

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION	)	
and AMERICAN CIVIL LIBERTIES	)	
UNION FOUNDATION,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
DEPARTMENT OF DEFENSE,	)	
CENTRAL INTELLIGENCE AGENCY,	)	
DEPARTMENT OF JUSTICE, and	)	
DEPARTMENT OF STATE,	)	
	)	
Defendants.	)	
	)	

No. 17 Civ. 3391 (PAE)

**DECLARATION OF ERIC F. STEIN**

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

1. I am the Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department” or “State”) and have served in this capacity since January 22, 2017. Previously, I served as the Acting Director since October 16, 2016, and as the Acting Co-Director since March 21, 2016.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the Freedom of Information Act, the Privacy Act, and the mandatory declassification review requirements of Executive Order No. 13526 of December 29, 2009, governing classified national security information), by members of Congress, by other government agencies, and those made pursuant to judicial process, such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives

management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. In my current capacity, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other records access provisions.

4. Prior to serving in this capacity, I worked directly for the Department's Deputy Assistant Secretary ("DAS") for Global Information Services ("GIS") and served as a senior advisor and deputy to the DAS on all issues related to GIS offices and programs, which include IPS. As the Director of IPS, I have original classification authority and am authorized to classify and declassify national security information.

5. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject requests, and I am in charge of coordinating the agency's search and recovery efforts with respect to those requests.

6. The American Civil Liberties Union and American Civil Liberties Union Foundation ("Plaintiffs") indicated through counsel that they seek to challenge the Department's withholdings on nine (9) documents. With respect to these documents, the Department is withholding information because the information is classified, pre-decisional and deliberative, protected from disclosure under the attorney-client privilege, or because it pertains to individual personal privacy.

7. This declaration explains the FOIA exemptions applied in processing the responsive records. A *Vaughn* index (section IV below) provides a detailed description of the

information withheld and the justifications for those withholdings with respect to the nine documents whose withholdings Plaintiffs have indicated they seek to challenge.

**I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST**

8. On March 15, 2017, the American Civil Liberties Union and the American Civil Liberties Union Foundation (“Plaintiffs”) submitted by fax a FOIA request to the Department (Exhibit 1) seeking:

- (1) The legal and policy bases in domestic, foreign, and international law upon which the government evaluated or justified the al Ghayil Raid, including but not limited to records related to the designation of parts of Yemen as “areas of active hostilities,” and the legal and factual basis that the government uses in designating such areas;
- (2) The process by which the government approved the al Ghayil Raid, including which individuals possessed decision-making authority and the evidentiary standard by which the factual evidence was evaluated to support the determination;
- (3) The process by which the decision was made to designate three parts of Yemen as “areas of active hostilities”;
- (4) Before-the-fact assessments of civilian or bystander casualties of the raid and the “after-action” investigation into the raid; and
- (5) The number and identities of individuals killed or injured in the al Ghayil Raid, including by not limited to the legal status of those killed or injured, with these separated out by individuals intentionally targeted and collateral casualties or injuries.

9. By letter dated March 21, 2017 (Exhibit 2), Office of Information Programs and Services (“IPS”) acknowledged receipt of Plaintiff’s FOIA request and assigned it Case Control Number F-2017-06067.

10. By letter dated November 17, 2017 (Exhibit 3), IPS informed Plaintiff that in response to his FOIA request, it had conducted searches and located responsive documents. The Department released two documents in full, nine documents in part, and denied one document in full.

11. By letter dated December 15, 2018 (Exhibit 4), the Department released 9 documents in full, 63 documents in part, and denied 65 documents in full. Also, the Department informed Plaintiff that nine documents had been referred to another agency for direct response.

12. By letter dated July 18, 2018 (Exhibit 5), the Department released supplemental material in four documents that had been previously withheld in part.

## **II. THE SEARCH PROCESS**

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

14. Each office within State, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission. These files consist generally of working copies of documents, information copies of documents maintained in the Central Foreign Policy Records collection, and other documents prepared by or furnished to the office in connection with the performance of its official duties, including electronic copies of documents and e-mail messages.

15. After reviewing Plaintiff's requests, IPS determined that the following offices or records systems were reasonably likely to have documents responsive to Plaintiff's requests: the Office of the Executive Secretariat ("S/ES"), the Office of the Legal Adviser ("L"), the Bureau of Near Eastern Affairs ("NEA"), the Bureau of Political-Military Affairs ("PM"), and the Bureau of Counterterrorism ("CT").

