

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00158-CKK**

PUBLIC EMPLOYEES FOR ENVIRONMENTAL
RESPONSIBILITY v. UNITED STATES DEPARTMENT OF
HOMELAND SECURITY

Assigned to: Judge Colleen Kollar-Kotelly
Cause: 05:552 Freedom of Information Act

Date Filed: 01/25/2018
Date Terminated: 12/17/2021
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY**

represented by **Paula Naomi Dinerstein**
PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY
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ATTORNEY TO BE NOTICED

V.

Defendant

**DEPARTMENT OF HOMELAND
SECURITY**

represented by **Michael A. Tilghman , II**
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
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TERMINATED: 05/28/2020

Date Filed	#	Docket Text
01/25/2018	<u>1</u>	COMPLAINT against UNITED STATES DEPARTMENT OF HOMELAND SECURITY (Filing fee \$ 400 receipt number 0090-5302038) filed by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Declaration Corporate Disclosure, # <u>3</u> Summons Attorney General, # <u>4</u> Summons DHS, # <u>5</u> Summons USAO)(Dinerstein, Paula) (Entered: 01/25/2018)
01/25/2018	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (md) (Entered: 01/25/2018)

01/25/2018		Case Assigned to Judge Colleen Kollar-Kotelly. (md) (Entered: 01/25/2018)
01/25/2018	<u>3</u>	SUMMONS (3) Issued Electronically as to UNITED STATES DEPARTMENT OF HOMELAND SECURITY, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent) (md) (Entered: 01/25/2018)
01/30/2018	<u>4</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 1/30/18. (DM) (Entered: 01/30/2018)
02/07/2018	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 1/31/2018. Answer due for ALL FEDERAL DEFENDANTS by 3/2/2018. (Dinerstein, Paula) (Entered: 02/07/2018)
02/07/2018	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. UNITED STATES DEPARTMENT OF HOMELAND SECURITY served on 1/30/2018 (Dinerstein, Paula) (Entered: 02/07/2018)
02/07/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 1/31/2018. (Dinerstein, Paula) (Entered: 02/07/2018)
02/12/2018	<u>8</u>	NOTICE of Appearance by Marina Utgoff Braswell on behalf of UNITED STATES DEPARTMENT OF HOMELAND SECURITY (Braswell, Marina) (Entered: 02/12/2018)
03/02/2018	<u>9</u>	ANSWER to <u>1</u> Complaint by UNITED STATES DEPARTMENT OF HOMELAND SECURITY.(Braswell, Marina) Modified to add link on 3/5/2018 (znmw). (Entered: 03/02/2018)
03/20/2018	<u>10</u>	ORDER. The parties shall file the schedule not later than APRIL 19, 2018 . Signed by Judge Colleen Kollar-Kotelly on March 20, 2018. (lcckk1) (Entered: 03/20/2018)
03/20/2018		Set/Reset Deadlines: Joint Schedule due by 4/19/2018. (dot) (Entered: 03/20/2018)
04/19/2018	<u>11</u>	MEET AND CONFER STATEMENT. (Dinerstein, Paula) (Entered: 04/19/2018)
05/02/2018		MINUTE ORDER: The Court has received the parties' <u>11</u> Joint Meet and Confer Report, which indicates that Defendant's Federal Emergency Management Agency ("FEMA") and National Protection and Programs Directorate ("NPPD") have identified certain documents and expect to make an interim release by May 9, 2018, and to complete processing by June 15, 2018. Accordingly, the Court adopts the parties' proposal that they file a Joint Status Report by JUNE 25, 2018 , confirming the status of Defendant's productions, identifying how Plaintiff intends to proceed, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on May 2, 2018. (lcckk1) (Entered: 05/02/2018)
05/02/2018		Set/Reset Deadlines: Joint Status Report due by 6/25/2018, confirming the status of Defendant's productions, identifying how Plaintiff intends to proceed, and proposing a briefing schedule, if necessary. (dot) (Entered: 05/02/2018)
06/25/2018	<u>12</u>	Joint MEET AND CONFER Statement by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) Modified on 7/5/2018 (zrdj). (Entered: 06/25/2018)
07/09/2018		MINUTE ORDER: The Court has received the parties' <u>12</u> Joint Meet and Confer Report, which indicates that FEMA and NPPD have made "final" productions to Plaintiff. It is not clear whether the parties are currently negotiating over the finality of those productions, as they represent that "[a]fter plaintiff's FOIA request has been fully processed and produced," further time will be necessary to enable Plaintiff to identify its proposed next steps in this litigation. In any event, the parties shall file a further Joint Status Report by JULY 31, 2018 , indicating how Plaintiff intends to proceed, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on July 9, 2018. (lcckk1) (Entered: 07/09/2018)
07/09/2018		Set/Reset Deadlines: Joint Status Report due by 7/31/2018. (kt) (Entered: 07/09/2018)

07/31/2018	<u>13</u>	Joint STATUS REPORT by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) (Entered: 07/31/2018)
08/07/2018		MINUTE ORDER: The Court has received the parties' <u>13</u> Joint Status Report, which indicates that Defendant has completed its processing of Plaintiff's FOIA request, that the parties continue to discuss certain exemptions asserted by FEMA, and that FEMA is preparing a <i>Vaughn</i> declaration for Plaintiff. The parties shall file a further Joint Status Report by SEPTEMBER 10, 2018 , indicating how the parties intend to proceed, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on August 7, 2018. (lcckk1) (Entered: 08/07/2018)
08/07/2018		Set/Reset Deadlines: Joint Status Report due by 9/10/2018, indicating how the parties intend to proceed, and proposing a briefing schedule, if necessary. (dot) (Entered: 08/07/2018)
09/10/2018	<u>14</u>	Joint STATUS REPORT by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) (Entered: 09/10/2018)
09/17/2018		MINUTE ORDER: The Court has received the parties' <u>14</u> Joint Status Report, which indicates that Defendant has prepared a <i>Vaughn</i> declaration for Plaintiff and that Plaintiff intends to review this declaration to determine whether to make any challenges. The parties shall file a further Joint Status Report by OCTOBER 15, 2018 , indicating whether the parties plan to settle or how they otherwise intend to proceed, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on September 17, 2018. (lcckk1) (Entered: 09/17/2018)
09/17/2018		Set/Reset Deadlines: Joint Status Report due by 10/15/2018. (dot) (Entered: 09/19/2018)
10/15/2018	<u>15</u>	Joint STATUS REPORT by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) (Entered: 10/15/2018)
10/16/2018		MINUTE ORDER: The Court has received the parties' <u>15</u> Joint Status Report, which indicates that Plaintiff continues to review the <i>Vaughn</i> index and that the parties intend to confer upon completion of that review. The parties shall file a further Joint Status Report by NOVEMBER 15, 2018 , indicating whether they plan to settle or how they otherwise intend to proceed, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on October 16, 2018. (lcckk1) (Entered: 10/16/2018)
10/16/2018		Set/Reset Deadlines: Joint Status Report due by 11/15/2018, indicating whether they plan to settle or how they otherwise intend to proceed, and proposing a briefing schedule, if necessary. (dot) (Entered: 10/17/2018)
11/15/2018	<u>16</u>	Joint STATUS REPORT by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) (Entered: 11/15/2018)
11/28/2018		MINUTE ORDER: The Court has received the parties' <u>16</u> Joint Status Report, which indicates that Plaintiff has completed its review of the <i>Vaughn</i> index and that it disagrees with the claimed exemption. The parties shall file a further Joint Status Report by DECEMBER 14, 2018 , including their proposed briefing schedule, if briefing remains necessary. Signed by Judge Colleen Kollar-Kotelly on November 28, 2018. (lcckk1) (Entered: 11/28/2018)
11/29/2018		Set/Reset Deadlines: Joint Status Report due by 12/14/2018. (tb) (Entered: 11/29/2018)
12/12/2018	<u>17</u>	JOINT STATUS REPORT and PROPOSED BRIEFING SCHEDULE , , by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) Modified text on 12/13/2018 (ztd). (Entered: 12/12/2018)
12/14/2018		MINUTE ORDER: The Court has received the parties' <u>17</u> Joint Status Report and Proposd [sic] Briefing Schedule for Defendant's Motion for Summary Judgment. The Court shall adopt the parties' generous proposed schedule in the accompanying Scheduling and Procedures Order. Signed by Judge Colleen Kollar-Kotelly on December 14, 2018. (lcckk1) (Entered: 12/14/2018)
12/14/2018	<u>18</u>	SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on December 14, 2018. (lcckk1) (Entered: 12/14/2018)

12/14/2018		Set/Reset Deadlines: Plaintiff's Cross Motion due by 2/25/2019. Response to Cross Motion due by 3/25/2019. Reply to Cross Motion due by 4/24/2019. Defendant's Summary Judgment Motion due by 1/24/2019. Response to Motion for Summary Judgment due by 2/25/2019. Reply to Motion for Summary Judgment due by 3/25/2019. Vaughn Index due by 1/24/2019. (dot) (Entered: 12/17/2018)
01/18/2019	<u>19</u>	Consent MOTION to Stay (<i>Defendant's Consent Motion to Stay Proceedings in Light of Lapse of Appropriations</i>) by UNITED STATES DEPARTMENT OF HOMELAND SECURITY (Attachments: # <u>1</u> Text of Proposed Order)(Braswell, Marina) (Entered: 01/18/2019)
01/18/2019		MINUTE ORDER: The Court has received Defendant's <u>19</u> Consent Motion to Stay Proceedings in Light of Lapse of Appropriations. With Plaintiff's consent, and in an exercise of the Court's discretion, the Court shall GRANT Defendant's <u>19</u> Consent Motion. Except as provided below, the Court shall STAY this case, including the deadline for Defendant's Motion for Summary Judgment and any <i>Vaughn</i> declaration otherwise due by January 24, 2019. The parties shall file a notice within five business days of the restoration of the U.S. Department of Justice's funding and the resumption of its operations. Defendant has not indicated whether the agency personnel responsible for assisting with the preparation of the Motion for Summary Judgment and any <i>Vaughn</i> declaration have been deemed essential. To the extent that those agency personnel have been deemed essential, they should continue to assist in that preparation so that, upon restoration of funding, the Motion for Summary Judgment and any <i>Vaughn</i> declaration may be submitted more promptly. Signed by Judge Colleen Kollar-Kotelly on January 18, 2019. (lcckk1) (Entered: 01/18/2019)
02/01/2019	<u>20</u>	Joint STATUS REPORT and Revised Briefing Schedule by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) (Entered: 02/01/2019)
02/01/2019		MINUTE ORDER: The Court has received the parties' <u>20</u> Joint Status Report and Extended Briefing Schedule. The parties identify the restoration of government funding. Accordingly, the Court hereby LIFTS the stay in this matter. In the accompanying Amended Scheduling and Procedures Order, the Court adopts a slightly adjusted version of the parties' proposed extended schedule for summary judgment briefing. Signed by Judge Colleen Kollar-Kotelly on February 1, 2019. (lcckk1) (Entered: 02/01/2019)
02/01/2019	<u>21</u>	AMENDED SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on February 1, 2019. (lcckk1) (Entered: 02/01/2019)
03/01/2019	<u>22</u>	MOTION for Summary Judgment by UNITED STATES DEPARTMENT OF HOMELAND SECURITY (Attachments: # <u>1</u> Bridges Declaration, # <u>2</u> Stainsby Declaration)(Braswell, Marina) (Entered: 03/01/2019)
03/05/2019	<u>23</u>	NOTICE (<i>Notice of Filing of Table of Authorities and Paginated Vaughn Index in Support of Defendant's Motion for Summary Judgment</i>) by UNITED STATES DEPARTMENT OF HOMELAND SECURITY re <u>22</u> MOTION for Summary Judgment (Attachments: # <u>1</u> (Table of Authorities), # <u>2</u> (Vaughn Index))(Braswell, Marina) (Entered: 03/05/2019)
03/07/2019		MINUTE ORDER: The Court has received electronic copies of Defendant's <u>22</u> Motion for Summary Judgment and <u>23</u> Notice of Filing of Table of Authorities and Paginated Vaughn Index in Support of Defendant's Motion for Summary Judgment. However, the Court also expects Defendant to submit courtesy hard copies of these filings and their accompanying exhibits, which the Court has not yet received. <i>See</i> Am. Scheduling and Procedures Order, ECF No. <u>21</u> , ¶ 8. Signed by Judge Colleen Kollar-Kotelly on March 7, 2019. (lcckk1) (Entered: 03/07/2019)
03/29/2019	<u>24</u>	Cross MOTION for Summary Judgment and opposition to <u>22</u> Defendant's Motion for Summary Judgment by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (Attachments: # <u>1</u> Memorandum in Support memorandum of law, # <u>2</u> Declaration Dinerstein Declaration, # <u>3</u> Exhibit Exhibit A to Dinerstein Declaration, # <u>4</u> Statement of Facts Statement of Disputed Facts, # <u>5</u> Statement of Facts Statement of Undisputed Facts, # <u>6</u> Text of Proposed Order proposed order)(Dinerstein, Paula) (Entered: 03/29/2019)

03/29/2019	<u>25</u>	Memorandum in opposition to re <u>22</u> MOTION for Summary Judgment filed by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY; (See docket entry no. <u>24</u> to view.) (ztd) (Entered: 04/01/2019)
04/01/2019		NOTICE OF ERROR re <u>24</u> Motion for Summary Judgment; emailed to pdinerstein@peer.org, cc'd 6 associated attorneys -- The PDF file you docketed contained errors: 1. Two-part docket entry, 2. Remember to file all parts of your document. The second part of this has been entered on the docket by the Court. (ztd,) (Entered: 04/01/2019)
04/03/2019		MINUTE ORDER: The Court has received an electronic copy of Plaintiff's <u>24</u> Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment. However, the Court also expects Plaintiff to submit a courtesy hard copy of this filing and its accompanying exhibits, which the Court has not yet received. <i>See</i> Am. Scheduling and Procedures Order, ECF No. <u>21</u> , ¶ 8. Signed by Judge Colleen Kollar-Kotelly on April 3, 2019. (lcckk1) (Entered: 04/03/2019)
04/29/2019	<u>26</u>	Unopposed MOTION for Extension of Time to File <i>Opposition/Reply Brief</i> by UNITED STATES DEPARTMENT OF HOMELAND SECURITY (Braswell, Marina) (Entered: 04/29/2019)
04/30/2019		MINUTE ORDER: The Court has received Defendant's <u>26</u> Unopposed Motion for Leave to File Motion for Extension of Time and Motion for Extension of Time of One Day. Defendant filed this motion on April 29, 2019, the date that its Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment and its Opposition to Plaintiff's Cross-Motion for Summary Judgment ("Reply/Opposition") were due. Defendant acknowledges the tardiness of its extension request. <i>See</i> Am. Scheduling and Procedures Order, ECF No. <u>21</u> , ¶ 2(a). Nevertheless, because of unexpected delays in the completion of Defendant's declaration, and with the consent of Plaintiff, the Court shall GRANT, <i>nunc pro tunc</i> , Defendant's <u>26</u> Unopposed Motion for Leave to File Motion for Extension of Time and Motion for Extension of Time of One Day, for good cause shown. Defendant shall have until and including APRIL 30, 2019 , to file its Reply/Opposition. Signed by Judge Colleen Kollar-Kotelly on April 30, 2019. (lcckk1) (Entered: 04/30/2019)
04/30/2019	<u>27</u>	Memorandum in opposition to re <u>24</u> Cross MOTION for Summary Judgment <i>and opposition to 22 Defendant's Motion for Summary Judgment</i> filed by UNITED STATES DEPARTMENT OF HOMELAND SECURITY. (Attachments: # <u>1</u> Statement of Facts, Response, # <u>2</u> Supplemental Stainsby Declaration)(Braswell, Marina) (Entered: 04/30/2019)
04/30/2019	<u>28</u>	REPLY to opposition to motion re <u>22</u> MOTION for Summary Judgment filed by UNITED STATES DEPARTMENT OF HOMELAND SECURITY. (Attachments: # <u>1</u> Supplemental Stainsby Declaration)(Braswell, Marina) (Entered: 04/30/2019)
05/01/2019	<u>29</u>	NOTICE (<i>Notice of Filing of Table of Authorities in Support of Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Cross-Motion for Summary Judgment and in Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment</i>) by UNITED STATES DEPARTMENT OF HOMELAND SECURITY re <u>28</u> Reply to opposition to Motion (Attachments: # <u>1</u> (Table of Authorities))(Braswell, Marina) (Entered: 05/01/2019)
05/29/2019	<u>30</u>	REPLY to opposition to motion re <u>24</u> Cross MOTION for Summary Judgment <i>and opposition to 22 Defendant's Motion for Summary Judgment</i> filed by PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY. (Dinerstein, Paula) (Entered: 05/29/2019)
05/28/2020	<u>31</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Michael A. Tilghman on behalf of UNITED STATES DEPARTMENT OF HOMELAND SECURITY Substituting for attorney Marina Utgoff Braswell (Tilghman, Michael) (Entered: 05/28/2020)
12/17/2021	<u>32</u>	ORDER granting <u>22</u> Motion for Summary Judgment and denying <u>24</u> Cross-Motion for Summary Judgment. A Memorandum Opinion follows this Order. Signed by Judge Colleen Kollar-Kotelly on December 17, 2021. (lcckk1) (Entered: 12/17/2021)
12/17/2021	<u>33</u>	MEMORANDUM OPINION re <u>32</u> Order. Signed by Judge Colleen Kollar-Kotelly on December 27, 2021. (lcckk1) (Entered: 12/17/2021)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY
962 Wayne Ave., Suite 610
Silver Spring, MD 20910

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY
500 C Street, S.W., Mail Stop 3172
Washington, D.C. 20472-3172

Defendant,

Civil Action 18-158

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Public Employees for Environmental Responsibility (“PEER” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to compel the United States Department of Homeland Security, (“DHS” or “Defendant”), Federal Emergency Management Agency, to disclose records wrongfully withheld in failing to respond within the statutory deadline to Plaintiff’s FOIA request.
2. Plaintiff is a non-profit organization dedicated to research and public education concerning the activities and operation of federal, state, and local governments.
3. On September 1, 2017, Plaintiff sent a FOIA request seeking records related to the Strategic National Risk Assessment (“SNRA”) prepared by DHS. This request specifically sought: (1) SNRA 2015 Findings [Report], May 2015; (2) SNRA 2015

Technical Appendix, May 2015; (3) SNRA 2015 Working Papers, May 2015; (4) PPD-8 Implementation Plan, May 2011; (5) SNRA Terms of Reference, June 2011; (6) SNRA 2015 Update Background and General Guidance, February 2015; (7) SNRA 2015 Qualitative Data Instructions, February 2015; (8) SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015; and (9) Any successor SNRA versions later than May 2015.

4. The FOIA requires federal agencies to respond to public requests for records, including files maintained electronically, to increase public understanding of the workings of government and provide access to government information. The FOIA reflects a “profound national commitment to ensuring an open Government” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4,683 (Jan. 21, 2009).
5. The FOIA requires the agency to determine within 20 working days after receipt of a FOIA request whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). The agency may extend this time period only in “unusual circumstances” and then only for a maximum of ten additional working days. 5. U.S.C. § 552(a)(6)(B)(i).
6. To date, Defendant has failed to make a determination concerning compliance or to produce any records in response to Plaintiff’s FOIA Case No. 2017-FEFO-02241.
7. Defendant’s conduct amounts to a denial of Plaintiff’s FOIA request. Plaintiff is seeking to educate the U.S. Congress, state and local decision-makers responsible for public safety, and residents of communities at risk all across the country about the relative risks identified by DHS. Defendant is frustrating that purpose.

8. Plaintiff constructively exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i), and now seeks an order from the Court requiring Defendant to immediately produce the records sought in Plaintiff's FOIA request, as well as other appropriate relief, including attorney's fees and costs.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
10. This Court is a proper venue because Defendant is a government agency that resides in the District of Columbia. *See* 28 U.S.C. § 1391(e)(1)(A) (where defendant is the government or a government agency, a civil action may be brought in the district where the defendant resides). Venue is also proper under 5 U.S.C. § 552(a)(4)(B) (providing for venue in FOIA cases where the plaintiff resides, where records are located, or in the District of Columbia).
11. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
12. This court has authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PARTIES

13. Plaintiff, PEER, is a non-profit public interest organization incorporated in Washington, D.C. and headquartered in Silver Spring, Maryland, with field offices in California, Colorado, Florida, Massachusetts, and Tennessee.
14. Among other public interest projects, PEER engages in advocacy, research, education, and litigation to promote public understanding and debate concerning key and current

public policy issues. PEER focuses on the environment, including the regulation of threats to human health, public land and natural resource management, public funding of environmental and natural resource agencies, and ethics in government. PEER educates and informs the public through news releases to the media, through its website, www.peer.org, and through publication of the PEER newsletter.

