IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS UNITED, Plaintiff, v. DEPARTMENT OF STATE, Defendant.	Case No. 1:15-cv-374 (EGS)

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

Dated: September 21, 2015

Respectfully Submitted,

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INTRODUCTION

This action pertains to four Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, requests that Plaintiff Citizens United submitted to Defendant United States Department of State ("State"). Plaintiff seeks disclosure of records related to correspondence between former Department Officials Cheryl Mills, Huma Abedin, and Kris Balderston with individuals at the Teneo Corporation and the Bill, Hillary, and Chelsea Clinton Foundation. State conducted a search of the records in its possession at the time the searches began that was reasonably calculated to locate all records responsive to Citizens United's requests; State has released all non-exempt portions of responsive records to Plaintiff, and now moves for partial summary judgment with respect to those records. In addition, since the completion of the searches regarding Cheryl Mills and Huma Abedin, State has received voluminous additional documents from those former officials. Despite being under no obligation to do so, State intends to search for records responsive to Plaintiff's requests and produce any responsive, non-exempt portions of such documents to Plaintiff, at which time State will move for summary judgment with respect to those additional records.[1]

Partial summary judgment in favor of State is appropriate because the searches it conducted were adequate and its application of Exemptions 1, 5, and 6 was proper.

BACKGROUND

On May 15, 2014, Citizens United submitted a FOIA request to State seeking, in relevant part:

[1] State urges the Court to adopt the production and briefing schedule proposed in its enlargement motion, which is still under consideration in this Court. *See* Mot. for an Enlargement of Time to File Its Mot. for Summ. J.(ECF No. 13).

> [A]ll electronic and written communication (emails, faxes, postal mail, etc) between former State Department employee Kris Balderston and Teneo Consulting founder Douglas (Doug) Band.

Exh. A, Declaration of John Hackett ("Hackett Decl." or "Hackett Declaration") ¶ 4; Compl. ¶ 11. State acknowledged receipt of the request via letter dated May 20, 2014. Exh. A, Hackett Decl. ¶ 4. State assigned the request Case Control Number F-2014-08437 for processing, and denied Plaintiff's request for expedited processing. *Id.*

On July 29, 2014, Citizens United submitted a FOIA request to State seeking:

> Any and all correspondences exchanged between Huma Abedin and the following individuals from June 1, 2012 to February 28, 2012: Declan Kelly, Chairman and CEO, Teneo; Doug Band, President, Teneo; Paul Keary, Chief Operating Officer, Teneo; Michael Madden, Chairman, Teneo Capital; Harry Van Dyke, CEO, Teneo Capital; Chris Wearing, President, Teneo Consulting; Jim Shinn, CEO, Teneo Intelligence; Chris Deri, Managing Director, Teneo Strategy; Richard Powell, President, Teneo Strategy; Orson Porter, Washington D.C. Managing Director, Teneo; George J. Mitchell, Senior Advisor, Teneo; Lord Davies of Abersoch, Vice Chairman, Teneo; Harvey Pitt, Senior Advisor, Teneo Intelligence; Victor D. Cha, Senior Advisor, Teneo Intelligence; Ken Miller, Senior Advisor, Teneo Capital; and Karim Shariff, Teneo Capital Dubai. The requested correspondence includes, but is not limited to, any and all correspondences between Huma Abedin and the above stated individuals that were used to conduct official State Department business, as well as correspondences that were of a personal nature that used Huma Abedin's State Department e-mail address, used the State Department letterhead, or utilized any State Department resources in the creation or delivery of said correspondence.

Exh. 4, Hackett Decl. ¶ 6; Complaint, ECF No. 1 ("Compl.") ¶ 16. State acknowledged receipt of this request via letter dated August 4, 2014, in which State assigned the request number F-2014-13322 for processing and denied Citizens United's request for expedited processing. Exh. 5, Hackett Decl. ¶ 8.

On July 29, 2014, Citizens United submitted an additional FOIA request to State seeking:

> Any and all correspondences exchanged between Cheryl Mills and the following individuals associated with the William J. Clinton foundation, renamed the Bill, Hillary and Chelsea Foundation: Eric Braverman;

> Andrew Kessel; Valerie Alexander; Dennis Cheng; Scott Curran; Amitabh Desai; Rain Henderson; Laura Graham; Mark Gunton; Robert Harrison; Bari Lurie; Terri Mccullough; Patti Miller; Craig Minassian; Walker Morris; Maura Pally; Terry Sheridan; Stephanie S. Streett; Dymphna Van Der Lans; Bruce Lindsey; Chelsea Clinton; Former President Bill Clinton; Eric Braverman; Frank Giustra; Rolando Gonzalez Bunster; Ambassador Eric Goosby, MD; Hadeel Ibrahim; Lisa Jackson; Cheryl Saban, Ph.D; and Richard Verma [.] The request for correspondence includes, but is not limited to, any and all correspondence between Cheryl Mills and the above stated individuals that were used to conduct official State Department business, as well as correspondences that were of a personal nature that used Cheryl Mills' State Department e-mail address, used the State Department letterhead, or utilized any State Department resources in the creation or delivery of said correspondence.

Exh. 10, Hackett Decl. ¶ 13 Compl. ¶ 21. State acknowledged receipt of this request via letter dated August 4, 2014, in which State assigned the request number F-2014-13323 for processing and denied Citizens United's request for expedited processing. Exh. 11, Hackett Decl. ¶ 13.