16. When conducting a search in response to a FOIA request, State relies on the knowledge and expertise of the employees of each bureau/office/post to determine the files and locations reasonably likely to maintain responsive records and the best means of locating such

records, as these employees are in the best position to know how their files are organized. Likewise, those employees are also in the best position to determine which search terms would yield potentially responsive records, because they are most knowledgeable about the organization of the records systems in use. The searches for responsive records were conducted by individuals who were knowledgeable of both Plaintiff's FOIA request and the particular records being searched. In total, State released 23 pages in full and 162 pages in part, and denied 304 pages in full.

17. Because I understand through counsel that Plaintiffs are not challenging the adequacy of the State Department's searches for responsive documents, the agency's searches are not further addressed herein.

### **III. FOIA EXEMPTIONS CLAIMED**

#### **FOIA Exemption 1– Classified Information**

18. 5 U.S.C. § 552(b)(1) states that the FOIA does not apply to matters 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;

19. The Department withheld certain information under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), (b), (c), and (d). Section 1.4(a) protects military plans, weapons systems, or operations. Section 1.4(b) protects foreign government information. Section 1.4(c) protects intelligence activities (including covert action), intelligence sources or methods, or cryptology. Section 1.4(d) protects foreign relations or foreign activities of the United States, including confidential sources. The withheld information includes information classified at the SECRET and CONFIDENTIAL levels. Section 1.2 of E.O. 13526 states:

“Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

“Confidential” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

20. The information withheld under Exemption 1, 5 U.S.C. § 552(b)(1), continues to meet the classification criteria of E.O. 13526 and the Department has not previously authorized or officially acknowledged public release of this information.

#### **FOIA Exemption 5 – Privileged Information**

21. 5 U.S.C. § 552(b)(5) states that the FOIA does not apply to:

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

22. Exemption 5, 5 U.S.C. § 552(b)(5), protects from disclosure information that is normally privileged in the civil discovery context, including information that is protected by the deliberative process privilege. The deliberative process privilege (“DPP”) protects the confidentiality of candid views and advice of U.S. Government officials in their internal deliberations related to policy formulation and administrative direction. Disclosure of material containing the details of internal 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. In addition, 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. In each case where such information has been withheld pursuant to Exemption 5 and the deliberative process privilege, disclosure of this information, which is pre-decisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit

candid internal discussions and the expression of recommendations and judgments regarding current issues and preferred courses of action by Department personnel.

23. Additionally, the Department withheld certain information under FOIA Exemption 5 pursuant to the attorney-client privilege (“ACP”). This information has been withheld to protect communications between attorneys and their clients for the purpose of seeking and/or providing legal advice. These communications were intended to be kept confidential and that confidentiality has been maintained.

24. Additionally, the Department withheld certain information under FOIA Exemption 5 pursuant to the presidential communications privilege, to protect discussions between close presidential advisors and senior State officials preparing information or advice for potential presentation to the President. The information withheld pursuant to this privilege consists of summaries of discussions in meetings of the interagency Deputies Committee. National Security Presidential Memorandum 4 of April 4, 2017 provides that the Deputies Committee is “the senior sub-Cabinet interagency forum for consideration of, and where appropriate, decision making on, policy issues that affect the national security interests of the United States.” These meetings consist of discussions with close presidential advisors and members of their staffs who have broad and significant responsibility for gathering information in the course of preparing advice for potential presentation to the President in matters that implicate the President’s decisions concerning foreign policy or national security concerns, and senior officials of the State Department and other agencies. In this case, disclosure of the information withheld under this privilege would reveal the process by which the President receives national security advice from close advisors, and would reveal information about the advice itself.

**FOIA Exemption (b)(6) – Personal Privacy**

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

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

26. As described below, the Department has withheld certain personal information, such as names, email addresses, phone numbers, and signatures, under Exemption 6 because its release could result in unsolicited attention and harassing inquiries. Certain names of employees in the Bureaus of Counterterrorism (“CT”) and Intelligence and Research (“INR”) have been withheld due to the sensitive nature of the work conducted for the Department relevant to this request, which is focused on a specific U.S. counterterrorism operation.

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

28. As for all of the information withheld pursuant to Exemption 6, I have concluded that (1) disclosure of the information withheld would result in a clearly unwarranted invasion of personal privacy; and (2) disclosure of the information would not serve the core purpose of the FOIA, i.e., it would not disclose information about “what the government is up to.” Accordingly, I have determined that the privacy interests clearly outweigh any public interest in disclosure of such personal information.