15. Defendant, DHS, is an agency of the United States as defined by 5 U.S.C. § 552(f)(1).

16. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirement of the FOIA. Here, Defendant is denying the Plaintiff access to its records in contravention of federal law.

STATEMENT OF FACTS

17. As part of its mission, Defendant DHS creates a “National Preparedness Report” on a regular basis that provides all levels of government, the private and nonprofit sectors, and the public with practical insights into preparedness to support decisions about program priorities, resource allocations, and community actions.

18. Within the 2015 National Preparedness Goal, which describes the Nation’s approach to preparing for the threats and hazards that pose the greatest risk to the security of the United States, DHS declared:

“Understanding the greatest risks to the Nation’s security and resilience is a critical step in identifying core capabilities...The information gathered during a risk assessment also enables a prioritization of preparedness efforts and an ability to identify our capability requirements.

The Strategic National Risk Assessment indicates that a wide range of threats and hazards continue to pose a significant risk to the Nation, affirming the need for an all-hazards, capability-based approach to preparedness planning.” (pg. 4)

19. While the 2015 National Preparedness Goal document summarizes some “key findings” of the Strategic National Risk Assessment (“SNRA”), the assessment itself is not readily available.
20. On September 1, 2017, Plaintiff sent a FOIA request seeking records related to the SNRA, specifically: (1) SNRA 2015 Findings [Report], May 2015; (2) SNRA 2015 Technical Appendix, May 2015; (3) SNRA 2015 Working Papers, May 2015; (4) PPD-8 Implementation Plan, May 2011; (5) SNRA Terms of Reference, June 2011; (6) SNRA 2015 Update Background and General Guidance, February 2015; (7) SNRA 2015 Qualitative Data Instructions, February 2015; (8) SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015; and (9) Any successor SNRA versions later than May 2015.
21. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant had twenty working days from the date of the receipt to respond, or to assert the need for an extension. *See also* 6 C.F.R. § 5.6. The statutory production deadline has passed.
22. On September 12, 2017, Defendant sent an email acknowledging receipt of Plaintiff’s FOIA request. Defendant assigned it request No. 2017-FEFO-02241.
23. Having received no further response, on December 12, 2017, Plaintiff emailed both the DHS and FEMA FOIA Officers to inquire about the status of this FOIA request but received contradictory responses as to which DHS component – FEMA or the National Protection and Programs Directorate -- is tasked with handling this request. No further response or determination was provided.
24. As of this January 25, 2018 filing, Plaintiff has not received any records responsive to its FOIA request nor any determination from Defendant.

25. Administrative remedies are constructively exhausted when an agency fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(6)(C)(i). Having fully exhausted its administrative remedies for its September 1, 2017 FOIA request, Plaintiff now turns to this Court to enforce the FOIA's guarantee of public access to agency records, along with the remedies available when an agency withholds that access.

CAUSE OF ACTION

26. Plaintiff incorporates the allegations of the preceding paragraphs.

27. Defendant's failure to make a determination on the request or disclose the records requested under Request No. 2017-FEFO-02241 within the time limits mandated by statute is a constructive denial and wrongful withholding of records in violation of the FOIA, 5 U.S.C. § 552, and the Department of Homeland Security's regulations promulgated thereunder, 6 C.F.R. § 5.1 *et seq.*

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that Defendant wrongfully withheld requested agency records;
- ii. Issue a permanent injunction directing the Defendant disclose to Plaintiff all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until Defendant is in compliance with the FOIA and every order of the court;
- iv. Award Plaintiff attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Respectfully submitted on January 25, 2018,

/s/

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Avenue, Suite 610
Silver Spring, MD 20910
(202) 265-7337

Attorney for Plaintiff

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS Public Employees for Environmental Responsibility (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS U.S. Department of Homeland Security COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>88888</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Paula Dinerstein 962 Wayne Ave, Suite 610 Silver Spring, MD 20910	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																								
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III) </div> </div>	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center; font-size: small;">PTF</th> <th style="text-align: center; font-size: small;">DFT</th> <th></th> <th style="text-align: center; font-size: small;">PTF</th> <th style="text-align: center; font-size: small;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	<input type="radio"/> F. Pro Se General Civil
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Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 Forfeiture/Penalty <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) <i>*(If pro se, select this deck)*</i>	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge
 ☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. 552; 6 C.F.R. 5.1 et seq. Constructive denial and wrongful withholding of records under FOIA.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Check YES only if demanded in complaint			

VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 1/25/2018	SIGNATURE OF ATTORNEY OF RECORD: <i>Paula Dineen</i>
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY

Defendant.

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Case No. 18-cv-158

RULE 7.1 DISCLOSURE STATEMENT

As required by LCvR 7.1 of the Local Rules of this Court, I, the undersigned, counsel of record for Plaintiff Public Employees for Environmental Responsibility certify that to the best of my knowledge and belief, Plaintiff has no parent companies, subsidiaries, or affiliates that have any outstanding securities in the hands of the public.

Respectfully submitted on January 25, 2017,

/s/Paula Dinerstein

Paula Dinerstein, DC Bar # 333971
Public Employees for Environmental Responsibility
962 Wayne Avenue, Suite 610
Silver Spring, MD 20910
(202) 265-7337

Counsel for Plaintiff

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

CLEAR FORM

Public Employees for Environmental Responsibility

Plaintiff

v.

U.S. Department of Homeland Security

Defendant

Civil Action No. 18-cv-158

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

US Attorney General
950 Pennsylvania Ave, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-158

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

CLEAR FORM

Public Employees for Environmental Responsibility

Plaintiff

v.

U.S. Department of Homeland Security

Defendant

Civil Action No. 18-cv-158

SUMMONS IN A CIVIL ACTIONTo: *(Defendant's name and address)*

US Attorney General
950 Pennsylvania Ave, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-158

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This summons for *(name of individual and title, if any)* _____
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☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
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☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

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Printed name and title

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Save As...

Reset

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

CLEAR FORM

Public Employees for Environmental Responsibility

Plaintiff

v.

U.S. Department of Homeland Security

Defendant

Civil Action No. 18-cv-158

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

US Attorney General
950 Pennsylvania Ave, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-158

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY

Defendant.

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Case No. 18-cv-158

RULE 7.1 DISCLOSURE STATEMENT

As required by LCvR 7.1 of the Local Rules of this Court, I, the undersigned, counsel of record for Plaintiff Public Employees for Environmental Responsibility certify that to the best of my knowledge and belief, Plaintiff has no parent companies, subsidiaries, or affiliates that have any outstanding securities in the hands of the public.

Respectfully submitted on January 25, 2017,

/s/Paula Dinerstein
Paula Dinerstein, DC Bar # 333971
Public Employees for Environmental Responsibility
962 Wayne Avenue, Suite 610
Silver Spring, MD 20910
(202) 265-7337

Counsel for Plaintiff

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

Public Employees for Environmental Responsibility

Plaintiff

v.

U.S. Department of Department of

Defendant

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Civil Action No. 18-cv-158 CKK

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of Homeland Security
500 C Street, S.W., Mail Stop 3172
Washington, D.C. 20472-3172

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 1/25/2018

/s/ Michael Darby

Signature of Clerk or Deputy Clerk

FOIA Summons (12/11) (Page 2)

Civil Action No. 18-cv-158

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Public Employees for Environmental Responsibility

Plaintiff

v.

U.S. Department of Homeland Security

Defendant

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Civil Action No. 18-cv-158 CKK

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Civil Process Clerk
US Attorney for the District of Columbia
555 Fourth Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 1/25/2018

/s/ Michael Darby

Signature of Clerk or Deputy Clerk

FOIA Summons (12/11) (Page 2)

Civil Action No. 18-cv-158

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Public Employees for Environmental Responsibility

Plaintiff

v.

U.S. Department of Homeland Security

Defendant

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Civil Action No. 18-cv-158 CKK

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

US Attorney General
950 Pennsylvania Ave, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 1/25/2018

/s/ Michael Darby

Signature of Clerk or Deputy Clerk

FOIA Summons (12/11) (Page 2)

Civil Action No. 18-cv-158

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
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☐ I personally served the summons on the individual at *(place)* _____
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 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA**

ANGELA D. CAESAR
Clerk of Court

**NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE**

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in the delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to trial of your case by a United States Magistrate Judge. By statute, 28 USC §636(c), Fed.R.Civ.P. 73 and Local Civil Rule 73.1, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a United States District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Civil Rule 16.3 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Counsel for the plaintiff has been furnished a copy of the "Consent to Proceed Before a United States Magistrate Judge for all Purposes" form. If and when the form is executed, your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form the case will be randomly assigned for all purposes to a Magistrate Judge.

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

Plaintiff

v.

Civil Action No.

Defendant

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. Once judgment is entered an appeal must be taken to the U.S. Court of Appeals for the D.C. Circuit and not to the United States District Judge. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Parties' printed names</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: Return this form to the clerk of court only if you are consenting to the exercise jurisdiction by a United States magistrate judge. Do not return this form to a judge.

**ORDER ESTABLISHING PROCEDURES
FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY**

In order to administer this civil action in a manner fair to the litigants and consistent with the parties' interest in completing this litigation in the shortest possible time and at the least possible cost, it is, hereby

ORDERED that the parties are directed to comply with each of the directives set forth in this Order. The Court will hold the parties responsible for following these directives; failure to conform to this Order's directives **may, when appropriate, result in the imposition of sanctions.**

1. **SERVICE OF COMPLAINT.** Plaintiff(s) must promptly serve the complaint on Defendant(s) in accordance with Federal Rule of Civil Procedure 4 and file proof of service in accordance with **Rules of the United States District Court for the District of Columbia** ("Local Civil Rules") Rule 5.3.
2. **REMOVED ACTIONS.** Defendant(s) removing an action to this Court must re-file any answer as a supplement to the petition and re-notice any pending motion.
3. **DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS.** Where a corporation is a party or intervenor, counsel of record for that party or intervenor shall file a certificate listing any parent, subsidiary, or affiliate of that party or intervenor which, to the knowledge of counsel, has any outstanding securities in the hands of the public. Such certificate shall be filed with the party's first pleading. The purpose of this certificate is to enable the Judges of this Court to determine the need for recusal. **Counsel have the continuing obligation to advise the Court of any change.** See LCvR 7.1.
4. **ELECTRONIC FILING.** All documents in this case are to be filed electronically, except with prior leave of the Court upon good cause shown, and in the case of the exceptions noted below. All electronically filed documents are to be in Portable Data Format (.pdf). In order to enable the Court's efficient resolution of all matters in this case, **all filings** shall be submitted in text searchable PDF files, directly converted from the word-processing format into PDF so as to preserve their searchability and readability. (The Court recognizes an exception for exhibits that must be scanned because they exist only in paper format.).

(A) **EXCEPTIONS TO ELECTRONIC FILING.**

- (i) Every document filed under seal in a totally sealed case shall be filed in paper form accompanied by an electronic copy in a format deemed compatible by the Clerk's Office with CM/ECF filing. See LCvR 5.4(e)(1).
- (ii) In a case involving a ***pro se* party**, electronic filing procedures will be followed **by parties represented by counsel only**. The party appearing

pro se shall continue to file documents in paper form with the Clerk's Office. Parties represented by counsel must serve documents upon *pro se* parties in paper form.

- (B) Absent specific statutory authority, a proposed sealed document in an otherwise unsealed case must be accompanied with a motion to seal. in accordance with Local Civil Rule 5.1(h) and filed pursuant to the procedures established by the Clerk's Office. Motions to seal should explain why sealing is appropriate with reference to the factors identified in *United States v. Hubbard*, 650 F.2d 292 (D.C. Cir. 1980). Failure to file a proper motion to seal may result in the document being placed in the public record.
- (C) **CM/ECF Passwords** may only be used only by the person to whom they are assigned or, in the case of an attorney, by that attorney or an authorized employee or agent of that attorney's law office or organization. The use of a CM/ECF password to login and submit documents creates an electronic record that operates and serves as the **signature** of the person to whom the password is assigned for all purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court.
- (D) The electronic submission of any document in accordance with these procedures constitutes **filing** for all purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court and simultaneously creates an official **docket entry**. A person filing by electronic means is responsible for ensuring the accuracy of the official docket entry generated by the CM/ECF software. *See* LCvR 5.3(c)(2).
- (E) No **certificate of service** is required for documents filed electronically. Service is complete upon electronic submission of an order or document and will be effected by electronic notice. Counsel are responsible for monitoring their e-mail accounts and, upon receipt of notice of an electronic filing, for retrieving the order or document electronically.
- (F) Electronically filing a document that contains a declaration, verification, certificate, sworn statement, oath or affidavit certifies that the original signed document is in the possession of the attorney or *pro se* party responsible for the filing and that it is available for review upon request by a party or by the Court. LCvR 5.4(b)(5)
- (G) The Court may take into consideration technical difficulties experienced by a filer when presented a late filing. However, parties who wait until the last minute to begin filing are warned that technical difficulties do not necessarily constitute "good cause" or "excusable neglect" justifying an extension of the applicable deadline(s). FED. R. CIV. P. 6(b). Further, **no allowance can be made for late filing documents whose time limits are jurisdictional**.
- (H) Attorneys are to be **precise** in describing the type of document and requested relief when making electronic filings with the Court, because that description

becomes the official docket entry recorded in the case. Failure to be accurate and thorough in the description of documents electronically filed may result in action adverse to the attorney.

5. **COMMUNICATIONS WITH THE COURT.** The parties should endeavor to keep communications with Chambers to a minimum. *Ex parte* communications on matters other than scheduling are **strictly prohibited**; if the parties need to contact Chambers, it must be done jointly pursuant to a conference call arranged by the parties.
6. **APPEARANCES AT HEARINGS.** Principal trial counsel must appear at all hearings unless excused by the Court in advance.
7. **MOTIONS FOR EXTENSIONS OF TIME AND RE-SCHEDULING OF HEARINGS.** Motions for extensions of time and to re-schedule hearings are strongly discouraged; they will be granted only in truly exceptional or compelling circumstances and parties should not expect the Court to grant extensions. The Court will not entertain or honor stipulations for extensions of time or for the re-scheduling of hearings; parties must file a written motion in accordance with the following instructions:
 - (A) Motions for extensions of time **must be filed at least four (4) business days prior to the first affected deadline.**
 - (B) Motions to continue a hearing **must be filed at least four business days prior to the scheduled hearing.**
 - (C) All motions for extensions of time and for re-scheduling of hearings **must include the following or they will not be considered:**
 - (i) The specific grounds for the extension or the re-scheduling of the hearing;
 - (ii) The number of previous extensions or continuances, if any, granted to each party;
 - (iii) A statement of the impact that the requested extension or continuance would have on all other previously set deadlines;
 - (iv) A proposed schedule for any other affected deadlines, to be proposed only after consulting with opposing counsel; and
 - (v) A statement of whether or not opposing counsel opposes the motion in accordance with Local Civil Rule 7(m).
8. **DISCOVERY DISPUTES.** The parties are referred to Local Civil Rule 26.2 and are expected to fully comply with its directives. Moreover, counsel are required, under both Federal Rule of Civil Procedure 26(f) and Local Civil Rule 7(m), to confer in good faith in an effort to resolve any discovery dispute before bringing it to the Court's attention. **The parties shall not file a discovery motion without prior consultation with opposing counsel.** If, in what should be the unusual case, the parties are unable to resolve

their discovery dispute, counsel shall contact Chambers jointly in order to arrange for a telephone conference with the Court.

9. **DEPOSITIONS.** Counsel must adhere to the following guidelines when taking a deposition:

- (A) Counsel for the deponent shall refrain from gratuitous comments and from directing the deponent as to times, dates, documents, testimony, and the like;
- (B) Counsel shall refrain from cuing the deponent by objecting in any manner other than stating an objection for the record followed by a word or two describing the legal basis for the objection;
- (C) Counsel shall refrain from directing the deponent not to answer any question except for reasons which conform to Federal Rule of Civil Procedure 30(c)(2);
- (D) Counsel shall refrain from engaging in dialogue on the record during the course of the deposition;
- (E) If counsel for any party or person given notice of the deposition believes that these conditions are not being adhered to, that counsel may call for suspension of the deposition and then immediately apply to the Court for a ruling and remedy. When appropriate, the Court will impose sanctions;
- (F) All counsel are to conduct themselves in a civil, polite, and professional manner. The Court will not countenance incivility or other behavior during the deposition demonstrating that the examination is being conducted in bad faith or to simply annoy, embarrass, or oppress the deponent; and
- (G) In accordance with Federal Rule of Civil Procedure 30(d)(1), no deposition may last more than seven hours (exclusive of breaks), except by leave of the Court or stipulation of the parties.

10. **MOTIONS GENERALLY.** Parties must comply with the following instructions when briefing any motion:

- (A) Memoranda of points and authorities filed in support of or in opposition to any motion may not, without leave of the Court, exceed forty-five (45) pages, and reply memoranda may not exceed twenty-five (25) pages, with margins set at one inch and with all text double-spaced (excepting footnotes) and in twelve-point Times New Roman (including footnotes).
- (B) **Where a party fails to file a memorandum of points and authorities in opposition to a given motion, the Court may treat the motion as conceded.** See LCvR 7(b). Similarly, where a party fails to respond to arguments in opposition papers, the Court may treat those specific arguments as conceded. See *Phrasavang v. Deutsche Bank*, 656 F. Supp. 2d 196, 201 (D.D.C. 2009).

- (C) A party may not file a sur-reply without first requesting leave of the Court.
 - (D) **Exhibits shall be properly edited** to exclude irrelevant material and to direct the Court's attention to the pertinent portions thereof.
 - (E) Each submission shall be accompanied by a table of cases and other authorities cited therein.
 - (F) Every pleading or paper, regardless of whether it is signed by an attorney or a *pro se* party, shall contain the name, address, telephone number, and, for an attorney, bar identification number. *See* LCvR 5.1(e).
11. **MOTIONS TO DISMISS.** The parties are reminded that a motion to dismiss under Rule 12(b)(6) or a motion for judgment on the pleadings under Rule 12(c) presenting matters outside the pleadings may be converted to a motion for summary judgment. FED. R. CIV. P. 12(d). If a motion to dismiss presents matters outside the pleadings, all parties must comply **fully** with the instructions set forth below regarding motions for summary judgment.
12. **MOTIONS FOR SUMMARY JUDGMENT.** Parties must comply with the following instructions when briefing motions for summary judgment and the Court may strike papers not in conformity therewith:
- (A) **Cases Involving Judicial Review of Administrative Agency Actions.**
 - (i) In accordance with Local Civil Rule 7(h)(2), each motion for summary judgment, and opposition thereto, shall include a statement of facts with references to the administrative record. The parties must furnish **precise citations** to the portions of the administrative record on which they rely; the Court need not consider materials not specifically identified. *See* FED. R. CIV. P. 56(c)(3).
 - (ii) In accordance with Local Civil Rule 7(n), the parties shall provide the Court with a joint appendix containing copies of those portions of the administrative record that are cited or otherwise relied upon in any memorandum in support of, or in opposition to, a motion for summary judgment.
 - (B) **All Other Cases.**
 - (i) The Court **strictly adheres to the dictates of Local Civil Rule 7(h)**, which requires that each party submitting a motion for summary judgment attach a statement of material facts for which that party contends there is no genuine dispute, with specific citations to those portions of the record upon which the party relies in fashioning the statement. The party opposing the motion must, in turn, submit a statement enumerating all material facts which the party contends are genuinely disputed and thus require trial. *See* LCvR 7(h)(1). The parties are strongly encouraged to

carefully review *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145 (D.C. Cir. 1996), on the subject of Local Civil Rule 7(h).

- (ii) The parties must furnish **precise citations** to the portions of the record on which they rely; the Court need not consider materials not specifically identified. *See* FED. R. CIV. P. 56(c)(3).
- (iii) The moving party's statement of material facts shall be a short and concise statement, **in numbered paragraphs**, of all material facts as to which the moving party claims there is no genuine dispute. The statement must contain **only one factual assertion in each numbered paragraph**.
- (iv) The party responding to a statement of material facts must respond to each paragraph with a **correspondingly numbered paragraph**, indicating whether that paragraph is admitted or denied. If a paragraph is admitted only in part, the party must specifically identify which parts are admitted and which parts are denied.
- (v) The Court may assume that facts identified by the moving party in its statement of material facts are **admitted**, unless such facts are controverted in the statement filed in opposition to the motion. *See* LCvR 7(h)(1).
- (vi) The responding party must include any information relevant to its response in its correspondingly numbered paragraph, with specific citations to the record. However, if the responding party has additional facts that are not **directly relevant** to its response, it must identify such facts in consecutively numbered paragraphs **at the end** of its responsive statement of facts. **If additional factual allegations are made, the opponent must file a responsive statement of its own.**

13. **MOTIONS FOR RECONSIDERATION.** Motions for reconsideration of prior rulings are strongly discouraged. Such motions shall be filed only when the requirements of Federal Rules of Civil Procedure 54(b), 59(e), and/or 60(b) are met. If such a motion is filed, it **shall not exceed ten (10) pages in length**. Moreover, the Court will not entertain: (a) motions which simply reassert arguments previously raised and rejected by the Court; or (b) arguments which should have been previously raised, but are being raised for the first time. *See Nat'l Trust v. Dep't of State*, 834 F. Supp. 453, 455 (D.D.C. 1995). Motions not in compliance with these instructions may be stricken.