On July 29, 2014, Citizens United also submitted a third FOIA request to State seeking:

> Any and all correspondences exchanged between Huma Abedin and the following associated with the William J. Clinton foundation, renamed the Bill, Hillary and Chelsea Foundation: Eric Braverman; Andrew Kessel; Valerie Alexander; Dennis Cheng; Scott Curran; Amitabh Desai; Rain Henderson; Laura Graham; Mark Gunton; Robert Harrison; Bari Lurie; Terri Mccullough; Patti Miller; Craig Minassian; Walker Morris; Maura Pally; Terry Sheridan; Stephanie S. Streett; Dymphna Van Der Lans; Bruce Lindsey; Chelsea Clinton; Former President Bill Clinton; Eric Braverman; Frank Giustra; Rolando Gonzalez Bunster; Ambassador Eric Goosby, MD; Hadeel Ibrahim; Lisa Jackson; Cheryl Saban, Ph.D; and Richard Verma [.] The request for correspondence includes, but is not limited to, any and all correspondence between Huma Abedin and the above stated individuals that were used to conduct official State Department business, as well as correspondences that were of a personal nature that used Huma Abedin's State Department e-mail address, used the State Department letterhead, or utilized any State Department resources in the creation or delivery of said correspondence.

Exhibit 15, Hackett Decl. ¶ 19; Compl. ¶ 26. State acknowledged receipt of this request via letter dated August 4, 2014, in which State assigned the request number F-2014-13323 for

processing and denied Citizens United's request for expedited processing. Exh. 17, Hackett Decl. ¶ 14.

On March 16, 2015, Citizens United filed this action under the FOIA. ECF No. 1 ("Complaint"). On April 20, 2015 State filed its Answer. ECF. No 2. Also on April 20, this Court ordered the parties to submit a Joint Status Report, including any agreed upon recommendations for further proceedings and a proposed briefing schedule. Unable to reach an agreement, the parties submitted a Joint Status Report on May 4, 2015 containing their respective positions. ECF No. 5. On May 12, 2015, the Court held a status conference to address scheduling matters and issued a briefing schedule.

In accordance with State's representations at the May 12, 2015 hearing, State provided three timely productions to Citizens United on July 13, 2015; August 10, 2015; and September 14, 2015. In total, State withheld portions of 45 documents, released in full 9 documents, and withheld in full 12 documents. With the final production, State provided to Citizens United a draft *Vaughn* index detailing the bases for withholding of exempt information under the FOIA. Hackett Decl. ¶ 24.

State now moves for partial summary judgment.

ARGUMENT

I. STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009).

With respect to the adequacy of an agency's search, an agency can prevail on summary judgment by showing "that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). "There is no requirement that an agency search every record system." *Id.* "[T]he issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate." *Weisberg v. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984) (italics removed); *see also Meeropol v. Meese*, 790 F.2d 942, 952-53 (D.C. Cir. 1986) ("[A] search is not unreasonable simply because it fails to produce all relevant material."). "The Supreme Court has held that FOIA reaches only records that the agency controls at the time of the request." *Judicial Watch v. FHA*, 646 F.3d 924, 926 (D.C. Cir. 2011) (citing *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1998)).

An agency bears the burden of justifying the assertion of FOIA exemptions to redact or withhold documents. 5 U.S.C. § 552(a)(4)(B). To meet these burdens, an agency may rely upon reasonably detailed, non-conclusory affidavits. *See Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995). An affidavit that "identif[ies] the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption" is "commonly referred to as a '*Vaughn*' index." *Lion Raisins Inc. v. U.S. Dep't of Agric.*, 354 F.3d 1072, 1082 (9th Cir. 2004) (citing *Vaughn v. Rosen*, 484 F.2d 820, 823-25 (D.C. Cir. 1973)); *see Am. Civil Liberties Union v. C.I.A.*, 710 F.3d 422, 432 (D.C. Cir. 2012).

The Hackett Declaration and *Vaughn* Index are "accorded a presumption of good faith." *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1200 (D.C. Cir. 1991); *see Gardels v. CIA*, 689

F.2d 1100, 1104 (D.C. Cir. 1982). "Ultimately, an agency's justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.'" *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007). The Court may grant summary judgment "solely on the basis of information provided by [State] in declarations when the declarations describe 'the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.'" *Citizens For Responsibility & Ethics in Wash. v. U.S. Dep't of Labor*, 478 F. Supp. 2d 77, 80 (D.D.C. 2007) (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)). The detailed and non-conclusory explanations for the withholdings are set out in the attached Hackett Declaration, exhibits to the Declaration, and the accompanying *Vaughn* Index.

II. STATE CONDUCTED REASONABLE SEARCHES FOR RESPONSIVE DOCUMENTS, AND ITS SEARCHES WERE ADEQUATE

State's search for documents responsive to Citizens United's requests was reasonably calculated to uncover all documents responsive to those requests based on the documents in its possession at the time the search began.[2] It is well settled that under the FOIA, an agency's

[2] State is not obligated under FOIA to produce documents that State neither possesses nor controls. *See, e.g., Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152, 154-55 (1980); *Nat'l Sec. Archive v. Archivist of the U.S.*, 909 F.2d 541, 545 (D.C. Cir. 1990); *Competitive Enterprise Institute v. Office of Science and Technology Policy*, 82 F. Supp. 3d 22, 232-33 (D.D.C. 2015). At most, an agency need only search those documents in its possession at the time relevant searches began, and indeed, courts often require far *less*, such that an agency need only search those documents in its possession *at the time of the FOIA request*. *See Judicial Watch v. FHA*, 646 F.3d 924, 926 (D.C. Cir. 2011) (citing *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1998)) ("The Supreme Court has held that FOIA reaches only records the agency controls at the time of the request."); *Antonelli v. U.S. Parole Comm'n.*, 619 F. Supp. 2d 1, 4 (D.D.C. 2009) (rejecting plaintiff's challenge to agency's search based on claim that additional records exist in files of other DOJ components, because "an agency component is obligated to produce only those records in its custody and control at the time of the FOIA request"); *Dockery v. Gonzalesi*, 524 F. Supp. 2d 49, 53-54 (D.D.C. 2007) (holding that U.S.