**IV. VAUGHN**

29. **Document C06395171** is an approved three-page action memorandum dated February 10, 2017, for the Acting Assistant Secretary for Diplomatic Security that was originally and is currently classified SECRET. The Department withheld the document in full under FOIA



Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), 1.4(b), 1.4(c), and 1.4(d). The document contains information about military plans and operations, including a detailed description of operational steps that DoD and State planned to take in coordination with each other to protect U.S. Government personnel from a list of specific threats in connection with a planned future engagement. Release of this information reasonably could be expected to cause serious damage to the national security by revealing these operational security measures and thereby making it easier for adversaries to anticipate and counter them, which jeopardizes the safety of U.S. personnel and the success of U.S. operations. The document also contains foreign government information, including reporting on a foreign official's response to recent U.S. Government activities. Release of this information reasonably could be expected to cause serious damage to the national security by reducing the likelihood that foreign officials will be willing to convey sensitive national security information in confidence to the U.S. Government, for fear that expectation of confidentiality will be breached. The document also contains information about intelligence activities, including intelligence gathering. Release of this information reasonably could be expected to cause serious damage to the national security by endangering the efficacy of U.S. intelligence activities. The document also contains information about foreign relations and foreign activities of the United States, including descriptions of past and planned future engagements with senior foreign officials and U.S. Government activities in Yemen, the U.S. objective in a planned future engagement, and an assessment of the local security situation and the threats it poses to U.S. personnel. Release of this information reasonably could be expected to cause serious damage to the national security by undermining U.S. foreign policy by revealing diplomatic strategies and tactics that depend on discretion, and by inhibiting the execution of U.S. foreign policy in pursuit of national security goals by

increasing security risks to the personnel implementing that policy, thereby making the policy more difficult to carry out successfully. The Department conducted a line-by-line review of the document and determined that no meaningful, non-exempt information can be reasonably segregated and released.

30. **Document C06395264** is a three-page information memorandum dated February 7, 2017, for the Secretary of State regarding foreign policy in the context of upcoming February 17, 2017, multilateral meetings with Gulf countries and United Nations counterparts. This document was originally and is currently classified SECRET. The Department withheld the document in full under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), 1.4(b), 1.4(c), and 1.4(d). The document contains information about military plans and operations, including a U.S. assessment of a foreign military strategy and specific operations undertaken as part of it, possible results, and an assessment of the strategy's immediate and second-order implications for future U.S. military posture and activities. Release of this information reasonably could be expected to cause serious damage to the national security by giving adversaries a guide to actions they can take that would endanger U.S. personnel and jeopardize U.S. national security interests. The document also contains foreign government information, including descriptions of foreign governments' beliefs, priorities, and concerns. Release of this information reasonably could be expected to cause serious damage to the national security by reducing the likelihood that foreign officials will be willing to convey sensitive information to the U.S. Government. The document also contains information about intelligence activities, including an intelligence community judgment. Release of this information reasonably could be expected to cause serious damage to the national security by endangering the efficacy of U.S. intelligence activities. The document also contains information about

foreign relations and foreign activities of the United States, including extensive and detailed description and analysis of the priorities and specific plans of the regional states and terrorist groups such as al-Qaida in the Arabian Peninsula (AQAP) and the Islamic State in Iraq and the Levant (ISIL), as well as recommendations on what U.S. foreign policy should be on these issues. Release of this information reasonably could be expected to cause serious damage to the national security by undermining U.S. foreign policy on an issue that remains unresolved by revealing diplomatic strategies and tactics that depend on discretion, and by revealing to adversaries specific trends and activities that threaten U.S. national security objectives in the region, as well as ways the U.S. acts and could act to counter them. The Department conducted a line-by-line review of the document and determined that no meaningful, non-exempt information can be reasonably segregated and released.

31. **Document C06395294** is a version of a draft three-page action memorandum dated March 10, 2017, to the Secretary of State regarding foreign policy in Yemen. The document was originally and is currently classified SECRET, and the Department withheld the document in full.