14. **COURTESY COPIES.** The parties shall deliver one (1) courtesy copy of any submission that is over twenty-five (25) pages in length or that includes more than one (1) exhibit to the Court Security Officer at the loading dock located at Third and C Streets (not the Clerk's Office or Chambers). Courtesy copies shall be appropriately bound and tabbed for ease of reference.

15. **SETTLEMENT.** The parties are expected to evaluate their respective cases for purposes of settlement. The Court encourages the use of alternative dispute resolution—*e.g.*, mediation or neutral case evaluation. The use of these methods is available at any time, as is a settlement conference before a magistrate judge. If counsel are interested in pursuing these options, they may contact Chambers at any time. If the case settles in whole or in part, counsel shall **promptly** advise the Court.

SO ORDERED.

/s/

COLLEEN KOLLAR-KOTELLY
United States District Judge

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
	)	Civil Action No. 18-cv-158
Plaintiff,)	
)	
v.)	
)	
DEPARTMENT OF HOMELAND SECURITY)	
)	
Defendant.)	

DECLARATION OF SERVICE

I, Paula Dinerstein, hereby declare that on January 26, 2018, I mailed a copy of the summons and complaint in the above-captioned matter, certified mail, to the United States Attorney for the District of Columbia with tracking number 7013 3020 0000 7182 1410. Attached hereto is a copy of the United States Postal Service certified mail receipt and tracking information showing service on **January 31, 2018**. I declare under penalty of perjury that this information is true.

Dated: February 7, 2018.

/s/ Paula Dinerstein
 Paula Dinerstein, Staff Counsel
 Public Employees for Environmental Responsibility
 962 Wayne Ave, Suite 610
 Silver Spring, MD 20910
 (202) 265-7337

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY

Defendant.

Civil Action No. 18-cv-158

DECLARATION OF SERVICE

I, Paula Dinerstein, hereby declare that on January 26, 2018, I mailed a copy of the summons and complaint in the above-captioned matter, certified mail, to the United States Department of Homeland Security with tracking number 7013 3020 0000 7182 1427. Attached hereto is a copy of the United States Postal Service certified mail receipt and tracking information showing service on **January 30, 2018**. I declare under penalty of perjury that this information is true.

Dated: February 7, 2018.

/s/ Paula Dinerstein

Paula Dinerstein, Staff Counsel
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
(202) 265-7337

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY
962 Wayne Ave., Suite 610
Silver Spring, MD 20910

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY
500 C Street, S.W., Mail Stop 3172
Washington, D.C. 20472-3172

Defendant.

Civil Action No. 18-0158 (CKK)

NOTICE OF APPEARANCE

The Clerk of the Court will please enter the appearance of Marina Utgoff Braswell,
Assistant U.S. Attorney, as counsel of record for Defendant in the above-captioned case.

/s/ Marina Utgoff Braswell
MARINA UTGOFF BRASWELL
D.C. Bar # 416587
Assistant United States Attorney
United States Attorney's Office
555 4th Street, N.W. – Civil Div.
Washington, D.C. 20530
(202) 252-2561
Marina.Braswell@usdoj.gov

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY

962 Wayne Ave., Suite 610
Silver Spring, MD 20910,

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY
500 C Street, S.W., Mail Stop 3172
Washington, D.C. 20472-3172,

Defendant.

Civil Action No. 18-0158 (CKK)

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant, the U.S. Department of Homeland Security (“DHS”), a component of which is the Federal Emergency Management Agency (“FEMA”), by and through its undersigned counsel, hereby answers the Complaint as follows.

FIRST DEFENSE

Plaintiff fails to state a claim for which the Court can grant relief.

SECOND DEFENSE

In response to the specifically-enumerated paragraphs, as set forth in the Complaint, Defendant admits, denies and otherwise avers as follows:

PRELIMINARY STATEMENT

1. Paragraph 1 of the Complaint identifies Plaintiff Public Employees for Environmental Responsibility (“PEER”), as bringing suit under the Freedom of Information Act (“FOIA”) against a component of DHS, specifically FEMA. With respect to the remainder of

paragraph 1, FEMA denies it wrongfully withheld records or failed to respond within the statutory deadline to Plaintiff's September 1, 2017 FOIA request. FEMA avers that in its September 12, 2017 acknowledgement, FEMA determined the requested records were under the purview of National Protection and Programs Directorate ("NPPD"), a component of DHS, and would refer the request to NPPD, and included NPPD's contact information for Plaintiff to contact NPPD directly. FEMA referred the request to NPPD on September 12, 2017.

2. Paragraph 2 of the Complaint contains Plaintiff's characterizations of its organization. DHS lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

3. DHS admits the allegations in Paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint consists of a legal conclusion and descriptions of the FOIA, which require no response.

5. Paragraph 5 of the Complaint consists of legal conclusions concerning the FOIA that require no response.

6. DHS denies the allegations in Paragraph 6 of the Complaint. FEMA avers that in its September 12, 2017 acknowledgement, FEMA determined the requested records were under the purview of NPPD and would refer the request to NPPD, and included NPPD's contact information for Plaintiff to contact NPPD directly. FEMA referred the request to NPPD on September 12, 2017.

7. Paragraph 7 of the Complaint contains a legal conclusion concerning the FOIA, which requires no response. The second sentence in Paragraph 7 of the Complaint consists of Plaintiff's purpose for its FOIA request, which requires no response. DHS denies the remainder of Paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint consists of a legal conclusion regarding the FOIA, and characterizations of Plaintiff's lawsuit, which require no response.

JURISDICTION AND VENUE

9. Paragraph 9 of the Complaint consists of legal conclusions regarding jurisdiction, which require no response.

10. Paragraph 10 of the Complaint consists of legal conclusions regarding venue, which require no response.

11. Paragraph 11 of the Complaint consists of a legal conclusion regarding declaratory relief, which requires no response.

12. Paragraph 12 of the Complaint consists of a legal conclusion regarding attorneys' fees, which requires no response.

PARTIES

13. Paragraph 13 of the Complaint consists of Plaintiff's characterizations of its organization. DHS lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

14. Paragraph 14 of the Complaint consists of Plaintiff's characterizations of its organization. DHS lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

15. Paragraph 15 of the Complaint contains a legal conclusion regarding DHS, which requires no response, except to admit that DHS is an agency of the United States.

16. Paragraph 16 of the Complaint consists of a legal conclusion regarding the responsibilities DHS has under the FOIA, which requires no response. DHS denies the allegation in the second sentence of Paragraph 16 of the Complaint.

STATEMENT OF FACTS

17. DHS admits the allegations made in Paragraph 17 of the Complaint.

18. DHS admits the allegations made in Paragraph 18 of the Complaint.

19. DHS admits the allegations made in Paragraph 19 of the Complaint.

20. DHS admits the allegations made in Paragraph 20 of the Complaint.

21. Paragraph 21 of the Complaint consists of legal conclusions regarding a FOIA statutory deadline, which require no response. FEMA denies the implication it failed to abide by FOIA's statutory deadline, and avers that in its September 12, 2017 acknowledgement, FEMA determined the requested records were under the purview of NPPD and would refer the request to NPPD, and included NPPD's contact information for Plaintiff to contact NPPD directly. FEMA referred the request to NPPD on September 12, 2017.

22. DHS admits the allegations made in Paragraph 22 of the Complaint, and avers that in its September 12, 2017 acknowledgement, FEMA determined the requested records were under the purview of NPPD and would refer the request to NPPD, and included NPPD's contact information for Plaintiff to contact NPPD directly. FEMA referred the request to NPPD on September 12, 2017.

23. DHS admits that Plaintiff emailed FEMA's FOIA office on December 12, 2017, to inquire about the status of the FOIA request. FEMA avers it replied to the email and informed Plaintiff that the FOIA request was closed because it had been referred to NPPD on September 12, 2017, after determining the requested records were under the purview of NPPD. FEMA again included NPPD's contact information for Plaintiff to contact NPPD directly. Furthermore, on December 12, 2017, FEMA emailed NPPD to confirm receipt of the September 12, 2017 referral. NPPD replied that the request was referred to NPPD and was assigned the request number 2017-NPFO-00752. FEMA admits that it provided no further response or determination, and avers this

was because FEMA already determined the requested records were in NPPD's purview, referred the request to NPPD and closed it out on FEMA's end. FEMA denies all other allegations made in Paragraph 23 of the Complaint.

24. FEMA denies that as of Plaintiff's January 25, 2018 filing, Plaintiff had not received any determination from FEMA. FEMA avers that Plaintiff did not receive any responsive records from FEMA because in its September 12, 2017 acknowledgement, FEMA determined the requested records were under the purview of NPPD and would refer the request to NPPD, and included NPPD's contact information for Plaintiff to contact NPPD directly. FEMA referred the request to NPPD on September 12, 2017.

25. Paragraph 25 of the Complaint consists of legal conclusions concerning the FOIA, and Plaintiff's characterizations of its lawsuit, which require no response.

CAUSE OF ACTION

26. DHS incorporates by reference its responses in the preceding paragraphs to the allegations made in the Complaint.

27. DHS denies it failed to make a determination regarding Request No. 2017-FEFO-02241 within FOIA's time limits. The remainder of Paragraph 27 of the Complaint consists of legal conclusions regarding the FOIA, which require no response.

The remainder of the Complaint is a prayer for relief to which no answer is required, but insofar as an answer is deemed required, Defendant denies that Plaintiff is entitled to the requested relief or any relief whatsoever.

Each and every allegation not heretofore expressly admitted or denied is denied.

Respectfully submitted,

JESSIE K. LIU
United States Attorney
for the District of Columbia

D.C. BAR #472845

DANIEL F. VAN HORN
Chief, Civil Division
D.C. BAR # 924092

/s/ Marina Utgoff Braswell
MARINA UTGOFF BRASWELL
D.C. BAR # 416587
Assistant United States Attorney
United States Attorney's Office – Civil Division
555 Fourth St., N.W.
Washington, D.C. 20530
Phone: (202) 252-2561
Fax: (202) 252-2599

Of counsel:

Jonathan Chase, Esq.
Office of Chief Counsel
Federal Emergency Management Agency

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendant.

Civil Action No. 18-158 (CKK)

ORDER

(March 20, 2018)

This case comes before the Court upon the filing of Defendant's Answer to Plaintiff's Complaint. In light of this filing, it is this 20th day of March, 2018, hereby

ORDERED that the parties shall MEET AND CONFER and file a Joint Status Report proposing a schedule for proceeding in this matter. The schedule should address the status of Plaintiff's FOIA request, the anticipated number of documents responsive to Plaintiff's FOIA request, the anticipated date(s) for release of the documents requested by Plaintiff, whether a motion for an *Open America* stay is likely in this case, whether a *Vaughn* index will be required in this case, etc. The parties shall file the schedule not later than **APRIL 19, 2018**.

SO ORDERED.

/s/

COLLEEN KOLLAR-KOTELLY
United States District Judge

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

)
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) Civil Action No. 18-cv-158 (CKK)
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JOINT MEET AND CONFER REPORT

Plaintiff, Public Employees for Environmental Responsibility (“PEER”), and Defendant, the United States Department of Homeland Security (“DHS”), submit this Joint Meet and Confer Report pursuant to the Court’s Standing Order, to apprise the Court of their progress in resolving this case.

1. On September 1, 2017, PEER submitted a Freedom of Information Act (“FOIA”) request to the Federal Emergency Management Agency (“FEMA”), located within DHS, seeking records relating to the publication of the Strategic National Risk Assessment.

2. PEER filed a Complaint with the Court on January 25, 2018, asserting that DHS failed to timely respond to Plaintiff's FOIA request, in accordance with 5 U.S.C. § 552(a)(6)(A)(i). DHS responded to this Complaint on March 2, 2018.

3. Plaintiff's FOIA request is being processed by both FEMA and by DHS's National Protection and Programs Directorate ("NPPD"). FEMA has located approximately 716 pages; NPPD has located approximately 1251 pages.

4. Both FEMA and NPPD plan to make an interim release by May 9, 2018.

5. Both FEMA and NPPD anticipate that they will complete processing plaintiff's FOIA request by June 15, 2018.

6. After plaintiff's FOIA request has been fully processed, plaintiff will need some time to ascertain how plaintiff wants to proceed with the litigation.

7. Accordingly, the parties recommend that they be ordered to file a further Joint Status Report on June 25, 2018.

April 19, 2018,

s/ Paula Dinerstein
Public Employees for
Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
(202) 265-7337

Attorney for Plaintiff

JESSIE K. LIU
United States Attorney
for the District of Columbia
D.C. BAR #472845

DANIEL F. VAN HORN
Chief, Civil Division
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/s/ Marina Utgoff Braswell
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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

)
)
) Civil Action No. 18-cv-158 (CKK)
)
)
)
)
)
)

JOINT MEET AND CONFER REPORT

Plaintiff, Public Employees for Environmental Responsibility (“PEER”), and Defendant, the United States Department of Homeland Security (“DHS”), submit this Joint Meet and Confer Report pursuant to the Court’s Standing Order, to apprise the Court of their progress in resolving this case.

1. On September 1, 2017, PEER submitted a Freedom of Information Act (“FOIA”) request to the Federal Emergency Management Agency (“FEMA”), located within DHS, seeking records relating to the publication of the Strategic National Risk Assessment.

2. PEER filed a Complaint with the Court on January 25, 2018, asserting that DHS failed to timely respond to Plaintiff's FOIA request, in accordance with 5 U.S.C. § 552(a)(6)(A)(i). DHS responded to this Complaint on March 2, 2018.

3. Plaintiff's FOIA request is being processed by both FEMA and by DHS's National Protection and Programs Directorate ("NPPD"). FEMA located approximately 716 potentially responsive pages; NPPD located approximately 1251 potentially responsive pages.

4. FEMA made interim productions on May 9, 2018, and June 22, 2018, and has made a final production today, June 25, 2018. NPPD made a final production on May 9, 2018.

5. After plaintiff's FOIA request has been fully processed and produced, plaintiff will need some time to ascertain how plaintiff wants to proceed with the litigation.

6. Accordingly, the parties recommend that they be ordered to file a further Joint Status Report on July 31, 2018.

June 25, 2018,

s/ Paula Dinerstein
Public Employees for
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Attorney for Plaintiff

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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
	)	Civil Action No. 18-cv-158 (CKK)
Plaintiff,)	
)	
v.)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s July 9, 2018 Order, Plaintiff Public Employees for Environmental Responsibility (“PEER”), and Defendant United States Department of Homeland Security (“DHS”), submit this Joint Status Report, to apprise the Court of their progress in resolving this case.

Defendant has completed processing information located in response to plaintiff’s Freedom of Information Act (“FOIA”) request. Plaintiff has expressed to defendant some concerns about the processing by DHS’s Federal Emergency Management Agency (“FEMA”) regarding certain redactions taken. FEMA is considering those concerns and may want further conferral with plaintiff regarding the issues raised. FEMA is also working on preparing a Vaughn declaration for plaintiff.

The parties suggest that their next status report be due September 10, 2018. This will allow them time to confer on the issues raised by plaintiff and for FEMA to complete preparation

of its Vaughn declaration for plaintiff.

July 31, 2018

Respectfully Submitted,

s/ Paula Dinerstein
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Attorney for Plaintiff

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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
	)	Civil Action No. 18-cv-158 (CKK)
Plaintiff,)	
)	
v.)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s August 7, 2018 Order, Plaintiff Public Employees for Environmental Responsibility (“PEER”), and Defendant United States Department of Homeland Security (“DHS”), submit this Joint Status Report, to apprise the Court of their progress in resolving this case.

Defendant has prepared a Vaughn declaration identifying a significant number of redactions or withholdings across roughly 700 pages of produced documents which was delivered today, September 10, 2018. The high volume of individual redactions is anticipated to take a substantial amount of time to review to determine whether any challenges will be made.

The parties suggest that their next status report be due October 15, 2018. This will allow Plaintiff time to review FEMA’s Vaughn declaration and confer with Defendant about either settlement or a proposed briefing schedule.

September 10, 2018

Respectfully Submitted,

[signatures on next page]

s/ Paula Dinerstein

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Public Employees for Environmental
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/s/ Marina Utgoff Braswell

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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
	)	Civil Action No. 18-cv-158 (CKK)
Plaintiff,)	
)	
v.)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s September 17, 2018 Order, Plaintiff Public Employees for Environmental Responsibility (“PEER”), and Defendant United States Department of Homeland Security (“DHS”), submit this Joint Status Report, to apprise the Court of their progress in resolving this case.

Plaintiff has reviewed substantial portions of the Vaughn Index prepared by Defendant but requires additional time to complete the review and determine which challenges to make. After review is completed, the parties intend to confer to see if any areas of disagreement can be reduced, and if necessary the parties will discuss a proposed briefing schedule.

The parties suggest that their next status report be due November 15, 2018. This will allow Plaintiff time to complete review and confer with Defendant about either settlement or a proposed briefing schedule.

October 15, 2018

Respectfully Submitted,

[signatures on next page]

s/ Paula Dinerstein

PAULA DINERSTEIN

Public Employees for Environmental
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Attorney for Plaintiff

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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
	)	Civil Action No. 18-cv-158 (CKK)
Plaintiff,)	
)	
v.)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court's October 17, 2018 Order, Plaintiff Public Employees for Environmental Responsibility ("PEER"), and Defendant United States Department of Homeland Security ("DHS"), submit this Joint Status Report, to apprise the Court of their progress in resolving this case.

Plaintiff has completed review of the Vaughn Index prepared by Defendant and is unable to agree with Defendant that the withholdings comply with the claimed exemption, 5 U.S.C. § 552(b)(5). Because the parties cannot reach an arrangement, counsel must confer to establish a proposed briefing schedule for any motions the parties intend to file.

The parties suggest that their next status report and proposed briefing schedule be due December 7, 2018.

November 15, 2018

Respectfully Submitted,

s/ Paula Dinerstein
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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
	)	Civil Action No. 18-cv-158 (CKK)
Plaintiff,)	
)	
v.)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	

**JOINT STATUS REPORT AND PROPOSED BRIEFING
SCHEDULE FOR DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to the Court’s November 29, 2018 Order, Plaintiff Public Employees for Environmental Responsibility (“PEER”), and Defendant United States Department of Homeland Security (“DHS”), submit this Joint Status Report, to apprise the Court of their proposed briefing schedule for the parties to submit dispositive motions regarding the agency’s withholdings under the claimed exemption, 5 U.S.C. § 552(b)(5). The parties propose the following briefing schedule:

1. By January 24, 2018: Defendant shall serve its motion for summary judgment and any *Vaughn* declaration
2. By February 24, 2018: Plaintiff shall serve its combined cross-motion for summary judgment (if any) and opposition to Defendant’s motion
3. By March 24, 2018: Defendant shall serve its combined reply in support of its motion for summary judgment and opposition to plaintiff’s motion for summary judgment (if any)

4. By April 24, 2018: Plaintiff shall serve its reply in support of its motion for summary judgment (if any)

The parties do not believe any further status conferences are necessary at this time and any concerns between the parties related to the scope of disclosures and withholdings will be addressed in summary judgment briefing.

December 12, 2018

Respectfully Submitted,

s/ Paula Dinerstein
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Attorney for Plaintiff

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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 18-158 (CKK)

SCHEDULING AND PROCEDURES ORDER

(December 14, 2018)

In order to administer this civil action in a manner fair to the litigants and consistent with the parties' interest in completing this litigation in the shortest possible time and at the least possible cost, it is, this 14th day of December, 2018, hereby

ORDERED that the parties are directed to comply with each of the directives set forth in this Order. The Court will hold the parties responsible for following these directives; failure to conform to this Order's directives **may, when appropriate, result in the imposition of sanctions.** *See, e.g.,* FED. R. CIV. P. 16(f).

1. **COMMUNICATIONS WITH THE COURT.** The parties should endeavor to keep communications with Chambers to a minimum. *Ex parte* communications on matters other than scheduling are **strictly prohibited**; if the parties need to contact Chambers, it must be done **jointly** pursuant to a conference call arranged by the parties.