search for responsive records "need not be perfect, [but] only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request." *Meeropol*, 790 F.2d at 956. An agency "is not oblig[at]ed to look beyond the four corners of the request for leads to the location of responsive documents." *Kowalczyk v. Dep't. of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996). Rather, where, as here, a request provides no "specific information" about where to search for records responsive to the subject of the request, courts will approve an agency's search of "files where responsive information would likely be located." *Bricker v.* FBI, No. 97-2742, slip op. at 7 (D.D.C. Mar. 26, 1999) [Attached as Exh. 2]. State thus "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*, 920 F.2d at 68.

In this case, as set out in detail in the attached Declaration of John Hackett, State's searches for records responsive to Plaintiff's FOIA requests were more than adequate. *Meeropol*, 790 F.2d at 956. *See also Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982) (declaration need not "set forth with meticulous documentation the details of an epic search for the requested records."). Based on its knowledge of the subjects and individuals at issue in Citizens United's request, State directed its search efforts towards offices, individuals, and file systems it determined were likely to have responsive records, namely the Office of the Executive Secretariat, the Retired Record Inventory Management System, the Bureau of Information Resource Management, and the Secretary's Office of Global Partnerships. Hackett Decl. ¶¶ 27-

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Attorney's Office was not obligated to search court files, but rather only those records in its custody and control at the time of the request). Nevertheless, going far beyond these obligations in an effort to be as transparent as possible, State plans to search the additional recently received records from Huma Abedin and Cheryl Mills, and urges the Court to adopt the production schedule detailed in its enlargement motion, *see* Def.'s Enlargement Mot. at 3-4.

29. State concluded that no other offices or records systems were reasonably likely to maintain documents responsive to Plaintiff's requests. *Id.*

The searches conducted pursuant to Requests F-2014-13322, F-2014-13323, and F-2014-13324, which yielded responsive documents, were adequate. For each of these requests, State searched three systems within the Office of the Executive Secretariat as well as email records utilizing search terms of the individuals identified in the language of the requests. Hackett Decl. ¶¶ 31-32. As detailed above, State was under no obligation to search the records not in its possession or control at the time searches for these custodians began. *See supra* at 6 n. 2. State's search for responsive records was adequate under FOIA.

The searches conducted pursuant to Request F-2014-08437, which yielded no responsive records, were likewise adequate. Hackett Decl. ¶ 30, 33, 37, 39. *See Duenas Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) ("It is long settled that the failure of an agency to turn up one specific document in its search does not alone render a search inadequate . . . particular documents may have been accidentally lost or destroyed, or a reasonable and thorough search might have missed them."). State searched the Retired Records Inventory Management System ("RIMS"), the Bureau of Information Resource Management, the Office of Global Partnership,[3] and four locations within the Office of the Executive Secretariat. Hackett Decl., ¶¶ 27, 29, 32, 37, 39. Its searches were adequate.

[3] Out of an abundance of caution, State conducted a supplemental search of the Secretary for the Office of Global Partnership's sharedrive on September 17, 2015 and confirmed that the sharedrive did not contain and records of emails from Mr. Balderston. None of the other custodians at issue in this case, the searches for whom began and were completed on May 12 and 19, respectively, were located within S/GP. Hackett Decl. ¶ 39-40.

III. STATE PROPERLY ASSERTED EXEMPTIONS 1, 5, AND 6 OF FOIA

A. State Properly Asserted Exemption 1

State properly withheld classified information pursuant to section 552(b)(1) of the FOIA ("Exemption 1"). Exemption 1 protects records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). Agency decisions to withhold classified information under FOIA are reviewed *de novo* by the district court, and the agency bears the burden of proving its claim for exemption. *See* 5 U.S.C. § 552(a)(4)(B). Because classification authorities have "unique insights" into the adverse effects that might result from public disclosure of classified information, courts must accord "substantial weight" to an agency's affidavits justifying classification. *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). "[T]he court is not to conduct a detailed inquiry to decide whether it agrees with the agency's opinions." *Halperin v. CIA*, 629 F.2d 144, 148 (D.C. Cir. 1980); *see Weissman v. CIA*, 565 F.2d 692, 697 (D.C. Cir. 1977) ("Few judges have the skill or experience to weigh the repercussions of disclosure of intelligence information."). Instead, courts have "consistently deferred to executive affidavits predicting harm to the national security, and have found it unwise to undertake searching judicial review." *Larson*, 565 F.3d at 865 (citation omitted).

An agency can demonstrate that it has properly withheld information under Exemption 1 if it establishes that it has met the substantive and procedural requirements of Executive Order 13526. Substantively, the agency must show that the records at issue logically fall within the exemption, that Executive Order 13526 authorizes the classification of the information at issue. Procedurally, the agency must demonstrate that it followed the proper procedures in classifying the information. *See Salisbury v. United States*, 690 F.2d 966, 970-73 (D.C. Cir. 1982). An

agency meeting both tests is entitled to summary judgment. *See, e.g., Abbotts v. Nuclear Regulatory Comm'n*, 766 F.2d 604, 606-08 (D.C. Cir. 1985); *Miller v. Casey*, 730 F.2d 773, 776 (D.C. Cir. 1984).