32. The Department withheld the document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), 1.4(b), 1.4(c), and 1.4(d). The document contains information about military plans and operations, including specific potential U.S. military activities and recommended conditions for them. Release of this information reasonably could be expected to cause serious damage to the national security by jeopardizing U.S. military operations through revealing information that could be used to anticipate and counter them, including by revealing conditions under which the activities would be more or less likely to occur. The document also contains foreign government information, including the description of

outreach by foreign officials to the United States and extensive discussion of recommended engagements by senior U.S. officials. Release of this information reasonably could be expected to cause serious damage to the national security by reducing the likelihood that foreign officials will be willing to convey sensitive information in confidence to the U.S. Government, for fear that expectation of confidentiality will be breached, which would deny U.S. personnel information that is important to plan and carry out national security activities. The document also contains information about intelligence activities, including a location of intelligence collection. Release of this information reasonably could be expected to cause serious damage to the national security by endangering the efficacy of U.S. intelligence activities. The document also contains information about foreign relations and foreign activities of the United States, including an assessment of the immediate-term and long-term diplomatic challenges posed by the situation in Yemen, detailed proposals for diplomatic lines of effort, proposed diplomatic engagements to carry out these options, and contingency options contemplated in response to specific changes. Release of this information reasonably could be expected to cause serious damage to the national security by undermining U.S. foreign policy by revealing diplomatic strategies and tactics that depend on discretion, including proposals to deliver certain messages and achieve certain objectives through intermediaries and to leverage relationships with certain foreign officials and international institutions to achieve specific goals.

33. The Department also withheld the document under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege. The memorandum is a draft, not a final version in the format that is standard for memos processed for review by the Secretary of State. Among the information indicating that this is a draft memorandum rather than a final version is that the memorandum lacks the markings that would be standard in a final

memorandum processed for review by the Secretary of State, and that the memorandum's last page – which lists individuals who have approved the memorandum – indicates that one individual's approval is missing. In addition, the memorandum is pre-decisional in that it proposes lines of effort for approval or disapproval by the Secretary of State, and it is deliberative in that it assesses the proposals' potential risks and benefits. The release of this information could reasonably be expected to shrink the range of options presented in the future to the Secretary of State about major foreign policy challenges, because if Department officials expect the options they present to be released to the public then they may be less likely to consider, develop and present unconventional or controversial options that do not reflect conventional wisdom or follow the path of least resistance. The release of this information could also be reasonably expected to reduce the candor with which officials describe such options.

34. The Department conducted a line-by-line review of the document and determined that there is no meaningful, non-exempt information that can be reasonably segregated and released.

35. **Document C06395321** is an undated version of a five-page draft briefing paper containing an annotated agenda, background information, and recommendations for expected participation by a senior State Department official in an interagency meeting scheduled for May 5, 2017, including confidential and privileged legal analysis regarding a proposal to be discussed at said meeting. The document was originally and is currently classified SECRET, and the Department withheld it in full.

36. The Department withheld the document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), 1.4(b), 1.4(c), and 1.4(d). The document contains information about military plans and operations, including an extended and detailed

discussion of a potential proposal for U.S. military activities, the history of actions preceding it, the environment in which the activities would occur, the specific components of the activities, and an assessment of the likely impact of the activities. Release of this information reasonably could be expected to cause serious damage to the national security by jeopardizing similar future U.S. military operations through revealing information that could be used to anticipate and counter them. The document also contains foreign government information, including the views of senior foreign officials about U.S. military activities. Release of this information reasonably could be expected to cause serious damage to the national security by reducing the likelihood that foreign officials will be willing to convey sensitive national security-related information in confidence to the U.S. Government, for fear that the U.S. Government will not maintain that confidentiality. The document also contains information about intelligence activities, including a preview of an expected intelligence community update on the impact of U.S. activities. Release of this information reasonably could be expected to cause serious damage to the national security by endangering the efficacy of U.S. intelligence activities. The document also contains information about foreign relations and foreign activities of the United States, including assessments of the capabilities and intentions of various foreign states and non-state entities with respect to the political and military situation, and descriptions of the relationships and tensions between such actors. Release of this information reasonably could be expected to cause serious damage to the national security by harming the U.S. Government's relationships with the actors discussed in the memorandum, and by revealing diplomatic plans to address an ongoing issue that depend for their success on discretion.