2. **MOTIONS FOR EXTENSIONS OF TIME.** The Court will not entertain or honor stipulations for extensions of time; parties must file a motion in accordance with the following instructions:

- (a) Motions for extensions of time must be filed at least four (4) business days prior to the first affected deadline.
- (b) Motions for extensions of time are strongly discouraged; they will be granted only in truly exceptional or compelling circumstances and parties should not expect the Court to grant extensions.
- (c) All motions for extensions of time must include the following or they will not be considered:
 - (i) The specific grounds for the extension;
 - (ii) The number of previous extensions, if any, granted to each party;

- (iii) A statement of the impact that the requested extension would have on all other previously set deadlines;
- (iv) A proposed schedule for any other affected deadlines, to be proposed only after consulting with opposing counsel; and
- (v) A statement of opposing counsel's position vis-à-vis the motion in accordance with Local Civil Rule 7(m).

3. **MOTIONS GENERALLY.** Parties must comply with the following instructions when briefing any motion:

- (a) Memoranda of points and authorities filed in support of or in opposition to any motion may not, without leave of the Court, exceed forty-five (45) pages, and reply memoranda may not exceed twenty-five (25) pages, with margins set at one inch and with all text double-spaced (excepting footnotes) and in twelve-point Times New Roman (including footnotes).
- (b) A party may not file a sur-reply without first requesting leave of the Court.
- (c) Where a party fails to file a memorandum of points and authorities in opposition to a given motion, the Court **may treat the motion as conceded**, except with respect to motions for summary judgment. *See* Local Civil Rule 7(b); *Winston & Strawn, LLP v. McLean*, 843 F.3d 503, 505-08 (D.C. Cir. 2016) (citing, e.g., Fed. R. Civ. P. 56(e)(3)). Similarly, where a party fails to respond to arguments in opposition papers, the Court may treat those specific arguments as conceded. *Phrasavang v. Deutsche Bank*, 656 F. Supp. 2d 196, 201 (D.D.C. 2009).
- (d) **Exhibits shall be properly edited** to exclude irrelevant material and to direct the Court's attention to the pertinent portions thereof.
- (e) Each submission shall be accompanied by a table of cases and other authorities cited therein.
- (f) Every pleading or paper, regardless of whether it is submitted by an attorney or a *pro se* party, shall contain the name, address, telephone number, and, for an attorney, bar identification number. *See* Local Civil Rule 5.1(c).

4. **MOTIONS FOR SUMMARY JUDGMENT.** Parties must comply with the following instructions when briefing motions for summary judgment and the Court may strike papers not in conformity therewith:

- (a) The Court **strictly adheres to the dictates of Local Civil Rule 7(h)**, which requires that each party submitting a motion for summary judgment attach a statement of material facts for which that party contends there is no genuine dispute, with specific citations to those portions of the record upon which the party relies in fashioning the statement. The party opposing the motion must, in turn, submit a statement enumerating all material facts which the party contends are genuinely

disputed and thus require trial. Local Civil Rule 7(h)(1). The parties are strongly encouraged to carefully review *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145 (D.C. Cir. 1996), on the subject of Local Civil Rule 7(h).

- (b) The moving party's statement of material facts shall be a short and concise statement, **in numbered paragraphs**, of all material facts as to which the moving party claims there is no genuine dispute. The statement must contain **only one factual assertion in each numbered paragraph**.
- (c) The party responding to a statement of material facts must respond to each paragraph with a **correspondingly numbered paragraph**, indicating whether that paragraph is admitted or denied. If a paragraph is admitted only in part, the party must specifically identify which parts are admitted and which parts are denied.
- (d) The Court may assume that facts identified by the moving party in its statement of material facts are **admitted**, unless such facts are controverted in the statement filed in opposition to the motion. Local Civil Rule 7(h)(1).
- (e) The responding party must include any information relevant to its response in its correspondingly numbered paragraph, with specific citations to the record. However, if the responding party has additional facts that are not directly relevant to its response, it must identify such facts in consecutively numbered paragraphs **at the end** of its responsive statement of facts. **If additional factual allegations are made, the opponent must file a responsive statement of its own.**
- (f) The parties must furnish **precise citations** to the portions of the record on which they rely; the Court need not consider materials not specifically identified. Fed. R. Civ. P. 56(c)(1)(A), (c)(3).

7. **MOTIONS FOR RECONSIDERATION.** Motions for reconsideration of prior rulings are strongly discouraged. Such motions shall be filed only when the requirements of FED. R. CIV. P. 54(b), FED. R. CIV. P. 59(e), and/or FED. R. CIV. P. 60(b) are met. If such a motion is filed, it **shall not exceed ten (10) pages in length**. Moreover, the Court will not entertain: (a) motions which simply reassert arguments previously raised and rejected by the Court; or (b) arguments which should have been previously raised, but are being raised for the first time. *See Nat'l Trust v. Dep't of State*, 834 F. Supp. 453, 455 (D.D.C. 1995). Motions not in compliance with these instructions may be stricken.

8. **COURTESY COPIES.** The parties shall deliver one (1) courtesy copy of any submission that is over twenty-five (25) pages in length or that includes more than one (1) exhibit to the Court Security Officer at the loading dock located at Third and C Streets (not the Clerk's Office or Chambers). Courtesy copies shall be appropriately bound and tabbed for ease of reference.

9. **SETTLEMENT.** The parties are expected to evaluate their respective cases for purposes of settlement. The Court encourages the use of alternative dispute resolution—*e.g.*, media-

tion or neutral case evaluation. The use of these methods is available at any time, as is a settlement conference before a magistrate judge. If counsel are interested in pursuing these options, they may contact Chambers at any time. If the case settles in whole or in part, counsel shall **promptly** advise the Court.

10. **APPEARANCES AT HEARINGS.** Principal trial counsel must appear at all hearings unless excused by the Court in advance.

It is **FURTHER ORDERED** that the parties shall adhere to the following schedule:

- (a) Defendant shall file its Motion for Summary Judgment and any *Vaughn* declaration by no later than **JANUARY 24, 2019**.
- (b) Plaintiff shall file its Opposition to Defendant's Motion for Summary Judgment and its Cross-Motion for Summary Judgment, if any, by no later than **FEBRUARY 25, 2019**;
- (c) Defendant shall file its Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment and its Opposition to Plaintiff's Cross-Motion for Summary Judgment, if any, by no later than **MARCH 25, 2019**;
- (d) Plaintiff shall file its Reply in support of its Cross-Motion for Summary Judgment, if any, by no later than **APRIL 24, 2019**.

Additional dates will be set as necessary. The dates identified above are firm; the Court has endeavored to give the parties the generous schedule that they have requested and expects that they will adhere to that schedule.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

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

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

Plaintiff,

V.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY

Defendant.

Civil Action No. 18-0158 (CKK)

DEFENDANT’S CONSENT MOTION TO STAY PROCEEDINGS
IN LIGHT OF LAPSE OF APPROPRIATIONS

Defendant hereby moves for a stay of the above-captioned civil action in the above-captioned case. A Joint Status Report is due on January 18, 2019.

1. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The same is true for several other executive agencies. The Department does not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys and employees are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

3. Counsel for the Department of Justice therefore requests a stay of this civil action until Congress has restored appropriations to the Department.

4. If this motion for a stay is granted, undersigned counsel will notify the Court within two days after Congress has appropriated funds for the Department. Defendant respectfully requests that, at that point, all current deadlines for the parties be extended commensurate with the calendar day duration of the lapse in appropriations.

5. Counsel was able to confer with Plaintiff's counsel who consents to this motion.

Therefore, although we greatly regret any disruption caused to the Court and the other litigants, Defendant hereby moves for a stay of this case as applied to the duties of the government until Department of Justice attorneys are permitted to resume their usual civil litigation functions.

Dated: January 18, 2019

Respectfully submitted,
JESSIE K. LIU
D.C. Bar #472845
United States Attorney

DANIEL F. VAN HORN
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Chief, Civil Division

/s/ Marina Utgoff Braswell
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL)	
RESPONSIBILITY)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 18-0158 (CKK)
)	
UNITED STATES DEPARTMENT)	
OF HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

[PROPOSED] ORDER

In consideration of Defendant's Consent Motion to Stay Proceedings in Light of Lapse of Appropriations, it is hereby ORDERED that the motion is

GRANTED and all deadlines are stayed. It is

FURTHER ORDERED that all current deadlines for the parties shall be extended commensurate with the calendar day duration of the lapse in appropriations and Defendant's counsel shall notify the Court within fourteen days of Congress appropriating funds for the Justice Department.

DISTRICT COURT JUDGE

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
)	
Plaintiff,	)	Civil Action No. 18-cv-158 (CKK)
)	
v.)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	

**JOINT STATUS REPORT AND EXTENDED BRIEFING
SCHEDULE**

Pursuant to the Court’s January 18, 2019 Order, Plaintiff Public Employees for Environmental Responsibility (“PEER”), and Defendant United States Department of Homeland Security (“DHS”), submit this Joint Status Report, to apprise the Court of the restoration of the U.S. Department of Justice’s funding and the resumption of its operations, and provide a proposed briefing schedule for the parties to submit dispositive motions regarding the agency’s withholdings under the claimed exemption, 5 U.S.C. § 552(b)(5). The parties propose the following extension to the briefing schedule, commensurate with the length of the lapse in funding of 35 days:

1. By February 28, 2019: Defendant shall serve its motion for summary judgment and any *Vaughn* declaration
2. By March 28, 2019: Plaintiff shall serve its combined cross-motion for summary judgment (if any) and opposition to Defendant’s motion

3. By April 28, 2019: Defendant shall serve its combined reply in support of its motion for summary judgment and opposition to plaintiff's motion for summary judgment (if any)

4. By May 28, 2019: Plaintiff shall serve its reply in support of its motion for summary judgment (if any)

The parties do not believe any further status conferences are necessary at this time and any concerns between the parties related to the scope of disclosures and withholdings will be addressed in summary judgment briefing.

February 1, 2019

Respectfully Submitted,

s/ Paula Dinerstein
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Attorney for Plaintiff

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DANIEL F. VAN HORN
Chief, Civil Division
D.C. BAR # 924092

/s/ Marina Utgoff Braswell
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Defendant's Counsel

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 18-158 (CKK)

AMENDED SCHEDULING AND PROCEDURES ORDER

(February 1, 2019)

In order to administer this civil action in a manner fair to the litigants and consistent with the parties' interest in completing this litigation in the shortest possible time and at the least possible cost, it is, this 1st day of February, 2019, hereby

ORDERED that the parties are directed to comply with each of the directives set forth in this Order. The Court will hold the parties responsible for following these directives; failure to conform to this Order's directives **may, when appropriate, result in the imposition of sanctions.** *See, e.g.,* FED. R. CIV. P. 16(f).

1. **COMMUNICATIONS WITH THE COURT.** The parties should endeavor to keep communications with Chambers to a minimum. *Ex parte* communications on matters other than scheduling are **strictly prohibited**; if the parties need to contact Chambers, it must be done **jointly** pursuant to a conference call arranged by the parties.

2. **MOTIONS FOR EXTENSIONS OF TIME.** The Court will not entertain or honor stipulations for extensions of time; parties must file a motion in accordance with the following instructions:

- (a) Motions for extensions of time must be filed at least four (4) business days prior to the first affected deadline.
- (b) Motions for extensions of time are strongly discouraged; they will be granted only in truly exceptional or compelling circumstances and parties should not expect the Court to grant extensions.
- (c) All motions for extensions of time must include the following or they will not be considered:
 - (i) The specific grounds for the extension;
 - (ii) The number of previous extensions, if any, granted to each party;

- (iii) A statement of the impact that the requested extension would have on all other previously set deadlines;
- (iv) A proposed schedule for any other affected deadlines, to be proposed only after consulting with opposing counsel; and
- (v) A statement of opposing counsel's position vis-à-vis the motion in accordance with Local Civil Rule 7(m).

3. **MOTIONS GENERALLY.** Parties must comply with the following instructions when briefing any motion:

- (a) Memoranda of points and authorities filed in support of or in opposition to any motion may not, without leave of the Court, exceed forty-five (45) pages, and reply memoranda may not exceed twenty-five (25) pages, with margins set at one inch and with all text double-spaced (excepting footnotes) and in twelve-point Times New Roman (including footnotes).
- (b) A party may not file a sur-reply without first requesting leave of the Court.
- (c) Where a party fails to file a memorandum of points and authorities in opposition to a given motion, the Court **may treat the motion as conceded**, except with respect to motions for summary judgment. *See* Local Civil Rule 7(b); *Winston & Strawn, LLP v. McLean*, 843 F.3d 503, 505-08 (D.C. Cir. 2016) (citing, e.g., Fed. R. Civ. P. 56(e)(3)). Similarly, where a party fails to respond to arguments in opposition papers, the Court may treat those specific arguments as conceded. *Phrasavang v. Deutsche Bank*, 656 F. Supp. 2d 196, 201 (D.D.C. 2009).
- (d) **Exhibits shall be properly edited** to exclude irrelevant material and to direct the Court's attention to the pertinent portions thereof.
- (e) Each submission shall be accompanied by a table of cases and other authorities cited therein.
- (f) Every pleading or paper, regardless of whether it is submitted by an attorney or a *pro se* party, shall contain the name, address, telephone number, and, for an attorney, bar identification number. *See* Local Civil Rule 5.1(c).

4. **MOTIONS FOR SUMMARY JUDGMENT.** Parties must comply with the following instructions when briefing motions for summary judgment and the Court may strike papers not in conformity therewith:

- (a) The Court **strictly adheres to the dictates of Local Civil Rule 7(h)**, which requires that each party submitting a motion for summary judgment attach a statement of material facts for which that party contends there is no genuine dispute, with specific citations to those portions of the record upon which the party relies in fashioning the statement. The party opposing the motion must, in turn, submit a statement enumerating all material facts which the party contends are genuinely

disputed and thus require trial. Local Civil Rule 7(h)(1). The parties are strongly encouraged to carefully review *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145 (D.C. Cir. 1996), on the subject of Local Civil Rule 7(h).

- (b) The moving party's statement of material facts shall be a short and concise statement, **in numbered paragraphs**, of all material facts as to which the moving party claims there is no genuine dispute. The statement must contain **only one factual assertion in each numbered paragraph**.
- (c) The party responding to a statement of material facts must respond to each paragraph with a **correspondingly numbered paragraph**, indicating whether that paragraph is admitted or denied. If a paragraph is admitted only in part, the party must specifically identify which parts are admitted and which parts are denied.
- (d) The Court may assume that facts identified by the moving party in its statement of material facts are **admitted**, unless such facts are controverted in the statement filed in opposition to the motion. Local Civil Rule 7(h)(1).
- (e) The responding party must include any information relevant to its response in its correspondingly numbered paragraph, with specific citations to the record. However, if the responding party has additional facts that are not directly relevant to its response, it must identify such facts in consecutively numbered paragraphs **at the end** of its responsive statement of facts. **If additional factual allegations are made, the opponent must file a responsive statement of its own.**
- (f) The parties must furnish **precise citations** to the portions of the record on which they rely; the Court need not consider materials not specifically identified. Fed. R. Civ. P. 56(c)(1)(A), (c)(3).

7. **MOTIONS FOR RECONSIDERATION.** Motions for reconsideration of prior rulings are strongly discouraged. Such motions shall be filed only when the requirements of FED. R. CIV. P. 54(b), FED. R. CIV. P. 59(e), and/or FED. R. CIV. P. 60(b) are met. If such a motion is filed, it **shall not exceed ten (10) pages in length**. Moreover, the Court will not entertain: (a) motions which simply reassert arguments previously raised and rejected by the Court; or (b) arguments which should have been previously raised, but are being raised for the first time. *See Nat'l Trust v. Dep't of State*, 834 F. Supp. 453, 455 (D.D.C. 1995). Motions not in compliance with these instructions may be stricken.

8. **COURTESY COPIES.** The parties shall deliver one (1) courtesy copy of any submission that is over twenty-five (25) pages in length or that includes more than one (1) exhibit to the Court Security Officer at the loading dock located at Third and C Streets (not the Clerk's Office or Chambers). Courtesy copies shall be appropriately bound and tabbed for ease of reference.

9. **SETTLEMENT.** The parties are expected to evaluate their respective cases for purposes of settlement. The Court encourages the use of alternative dispute resolution—*e.g.*, media-

tion or neutral case evaluation. The use of these methods is available at any time, as is a settlement conference before a magistrate judge. If counsel are interested in pursuing these options, they may contact Chambers at any time. If the case settles in whole or in part, counsel shall **promptly** advise the Court.

10. **APPEARANCES AT HEARINGS.** Principal trial counsel must appear at all hearings unless excused by the Court in advance.

It is **FURTHER ORDERED** that the parties shall adhere to the following schedule:

- (a) Defendant shall file its Motion for Summary Judgment and any *Vaughn* declaration by no later than **MARCH 1, 2019**.
- (b) Plaintiff shall file its Opposition to Defendant's Motion for Summary Judgment and its Cross-Motion for Summary Judgment, if any, by no later than **MARCH 29, 2019**;
- (c) Defendant shall file its Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment and its Opposition to Plaintiff's Cross-Motion for Summary Judgment, if any, by no later than **APRIL 29, 2019**;
- (d) Plaintiff shall file its Reply in support of its Cross-Motion for Summary Judgment, if any, by no later than **MAY 29, 2019**.

Additional dates will be set as necessary. The dates identified above are firm; the Court has endeavored to give the parties the generous schedule that they have requested and expects that they will adhere to that schedule.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL)	
RESPONSIBILITY)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 18-0158 (CKK)
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant, United States Department of Homeland Security, by its undersigned attorneys, respectfully moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for an order granting summary judgment in favor of defendant on the grounds that no genuine issue as to any material fact exists and defendant is entitled to judgment as a matter of law. In support of this motion, the Court is respectfully referred to defendant’s accompanying declarations, exhibits, the Statement of Material Facts As To Which There Is No Genuine Issue, and the Memorandum of Points and Authorities in Support of Defendant’s Motion For Summary Judgment. A proposed order is also attached.

Respectfully submitted,

JESSIE K. LIU,
D.C. BAR # 472845
United States Attorney
for the District of Columbia

DANIEL F. VAN HORN,
D.C. BAR #924092
Chief, Civil Division

/s/ Marina Utgoff Braswell

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
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**DEFENDANT’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Local Rule 7(h), defendant United States Department of Homeland Security (“DHS”), on behalf of the Federal Emergency Management Agency (“FEMA”), submits this statement of material facts as to which there is no genuine issue:

1. By letter dated September 1, 2017, plaintiff made a request under the freedom of Information Act (“FOIA”) for access to the Strategic National Risk Assessment (“SNRA”) 2015 Findings [Report], May 2015; SNRA 2015 Technical Appendix, May 2015; SNRA 2015 Working Papers, May 2015; PPD-8 Implementation Plan, May 2011; SNRA Terms of Reference, June 2011; SNRA 2015 Update Background and General Guidance, February 2015; SNRA 2015 Qualitative Data Instructions, February 2015; SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015; and any successor SNRA versions later than May 2015.

Declaration of Gregory Bridges (“Bridges Decl.”), attached, ¶ 3.

2. In response to the request, FEMA produced without redaction the SNRA 2015 Update Background and General Guidance, February 2015; SNRA 2015 Qualitative Data Instructions, February 2015; and the SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015. Bridges Decl., ¶ 4.

3. The remaining information was withheld pursuant to FOIA Exemption 5. Bridges Decl., ¶ 4.

4. FEMA subsequently made additional discretionary releases of information, withholding parts of documents pursuant to Exemption 5. Bridges Decl., ¶ 5.

5. The parties agreed to limit briefing to FEMA's invocation of Exemption 5 with respect to certain specified documents. See Docket No. 20 at 1.

6. FEMA invoked Exemption 5 of the FOIA to protect certain information contained in inter or intra-agency documents or memoranda which is protected from mandatory disclosure by the deliberative process privilege. Bridges Decl., ¶ 9.

7. More specifically, the information withheld consists of predecisional documents never adopted by FEMA that contain candid, predecisional views and deliberations of government officials concerning threats and hazards potentially facing this country. Bridges Decl., ¶¶ 10-11.

8. Release of the information withheld would harm FEMA's decision-making process by chilling the free exchange of information, ideas, opinions, recommendations and selectively chosen facts, and may cause confusion to the public as to the actual threats and hazards perceived by FEMA and the agencies with which it consults. Bridges Decl., ¶¶ 12-13.

5. FEMA released all reasonably segregable non-exempt information to plaintiff. Bridges Decl., ¶¶ 12-13.

Respectfully submitted,

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D.C. BAR # 472845
United States Attorney
for the District of Columbia

DANIEL F. VAN HORN,
D.C. BAR #924092
Chief, Civil Division

/s/ Marina Utgoff Braswell
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT’S MOTION FOR SUMMARY JUDGEMENT**

PRELIMINARY STATEMENT

Plaintiff filed this civil action against defendant United States Department of Homeland Security (“DHS”), alleging that DHS’s Federal Emergency Management Agency (“FEMA”) violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in connection with plaintiff’s request for certain specified information concerning FEMA’s 2015 Strategic National Risk Assessment (“SNRA”). FEMA withheld certain information from plaintiff pursuant to FOIA Exemption 5. Declaration of Gregory Bridges (“Bridges Decl.”), attached, ¶¶ 9-14 & attached Vaughn Index.