The Hackett Declaration demonstrates that State has adhered to the procedures set forth in Executive Order 13526 in determining that the information withheld under Exemption 1 is classified. *See* Hackett Decl. ¶ 43-44. State's Deputy Assistant Secretary of Administration for Global Information Services personally reviewed the information in the two documents over which Exemption 1 is asserted and determined their current classification status, consistent with Section 1.1(a) of E.O. 13526. *Id.* at ¶ 43. Mr. Hackett ensured that the procedural requirements of E.O. 13526 were followed in this case, including proper identification and marking of documents. *Id* at ¶ 41. The classified information withheld in this case also meets the substantive requirements of E.O. 13526. The withheld material, which is under the control of the United States Government, contains information relating to foreign government information and foreign relations or foreign activities of the United States, both of which are authorized bases for classification. *See* E.O. 13526 §§ 1.4(b), (d); Hackett Decl. ¶¶ 44-48. Having met both the procedural and substantive requirements of E.O. 13526, State has sustained its burden of justifying nondisclosure of information pursuant to Exemption 1.

Pursuant to E.O. 13526 § 1.4(b) and Exemption 1, State has withheld foreign government information and information relating to the foreign relations or foreign activities of the United States on two document records.[4] *Hackett Decl.* ¶ 47, 50; *Vaughn* Index ¶¶ 23, 28. Foreign government information is defined as "information provided to the United States Government by

[4] Exemption 1 has been asserted to protect foreign government information and information regarding foreign relations of the United States with respect to Documents C05807909 and C05807923.

a foreign government or governments . . . with the expectation that the information, the source of the information, or both, are to be held in confidence." E.O. 13526 § 6.1(s)(1). State has also properly withheld the same information on the basis that it relates to foreign relations or foreign activities of the United States, which is protected from disclosure under section 1.4(d) of Executive Order 13526 and FOIA Exemption 1.

Specifically, State has withheld classified material in portions of an email exchange between Counselor Cheryl Mills, Amitabh Desai, and other Department officials. This exchange includes a message from the Assistant Secretary for African Affairs, Johnnie Carson, discussing recent developments in Eastern Congo. *Vaughn* Index ¶ 28. The information withheld concerns both foreign government information and critical aspects of U.S. foreign relations, including U.S. foreign activities carried out by officials of the U.S. Government. *Id.* The disclosure of this information has the potential to damage and inject friction into our bilateral relationship with African countries whose cooperation is important to U.S. national security. Hackett Decl. ¶ 51. As a result, the Department properly withheld that information under sections 1.4(b) and 1.4(d) of E.O. 13526. State has also withheld classified material contained in a second email exchange between Counselor Cheryl Mills and Amitabh Desai, which includes a message from the Assistant Secretary for African Affairs, Johnnie Carson, discussing President Clinton's upcoming visit to Rwanda. *Vaughn* Index ¶ 23. The disclosure of the withheld information in this document likewise had the potential to damage and inject friction into "our bilateral relationship with African countries whose cooperation is important to U.S. national security." *Id.* Accordingly, this classified information was properly withheld under Exemption 1.

B. State Properly Asserted Exemption 5

State properly asserted Exemption 5 of FOIA, which permits an agency to withhold from the public "inter-agency or intra-agency memorandums or letters which would not be available

by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). This exemption shields documents of the type that would be privileged in the civil discovery context. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 incorporates three traditional civil discovery privileges: (1) the attorney-client privilege; (2) the attorney work product doctrine; and (3) the deliberative process privilege. *Cuban v. SEC*, 744 F. Supp. 2d 60, 75 (D.D.C. 2010); *see also Judicial Watch v. U.S. Dep't of Homeland Sec.*, 736 F. Supp. 2d 202, 207 (D.D.C. 2010).

Because one of Citizens United's requests seeks communications involving the Counselor of the Department of State Cheryl Mills and certain high-ranking Department officials, it should come as no surprise that responsive records implicate the attorney-client privilege. Moreover, because many of the records sought were exchanges between Counselor Mills and Assistant Secretary for Legislative Affairs Richard Verma, it should be equally unsurprising that some of those documents, which were created as part of the process of determining how to respond to Congressional inquiries and anticipated litigation surrounding the September 11, 2012 attacks on Benghazi, Libya, such records are protected by the overlap of the attorney work product doctrine and the deliberative process privilege. As explained below, and as amply demonstrated in the Hackett Declaration and *Vaughn* Index, State's withholdings clearly meet the requirements of FOIA.

C. Deliberative Process

As the Supreme Court has explained, "[t]he deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance 'the quality of agency decisions' by protecting open and frank discussion among those who make them within the Government." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532

U.S. 1, 8-9, (2001) (citation omitted). The privilege also serves to "protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

To fall within the deliberative process privilege, a document must be both "pre-decisional" and "deliberative." *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 25 (D.D.C. 2011). "A document is pre-decisional if it was generated before agency policy was adopted and deliberative if it 'reflects the give and take of the consultative process.'" *Id.* (quoting *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.D.C. 2006)). The deliberative process privilege "covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp.*, 617 F.2d at 866. This Court should accord substantial weight to State's application of the Exemption 5 deliberative process privilege because the Agency is best situated "to know what confidentiality is needed 'to prevent injury to the quality of agency decisions.'" *Chem. Mfrs. Ass'n v. Consumer Prod. Safety Comm'n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *N.L.R.B.*, 421 U.S. at 151).