37. The Department also withheld the document under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege and the attorney-client privilege. The

briefing paper is a draft, not a final version, as the e-mail message to which it was attached indicates that it was under review. The briefing paper is pre-decisional and deliberative at the micro level, in that it includes recommendations for the positions the senior State Department official should take in the interagency meeting, as well as explanations for those positions. It is also pre-decisional and deliberative at the macro level, as the interagency meeting for which the paper was prepared was part of an ongoing interagency discussion, review, and decision-making process on security issues and concerned a particular proposal to be decided at a higher level. The release of this information could reasonably be expected to reduce the range of options that Department personnel present to senior Department officials, as well as the options that senior Department officials then present in interagency meetings, and to diminish the candor with which all of those options are discussed. In addition, the paper includes legal advice about domestic and international legal issues prepared by Department attorneys for their clients. This advice was intended to be kept confidential, and that confidentiality has been maintained.

38. The Department conducted a line-by-line review of the document and determined that there is no meaningful, non-exempt information that can be reasonably segregated and released.

39. **Document C06432231** is a two-page intra-agency email sent on a classified system providing a readout of deliberations from an interagency meeting of the Deputies Committee held on January 26, 2017. The email was originally and is currently classified SECRET, and the Department released it in part.

40. The Department withheld certain information in the email under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), 1.4(b), 1.4(c), and 1.4(d). The document contains information about military plans and operations, including planned and

contingency U.S. military activities. Release of this information reasonably could be expected to cause serious damage to the national security by jeopardizing U.S. military operations through revealing information that could be used to anticipate and counter them, including by revealing a contingency that could cause the cessation of certain military activities. The document also contains foreign government information, including the views of a senior foreign official about U.S. activities. Release of this information reasonably could be expected to cause serious damage to the national security by reducing the likelihood that foreign officials will be willing to convey sensitive information to the U.S. Government. The document also contains information about intelligence activities, including a proposal for an intelligence activity. Release of this information reasonably could be expected to cause serious damage to the national security by endangering the efficacy of U.S. intelligence activities. The document also contains information about foreign relations and foreign activities of the United States, including contingency actions to be taken in the event of particular political developments, including planned contact with a particular identified official at a particular time. Release of this information reasonably could be expected to cause serious damage to the national security by undermining U.S. foreign policy by revealing diplomatic strategies and tactics that depend on discretion.

41. The Department also withheld certain information in the email under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege. The email summarizes interagency deliberations about a specific proposal. The release of this information could reasonably be expected to chill the Department's expression of frank assessments and opinions in interagency discussions.

42. The Department also withheld certain information in the email under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the presidential communication privilege. The



information withheld under this privilege consists of a summary (“readout”) of a meeting of the Deputies Committee, including descriptions of comments by senior officials of the State Department and other agencies. This information has been closely held within the Executive Branch. The substance of the Deputies Committee’s deliberations and discussions during the meeting summarized in this document has not been publicly revealed. Disclosure of this information would inhibit the ability of the President and his close advisors, including senior State officials, to engage in effective communications and decisionmaking.

43. The Department also withheld the name of a Bureau of Counterterrorism employee under FOIA Exemption 6, 5 U.S.C. § 552 (b)(6). The release of the name of this individual, who was involved in sensitive U.S. Government counter-terrorism planning, could reasonably be expected to subject the person to harassment and/or intimidation, could have a detrimental effect on the employee’s ability to carry out his/her duties, and would constitute a clearly unwarranted invasion of privacy. Release of this name would shed no light on the operations and activities of the U.S. Government.

44. The Department conducted a line-by-line review of the document and released the meaningful, non-exempt information that could be reasonably segregated.

45. **Documents C06432239, C06432636, and C06432854** are identical copies of a three-page intra-agency email sent on a classified system providing a readout of deliberations from an interagency meeting of the Deputies Committee held on January 6, 2017. The content of the email was originally and is currently classified SECRET, and the Department released the document in part.

46. The Department withheld the document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), 1.4(b), 1.4(c), and 1.4(d). The document

contains information about military plans and operations, including detailed discussion of the modalities of potential U.S. military activities. Release of this information reasonably could be expected to cause serious damage to the national security by jeopardizing U.S. military operations through revealing information that could be used to anticipate and counter them, by allowing adversaries to plan and carry out engagements with detailed knowledge of U.S. capabilities, force levels and intentions. The document also contains foreign government information, including the views of foreign officials about military activities and their plans for them. Release of this information reasonably could be expected to cause serious damage to the national security by reducing the likelihood that foreign officials will be willing to convey sensitive national security information in confidence to the U.S. Government, for fear that expectation of confidentiality will be breached. The document also contains information about intelligence activities, including possible intelligence assessments. Release of this information reasonably could be expected to cause serious damage to the national security by endangering the efficacy of U.S. intelligence activities. The document also contains information about foreign relations and foreign activities of the United States, including details of potential U.S. engagements with regional partners and possible reactions by regional adversaries. Release of this information reasonably could be expected to cause serious damage to the national security by undermining U.S. foreign policy by revealing diplomatic strategies and tactics that depend on discretion, including conditions under which to conduct certain activities and factors in deciding whether to encourage or support particular foreign governments' initiatives.