As demonstrated below, and in the accompanying declarations of Gregory Bridges (“Bridges Decl.”), and Leiloni Stainsby (“Stainsby Decl.”), and the Vaughn Index describing the withheld information, FEMA has satisfied all of its FOIA obligations with respect to plaintiff’s request, given plaintiff all of the records and information to which it is entitled. Therefore,

judgment should be entered in favor of defendant based on the entire record, because there is no genuine issue of material fact and defendant is entitled to judgment as a matter of law.

ARGUMENT

I. Pursuant to Exemption 5, FEMA Properly Withheld Information Subject to the Deliberative Process Privilege

FOIA Exemption 5 protects from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency.” 5 U.S.C. § 552(b)(5). Here, all the documents at issue were exchanged within FEMA, or between FEMA and other governmental entities, and thus qualifies as inter-agency or intra-agency information. Bridges Decl., ¶ 9.

The exemption protects records that ordinarily would be privileged in the civil discovery context, and thus encompasses the deliberative process privilege, among other privileges. See Nat’l Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 148-49 (1975); Abtew v. U.S. Dep’t of Homeland Sec., 808 F.3d 895, 898 (D.C. Cir. 2015). The purpose of this privilege is to protect the government’s decision-making process, and “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.” U.S. Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 8–9 (2001); Abtew, 808 F.3d at 898; Tax Analysts v. IRS, 117 F.3d 607, 617 (D.C. Cir. 1997) (noting that the privilege “reflect[s] the legislative judgment that the quality of administrative decision-making would be seriously undermined if agencies were forced to ‘operate in a fishbowl’ because the full and frank exchange of ideas on legal or policy matters would be impossible”). Application of the privilege, therefore, serves to “prevent injury to the quality of agency decisions.” NLRB, 421 U.S. at 150–51.

To qualify for protection under the deliberative process privilege, the agency must show that the information is both (1) “predecisional” and (2) “deliberative.” Nat’l Ass’n of Home Builders v. Norton, 309 F.3d 26, 39 (D.C. Cir. 2002). A document is predecisional if “it was generated before the adoption of an agency policy,” and deliberative if “it reflects the give-and-take of the consultative process.” Coastal States Gas Corp. v. Dep’t of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Abtew, 808 F.3d at 899. The privilege applies to documents “reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” NLRB, 421 U.S. at 150; Coastal States Gas Corp., 617 F.2d at 866 (deliberative process privilege protects documents “which would inaccurately reflect or prematurely disclose the views of the agency”). The privilege “ensur[es] that persons in an advisory role would be able to express their opinions freely to agency decision-makers without fear of publicity. . . . Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.” McKinley v. Bd. Of Gov. of the Fed. Reserve Sys., 647 F.3d 331, 339-40 (D.C. Cir. 2011) (*quoting* Ryan v. Dep’t of Justice, 617 F.2d 781, 789-90 (D.C. Cir. 1980)).

The deliberative process privilege also protects factual materials that are closely intertwined with opinions, recommendations, and deliberations. Ancient Coin Collectors Guild v. U.S. Dep’t of State, 641 F.3d 504, 513 (D.C. Cir. 2011) (“[T]he legitimacy of withholding does not turn on whether the material is purely factual in nature or whether it is already in the public domain, but rather on whether the selection or organization of facts is part of an agency’s deliberative process.”); Mapother v. Dep’t of Justice, 3 F.3d 1533, 1538-39

(D.C. Cir. 1993). Whether a document is predecisional does not depend on the agency's ability to identify a specific decision for which the document was prepared. NLRB, 421 U.S. at 151 n.18. Rather, the deliberative process privilege applies as long as the document is generated as part of a continuing process of agency decision- making.

Here, FEMA invoked Exemption 5's deliberative process privilege to protect certain predecisional information in documents. The predecisional nature of the documents and information is explained by Ms. Stainsby as follows:

The 2015 draft SNRA Documents were developed by FEMA's National Integration Center (NIC), which develops guidance and tools to assist communities in tackling their unique preparedness challenges and coordinates the adoption and implementation of a common incident management platform for emergency responders and officials. The NIC is a division of FEMA's National Preparedness Directorate (NPD), an organizational component tasked with helping people and communities become more resilient by developing the capabilities needed to prevent, protect against, respond to, recover from, and mitigate against all threats and hazards. NPD provides guidance, programs, and processes to empower people and the communities they live in to be prepared for any hazard. The NIC intended the 2015 SRNA Documents to be the risk-based analytic foundation of the National Preparedness Goal.

In April of 2015, the NIC forwarded the SNRA Documents to several offices [footnote omitted] throughout FEMA for review, including my office, the National Preparedness Assessment Division. To my knowledge, the NIC did not send the SNRA Documents through the formal concurrence process and NPD leadership did not approve them. Without review and concurrence, the SNRA Documents were never finalized or publicly released.

Stainsby Decl., ¶¶ 3-4; Bridges Decl., ¶ 10. Thus, given that none of the documents ever received final approval by those responsible for giving such approval, they were never finalized and remain predecisional.

The fact that the decisionmaking process concluded without any final decision or finalized documents does not strip these documents of their predecisional character. As the Supreme Court made clear in NLRB, 421 U.S. at 151 n.18 (1975):

Our emphasis on the need to protect pre-decisional documents does not mean that the existence of the privilege turns on the ability of an agency to identify a specific decision in connection with which a memorandum is prepared. Agencies are, and properly should be, engaged in a continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions; and the lower courts should be wary of interfering with this process.

Id.

The information withheld is deliberative. As the Stainsby Declaration makes clear, these documents contain opinions and recommendations on the various potential threats and hazards facing this country. Id. at ¶¶ 5-18. Mr. Bridges further explains that:

The information in these documents is deliberative because they consist of proposed factual findings, proposed assessments of information pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors. Any factual information included in these documents consists of facts culled from a larger set of facts concerning threats and hazards. The authors of these documents used their judgment as to which facts to include and which facts to exclude, and thus release of this factual information would reveal their deliberative process in selecting pertinent facts to include in these draft documents. Additionally, the factual information is so entangled with the analyses and proposed conclusions in these documents that its release would reveal the deliberative process and, because the documents were never finalized, may not reflect FEMA's actual position regarding the risks and impacts such threats and hazards could present.

Id., at ¶ 11.

Factual information that is included in documents through the exercise of judgment calls requiring extracting facts from a larger set of facts is entitled to exemption 5 protection. As the

Court held in Electric Frontier Foundation v. U.S. Dep't of Justice, 890 F. Supp.2d 35 (D.D.C. 2012):

‘The deliberative process privilege does not ... protect material that is purely factual, *unless* the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations,’ *In re Sealed Case*, 121 F.3d at 737 (emphasis added), or ‘it reflects an “exercise of discretion and judgment calls,”’ *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 641 F.3d 504, 513 (D.C.Cir.2011) (quoting *Mapother v. DOJ*, 3 F.3d 1533, 1539 (D.C.Cir.1993)). . .

It does, on the other hand, protect ‘factual material ... assembled through an exercise of judgment in extracting pertinent material from a vast number of documents for the benefit of an official called upon to take discretionary action.’ *Mapother*, 3 F.3d at 1539; *see Ancient Coin Collectors Guild*, 641 F.3d at 513 (deeming protected under the deliberative process privilege ‘factual summaries contained in [agency] reports [which] were culled by the [agency] from the much larger universe of facts presented to it and reflect an exercise of judgment as to what issues are most relevant to the pre-decisional findings and recommendations’ (internal quotation marks omitted)).

Id. at 47-48.

Because the Bridges Declaration makes clear that the factual information here was culled from a larger set of facts, and represents the judgment of what the authors thought were pertinent facts but might not be thought of as pertinent by any FEMA official with authority to finalize these documents, the factual information was properly protected under Exemption 5.

Finally, disclosure of this predecisional deliberative information could cause confusion for the public and would cause harm to the agency’s decision-making process.

Mr. Bridges explains that:

Release of the deliberative information would greatly harm the agency’s deliberative process by prematurely revealing potential threats and hazards, and analyses and recommendations concerning these potential threats and hazards when no final determination was made as to whether the potential threats and hazards were in fact threats and hazards that needed to be addressed in the manner suggested by the analyses and recommendations. Release of this information

would therefore cause confusion to the public and may result in members of the public taking action on potential threats and hazards where no action is warranted, or not the action suggested by a recommendation contained in the documents.

Bridges Decl., ¶ 12.

Additionally, release of this deliberative information would harm the agency's decision-making process because it would chill the needed open and frank discussion about possible threats and hazards facing this country and how they should be addressed. As the Supreme Court aptly observed, "officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news."

Klamath Water Users Protective Ass'n, 532 U.S. at 8–9. In this regard Mr. Bridges points out that:

Agency personnel may hold back from sharing important observations, analyses and recommendations, or factual information they thought should be considered, if they knew that such deliberations would be made public, and this would seriously undermine the development of an adequate, thorough, thoughtful, soundly based assessment of hazards and threats facing this country.

Bridges Decl., ¶ 13.

Exemption 5's deliberative process privilege was designed specifically to prevent harm to the government's decision-making process. The Bridges and Spainsby declarations amply demonstrate that the information withheld here is predecisional and deliberative in nature, including the factual information. Its release would harm the agency's decision-making process in ways courts have recognized should be prevented through the application of FOIA Exemption 5.

Accordingly, defendant's invocation of Exemption 5 here should be upheld.

II. FEMA Has Complied with FOIA's Segregability Requirement.

Under the FOIA, if a record contains information exempt from disclosure, any “reasonably segregable,” non-exempt information must be disclosed after redaction of the exempt information. 5 U.S.C. § 552(b). Non-exempt portions of records need not be disclosed if they are “inextricably intertwined with exempt portions.” Mead Data Cent., Inc. v. Dep’t of the Air Force, 566 F.2d 242, 260 (D.C. Cir. 1977). To establish that all reasonably segregable, non-exempt information has been disclosed, an agency need only show “with ‘reasonable specificity’” that the information it has withheld cannot be further segregated. Armstrong v. Executive Office of the President, 97 F.3d 575, 578-79 (D.C. Cir. 1996); Canning v. Dep’t of Justice, 567 F. Supp.2d 104, 110 (D.D.C. 2008). When an agency demonstrates that it has undertaken a “page-by-page” review of all the documents, and then submits a declaration attesting that each piece of information that is withheld is not reasonably segregable, this is sufficient to show that an entire document, or particular information within a document, cannot be produced. Juarez v. U.S. Dep’t of Justice, 518 F.3d 54, 61 (D.C. Cir. 2008); Beltranena v. U.S. Dep’t of State, 821 F. Supp. 2d 167, 178–79 (D.D.C. 2011).

The Bridges Declaration states that:

As the Vaughn Index shows, FEMA conducted a line-by-line review of all of the withheld information to ensure that it contained no segregable, nonexempt information. With respect to each piece of information withheld, no further information could be reasonably segregated from the exempt information and released, including factual information

Id. at ¶ 15.

Thus, because FEMA carefully reviewed the material withheld and determined that no additional non-exempt information could be released, this Court should find that the

segregability requirement has been met.

CONCLUSION

Accordingly, for all of the reasons set forth above and in the accompanying declarations, defendant respectfully submits that this motion for summary judgment should be granted.

Respectfully submitted,

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United States Attorney
for the District of Columbia

DANIEL F. VAN HORN,
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Chief, Civil Division

/s/ Marina Utgoff Braswell
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UNITED STATES DISTRICT COURT
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ENVIRONMENTAL)	
RESPONSIBILITY)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 18-0158 (CKK)
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

ORDER

Upon consideration of defendant's motion for summary judgment, plaintiff's opposition, and the entire record in this case, the Court finds that there are no issues of material fact and the defendant is entitled to judgment as a matter of law. Therefore, it is hereby

ORDERED that defendant's motion for summary judgment is granted.

This is a final, appealable order.

UNITED STATES DISTRICT JUDGE

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

PUBLIC EMPLOYEES FOR ENVIRONMENTAL
RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

Civil Action No. 18-cv-158 (CKK)

DECLARATION OF GREGORY BRIDGES

I, Gregory Bridges, hereby declare, pursuant to 28 U.S.C. § 1746, the following to be true and correct:

1. I am the Acting Chief of the Disclosure Branch, Records Management Division, Federal Emergency Management Agency (“FEMA”), United States Department of Homeland Security (“DHS”). I have held this position since February 18, 2019. In this capacity, I am responsible for the overall activities and operations of FEMA’s compliance with the Federal Freedom of Information Act (“FOIA”) and the Privacy Act of 1974, including document production on behalf of FEMA. I have been with FEMA since August 21, 2018.

2. I make this declaration based on my personal knowledge of FEMA’s FOIA processing procedures and the circumstances surrounding FEMA’s response to plaintiff Public Employees for Environmental Responsibility’s September 1, 2017 request. The purpose of this declaration is to provide information concerning FEMA’s Vaughn index, and information withheld from plaintiff pursuant to FOIA Exemption 5.

3. By letter dated September 1, 2017, plaintiff requested documents related to the draft 2015 Strategic National Risk Assessment (“SNRA Documents”). Specifically, plaintiff requested the SNRA 2015 Findings [Report], May 2015; SNRA 2015 Technical Appendix, May 2015; SNRA 2015 Working Papers, May 2015; PPD-8 Implementation Plan, May 2011; SNRA Terms of Reference, June 2011; SNRA 2015 Update Background and General Guidance, February 2015; SNRA 2015 Qualitative Data Instructions, February 2015; SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015; and any successor SNRA versions later than May 2015. Copy attached as Exhibit A.

4. In response to the request, FEMA produced, in full, the SNRA 2015 Update Background and General Guidance, February 2015; SNRA 2015 Qualitative Data Instructions, February 2015; and the SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015. The remaining items were withheld in their entirety pursuant to Exemption 5.

5. FEMA subsequently made three more productions on May 9, 2018, June 22, 2018, and June 25, 2018, making discretionary releases of additional information. The releases contained all of the requested documents with Bates numbering. The May 9, 2018 production contained the previously-released SNRA 2015 Update Background and General Guidance, February 2015; SNRA 2015 Qualitative Data Instructions, February 2015; and the SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015. These were released with no exemptions claimed. The June 22, 2018 production contained the SNRA 2015 Findings [Report], May 2015; PPD-8 Implementation Plan, May 2011; SNRA Terms of Reference, June 2011; and the successor SNRA versions later than May 2015: the Summary of Findings, November 2015, the Presidential Policy Directive/PPD-8 Refresh, SNRA Findings Review, May 29, 2015, and the SNRA 2015 Summary of Findings, May 2015. These were partially released under Exemption 5.

Finally, the June 25, 2018 production contained the SNRA 2015 Technical Appendix, May 2015; and the SNRA 2015 Working Papers, May 2015. These were partially released under Exemption 5. Thus, no documents were withheld in full from plaintiff any longer.

6. Attached as Exhibit B is a Vaughn index prepared by FEMA pursuant to the Court's January 18, 2019 Order. It details the withholdings, and their justifications, regarding the requested draft 2015 SNRA Documents. This index was prepared by FEMA employees familiar with the draft nature of the SNRA Documents.

7. The SNRA Documents that were redacted in part in response to PEER's FOIA request are the SNRA Summary of Findings (November 2015); Presidential Policy Directive/PPD-8 Refresh, SNRA Findings Review (May 29, 2015); SNRA Summary of Findings (May 2015); SNRA Terms of Reference; SNRA 2015 Technical Appendix (May 2015); SNRA 2011 Supplement: Unclassified Documentation of Findings; and the SNRA Working Papers (May 2015). All of these documents were part of a decision-making process intended to aid in the development of the 2015 National Preparedness Goal and are described in detail in the accompanying Vaughn index and the accompanying Stainsby Declaration. I hereby incorporate this accompanying Vaughn index into this declaration.

8. The Vaughn index entries have been tailored to each specific withholding to explain the basis for that withholding. Nonetheless, many of the entries in the Vaughn index contain similar language. This is the case for a number of reasons. First, the releases to plaintiff include records that are similar in style, presentation, and content. For example, the SNRA Summary of Findings (November 2015), and the Presidential Policy Directive/PPD-8 Refresh, SNRA Findings Review (May 29, 2015), summarize data and conclusions that would be used to develop the 2015 National preparedness Goal designed to help communities address all threats and hazards, while

the SNRA 2015 Technical Appendix (May 2015), SNRA 2011 Supplement: Unclassified Documentation of Findings, and the SNRA Working Papers (May 2015) includes much more detailed information on the source information, key findings, methodology, and technical data regarding potential threats and hazards. The stated basis in the Vaughn index for withholding these records in part or whole will necessarily be the same. Second, even where the records are very similar, the majority of the withholdings relate to (a) data and information on specific categories of threats and hazards; (b) impacts; (c) key findings and conclusions; and (d) reference information and appendices. All of these categories of records comprise and relate to the assessment of a variety of risks, involving repetitive discussion of threats, hazards, findings, and conclusions. In order to ensure similar withholdings are treated consistently, FEMA has tried to provide similar and/or uniform exemption language in the Vaughn index.

9. FEMA has invoked Exemption 5 of the FOIA to withhold predecisional, deliberative information in the documents mentioned in paragraph 7 above. All of these documents were exchanged within FEMA and/or between FEMA and other government agencies and thus qualify for Exemption 5's threshold of being inter-agency or intra-agency documents and information.

10. The documents with Exemption 5 withholdings are all predecisional. As explained in the accompanying Stainsby Declaration, the 2015 SNRA documents were developed to be used in preparing the 2015 National Preparedness Goal, which was published in September 2015. None of the documents with Exemption 5 withholdings could become final without formal federal interagency concurrence and senior-level White House approval. This included approval of the factual information contained within these documents, all of which was culled from a broader set of facts pertaining to threats and hazards, through the exercise of judgment by the authors of these

documents. Since FEMA never received the required interagency concurrence and White House approval, the SNRA documents received no formal approval within FEMA. Thus, they remain predecisional.

11. The information in these documents is deliberative because they consist of proposed factual findings, proposed assessments of information pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors. Any factual information included in these documents consists of facts culled from a larger set of facts concerning threats and hazards. The authors of these documents used their judgment as to which facts to include and which facts to exclude, and thus release of this factual information would reveal their deliberative process in selecting pertinent facts to include in these draft documents. Additionally, the factual information is so entangled with the analyses and proposed conclusions in these documents that its release would reveal the deliberative process and, because the documents were never finalized, may not reflect FEMA's actual position regarding the risks and impacts such threats and hazards could present.

12. Release of the deliberative information would greatly harm the agency's deliberative process by prematurely revealing potential threats and hazards, and analyses and recommendations concerning these potential threats and hazards when no final determination was made as to whether the potential threats and hazards were in fact threats and hazards that needed to be addressed in the manner suggested by the analyses and recommendations. Release of this information would therefore cause confusion to the public and may result in members of the public taking action on potential threats and hazards where no action is warranted, or not the action suggested by a recommendation contained in the documents.

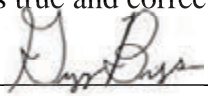
13. Release of this deliberative information would also discourage the open and frank discussion among agency personnel that is critical to arriving at a final analysis of threats and hazards faced by this country. Agency personnel may hold back from sharing important observations, analyses and recommendations, or factual information they thought should be considered, if they knew that such deliberations would be made public, and this would seriously undermine the development of an adequate, thorough, thoughtful, soundly based assessment of hazards and threats facing this country.

14. For these reasons, certain information in the documents listed above in paragraph 7, and on the accompanying Vaughn index, was withheld pursuant to Exemption 5.

15. As the Vaughn Index shows, FEMA conducted a line-by-line review of all of the withheld information to ensure that it contained no segregable, nonexempt information. With respect to each piece of information withheld, no further information could be reasonably segregated from the exempt information and released, including factual information, for the reasons stated above.

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

Executed on this 1st day of March 2019.



GREGORY BRIDGES

EXHIBIT A



Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • Fax: (202) 265-4192

Email: info@peer.org • Web: <http://www.peer.org>

September 1, 2017

FEMA Information Management Division
FOIA Request
500 C Street, S.W., Mailstop 3172
Washington, D.C. 20472

Email: fema-foia@dhs.gov

**RE; FREEDOM OF INFORMATION ACT REQUEST
VIA U.S. MAIL & EMAIL**

Dear FOIA Officer:

In a document entitled “National Preparedness Goal” dated September 2015, the Department of Homeland Security (DHS) declares:

“Understanding the greatest risks to the Nation’s security and resilience is a critical step in identifying core capabilities...The information gathered during a risk assessment also enables a prioritization of preparedness efforts and an ability to identify our capability requirements.

The Strategic National Risk Assessment indicates that a wide range of threats and hazards continue to pose a significant risk to the Nation, affirming the need for an all-hazards, capability-based approach to preparedness planning.” (pg. 4)

While this document goes on to summarize some “key findings” of the Strategic National Risk Assessment (SNRA), the assessment itself is not readily available.