State has properly asserted Exemption 5 to redact or withhold documents protected by the deliberative process privilege.[5] These documents generally fall into two categories: (1) emails containing draft materials; and (2) emails containing deliberative communications. As fully explained in the Hackett Declaration and the *Vaughn* Index, each document redacted or withheld

[5] The deliberative process privilege was asserted pursuant to Exemption 5 with respect to the following documents: C05807837, C05807842, C05807838, C05807840, C05807841, C05807845, C05807846, C05807849, C05807850, C05807851, C05807852, C05807853, C05808742, and C05808744.

constitutes intra-agency correspondence because the documents were prepared by and circulated among only government employees. Hackett Decl. ¶ 52. Further, the redacted or withheld documents contain both pre-decisional and deliberative information. *Id.* For these reasons, State properly asserted Exemption 5 based on the deliberative process privilege.

1. Emails Containing Draft Materials

"Draft documents, by their very nature, are typically predecisional and deliberative." *Exxon Corp. v. Dep't of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983). This is because drafts are "recommendatory in nature" and "reflect[] the give-and-take of the consultative process." *Coastal States Gas Corp.*, 617 F.2d at 866. Drafts are also pre-decisional if they "reflect the personal opinions of the writer rather than the policy of the agency." *Id.*

State redacted or withheld draft documents pertaining to the development of a response to requests from Congress for information regarding the September 11, 2012 attacks in Benghazi, Libya. *Vaughn* Index ¶ 7. Specifically, State withheld or redacted email exchanges containing: the text of a proposed draft letter from the Assistant Secretary of Legislative Affairs, *id.* ¶¶ 7, 8; drafts of a proposed official statement on the Benghazi attacks, *id.* ¶ 11; and comments to the draft text of Congressional testimony, *id.* ¶ 12.

These draft documents and related internal discussions fit easily within the deliberative process privilege. *See Odland v. Federal Energy Regulatory Comm'n*, 34 F. Supp. 3d 3, 18-19 (D.D.C. 2014) (upholding assertion of the deliberative process privilege to email discussions about draft language in agency's environmental assessment); *Badalamenti v. U.S. Dep't of State*, 899 F. Supp. 542, 548 (D. Kan. 1995) (upholding the government's assertion of Exemption 5 on draft filings and discussions relating to those filings prepared in connection with the plaintiff's criminal prosecution). Each of the redacted or withheld documents pre-dated the finalization of the end product and thus is pre-decisional. The documents are deliberative in that they contain

suggestions by attorneys regarding the content and development of the draft and concern legal advice regarding the final versions of letters, official statements, and Congressional testimony. Additionally, these documents are deliberative because they reflect the thoughts of State staff. As such, their disclosure would have a chilling effect on discussions among State staff, would interfere with attorneys' ability to prepare legally sufficient responses to Congressional inquiries, and could cause public confusion by disclosure of responses to inquiries that were not in fact ultimately selected for inclusion. *See Coastal States Gas Corp.*, 617 F.2d at 866 ("[The deliberative process privilege] protect[s] against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action.").

State has released any non-exempt portion of deliberative material within the documents following a careful review of the documents. *See* Hackett Decl. If any segment of the withheld drafts "appeared in the final version, it is already on the public record and need not be disclosed." *Exxon Corp.*, 585 F. Supp. at 698 (quoting *Lead Indus. Ass'n v. O.S.H.A.*, 610 F.2d 70, 86 (2d Cir. 1979)). Moreover, "[i]f the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so." *Id.* Accordingly, State's application of Exemption 5 to draft documents and the related internal discussions is well supported.

2. Emails containing deliberative communications

State's staff occasionally used email to discuss how to respond to requests from Congress for information about the attacks in Benghazi. *See* Hackett Decl. ¶ 53. Such information is deliberative because it "reflect[s] the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp.*, 617 F.2d at 866. Accordingly, State redacted or withheld emails containing communications pertaining to the development of a response to requests from

Congress for information surrounding the Benghazi attacks. Specifically, State withheld: emails regarding strategy for outreach to members of Congress and Congressional staffs, *Vaughn* Index ¶ 14; emails discussing preparations for an upcoming Congressional hearing, *id.* ¶ 15; emails between Counselor Cheryl Mills and other Department officials discussing draft Congressional testimony, *id.* ¶ 16; emails discussing proposed interactions with Congress, *id.* ¶ 17; emails discussing proposed responses to various Congressional inquiries, *id.* ¶ 9, 10, 18; emails discussing a draft memo to Congress, *id.* ¶ 49; and emails discussing the timing of proposed hearings before and calls to Congress, *id.* ¶ 50.

Exemption 5 protects these internal exchanges of comments, criticisms, and recommendations. These communications pre-dated any final response to the Congressional requests at issue. Therefore, the withheld information is pre-decisional because it was prepared for the purpose of assisting State's decision-making regarding the review, analysis, and synthesis of options for responding to the inquiry. Indeed, these emails contributed to State's decision-making process. Release of this information would harm State's ability to prepare legally sufficient and complete responses to Congressional inquiries and impair the ability of State to have discussions regarding a range of options, ideas, or analysis related to the response that may not be ultimately selected. Indeed, "Exemption 5 was created to prevent the disruption of a free flow of ideas, opinions, advice and frank discussions within agencies concerning their policies and programs." *Julian v. U.S. Dep't of Justice*, 806 F.2d 1411, 1419 (9th Cir. 1986) *aff'd*, 486 U.S. 1 (1988) (citing S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965); H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966), U.S. Code Cong. & Admin. News 1966, p. 2418).