47. The Department also withheld the document under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege. The email summarizes interagency deliberations about a specific proposal. The release of this information could reasonably be

expected to chill the Department's expression of frank assessments and opinions in interagency discussions.

48. The Department also withheld the content of the email under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the presidential communication privilege. The information withheld under this privilege consists of a summary ("readout") of a meeting of the Deputies Committee, including descriptions of comments by senior officials of the State Department and other agencies. This information has been closely held within the Executive Branch. The substance of the Deputies Committee's deliberations and discussions during the meeting summarized in this document has not been publicly revealed. Disclosure of this information would inhibit the ability of the President and his close advisors, including senior State officials, to engage in effective communications and decision making.

49. The Department also withheld the names of Bureau of Counterterrorism employees under FOIA Exemption 6, 5 U.S.C. § 552 (b)(6). The release of the names of these individuals, who were involved in sensitive U.S. Government counterterrorism planning, could reasonably be expected to subject the persons to harassment and/or intimidation, could have a detrimental effect on the employee's ability to carry out his/her duties, and would constitute a clearly unwarranted invasion of privacy. Release of these names would shed no light on the operations and activities of the U.S. Government.

50. The Department conducted a line-by-line review of the document and released the meaningful, non-exempt information that could be reasonably segregated.

51. **Document C06432633** is an undated draft one-page attachment to C06432632, which is an undated version of a draft annotated agenda for an interagency meeting scheduled for January 5, 2017, to be attended by a senior Department official. The one-page attachment was

originally and is currently classified SECRET, and the Department withheld the document in full.

52. The Department withheld the document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(a), 1.4(b), 1.4(c), and 1.4(d). The document contains information about military plans and operations, including repeated references to contemplated U.S. military activities. Release of this information reasonably could be expected to cause serious damage to the national security by revealing arrangements necessary for U.S. military activities that adversaries could exploit to seek to prevent or end the activities. The document also contains foreign government information, including references to particular communications previously made by foreign governments. Release of this information reasonably could be expected to cause serious damage to the national security by reducing the likelihood that foreign governments will be willing to convey sensitive national security-related information to the U.S. Government in confidence, for fear that expectation of confidentiality will be breached. The document also contains information about intelligence activities, including a reference to intelligence with respect to a particular location. Release of this information reasonably could be expected to cause serious damage to the national security by endangering the efficacy of U.S. intelligence activities in that location. The document also contains information about foreign relations and foreign activities of the United States, including a description of particular commitments contemplated to be sought from a foreign government. Release of this information reasonably could be expected to cause serious damage to the national security by making it less likely that governments would be willing to make commitments in confidence to the U.S., which in turn would impede U.S. relationships with partners and thereby

make it more difficult for the U.S. to accomplish its national security objectives in coordination with other states.

53. The Department also withheld the document under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege and attorney-client privilege. The document is expressly labeled a draft. The document was drafted to inform interagency discussion about the issues it addresses in the meeting for which it was prepared. The release of this document could reasonably be expected to chill the Department's preparation of documents to serve as a basis for discussion in interagency meetings. In addition, the document was prepared by Department attorneys for the purpose of illustrating an approach reflecting their legal advice, for use ultimately by clients. The document was intended to be kept confidential, and that confidentiality has been maintained.

54. The Department conducted a line-by-line review of the document and determined that no meaningful, non-exempt information can be reasonably segregated and released.

#### **V. CONCLUSION**

55. In summary, the Department searched all locations likely to contain relevant documents responsive to Plaintiff's FOIA request. State retrieved 158 records responsive to this FOIA request. Of those records, 11 were released in full, 72 were released in part, and 66 were withheld in full. The remaining nine documents were referred to another agency for direct response to Plaintiff. State has conducted a line-by-line review of all documents addressed herein for non-exempt information and has released meaningful, nonexempt information when reasonably segregable.

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

Executed this 20<sup>th</sup> day of July 2018, Washington, D.C.

A handwritten signature in black ink, appearing to read "Eric F. Stein", written over a horizontal line.

Eric F. Stein