Pursuant to the Freedom of Information Act (5 U.S.C. 552) Public Employees for Environmental Responsibility (PEER) seeks records documenting the SNRA. Specifically, we request the following:

1. SNRA 2015 Findings [Report], May 2015;
2. SNRA 2015 Technical Appendix, May 2015;

3. SNRA 2015 Working Papers, May 2015;
4. PPD-8 Implementation Plan, May 2011;
5. SNRA Terms of Reference, June 2011;
6. SNRA 2015 Update Background and General Guidance, February 2015;
7. SNRA 2015 Qualitative Data Instructions, February 2015;
8. SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015; and
9. Any successor SNRA versions later than May 2015.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

Fee Waiver Request

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The records concern the operations or activities of the Government.

The FOIA request is, by its terms, limited to identifiable activities of Federal Emergency Management Agency (FEMA) and DHS officials.

2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.

The requested material represent the clearest articulations of the comprehensive national risk assessment constituting the SNRA. We are seeking information about both the relative risks found as well as the methodology for how these assessments were done and compiled in a comparative fashion. As such, the requested documents are precisely on point of the subject matter of the request.

3. The release of requested records will contribute significantly to public understanding of the governmental activities

As noted in the DHS statement quoted above, the SNRA provides the basis for “an all-hazards, capability-based approach to preparedness planning.” Consequently, the requested documents should be of intense interest to the U.S. Congress (especially appropriators), state and local decision-makers responsible for public safety, and residents of communities at risk all across the country.

In addition, the requested documents would detail in what manner the Presidential Policy Directive 8: *National Preparedness* was implemented. The general public has an interest in whether presidential directives are followed or ignored by executive branch agencies.

Further, the very nature of the SNRA would give the public a snapshot of the relative risks the nation faces. It would thus enable the public to learn whether national investments are commensurate with the relative risks the investment is designed to address.

Finally, the natural, technological, and human-caused adversarial risks assessed in the SNRA are all the subject of extensive media coverage and public discussion. The materials requested would put these topics of broad concern into an understandable national context.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws on average 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

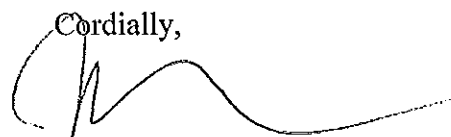
Moreover, DHS statements about the importance of the SNRA denote the unquestionable public interest in the requested materials.

4. Disclosure would not serve a commercial interest of the requestor.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Cordially,

A handwritten signature in black ink, appearing to read 'Jeff Ruch', with a long, sweeping horizontal line extending to the right.

Jeff Ruch
Executive Director



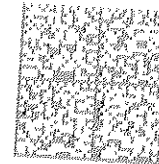
Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

ADDRESS CORRECTION REQUESTED

FEMA Information Management Division
FOIA Request
500 C Street, S.W., Mailstop 3172
Washington, D.C. 20472

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EXHIBIT B

TEST

Bates Number	Document Title	Exemption	Description of Withheld Information	Jusitification for Withholding
000046	Strategic National Risk Assessment (SNRA) 2015, Summary of Findings, November 2015	(b)(5)	Specific threats, drivers, and categories identified in the Table of Contents of the Strategic National Risk Assessment (SNRA) 2015, Summary of Findings, November 2015. Information concerning the differences between the 2011 SNRA and the 2015 SNRA; footnotes containing definitions, references, and information on the differences between the 2011 SNRA and the 2015 SNRA.	<ul style="list-style-type: none"> • Deliberative Process Privilege <p>The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.</p> <p>The deliberative process privilege was used to withhold source information, technical data, threats, hazards, analyses, interpretations, conclusions, and information on previously-released threats and hazards that have been updated in the 2015 SNRA. This document is a draft and didn't complete the review process in order to be finalized. The withheld information contains factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding risks. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.</p>
000048			Information concerning the differences between the 2011 SNRA and the 2015 SNRA; footnotes containing information on the scope of the 2015 SNRA.	
000049			Information concerning the differences between the 2011 SNRA and the 2015 SNRA; findings on threats identified in the 2015 SNRA; footnotes describing the scope of the SNRA and how it relates to other preparedness programs, and reference information.	
000050			Findings on threats identified in the 2015 SNRA, including descriptions of new threats.	
000051				

000052 Footnotes containing information on the scope, differences between the 2011 SNRA and the 2015 SNRA, how risks are studied, and explanatory information. Information on threats new to the 2015 SNRA, their descriptions, and how they are analyzed; footnotes describing national preparedness information used to formulate the SNRA, differences between the 2011 and 2015 SNRAs, and descriptions of how thresholds are

000053 formulized. New threats and their descriptions, descriptions of threats in the 2015 SNRA that differ from the 2011 SNRA; a footnote describing the scope and background information of a new threat.

000054 New threats and their descriptions, and descriptions of threats in the 2015 SNRA that differ from the 2011 SNRA.

000055 New threats and their descriptions; footnotes describing threats and models and how they differ between the 2011 and

000056 2015 SNRAs.

000057 New threats and their descriptions. Footnotes describing terminology, interpretation and analysis methods.

000058 Information on the results of the 2015 SNRA, differences between the 2011 and 2015 SNRAs; a footnote containing

000059 information on a new threat. Information on the results of the 2015 SNRA, differences between the 2011 and 2015 SNRAs, and new threats and how

000060 they were analyzed. Information on new threats and how they were analyzed; a footnote containing information on the validity of a method of

000061 examination.

000062 Information and analysis on drivers and evolving threats; footnotes containing reference information.

000063 Information and analysis on drivers and evolving threats; footnotes containing reference information.

000064 Information and analysis on drivers and evolving threats; footnotes containing reference information.

000065 Information and analysis on drivers and evolving threats; footnotes containing reference information.

000066 Information and analysis on drivers and evolving threats.

000067 Information and analysis on the threats and hazards of greatest concern by whole community partners; footnotes analyzing source information and contextualizing the findings.

000068 Categorization and analysis of threats; a footnote contextualizing the findings.

000070 Presidential Policy Directive/PPD-8 Refresh, Strategic National Risk Assessment, Findings Review, May 29, 2015

Differences between the 2011 and 2015 SNRAs, updated scope, new threats and analysis.

• Deliberative Process Privilege

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

The deliberative process privilege was used to withhold differences between the 2011 SNRA and the draft 2015 SNRA Findings document. This document is a draft and didn't complete the review process in order to be finalized. This document contains data and factual information; however, the withheld data and factual information is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

000072	SNRA 2015, Summary of Findings, May 2015 (b)(5)	Specific threats, drivers, and categories identified in the Table of Contents of the SNRA 2015. Information concerning the differences between the 2011 SNRA and the 2015 SNRA; footnotes containing definitions, references, and information on the differences between the 2011 SNRA and the 2015 SNRA.
000074		Information concerning the differences between the 2011 SNRA and the 2015 SNRA; footnotes containing information on the scope of the 2015 SNRA.
000075		Information concerning the differences between the 2011 SNRA and the 2015 SNRA; findings on threats identified in the 2015 SNRA; footnotes describing the scope of the SNRA and how it relates to other preparedness programs.
000076		Findings on threats identified in the 2015 SNRA, including descriptions of new threats.
000077		Footnotes containing information on the scope, differences between the 2011 SNRA and the 2015 SNRA, how risks are studied, and explanatory information.
000078		

Exemption 5 was used to withhold source information, technical data, threats, hazards, analyses, interpretations, conclusions, and information on previously-released threats and hazards that were updated for the draft 2015 SNRA. This document is a draft and didn't complete the review process in order to be finalized. This document contains data and factual information; however, the withheld data and factual information is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

000079 Information on threats new to the 2015
SNRA, their descriptions, and how they are
analyzed; footnotes describing national
preparedness information used to
formulate the SNRA, differences between
the 2011 and 2015 SNRAs, and
descriptions of how thresholds are
formulized.

000080 New threats and their descriptions,
descriptions of threats in the 2015 SNRA
that differ from the 2011 SNRA, and a
footnote describing the scope and
background information of a new threat.

000081 New threats and their descriptions, and
descriptions of threats in the 2015 SNRA
that differ from the 2011 SNRA.

000082 New threats and their descriptions;
footnotes describing threats and models
and how they differ between the 2011 and
2015 SNRAs.

000083 New threats and their descriptions.

000084 Footnotes describing terminology,
interpretation and analysis methods.

000085 Information on the results of the 2015
SNRA, differences between the 2011 and
2015 SNRAs; a footnote containing
information on a new threat.

000086 Information on the results of the 2015
SNRA, differences between the 2011 and
2015 SNRAs, and new threats and how
they were analyzed.

000087 Information on new threats and how they
were analyzed; a footnote containing
explanatory information.

000088 Information and analysis on drivers and
evolving threats; footnotes containing
reference information.

000089	Information and analysis on drivers and evolving threats; footnotes containing source references.
000090	Information and analysis on drivers and evolving threats; footnotes containing reference information.
000091	Information and analysis on drivers and evolving threats; footnotes containing reference information.
000092	Information and analysis on drivers and evolving threats.
000093	Information and analysis on the threats and hazards of greatest concern by whole community partners; footnotes containing reference and explanatory information.
000094	Categorization and analysis of threats; a footnote containing explanatory information.

• Deliberative Process Privilege

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

The deliberative process privilege was used to withhold threats, hazards, and explanatory information that was updated for the draft 2015 SNRA. This document is a draft and didn't complete the review process in order to be finalized. The specific threats, hazards, and explanatory information are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

000109	SNRA Terms of Reference	(b)(5)	Threats and hazards; footnotes regarding risks, risk assessments, groupings of risks, and defining thresholds.
000110			A footnote containing examples of risk assessments.

• Deliberative Process Privilege

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

The deliberative process privilege was used to withhold the key findings, source information, methodology, technical data, threats, hazards, analyses, interpretations, conclusions, and information on previously-released threats and hazards that were updated for the draft 2015 SNRA. This document is a draft and didn't complete the review process in order to be finalized. This document contains data and factual information; however, the withheld data and factual information is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

The key findings examine and compare risks for their likelihood of occurrence, potential impacts of threats and hazards, and analyze the uncertainty associated with each risk.

<p>SNRA 2015, Technical Appendix, 000114 May 2015</p> <p>000116</p> <p>000118</p> <p>000119</p> <p>000120</p> <p>000121</p> <p>000122</p> <p>000123</p>	<p>New and updated threats, drivers, and risks identified in the Table of Contents of the SNRA 2015.</p> <p>A list of new and updated risks identified in the 2015 SNRA.</p> <p>Information on the methodology that was updated for the 2015 SNRA, and how it differs from the 2011 SNRA.</p> <p>Information on the methodology that was updated for the 2015 SNRA, and how it differs from the 2011 SNRA.</p> <p>Thresholds for specific threats and hazards in the 2011 SNRA.</p> <p>Thresholds for specific threats and hazards in the 2011 SNRA and the 2015 SNRA; a footnote containing reference information.</p> <p>Threats, hazards, and their related data sources for the 2011 and 2015 SNRAs.</p> <p>Threats, hazards, impact types, and their related data sources for the 2011 and 2015 SNRAs; a footnote containing reference information.</p>
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000124	Information on the new types of analyses employed in the 2015 SNRA; footnotes on how frequency was used and interpreted.
000125	Information on the new types of analyses employed in the 2015 SNRA; a footnote describing how information received from subject matter experts was modeled and interpreted.
000127	A table comparing the risks of specific types threats and hazards.
000128	The key findings of the SNRA, organized by type of risk; footnotes containing explanatory information.
000129	The key findings of the SNRA; footnotes containing reference and explanatory information.
000130	The key findings of the SNRA.
000131	The key findings of the SNRA.
000132	The key findings of the SNRA; footnotes containing reference and explanatory information.
000133	The key findings of the SNRA; a footnote containing explanatory information.
000134	The key findings of the SNRA; a footnote containing explanatory information.
000135	The key findings of the SNRA.
000136	The key findings of the SNRA; footnotes containing explanatory and historical information.
000137	The key findings of the SNRA; footnotes containing reference information.
000138	The key findings of the SNRA; a footnote containing explanatory information.
000139	The key findings of the SNRA; a footnote containing explanatory information.
000140	The key findings of the SNRA.
000141	The key findings of the SNRA.
000142	The key findings of the SNRA; a footnote containing explanatory information.

000143	The key findings of the SNRA; information on how the frequencies for the 2011 and 2015 SNRAs were estimated; footnotes containing explanatory information. Information on how the frequency results were interpreted; more key findings of the SNRA; footnotes containing explanatory information.
000144	
000145	The key findings of the SNRA.
000146	A footnote containing reference and explanatory information.
000148	The key findings of the SNRA; footnotes containing explanatory information.
000149	Footnotes containing explanatory information.
000150	The key findings of the SNRA; footnotes containing reference and explanatory information.
000151	The key findings of the SNRA; footnotes containing reference information.
000152	The key findings of the SNRA; footnotes containing reference and explanatory information.
000153	The key findings of the SNRA; footnotes containing reference and explanatory information.
000154	The key findings of the SNRA; footnotes containing reference and explanatory information.
000155	The key findings of the SNRA; footnotes containing reference and explanatory information.
000156	The key findings of the SNRA; footnotes containing reference and explanatory information.
000157	The key findings of the SNRA; footnotes containing data, reference, and explanatory information.

000158	The key findings of the SNRA; a footnote containing explanatory information.
000159	The key findings of the SNRA; footnotes containing reference and explanatory information.
000160	The key findings of the SNRA; a footnote containing reference information.
000161	References.
000162	References.
000163	References.
000164	Information on a specific category of threats, and their respective impacts; footnotes containing explanatory information.
000165	Footnotes containing explanatory information.
000166	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000167	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000168	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000169	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000170	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.

000171	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000172	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000173	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000174	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000175	Information on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000176	Information on a specific category of threats, and their respective impacts; footnotes containing explanatory information and editorial comments.
000177	Information on a specific category of threats, and their respective impacts.
000178	References.
000179	References.
000180	References.
000181	References.
000182	References.
000183	References.
000184	References.
000185	References.
000186	References.
000187	References.

000188	Information on a specific category of threats, and their respective impacts; footnotes reference, historical, and explanatory information.
000189	Information on a specific category of threats, and their respective impacts; footnotes reference and explanatory information.
000190	Information on a specific category of threats, and their respective impacts; footnotes reference, historical, and explanatory information.
000191	Information on a specific category of threats, and their respective impacts; a footnote containing reference and explanatory information.
000192	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000193	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000194	Information on a specific category of threats, and their respective impacts.
000195	References.
000196	References.
000197	References.
000198	References.
000199	References.
000200	References.
000201	References.
000202	References.
000203	References.
000204	Historical data; footnotes containing reference and explanatory information.

000206	Information on a specific category of threats, and their respective impacts; footnotes containing explanatory information.
000207	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000208	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000209	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000210	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000211	Data related to specific threats; a footnote containing reference information.
000212	Data related to specific threats.
000213	Data related to specific threats.
000214	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000215	Information on a specific category of threats, and their respective impacts; footnotes containing reference, explanatory, and historical information.
000216	Information on a specific category of threats, and their respective impacts; footnotes containing reference and historical information.

000217	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000218	Information and data on a specific category of threats, and their respective impacts; a footnote containing reference information.
000219	Information on a specific category of threats, and their respective impacts; footnotes containing explanatory and historical information.
000220	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000221	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000222	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000223	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000224	References.
000225	References.
000226	References.
000227	References.
000228	References.
000229	References.
000230	References.
000231	References.
000232	References.
000233	References.
000234	References.

000235	References.
000236	References.
000237	References. Data related to specific threats; footnotes containing reference and explanatory information.
000238	Data related to specific threats; footnotes containing reference information.
000239	Data related to specific threats; footnotes containing reference and explanatory information.
000240	Data related to specific threats; footnotes containing explanatory information.
000241	Data related to specific threats; footnotes containing reference and explanatory information.
000242	Data related to specific threats; footnotes containing explanatory information.
000243	Information on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000244	Information on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000245	Information on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000246	Information on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000247	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000248	

000249	Information on a specific category of threats, and their respective impacts.
000250	Information on a specific category of threats; references.
000251	References.
000252	References.
000253	References.
000254	References.
000255	References.
000256	References.
000257	References.
000258	Data related to specific threats; footnotes containing reference and explanatory information.
000260	Data related to specific threats; footnotes containing reference and explanatory information.
000261	Footnotes containing explanatory information.
000262	Information related to specific threats; footnotes containing reference, historical, and explanatory information.
000263	Information related to specific threats; footnotes containing reference and explanatory information.
000264	Information related to specific threats; footnotes containing reference and explanatory information.
000265	Information related to specific threats; footnotes containing reference and explanatory information.
000266	Data and information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000267	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.

000268	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000269	Data and information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000270	Information on a specific category of threats, and their respective impacts; footnotes containing reference and historical information.
000271	Data related to specific threats.
000272	Data and information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000273	Data on a specific category of threats, and their respective impacts; a footnote containing reference information.
000274	Information and data on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000275	Footnotes containing reference, explanatory, and historical information.
000276	Data and information related to specific threats; footnotes containing reference and explanatory information.
000277	Information related to specific threats; footnotes containing reference, explanatory, and historical information.
000278	Information related to specific threats; footnotes containing reference, explanatory, and historical information.
000279	Information related to specific threats; footnotes containing explanatory information.

000280 Information related to specific threats;
footnotes containing explanatory
information.
Information on a specific category of
threats, and their respective impacts; a
footnote containing reference
000281 information.
Information on a specific category of
threats, and their respective impacts;
footnotes containing reference and
000282 explanatory information.
Information on a specific category of
threats, and their respective impacts; a
000283 footnote containing historical information.
Information on a specific category of
threats, and their respective impacts;
footnotes containing reference and
000284 explanatory information.
Information on a specific category of
000285 threats, and their respective impacts.
000286 Data related to specific threats.
Data related to a specific category of
threats, and their respective impacts;
footnotes containing reference, historical,
000288 and explanatory information.
Information on a specific category of
threats, and their respective impacts;
footnotes containing reference and
000289 explanatory information.
Information on a specific category of
threats, and their respective impacts;
footnotes containing reference and
000290 historical information.
Data and information on a specific
category of threats, and their respective
impacts; a footnote containing reference
000291 information.

	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000292	information.
	Information on a specific category of threats, and their respective impacts.
000293	Information on a specific category of threats, and their respective impacts; footnotes containing reference and
	explanatory information.
000294	Information on a specific category of threats, and their respective impacts; a
	footnote containing reference
000295	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000296	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000297	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000298	information.
	Information and data on a specific category of threats, and their respective impacts; footnotes containing reference
000299	information.
	Data on a specific category of threats, and their respective impacts; footnotes
000300	containing reference information.
	Data and information related to a specific category of threats, and their respective impacts; footnotes containing reference
000302	and explanatory information.

000303	Information on a specific category of threats, and their respective impacts; a footnote containing reference and explanatory information.
000304	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000305	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000306	Information on a specific category of threats, and their respective impacts; a footnote containing reference and historical information.
000307	Information on a specific category of threats, and their respective impacts; footnotes containing reference, explanatory, and historical information.
000308	Information on a specific category of threats, and their respective impacts; footnotes containing reference, explanatory, and historical information.
000309	Data and information related to a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000310	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000311	Information and data related to a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000312	Data related to specific threats; footnotes containing reference and explanatory information.

000314	Data and information related to a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000315	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000316	Information related to a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000317	Information related to a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000318	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000319	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000320	Information related to specific threats.
000321	Information related to specific threats.
000322	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000323	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000324	Information on a specific category of threats, and their respective impacts.
000325	Information on a specific category of threats, and their respective impacts.

000326	Information on a specific category of threats, and their respective impacts.
	Information on a specific category of threats, and their respective impacts;
000327	footnotes containing reference and explanatory information.
	Information on a specific category of threats, and their respective impacts;
000328	footnotes containing reference information.
	Information on a specific category of threats, and their respective impacts;
000329	footnotes containing reference information.
	Information on a specific category of threats, and their respective impacts;
000330	footnotes containing reference information.
	Information on a specific category of threats, and their respective impacts;
000331	footnotes containing reference and explanatory information.
	Information on a specific category of threats, and their respective impacts.
000332	Information on a specific category of threats, and their respective impacts;
	footnotes containing reference and explanatory information.
000333	Information on a specific category of threats, and their respective impacts.
000334	Information on a specific category of threats, and their respective impacts;
	footnotes containing reference and explanatory information.
000335	Information on a specific category of threats, and their respective impacts;
	footnotes containing explanatory information.
000336	

000337	Information on a specific category of threats, and their respective impacts.
	Information on a specific category of threats, and their respective impacts; a footnote containing explanatory
000338	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000340	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000341	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000342	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000343	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference and
000344	explanatory information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference and
000345	explanatory information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000346	information.
	Information on a specific category of threats, and their respective impacts; footnotes containing reference
000347	information.
000348	Data related to specific threats.