Courts have upheld the government's assertion of Exemption 5 over similar documents. In *Judicial Watch, Inc. v. U.S. Dep't of Homeland Security*, the court upheld the government's

assertion of Exemption 5 deliberative process over "documents contain[ing] discussions of how to respond to inquiries from . . . Congress" because they were "generated as part of a continuous process of agency decision making, viz., how to respond to on-going inquiries, they are pre-decisional and . . . [are of a] deliberative nature." 736 F. Supp. 2d at 208; *see also Citizens for Responsibility & Ethics in Wash.*, 478 F. Supp. 2d at 83 (finding that deliberative process privilege covered email messages discussing the agency's response to news article).

The same is true of the emails implicated here. These communications were generated as part of State's decision making process regarding the formulation of an appropriate and legally sufficient response to Congressional inquiries and are accordingly properly withheld under the deliberative process exemption. If it were otherwise, public disclosure of discussions held in the course of formulating a response could reasonably be expected to chill the open and frank exchange of comments, recommendations, and opinions that occurs between Department officials at these critical times. Hackett Decl. ¶ 53. Further, "disclosure of these details would severely hamper the ability of responsible Department officials to formulate and carry out executive branch programs if preliminary comments, opinions, and ideas were shared with the public." *Id.* Therefore, State properly redacted or withheld these deliberative emails pursuant to Exemption 5.

D. Attorney-Client Privilege

Exemption 5 permits an agency to withhold documents that implicate the attorney-client privilege, which protects "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Cent., Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977); *see In re Kellogg, Brown & Root, Inc.*, 756 F.3d 754, 757 (D.C. Cir. 2014). To qualify for protection under the attorney-client privilege, an agency must show that the withheld record "(1) involves confidential

communications between an attorney and his client and (2) relates to a legal matter for which the client has sought professional advice." *Judicial Watch, Inc. v. Dep't of the Treasury*, 802 F. Supp. 2d 185, 200 (D.D.C. 2011) (citation omitted). The purpose of the privilege is "'to assure that a client's confidences to his or her attorney will be protected, and therefore encourage clients to be as open and honest as possible with attorneys.'" *Judicial Watch, Inc.*, 736 F. Supp. 2d at 209 (quoting *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980)).

In a government agency context, the privilege covers "private information concerning . . . [e.g.,] 'counseling[]' intended to assist the agency in protecting its interests." *Am. Immigration Council v. Dep't of Homeland Sec.*, 21 F. Supp. 3d 60, 79 (D.D.C. 2014) (citing *Coastal States Gas Corp.*, 617 F.2d at 863). A government agency, like a private party, "needs . . . assurance of confidentiality so it will not be deterred from full and frank communications with its counselors." *In re Lindsey*, 148 F.3d 1100, 1105 (D.C. Cir. 1998). Thus, the privilege covers legal advice and recommendations regarding agency action. With respect to government personnel, the privilege encompasses confidential communications with government attorneys not only by "control group" personnel, but also by lower echelon employees. *See Upjohn Co. v. United States*, 449 U.S. 383, 392-97 (1981).

Accordingly, the attorney-client privilege fundamentally applies to facts divulged by a client to the attorney. *Vento v. IRS*, 714 F. Supp. 2d 137, 151 (D.D.C. 2010) (stating that attorney-client privilege protects facts given to attorney by client). Courts have found that this privilege "also encompasses any opinions given by an attorney to his client based on, and thus reflecting, those facts as well as communications between attorneys that reflect client-supplied information." *Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec.*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005). Thus, those facts need not be segregated for production. *Id.*

State has properly withheld documents that are subject to the attorney-client privilege.[6] These documents contain confidential communications to and from Cheryl Mills, the Counselor to the Department of State, and other Department attorneys and officials for the purpose of obtaining legal advice regarding the formulation of an official State Department response to requests from Congress pertaining to the September 11, 2012 attacks in Benghazi, Libya. Hackett Decl. ¶ 53; *Vaughn* Index ¶ 7.

The Hackett Declaration and the *Vaughn* Index establish that both of the documents for which State asserted the attorney-client privilege involve communications between attorneys and a client relating to a legal matter for which the client sought professional advice; that the communication was made with an expectation of confidentiality; and that the communication was not disclosed to a third party. *See e.g.*, Hackett Decl. ¶ 53. These documents, therefore, are entitled to the protection of the attorney-client privilege. *Coastal States Gas Corp.*, 617 F.2d at 863.

E. Attorney Work Product

Exemption 5 also permits an agency to withhold documents that are attorney work product, material that is "prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative . . . ." *Judicial Watch, Inc. v. DOJ*, 432 F.3d 366, 369 (D.C. Cir. 2005) (citations omitted). Protected attorney work product is not limited to "the mental impressions, conclusions, opinions, or legal theories of an attorney," *Tax Analysts v. IRS*, 117 F.3d 607, 620 (D.C. Cir. 1997) (holding that the work product doctrine "also protects factual materials prepared in anticipation of litigation). Rather, the distinction between "fact" and "opinion" work product that is made in civil discovery is irrelevant in the FOIA context. *FTC v.*

[6] State has asserted the attorney-client privilege pursuant to Exemption 5 with respect to Documents C05807837 and C05807842.

Grolier Inc., 462 U.S. 19, 27 (1983). Therefore, "factual material is itself privileged when it appears within documents that are attorney work product," and if a record may be withheld under the attorney work product protection of Exemption 5, "then segregability is not required." *Judicial Watch*, 432 F.3d at 371.

As the Supreme Court has recognized, "it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel." *Hickman v. Taylor*, 329 U.S. 495, 510 (1947); *see also Coastal States Gas Corp.*, 617 F.2d at 864 ("It is believed that the integrity of our system would suffer if adversaries were entitled to probe each other's thoughts and plans concerning the case.").

