shirlethia

On Jun 28, 2016, at 12:46 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Thanks all!

Melanie R. Newman  
Director, Office of Public Affairs

U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
@MelanieDOJ

**From:** Kadzik, Peter J (OLA)  
**Sent:** Tuesday, June 28, 2016 3:45 PM  
**To:** Pokorny, Carolyn (OAG)  
**Cc:** Newman, Melanie (OPA); Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** Re: DRAFT: Statement/Talking Points

Good here

Sent from my iPhone

On Jun 28, 2016, at 3:38 PM, Pokorny, Carolyn (OAG) <[cpokorny@jmd.usdoj.gov](mailto:cpokorny@jmd.usdoj.gov)> wrote:

None from me.

Carolyn Pokorny  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, D.C. 20530  
Email: [carolyn.pokorny@usdoj.gov](mailto:carolyn.pokorny@usdoj.gov)  
Office: (202) 616-2372  
Cell: (b) (6)

**From:** Newman, Melanie (OPA)  
**Sent:** Tuesday, June 28, 2016 3:37 PM  
**To:** Pokorny, Carolyn (OAG); Kadzik, Peter J (OLA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** RE: DRAFT: Statement/Talking Points

Edited to include Peter's comment as well. Also cleaned up Carolyn's edits a little to make it less clunky.  
Any further comments? I would like to close this out for the AG to use NOW. Thanks.

(b) (5)



(b) (5)



(b) (5)



Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
@MelanieDOJ

**From:** Pokorny, Carolyn (OAG)  
**Sent:** Tuesday, June 28, 2016 3:33 PM  
**To:** Newman, Melanie (OPA); Kadzik, Peter J (OLA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)  
**Subject:** RE: DRAFT: Statement/Talking Points

(b) (5)



**From:** Newman, Melanie (OPA)  
**Sent:** Tuesday, June 28, 2016 3:20 PM  
**To:** Kadzik, Peter J (OLA)  
**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA);

Herwig, Paige (OAG); Axelrod, Matthew (ODAG)

**Subject:** RE: DRAFT: Statement/Talking Points

Works for me. Edits reflected below to address your point, as well as additional from folks on the ground.

Please send edits in the next 10 minutes. Thank you.

Melanie R. Newman

Director, Office of Public Affairs

U.S. Department of Justice

Direct: 202-305-1920

Cell: (b) (6)

@MelanieDOJ

**From:** Kadzik, Peter J (OLA)

**Sent:** Tuesday, June 28, 2016 3:07 PM

**To:** Newman, Melanie (OPA)

**Cc:** Franklin, Shirlethia (OAG); Amuluru, Uma (OAG); Pokorny, Carolyn (OAG); Lewis, Kevin S. (OPA); Herwig, Paige (OAG); Axelrod, Matthew (ODAG)

**Subject:** Re: DRAFT: Statement/Talking Points

(b) (5)

Sent from my iPhone

On Jun 28, 2016, at 2:59 PM, Newman, Melanie (OPA) <[mnewman@jmd.usdoj.gov](mailto:mnewman@jmd.usdoj.gov)> wrote:

Edited v. 2:

(b) (5)



(b) (5)



(b) (5)



Melanie R. Newman  
Director, Office of Public Affairs  
U.S. Department of Justice  
Direct: 202-305-1920  
Cell: (b) (6)  
@MelanieDOJ

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

1. On August 1, 2017, the Defendant Department of Justice (DOJ) made what it purported to be a second and final production consisting of approximately 315 pages responsive to Plaintiff's FOIA request. More than half of the pages produced were partially or fully redacted pursuant to FOIA Exemption 5 and/or 6.

**RESPONSE:** Defendant admits that, in accordance with the parties' agreement, it produced a second and final production of 315 pages responsive to Plaintiff's FOIA request on August 1, 2017, approximately half of which contained at least some redaction. Defendant objects to the use of the phrase "what it purported to be," as there is no dispute as to what the production was, and the term "approximately," because the second production was exactly 315 pages.

2. On September 15, 2017, counsel for the ACLJ provided counsel for Defendant with a list of specific objections to DOJ's withholdings made pursuant to FOIA Exemption (b)(5) under the deliberative process privilege. Among those withholdings are the ones identified by DOJ in the Brinkmann Declaration (Dkt # 22-1).

**RESPONSE:** Defendant admits that counsel for Plaintiff sent Defendant's counsel a list of documents to which Plaintiff objected to the assertion of the deliberative process privilege and that the Brinkmann Declaration identifies those documents. Defendant objects to the use of the phrase "[a]mong those withholdings" because it misleadingly suggests that Plaintiff identified documents as to which it challenged the assertion of the deliberative process privilege that were not identified in the Brinkmann Declaration. Defendant also notes that the list Plaintiff provided included challenges to two additional documents on other bases.

3. On September 15, 2017, counsel for the ACLJ also clarified for DOJ's counsel that the ACLJ maintains a general objection to every withholding made by the DOJ to the extent that such withholding(s) contain segregable factual information that should be disclosed.

**RESPONSE:** Admitted, although Defendant notes that Plaintiff's Cross-Motion contains arguments only concerning the alleged failure to segregate factual information from talking points produced to Plaintiff.

4. At the time the Parties discussed motions practice in September 2017, ACLJ had no reason to believe that a search – especially one conducted by the Justice Department – had been anything but thorough and adequate.

**RESPONSE:** Defendant lacks information about what reasons Plaintiff may have had for its beliefs or lack thereof and therefore cannot agree that this statement is undisputed.

5. On December 1, 2017, ACLJ received documents responsive to a similar FOIA request issued to the Federal Bureau of Investigation (FBI).

**RESPONSE:** Defendant lacks information about how or when Plaintiff obtained documents from the FBI and therefore cannot agree that this statement is undisputed.

6. Within the December 1, 2017, document production from the FBI is an e-mail from a DOJ official within the Office of the Attorney General, Shirlethia Franklin, to three FBI officials regarding the Clinton-Lynch meeting.

**RESPONSE:** Defendant admits that the document attached as Exhibit C to the Cross-Motion is an e-mail from DOJ employee Shirlethia Franklin to three FBI employees regarding the June 27, 2016 meeting between then-Attorney General Lynch and former President Clinton. Defendant lacks information about how or when Plaintiff received that document and therefore cannot agree that the statement is undisputed.

7. This e-mail – while clearly responsive to ACLJ’s FOIA request in the present case – was never produced to the ACLJ by the DOJ.

**RESPONSE:** Defendant admits that the document attached to Plaintiff’s Cross-Motion as Exhibit C is responsive to Plaintiff’s FOIA request and was not produced to Plaintiff in Defendant’s productions in this case. Defendant notes, however, that Exhibit C is one e-mail in a chain where every other portion of the chain was produced to Plaintiff in Defendant’s productions in this case.

Dated: January 12, 2018

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

JESSIE K. LIU  
United States Attorney

ELIZABETH J. SHAPIRO  
Deputy Branch Director

/s/ Gary D. Feldon  
Gary D. Feldon  
(D.C. Bar No. 987142)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, Room 7217  
Washington, DC 20001  
Tel: (202) 514-4686  
Fax: (202) 616-8460  
E-mail: Gary.D.Feldon@usdoj.gov

*Counsel for Defendant*  
*United States Department of Justice*