	SNRA 2011	
	Supplement:	
	Unclassified	
	Documentation of	
000351	Findings	(b)(5)
		A list of errors and changes made for the 2015 SNRA.
000352		Information on the nature of the unclassified findings and the differences between them and the classified findings; footnotes containing reference and explanatory information.
000356		Specific findings, threats, drivers, categories, and appendices identified in the Table of Contents of the 2011 SNRA.
000357		Information on a specific category of threats, and their respective impacts; a footnote containing explanatory information.
000358		A list of threats identified in the 2011 SNRA.
000359		A table comparing the risks of specific types threats and hazards; a footnote containing explanatory information.

• Deliberative Process Privilege

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

The deliberative process privilege was used to withhold the key findings, source information, methodology, technical data, threats, hazards, analyses, interpretations, conclusions, and information on previously-released threats and hazards that were updated for the draft 2015 SNRA. This document is a draft and didn't complete the review process in order to be finalized. This document contains data and factual information; however, the withheld data and factual information is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

The key findings examine and compare risks for their likelihood of occurrence, potential impacts of threats and hazards, and analyze the uncertainty associated with each risk.

The appendices further discuss certain risks, contain calculations, more data and sources, and contain risk summary sheets for a variety of hazards. The risk summary sheets contain summarized versions of data, impacts, analyses, historical information, and sources.

000360	A table comparing the risks of specific types threats and hazards.
000361	A table comparing the risks of specific types threats and hazards; a footnote containing explanatory information.
000362	Footnotes containing reference and explanatory information.
000363	Excluded risks and reasons for exclusion.
000364	Footnotes containing reference and explanatory information.
000365	A specific threat; a footnote containing reference and explanatory information.
000366	Examples of hazards and their assessments.
000367	Footnotes containing reference and explanatory information.
000368	Excluded risks.
000369	Excluded risks; a footnote containing explanatory information.
000370	The key findings of the SNRA.
000371	The key findings of the SNRA; footnotes containing reference and explanatory information.
000372	The key findings of the SNRA.
000373	The key findings of the SNRA.
000374	The key findings of the SNRA; a footnote containing explanatory information.
000375	The key findings of the SNRA.
000376	The key findings of the SNRA.
000377	The key findings of the SNRA; footnotes containing reference information.
000378	The key findings of the SNRA.
000379	The key findings of the SNRA; a footnote containing explanatory information.
000380	The key findings of the SNRA.
000381	The key findings of the SNRA.
000382	The key findings of the SNRA; a footnote containing reference information.

000383	The key findings of the SNRA; footnotes containing reference information.
000384	The key findings of the SNRA; footnotes containing reference information.
000385	The key findings of the SNRA; footnotes containing reference information.
000386	The key findings of the SNRA; footnotes containing reference information.
000387	The key findings of the SNRA; footnotes containing reference information.
000388	The key findings of the SNRA; footnotes containing reference and explanatory information.
000389	The key findings of the SNRA; footnotes containing reference information.
000390	The key findings of the SNRA; footnotes containing reference information.
000391	The key findings of the SNRA; footnotes containing reference information.
000392	The key findings of the SNRA; footnotes containing reference information.
000393	The key findings of the SNRA; footnotes containing reference and explanatory information.
000394	The key findings of the SNRA; footnotes containing reference and explanatory information.
000395	The key findings of the SNRA; footnotes containing reference information.
000396	The key findings of the SNRA; footnotes containing reference and explanatory information.
000397	The key findings of the SNRA; footnotes containing reference information.
000398	The key findings of the SNRA; footnotes containing reference information.
000399	The key findings of the SNRA; footnotes containing reference and explanatory information.

000400	The key findings of the SNRA; footnotes containing reference and explanatory information.
000401	The key findings of the SNRA; footnotes containing reference and explanatory information.
000402	The key findings of the SNRA; footnotes containing reference information.
000403	The key findings of the SNRA; footnotes containing reference and explanatory information.
000408	A table of contents of appendices.
000410	An appendix on graphical representations of data.
000411	An appendix on graphical representations of data.
000412	An appendix on graphical representations of data; a footnote containing explanatory information.
000413	An appendix on methodology; a footnote containing explanatory information.
000414	An appendix on methodology.
000415	An appendix on methodology.
000416	An appendix on methodology.
000417	An appendix on methodology.
000418	An appendix on methodology; footnotes containing explanatory information.
000419	Footnotes containing explanatory, historical, and reference information.
000420	Footnotes containing explanatory, historical, and reference information.
000421	An appendix on assessing the impacts of a specific hazard.
000422	An appendix on assessing the impacts of a specific hazard.
000423	An appendix on assessing the impacts of a specific hazard.
000424	An appendix on assessing the impacts of a specific hazard.

000425 An appendix on assessing the impacts of a
specific hazard; footnotes containing
reference and explanatory information.

000426 Footnotes containing historical,
explanatory, and reference information.

000427 Footnotes containing historical,
explanatory, and reference information.

000428 An appendix on assessing the impacts of a
specific hazard.

000429 An appendix on assessing the impacts of a
specific hazard.

000430 An appendix on assessing the impacts of a
specific hazard.

000431 An appendix on assessing the impacts of a
specific hazard.

000432 An appendix on assessing the impacts of a
specific hazard; footnotes containing
reference and explanatory information.

000433 Footnotes containing explanatory,
historical, and reference information.

000434 Footnotes containing explanatory,
historical, and reference information.

000435 An appendix on assessing the impacts of a
specific hazard; a footnote containing
reference and explanatory information.

000436 An appendix on assessing the impacts of a
specific hazard.

000437 An appendix on assessing the impacts of a
specific hazard.

000438 An appendix on assessing the impacts of a
specific hazard.

000439 An appendix on assessing the impacts of a
specific hazard.

000440 An appendix on assessing the impacts of a
specific hazard; footnotes containing
reference and explanatory information.

000441 Footnotes containing explanatory,
historical, and reference information.

000442 Footnotes containing explanatory,
historical, and reference information.
An appendix on assessing the impacts of a
specific hazard; footnotes containing

000443 explanatory information.
An appendix on assessing the impacts of a
specific hazard; a footnote containing

000444 reference information.
An appendix on assessing the impacts of a
specific hazard.

000445 An appendix on assessing the impacts of a
specific hazard.

000446 An appendix on assessing the impacts of a
specific hazard.

000447 An appendix on assessing the impacts of a
specific hazard; footnotes containing
explanatory, historical, and reference

000448 information.
Footnotes containing reference and
explanatory information.

000449 An appendix on assessing the impacts of a
specific hazard; footnotes containing

000450 reference information.
An appendix on assessing the impacts of a
specific hazard; a footnote containing

000451 reference and explanatory information.
An appendix on assessing the impacts of a
specific hazard.

000452 An appendix on assessing the impacts of a
specific hazard; footnotes containing

000453 reference information.
An appendix on assessing the impacts of a
specific hazard.

000454 An appendix on assessing the impacts of a
specific hazard.

000455 An appendix on assessing the impacts of a
specific hazard.

000456 An appendix on assessing the impacts of a
specific hazard.

000457 An appendix on assessing the impacts of a specific hazard; a footnote containing reference and explanatory information.

000458 An appendix on assessing the impacts of a specific hazard.

000459 An appendix on assessing the impacts of a specific hazard.

000460 An appendix on assessing the impacts of a specific hazard.

000461 An appendix on assessing the impacts of a specific hazard.

000462 An appendix on thresholds; a footnote containing explanatory information.

000463 An appendix on thresholds; footnotes containing reference and explanatory information.

000464 An appendix on thresholds; footnotes containing reference and explanatory information.

000465 An appendix on thresholds; footnotes containing explanatory information.

000466 An appendix on thresholds; footnotes containing reference and explanatory information.

000467 An appendix on thresholds; footnotes containing reference and explanatory information.

000468 An appendix on thresholds.

000470 An appendix containing summary sheets of various risks; table of contents of the summary sheets; footnotes containing historical, explanatory, and reference information.

000471 An appendix containing summary sheets of various risks.

000472 A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.

000473	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000474	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000475	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000476	A risk summary sheet in the appendix, including a footnote containing reference information.
000477	Data table.
000478	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000479	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000480	A risk summary sheet in the appendix.
000481	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000482	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000483	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000484	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000485	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000486	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.

000487	A risk summary sheet in the appendix, including footnotes containing reference and explanatory information.
000488	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000489	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000490	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000491	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000492	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000493	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000494	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000495	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000496	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000497	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000498	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000499	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.

000500	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000501	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000502	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000503	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000504	References.
000505	Data table.
000506	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000507	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000508	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000509	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000510	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000511	A risk summary sheet in the appendix, including a bibliography and a footnote containing a definition.
000512	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000513	A risk summary sheet in the appendix, including references and footnotes containing reference information.

000514	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000515	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000516	A risk summary sheet in the appendix, including references and footnotes containing reference information.
000517	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000518	A risk summary sheet in the appendix, including references and footnotes containing reference and explanatory information.
000519	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000520	A risk summary sheet in the appendix, including references and footnotes containing reference and explanatory information.
000521	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000522	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000523	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000524	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000525	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.

000526	A risk summary sheet in the appendix, including references and footnotes containing reference and explanatory information.
000527	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000528	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000529	A risk summary sheet in the appendix, including references and footnotes containing reference and explanatory information.
000530	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000531	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000532	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000533	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000534	An appendix containing data on various hazards.
000535	An appendix containing data on various hazards.
000536	An appendix containing data on various hazards.
000537	An appendix containing data on various hazards.
000538	An appendix containing data on various hazards.
000539	An appendix on assessing the impacts of a specific hazard; footnotes containing historical and reference information.

000540	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000541	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000542	A risk summary sheet in the appendix, including footnotes containing reference, historical, and explanatory information.
000543	A risk summary sheet in the appendix, including references and footnotes containing reference and explanatory information.
000544	An appendix on data sources; a footnote containing explanatory information.
000545	An appendix on data sources; a footnote containing explanatory and reference information.
000546	An appendix on data sources.
000547	An appendix on data sources.
000548	An appendix on data sources.
000549	An appendix containing a table comparing the risks of specific types threats and hazards.
000550	An appendix containing a table comparing the risks of specific types threats and hazards.
000551	An appendix on the 2011 SNRA's findings; a footnote containing reference and explanatory information.
000552	An appendix on the 2011 SNRA's findings.
000553	An appendix on the 2011 SNRA's findings.
000554	An appendix on the 2011 SNRA's findings; a footnote containing explanatory information.
000555	An appendix on the 2011 SNRA's findings; a footnote containing explanatory information.
000556	An appendix on the 2011 SNRA's findings.

000557

An appendix on the 2011 SNRA's findings.

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000566 SNRA Working
Papers, May 2015 (b)(5)

Specific threats, drivers, and categories identified in the Table of Contents of the SNRA 2015 Working Papers.

000570

Information on a specific category of threats, and their respective impacts. Information and data on a specific category of threats, and their respective impacts; a footnote containing

000571

explanatory information.

000572

Information and data on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.

000573

Data on a specific category of threats, and their respective impacts.

000574

Information on a specific category of threats, and their respective impacts. Data on a specific category of threats, and their respective impacts; footnotes

000575

containing reference and explanatory information.

000576	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000577	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000578	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000579	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000580	Information and data on a specific category of threats, and their respective impacts.
000581	Data on a specific category of threats, and their respective impacts; footnotes containing explanatory information.
000582	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000583	Information on a specific category of threats, and their respective impacts; footnotes containing reference and historical information.
000584	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000585	Data on a specific category of threats, and their respective impacts; footnotes containing reference information.

000586	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000587	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000588	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000589	Information on a specific category of threats, and their respective impacts; a footnote containing reference information.
000590	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000591	Information and data on a specific category of threats, and their respective impacts; a footnote containing reference information.
000592	Data on a specific category of threats, and their respective impacts.
000593	Data on a specific category of threats, and their respective impacts; footnotes containing explanatory information.
000594	Information on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000595	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.

000596	Information on a specific category of threats, and their respective impacts; footnotes containing reference, historical, and explanatory information.
000597	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000598	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000599	Information on a specific category of threats, and their respective impacts; footnotes containing reference and historical information.
000600	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000601	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000602	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000603	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000604	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.

000605	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000606	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000607	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000608	Data on a specific category of threats, and their respective impacts; footnotes containing reference information.
000610	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000611	Information and data on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000612	Information and data on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000613	Information and data on a specific category of threats, and their respective impacts; footnotes containing reference information.
000614	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000615	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.

000616	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000617	Information on a specific category of threats, and their respective impacts; footnotes containing reference, explanatory, and historical information.
000618	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000619	Information on a specific category of threats, and their respective impacts; footnotes containing reference, explanatory, and historical information.
000620	Information on a specific category of threats, and their respective impacts; footnotes containing reference, explanatory, and historical information.
000621	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000622	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000623	Information on a specific category of threats, and their respective impacts; footnotes containing reference and explanatory information.
000624	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.

000625	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000626	Information on a specific category of threats, and their respective impacts; footnotes containing reference, explanatory, and historical information.
000627	Information on a specific category of threats, and their respective impacts; footnotes containing reference information.
000628	Information on a specific category of threats, and their respective impacts; references.
000629	References.
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR ENVIRONMENTAL
RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

Civil Action No. 18-cv-158 (CKK)

DECLARATION OF LEILONI STAINSBY

I, Leiloni Stainsby, hereby declare, pursuant to 28 U.S.C. § 1746, the following to be true and correct:

1. I am the Acting Director for the National Preparedness Directorate, Federal Emergency Management Agency (“FEMA”), United States Department of Homeland Security (“DHS”). I have held this position since July 2018. In this capacity, I am responsible for the development and delivery of national risk and capability assessments. I have been with the Department since November 2011.

2. I make this declaration based on my personal knowledge of FEMA’s process for developing the Strategic National Risk Assessment documents (“SNRA Documents”).¹ The

¹ The SNRA Documents that were redacted in part or in full in response to NPR’s Freedom of Information Act request are the SNRA Summary of Findings (November 2015); Presidential Policy Directive/PPD-8 Refresh, SNRA Findings Review (May 29, 2015); SNRA Summary of Findings (May 2015); SNRA Terms of Reference; SNRA 2015 Technical Appendix (May 2015); SNRA 2011 Supplement: Unclassified Documentation of Findings; and the SNRA Working Papers (May 2015).

purpose of this declaration is to provide information concerning the drafting process of the SNRA Documents.

The SNRA Documents

3. The 2015 draft SNRA Documents were developed by FEMA's National Integration Center (NIC), which develops guidance and tools to assist communities in tackling their unique preparedness challenges and coordinates the adoption and implementation of a common incident management platform for emergency responders and officials. The NIC is a division of FEMA's National Preparedness Directorate (NPD), an organizational component tasked with helping people and communities become more resilient by developing the capabilities needed to prevent, protect against, respond to, recover from, and mitigate against all threats and hazards. NPD provides guidance, programs, and processes to empower people and the communities they live in to be prepared for any hazard. The NIC intended the 2015 SNRA Documents to be the risk-based analytic foundation of the National Preparedness Goal.

4. In April of 2015, the NIC forwarded the SNRA Documents to several offices² throughout FEMA for review, including my office, the National Preparedness Assessment Division. To my knowledge, the NIC did not send the SNRA Documents through the formal concurrence process and NPD leadership did not approve them. Without review and concurrence, the SNRA Documents were never finalized or publicly released.

² FEMA's Office of External Affairs, Office of Chief Counsel, National Preparedness Directorate, and Office of Response and Recovery.

SNRA Summary of Findings (November 2015)

5. The NIC created this document for the purpose of summarizing the 2015 findings for public dissemination, in a product similar to the seven-page overview of the first SNRA published in December 2011.

6. This document is pre-decisional because, to my knowledge, the NIC did not send it through the formal concurrence process, and NPD leadership did not approve it. This document is deliberative because it contains opinions and recommendations on the various potential threats and hazards facing the nation. The deliberative process privilege was used to withhold source information, technical data, threats, hazards, analyses, interpretations, conclusions, and information on previously-released threats and hazards that have been updated in the 2015 SNRA Summary of Findings. This document is a draft and didn't complete the review process in order to be finalized. This document contains factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

Presidential Policy Directive/PPD-8 Refresh, SNRA Findings Review (May 29, 2015)

7. The NIC created this document for the purpose of illuminating the differences between the 2011 and 2015 SNRAs, updating the scope, and introducing new threats and analysis.

8. This document is pre-decisional because, to my knowledge, the NIC did not send it through the formal concurrence process, and NPD leadership did not approve it. This document is deliberative because it contains opinions and recommendations on the various potential threats

and hazards facing the nation. This document contains data and factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

SNRA Summary of Findings (May 2015)

9. The NIC created this document for the purpose of summarizing the 2015 findings for public dissemination, in a product similar to the seven-page overview of the first SNRA published in December 2011.

10. This document is pre-decisional because, to my knowledge, the NIC did not send it through the formal concurrence process, and NPD leadership did not approve it. This document is deliberative because it contains opinions and recommendations on the various potential threats and hazards facing the nation. The deliberative process privilege was used to withhold source information, technical data, threats, hazards, analyses, interpretations, conclusions, and information on previously-released threats and hazards that have been updated in the 2015 SNRA Summary of Findings. This document is a draft and didn't complete the review process in order to be finalized. This document contains factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

SNRA Terms of Reference

11. The NIC created this document for the purpose of outlining the proposed approach and methodology to developing the SNRA Documents.

12. This document is pre-decisional because, to my knowledge, the NIC did not send it through the formal concurrence process, and NPD leadership did not approve it. This document is deliberative because it contains opinions on the various potential threats and hazards facing the nation. The deliberative process privilege was used to withhold threats, hazards, and explanatory information that was updated for the draft 2015 SNRA. This document is a draft and didn't complete the review process in order to be finalized. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

SNRA 2015 Technical Appendix (May 2015)

13. The NIC created this document to include the technical data and information regarding the 2015 SNRA Documents. This document contains key findings, source information, methodology, technical data, threats, hazards, analyses, interpretations, conclusions, information on previously-released threats and hazards that were updated for the draft 2015 SNRA Documents, as well as risk summary sheets for various threats and hazards. Each risk summary sheet contains summarized versions of data, impacts, analyses, historical information, and sources.

14. This document is pre-decisional because, to my knowledge, the NIC did not send it through the formal concurrence process, and NPD leadership did not approve it. This document is deliberative because it contains opinions and recommendations on the various potential threats and hazards facing the nation. This document contains data and factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards

which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

SNRA 2011 Supplement: Unclassified Documentation of Findings

15. The NIC created this document as a supplement that examines errors and historical documentation between the 2011 and 2015 SNRA Documents. This document contains key findings, source information, methodology, technical data, threats, hazards, analyses, interpretations, conclusions, information on previously-released threats and hazards that were updated for the draft 2015 SNRA, as well as risk summary sheets for various threats and hazards. Each risk summary sheet contains summarized versions of data, impacts, analyses, historical information, and sources. The key findings examine and compare risks for their likelihood of occurrence, potential impacts of threats and hazards, and analyze the uncertainty associated with each risk. The appendices further discuss certain risks, contain calculations, and more data and sources.

16. This document is pre-decisional because, to my knowledge, the NIC did not send it through the formal concurrence process, and NPD leadership did not approve it. This document is deliberative because it contains opinions and recommendations on the various potential threats and hazards facing the nation. This document contains data and factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative

and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

SNRA Working Papers (May 2015)

17. The NIC created this document to be the basis for many of the qualitatively identified threats in hazards in the 2015 SNRA Documents, and for future updates to the SNRA. It contains data and narratives of various threats, and their respective impacts.

18. This document is pre-decisional because, to my knowledge, the NIC did not send it through the formal concurrence process, and NPD leadership did not approve it. This document is deliberative because it contains opinions and recommendations on the various potential threats and hazards facing the nation. This document contains data and factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

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

Executed on this 1st day of March 2019.


LEILONI STAINSBY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY

Defendant.

Civil Action No. 18-0158 (CKK)

**NOTICE OF FILING OF TABLE OF AUTHORITIES AND PAGINATED VAUGHN
INDEX IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Defendant hereby files a Table of Authorities and paginated Vaughn Index in support of
Defendant’s Motion for Summary Judgment (Docket No. 22) filed on March 1, 2019.

Respectfully submitted,

/s/ Marina Utgoff Braswell
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

Defendant.

Civil Case No. 18-158

**PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Public Employees for Environmental Responsibility ("PEER" or "Plaintiff") hereby moves for summary judgment pursuant to Federal Rule of Civil Procedure ("Rule") 56(b) and Local Rule 7(h) and opposes Defendant U.S. Department of Homeland Security ("Defendant" or "DHS")'s Motion for Summary Judgment.

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

Defendant.