State has properly asserted the attorney work product doctrine over documents prepared in anticipation of litigation.[7] These documents were prepared by Department officials at the direction of State attorneys, including an Assistant Legal Adviser and the Counselor of State, Cheryl Mills, in anticipation of litigation. The information reflects work product developed for attorneys and other officials in order to respond to an inquiry from Congress regarding the September 11, 2012 Benghazi attacks. Thus, these documents fall squarely within the definition of "work product." *See Judicial Watch, Inc.*, 432 F.3d at 369.

In order for a document to have been prepared "in anticipation of litigation," it must not have been prepared "in the ordinary course of business or for other nonlitigation purposes." *In re Sealed Case*, 146 F.3d 881, 887 (D.C. Cir. 1998) (citation omitted). However, the D.C. Circuit has broadly construed this "in anticipation of litigation" requirement. *Id.* For instance, there need not be a specific pending legal claim when a document is prepared in order to trigger work

[7] The attorney work product doctrine was asserted pursuant to Exemption 5 with respect to Documents C05807837, C05807842, C05807838, C05807840, C05807841, C05807846, C05807849, C05807850, C05807851, C05807852, and C05807853.

product protection. "In assessing whether the proponent of the work product doctrine has carried its burden to show a document is protected, the relevant inquiry is 'whether, in light of the document and the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared . . . because of the prospect of litigation." *Shurtleff v. U.S. Environ. Protection Agency*, 991 F.Supp. 2d 1, 17 (D.D.C. 2012) (Sullivan, J.) citing *EEOC v. Lutheran Soc. Servs.*, 186 F.3d 959, 968 (D.C. Cir. 1999).

The response to the Congressional inquiry surrounding Benghazi was not directly the subject of litigation, but the Department reasonably anticipated that litigation would flow from those inquiries. The first Congressional inquiry regarding the September 11, 2012 attacks in Benghazi, Libya was received scarcely a week later, in the form of a September 20 letter from a subcommittee of the House Committee on Oversight and Government Reform. In that letter, the subcommittee chairman requested seven sweeping categories of information. The Department promptly began to engage with that subcommittee – as well as several other Congressional committees and individual members – in the Constitutionally based process of inter-branch accommodation, to provide it with the requested information while being appropriately mindful of separation of powers and other Executive Branch confidentiality interests. But Congressional Committees soon threatened, and eventually issued, several overlapping subpoenas for information related to the attacks. This included the issuance of a subpoena against the Secretary of State, which was later retracted, as well as threats to hold the Department of State in Contempt of Congress. *See* Letter from Daryl Issa to John Kerry, May 2, 2014. Recent experience in this area shows that such Congressional inquiries, especially when followed by compulsory process, can and do lead to litigation between the Legislative and Executive Branches. *See Committee on Oversight and Government Reform, United States House of Representatives v. Eric H. Holder*,

1:12-cv—1332 (D.D.C.) (ABJ) (filed August 13, 2012); *Committee on the Judiciary v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008). Indeed, the prospect of litigation was readily apparent to the Department since the very committee whose subcommittee made the request to the Department had brought suit against the Justice Department the preceding month. Therefore, these documents were made with an "objectively reasonable" belief that "litigation was a real possibility." *In re Sealed Case*, 146 F.3d at 884. Because these documents were prepared in anticipation of litigation, State properly asserted the work product doctrine.

F. State Properly Asserted Exemption 6 of FOIA

State properly invoked Exemption 6 of FOIA, which protects "personnel and . . . similar files" which would constitute a clearly unwarranted invasion of personal privacy from disclosure. 5 U.S.C. § 552(b)(6). The applicability of this exemption requires the agency to balance the relevant individual privacy rights against the public interest in disclosure. Exemption 6 allows the withholding of information about individuals in "personnel and medical files and similar files" when the disclosure of such information would constitute a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). "[T]he phrase 'similar files' [has] a broad, rather than a narrow, meaning." *U.S. Dep't of State v. The Washington Post Co.*, 456 U.S. 595, 600 (1982). For this exemption to apply, the information at issue must be maintained in a government file and "appl[y] to a particular individual." *United States Dep't of State, 456 U.S* at 602.

State properly asserted Exemption 6 to withhold identifying information of State Department officials and private individuals.[8] Specifically, State withheld the private email

[8] Exemption 6 was asserted with respect to documents: C05798452, C05798453, C05798454, C05798458, C05798460, C05798464, C05807837, C05807842, C05807838, C05807840, C05807841, C05807845, C05807846, C05807848, C05807851, C05807852, C05807856, C05807857, C05807861, C05807867, C05807888, C05807916, C05807917,

addresses and phone numbers both federal employees of the State Department and third party private individuals, *Vaughn* Index ¶ 1-13, 16, 17, 19-22, 24-35, 37-48. In one instance, State withheld the home address of a private individual. *Id.* ¶ 36. In three instances, State withheld the names of third-party individuals mentioned in an email exchange and accompanying information of a personal, private nature which the author clearly expected to remain private, *id.* ¶ 20, 21, 43, 46. In one instance, Sate withheld portions of an email message containing sensitive familial information. *Id.* ¶ 44.

Because it can be identified as applying to specific individuals, the information withheld under Exemption 6 constitutes "similar files" within the meaning of statute. Courts have routinely held that names, email addresses, phone numbers, and other personal information meet this threshold test. *E.g.*, *Gov't Accountability Project v. U.S. Dep't of State*, 699 F. Supp. 2d 97, 106 (D.D.C. 2010) (email addresses); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011) (mobile phone numbers); *Conservation Force v. Jewell*, No. 12-cv-1665, 2014 WL 4327949, at *15 (D.D.C. Sept. 2, 2014) ("information about [employees'] family members, cell phone numbers, personal travel plans and personal email addresses").

Once this threshold requirement is met, Exemption 6 requires the agency to balance the individual's right to privacy against the public's interest in disclosure. *See Reed v. NLRB*, 927 F.2d 1249, 1251-52 (D.C. Cir. 1991). Privacy is of particular importance in the FOIA context because a disclosure required by FOIA is a disclosure to the public at large. *See, e.g.*, *Painting & Drywall Work Pres. Fund, Inc. v. Dep't of Housing and Urban Dev.*, 936 F.2d 1300, 1302 (D.C. Cir. 1991). In contrast, "the only relevant public interest in the [Exemption 6] balancing analysis

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C05807919, C05807920, C05807923, C05807924, C05807925, C05807926, C05807928, C05807929, C05807930, C05807931, C05807932, C05807934, C05807935, C05807936, C05808722, C05808723, C05808724, C05808726, C05808727, C05808728, C05808729, C05808730, C05808732, C05808734 C05808735, C05808738, C05808739, and C05808740.

[is] the extent to which disclosure of the information sought would 'shed light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'" *Dep't of Defense v. Fed. Labor Relation Auth.*, 510 U.S. 487, 497 (1994) (internal quotation marks omitted). State properly withheld the aforementioned personal information of officials and third parties because "release of this information could result in unsolicited attention and harassing inquiries [that] would shed no light on the conduct of U.S. Government business." *Vaughn* Index ¶ 4. Indeed, this Court has described the privacy interest in "preventing the burden of unsolicited emails and harassment" as a "substantial" one. *Shurtleff*, 991 F. Supp. 2d at 18 (Sullivan, J.).

Disclosure of the information withheld by State pursuant to Exemption 6 would not even marginally advance the public's interest in disclosure. Private email addresses, phone numbers, and other personal information of State employees and third party individuals reveal nothing about State's conduct generally or about State's specific activity concerning it interactions with the individuals identified in the FOIA requests. *See Gov't Accountability Project*, 699 F. Supp. 2d at 106 (holding balancing test weighs in favor of withholding personal email addresses; "releasing their email addresses serves no public interest because these email addresses would not reveal 'what the government is up to'"). Accordingly, having weighed the substantial privacy interests in the withheld information against the minimal or non-existent public interest in disclosure, State properly concluded that disclosure "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). State therefore properly applied Exemption 6.

IV. State Produced All Reasonably Segregable Information to Plaintiff

State released all reasonably segregable, non-exempt information. *See* Hackett Decl. The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information unless the non-exempt portions are "inextricably intertwined with exempt portions." 5 U.S.C. § 552(b); *Mead Data Ctr.*, 566 F.2d at 260; *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). However, this provision does not require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat'l Sec. Archive Fund, Inc. v. CIA*, 402 F. Supp. 2d 211, 220-21 (D.D.C. 2005) (concluding that no reasonably segregable information exists because "the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words").

Consistent with this obligation, State has reviewed the documents redacted or withheld under Exemption 5 on a line-by-line basis and has concluded that it is impossible to further segregate and release purely factual material from these documents without disclosing the pre-decisional and deliberative communications of the documents' authors, privileged attorney-client communications, or attorney work product. *See* Hackett Decl. ¶ 54. With respect to the documents withheld in full under the work product doctrine, the D.C. Circuit's "case law is clear that the work-product doctrine simply does not distinguish between factual and deliberative material." *Judicial Watch, Inc. v. Dep't. of Justice*, 432 F.3d 366, 371 (D.C. Cir. 2005) citing *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1187 (D.C. Cir. 1987). To this end, "[a]ny part of [a document] prepared in anticipation of litigation, not just the portions concerning opinions, legal theories, and the like, is protected by the work product doctrine and falls under exemption 5." *Tax Analysts*, 117 F.3d at 620. Accordingly, factual material is itself privileged

when it appears within documents that are exempt under the attorney work product doctrine. *Judicial Watch*, 432 F.3d at 371. "If a document is fully protected as work product, then segregability is not required." *Id*. Thus, State's decision to withhold in full certain documents exempt from disclosure by the attorney work product doctrine does not render it noncompliant with segregability obligations.[9]

State has thus produced all non-exempt, "reasonably segregable portion[s]" of the responsive records. 5 U.S.C. § 552(b).

CONCLUSION

State conducted adequate searches of the records in its possession at the time the relevant searches began, and properly withheld information under Exemptions 1, 5, and 6 of the FOIA. In addition, all reasonably segregable information was released to Plaintiff. For these reasons, this Court should grant Defendant's motion for partial summary judgment. State further urges the Court to adopt State's proposed schedule with respect to the search and productions of the recently received documents from Huma Abedin and Cheryl Mills.

Dated: September 21, 2015

Respectfully Submitted,

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Deputy Director

[9] As a purely discretionary matter, State released certain portions of documents which were originally withheld in full under the work product doctrine. Specifically, State supplemented its production to Plaintiff with the portions of documents C05807837 and CO5807842 that contain public press statements. To be sure, State was under no obligation to provide this information to Citizens United, and State's efforts exceed the requirements that FOIA imposes on agencies. *See ACLU v. DOJ*, 681 F.3d 61, 71 (2d Cir. 2012) ("FOIA does not permit courts to compel an agency to produce anything other than responsive, non-exempt records."); *see FlightSafety Servs. Corp. v. Dep't of Labor*, 326 F.3d 607, 613 (5th Cir. 2003) (per curiam).

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2015, a copy of the foregoing Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Caroline J. Anderson
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