Civil Case No. 18-158

**MEMORANDUM OF POINTS AND AUTHORITIES OF LAW IN SUPPORT OF
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Public Employees for Environmental Responsibility ("PEER" or "Plaintiff") hereby moves for summary judgment pursuant to Federal Rule of Civil Procedure ("Rule") 56(b) and Local Rule 7(h) and opposes Defendant U.S. Department of Homeland Security ("Defendant" or "DHS")'s Motion for Summary Judgment.

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PRELIMINARY STATEMENT

The 2015 Strategic National Risk Assessment Findings, Working Papers, Technical Appendix, and other documentation (collectively, the “SNRA”) is the Federal Emergency Management Agency (“FEMA”)’s and, by extension, the nation’s, most comprehensive collection of information on the many risks facing the United States. It is a plenary literature review of all of the best available information from publicly available sources concerning the propensity and scope of a vast array of calamities, and was assembled by a talented team of experts.

Plaintiff filed this action against Defendant alleging that FEMA violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in connection with Plaintiff’s September 1, 2017 request for the SNRA. Defendant produced 716 pages of materials in response to Plaintiff’s FOIA request, redacting large portions under FOIA’s Exemption 5, which incorporates the common law deliberative process privilege. Declaration of Paula Dinerstein, Exhibit A (hereinafter “Production”). FEMA has openly acknowledged the validity of the work it performed in the 2015 SNRA. While FEMA claims it was never finalized, it is clearly an operative document that has been repeatedly cited as the factual justification for the various National Planning Frameworks, as recently as 2018.¹ FEMA promotes work product based on the SNRA to the public and Congress while concealing the facts and reference materials which justify them. The agency is telling us that risks exist, and asserting concomitant

¹ There are five National Planning Frameworks, one for each of FEMA’s five mission areas: Prevention, Protection, Mitigation, Response, and Recovery. *See* FED. EMERG. MANAGEMENT AGENCY, NATIONAL PLANNING FRAMEWORKS (Jan. 30, 2019), <https://www.fema.gov/national-planning-frameworks>.

planning strategies, but the only evidence presented is “believe me.” The secrecy that FEMA has sought in this matter fulfills James Madison’s warning that “[a] popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.” *Letter from James Madison to W.T. Barry* (Aug. 4, 1822), in 9 THE WRITINGS OF JAMES MADISON 103 (Gaillard Hunt ed., 1910); see *Standing in the Way of Judicial Review: Assertion of the Deliberative Process Privilege in APA Cases*, 53 ST. LOUIS L.J. 349 (2009).

This case is not a typical FOIA challenge in which an agency is fighting to protect politically sensitive or embarrassing materials from making attention-grabbing headlines. PEER is asking the Department to make public one of its greatest achievements and make a substantial contribution to the sum of knowledge that decisionmakers at every level of government need to protect the nation, and that citizens need to understand the risks they face and the basis for their government’s decisions on how to address them. There is no national security exemption asserted, only the sensitivity of deliberations, but there is no risk that the reputations of the authors, the Department, or the decisionmaking process will be harmed. The only risk is that the Department fails to publicize one of its greatest tools “to empower people and the communities they live in to be prepared for any hazard.” Stainsby Decl. ¶ 3.

ARGUMENT

In FOIA contexts, the normal summary judgment standard where the moving party has the burden of proof is modified to reflect the information disparities inherent in litigation over the release of information that the government has, but the

plaintiff has not seen.² The FOIA statute provides that the government has the burden of proof to justify any withholdings. 5 U.S.C. § 552(a)(4)(B) (“the burden is on the agency to sustain its action.”). Summary judgment can be granted based on agency affidavits only where they “describe 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.” *Larson v. Dep’t of State*, 565 F.3d 857, 862 (D.C. Cir. 2009) (quoting *Miller v. Casey*, 730 F.2d 773, 776 (D.C. Cir. 1984)). This modification to the summary judgment standard is warranted because “the threshold question in any FOIA suit is whether the requester can even see the documents the character of which determines whether they can be released.” *Cooper Cameron Corp. v. U.S. Dep’t of Labor, OSHA*, 280 F.3d 539, 543 (5th Cir. 2002).

“Accordingly, the FOIA statute provides that, when the Government withholds information from disclosure, the agency has the burden to prove *de novo* that the information is exempt from disclosure.” *Batton v. Evers*, 598 F.3d 169, 175 (5th Cir. 2010). This structural disparity underlies the rule that “conclusory and generalized assertions are not enough” to sustain summary judgment. *Niagara Mohawk Power Corp. v. U.S. Dep’t of Energy*, 169 F.3d 16, 18 (D.C. Cir. 1999).

The government’s burden was further heightened by the 2016 FOIA Improvements Act. *See* Pub. L. No. 114-185, 130 Stat. 538 (codified at 5 U.S.C. § 552). Among other amendments, the Act added the requirement that an agency can

² In general, summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c).

withhold information *only* if it “reasonably foresees that disclosure would harm an interest protected” by the claimed exemption. 5 U.S.C. § 552(a)(8)(A)(i)(I). This heightened standard for withholdings precludes “agency rel[iance] on the technical application of an exemption, it must now identify a precise reason why the disclosure of a specific record would harm the interests protected by, in this case, the deliberative process privilege.” *Cause of Action Inst. v. United States DOJ*, 330 F. Supp. 3d 336, 354-55 (D.D.C. 2018).

While there is not yet much case law applying the 2016 amendment, two additional cases emphasize strict application of the “foreseeable harm” standard: *Rosenberg v. U.S. Dep’t of Defense*, 342 F. Supp. 3d 62 (D.D.C. 2018), and *Ecological Rights Found. v. FEMA*, No. 16-cv-05254, 2017 U.S. Dist. LEXIS 197451, 2017 WL 5972702 (N.D. Cal. Nov. 30, 2017). *Rosenberg* adopted the *Ecological Rights Foundation* court’s “insistence on strict compliance with the FOIA Improvement Act” in this District. 342 F. Supp. 3d 62, 78. It held that an agency “must explain how a particular Exemption 5 withholding would harm the agency’s deliberative process.” *Id.* An agency “may take a categorical approach—that is, group together like records—but in that case, it must explain the foreseeable harm of disclosure for each category.” *Id.* Such an explanation “must do more than perfunctorily state that disclosure of all the withheld information—regardless of category or substance—would jeopardize the free exchange of information between senior leaders within and outside of the [agency].” *Id.* at 79. The opacity of an affidavit explanation may prevent the court from adequately applying the substantive tests. See *Morley v. CIA*, 508 F.3d 1108, 1126-27 (D.C. Cir. 2007). While the level of specificity required is a matter of

judicial discretion, “it is enough to observe that where no factual support is provided for an *essential* element of the claimed privilege or shield, the label ‘conclusory’ is surely apt.” *Senate of Puerto Rico ex rel. Judiciary Comm. v. U.S. Dep’t of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987) (emphasis in original).

In this case, the assertions by the agency are just the kind of bare assertions of the statutory standards which the FOIA Improvements Act sought to eliminate. The declarants themselves may lack the capacity to provide more. While the admissibility of Defendant’s declarations is not challenged, their evidentiary value bears scrutiny. Gregory Bridges joined FEMA on August 21, 2018, after all three stages of the production were completed on June 25, 2018. Bridges Decl. ¶ 1. He became Acting Chief of the Disclosure Branch at FEMA on February 18, 2019, a mere 11 days before his declaration was filed. Similarly, Leiloni Stainsby has only held her position as Acting Director for the National Preparedness Directorate since July 2018, which also postdates all three productions. Stainsby Decl. ¶ 1. While Stainsby has been “with the Department [of Homeland Security]” since November 2011, and may have been involved in the creation of the SNRA, it is unclear from Defendant’s motion papers what her personal knowledge of the SNRA process is based on.

I. THE DELIBERATIVE PROCESS PRIVILEGE IS NOT APPLICABLE TO THE WITHHELD MATERIALS

Assertion of Exemption 5 requires an agency to demonstrate that a document is both predecisional and deliberative. *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C. Cir. 1975). It must also demonstrate that “disclosure would harm an interest protected by” Exemption 5. 5 U.S.C. § 552(a)(8)(A)(i)(I). “Both requirements stem from the privilege’s ‘ultimate purpose[, which] . . . is to prevent injury to the quality of agency

decisions' by allowing government officials freedom to debate alternative approaches in private." *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975) (alterations in original)).

It is "beyond dispute" that the deliberative process grounds for Exemption 5 withholdings do *not* protect "[u]nevaluated factual reports or summaries of past administrative determinations . . . used by decisionmakers in coming to a determination." *Vaughn*, 523 F.2d at 1143. Sensitive "deliberative or policymaking processes" are protected, while "purely factual, investigative matters" are not. *EPA v. Mink*, 410 U.S. 73, 89 (1973). "To fall within the deliberative process privilege, materials must bear on the formulation or exercise of agency policy-oriented judgment." *Petroleum Info. Corp. v. Dep't of Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992) (citation omitted; emphasis in original). The privilege "is centrally concerned with protecting the process by which *policy* is formulated." *Id.* (emphasis in original).

Purely factual materials are not shielded unless "the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations." *In re Sealed Case*, 121 F.3d at 737. Ultimately the standard to determine whether a document is both "predecisional" and "deliberative" is "whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency." *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Under the FOIA Improvements Act of 2016, a demonstration of reasonably foreseeable harm from disclosure should be made for each withholding.

Even if the withheld documents were found to be both predecisional and deliberative, FEMA does not meet the requirement that their disclosure would create foreseeable harm to the deliberative process. The version of the SNRA which Plaintiff requested is a completed document which all persons involved *expected to be made public*. This is explicit in the unredacted cover letter for the SNRA Findings, which explains to the reader “[t]he following represents a *fully adjudicated draft* of the 2015 Strategic National Risk Assessment (SNRA) Findings document.” Production at 000070 (emphasis added). After a redacted paragraph the page continues “[t]he 2015 SNRA supporting documentation which substantiates the 2015 SNRA Findings is also being provided.” *Id.* An unredacted release could not chill the free and frank discussion of those who created them, because the internal deliberations were already “fully adjudicated.” *Id.*

It is in all but name a final document, and has been relied upon by the agency in subsequent materials and communications with Congress. For example, at a roundtable discussion hosted by the Government Accountability Office (“GAO”) on February 27, 2019, GAO Acting Director Nathan Anderson summarized three reports it had issued from 2016-2019 on electromagnetic threats. Acting Director Anderson explained that GAO’s recommendation to DHS that it work with federal and industry partners to collect and analyze information on risk was implemented by FEMA’s completion of the 2015 update to the SNRA: “In June 2016, DHS reported that the department completed the planned refresh of the Strategic National Risk Assessment, which incorporated information on potential impacts to the power system from electromagnetic events.” Nathan Anderson, GAO, *Electromagnetic Events Roundtable*

Discussion: Key GAO Findings and Recommendations (Feb. 27, 2019), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Anderson-2019-02-27.pdf> (discussing GAO-16-243 ELECTROMAGNETIC THREATS 20 (2016)).

Even according to FEMA, the document was final but for approvals from officials outside of the process of creating it. Plaintiff is not attempting to wrest candid emails or meeting notes of heated debates on climate change, the threat of right-wing extremism, or forest management. These are the sorts of deliberations that Exemption 5 and the deliberative process privilege can and should protect so that politically sensitive topics can be discussed without fear of public exposure or reprisal. The SNRA Findings also emphasize that “the assessment treated impact categories separately (e.g. economic impacts are reported separately from fatality impacts). This allowed stakeholders to apply their own expert judgments to the findings and decide how those findings should inform core capabilities in the Goal.” Production at 000084. Clearly the deliberative process was completed by the time this document was created.

When faced with close calls on the deliberative nature of withheld materials, “resort to the purposes underlying the deliberative-process privilege clears away any misgivings.” *Cause of Action Inst.*, 330 F. Supp. 3d at 354. The privilege serves three purposes:

(1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before finally they are adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationale that were not in fact ultimately the grounds for an agency's action.

Citizens for Responsibility & Ethics in Washington v. Nat'l Archives & Records Admin., 583 F. Supp. 2d 146, 156 (D.D.C. 2008). Asserting the deliberative process privilege for all materials “that relate[] in some way to an agency's predecisional correspondence would fly in the face of the general directive that the Act's exemptions be ‘narrowly construed.’” *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1113 (D.C. Cir. 2004) (citations omitted).

A. *THE WITHHELD DOCUMENTS ARE NOT PREDECISIONAL*

Documents are only protected from disclosure under Exemption 5 where they expose agency deliberations preceding a particular policy decision or that were part of a deliberative process concerning a potential policy decision, in such a way that agency staff would be less likely to candidly express opinions amongst themselves. A document is only predecisional if was created “[a]ntecedent to the adoption of an agency policy.” *Jordan v. U.S. Dep't of Justice*, 591 F.2d 753, 774, (D.C. Cir. 1978). The court must “be able to pinpoint an agency decision or policy to which these documents contributed.” *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983) (citing *EPA v. Mink*, 410 U.S. 73, 89-91 (1973)), *vacated in part on other grounds*, 724 F.2d 201 (D.C. Cir. 1984).

To determine whether a document is predecisional, the agency's administrative process must be examined, as well as the document's role in that process. *See Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 172-79 (1975) (examining role of reports of facts and recommendations prepared by regional staff of the Renegotiation Board in deciding whether certain Government contractors have earned, and must refund, “excessive profits” on their Government

contracts); *Playboy Enters., Inc. v. Dep't of Justice*, 677 F.2d 931, 935 (D.C. Cir. 1982) (“the deliberative process privilege is dependent upon the individual document and the role it plays in the administrative process”).

In this case there was no ultimate *policy* decision, or even a process of formulating a policy, which disclosure of the SNRA might harm. There has been no showing that the SNRA contained specific policy recommendations or led to any policy decision. Moreover, FEMA makes clear that the SNRA was intended to be a stand-alone document to be publicly released to aid communities in emergency planning, and therefore was not merely a pre-decisional document feeding into any purported policy process. *See* Production 000069 (“the nation’s preparedness is dependent upon whole community partners understanding the risks”); Stainsby Decl. at ¶ 3. Furthermore, the findings of the 2015 SNRA were intended to “be summarized for public dissemination,” and the full documentation of the 2015 SNRA was meant to be “closely scrutinized by responsible leadership, reviewers in the U.S. risk science and policy communities, and state, local, tribal, and territorial planners and emergency managers.” Production 000011. This was not a deliberative document, but one intended to be utilized by policymakers and planners outside the federal government.

FEMA appears to claim that the SNRA was pre-decisional to the 2015 National Preparedness Goal, but also somewhat contradictorily that it was pre-decisional to itself because it was a draft that never received final approval, even though it was subsequently relied on in published FEMA documents. The court should find that the requested documents are not pre-decisional because they are sufficiently “final” to be

released, or alternately that there is no final “policy” decision to which the SNRA is pre-decisional. The agency cannot simultaneously claim on the one hand that the SNRA is pre-decisional because it was never finalized and thus remained inchoate and ineffective, and on the other that it was pre-decisional because it was employed as the “analytical foundation” of the final published National Preparedness Goal and the Planning Frameworks. Stainsby Decl. at ¶3. While the materials may never have received approval from the Secretary of Homeland Security, they are “a fully adjudicated draft.” Production at 000070 (emphasis added).

In addition, FEMA’s declarant has not shown that, as claimed, she actually has personal knowledge of the process of creating the SNRA documents or how they fit into FEMA’s decisionmaking processes. Stainsby Decl. ¶ 2. Thus, she cannot attest to the documents being pre-decisional or deliberative. According to the Stainsby Declaration, in the process of developing the SNRA, “the NIC forwarded the SNRA Documents to several offices³ throughout FEMA for review, including my office, the National Preparedness Assessment Division.” This means that the declarant was only a side player during the development of the SNRA and has no personal knowledge of how it was reviewed or discussed in other offices or agencies. Stainsby continues “[t]o *my knowledge*, the NIC did not send the SNRA Documents through the formal concurrence process and NPD leadership did not approve them.” Stainsby Decl. ¶ 6 (emphasis added). She does not exclude the very plausible possibility, given her role, that this could have occurred without her knowledge. While the Bridges Declaration

³ “FEMA’s Office of External Affairs, Office of Chief Counsel, National Preparedness Directorate, and Office of Response and Recovery” (footnote in original)

states that those documents could not “become final without formal federal interagency concurrence and senior-level White House approval,” Bridges Decl. ¶ 10, it is not clear what this really means or how it squares with the reliance on these documents in official agency publications. Nor does either declaration provide any details of the concurrence and approval process or cite to any agency policy or regulations implementing it.

Defendant asserts that these materials are predecisional “given that none of the documents ever received final approval by those responsible for giving such approval” without defining “those responsible” or the form which approval had to take. Def’s Br. at 4. Defendant states that “the decisionmaking process concluded without any final decision or finalized documents;” however there is nothing in the record to indicate what the process was or that it actually concluded or how or why. *Id.*, at 5. This also contradicts the assertion that the document was “generated as part of a continuing process of agency decisionmaking,” *id.* at 4, because a concluded decisionmaking process is by definition no longer continuing.

The *Vaughn* Index contains precious little information about the predecisional nature of the withholdings. Multiple documents are withheld on the basis of a single boilerplate and conclusory justification, that “This document is a draft and didn't complete the review process in order to be finalized.” Docket No 23-2 at 1, 3-4, 6, 7, 24, 37 (*hereinafter* “Index” or “Vaughn Index”). The agency relies on this statement to withhold all “differences between the 2011 SNRA and the draft 2015 SNRA Findings document.” *Id.* The alleged harm is that disclosure would “would discourage the expression of candid opinions and inhibit the free and frank exchange of information

among agency personnel.” *Id.* There is no more particularized reasoning for any individual withholding, only one-line descriptions of withheld information. One of the withholdings is from the table of contents of the SNRA Technical Appendix: every entry under “New and/or Updated Risk Summary Sheets” has been redacted, along with the text of those pages. Production 000114. It is not explained how disclosure of even the *subjects* of the Risk Summary Sheets, let alone their contents, “would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.” Index at 1, 3-4, 6, 7, 24, 37. This is particularly spurious reasoning when the Summary Sheet authors (who are unnamed) were told in advance that “[d]ata providers should expect that the risk summary sheets documenting the source data and analysis supporting their top level estimates will be scrutinized by the public, experts in the U.S. risk technical community, and state, local, tribal, and territorial planners and emergency managers.” Production 000012.

“What constitutes a ‘reasonable’ level of specificity in a *Vaughn* affidavit varies depending on the particular context, and specifically, which exemption is being invoked. *Seife v. United States Dep’t of State*, 298 F. Supp. 3d 592, 607 (S.D.N.Y. 2018) (internal quotations omitted). “*Vaughn* submissions are insufficient, however, where ‘the agency’s claims are conclusory, merely reciting statutory standards, or if they are too vague or sweeping.’” *Id.* (quoting *Quinon v. Fed. Bureau of Investigation*, 86 F.3d 1222, 1227 (D.C. Cir. 1996)). In this case, every stage of the analysis which Plaintiff and the Court must undertake to determine whether the withholdings comply with Exemption 5 is impeded by the boilerplate nature of the agency’s affidavits. While the

Vaughn Index itemizes all of the hundreds of redactions made across almost every page of the production, its reasoning is monolithic and does little more than recite the standard:

This document is a draft and didn't complete the review process in order to be finalized. The withheld information contains factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA's current position regarding risks. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

Index at 1, 3, 4, 6, 7, 24, 37. This explanation does not jive with the cover sheet in the production, which explains that the enclosed “represents a *fully adjudicated draft* of the 2015 Strategic National Risk Assessment (SNRA) Findings document.” Production at 000070 (emphasis added). No attempt is made to explain how disclosure of this fully adjudicated technical documentation could chill candid expression between the experts at FEMA.

A comparable *Vaughn* Index was presented in *Morley v. Central Intelligence Agency*, 508 F.3d 1108 (D.C. Cir. 2007). In that case the CIA provided a *Vaughn* Index and declaration supporting it with only “minimal information” that “provide[d] the court with no way of knowing if the CIA has properly applied [Exemption 5] in exempting material from the two records identified.” *Id.* at 1127.⁴ The Agency also “provided no hint of a final agency policy its ‘predecisional’ material preceded.” *Id.*

⁴ The provided information was more robust than FEMA's in this case. The CIA informed the court that “recommendations - concerning the waiver of certain reinvestigation methods” were being withheld under Exemption 5, whereas FEMA has only stated that the factual materials withheld were culled from a larger set of facts by agency analysts.

The included declaration from the agency must provide “factual support” for the claim that the decisionmaking process would be harmed by release and at least a basic description of why an employee would be less likely to provide accurate information in a fully adjudicated draft report that only lacked political approval. *Id.* (citing *Senate of Puerto Rico ex rel. Judiciary Comm. v. United States DOJ*, 823 F.2d 574, 585 (D.C. Cir. 1987)).

B. THE WITHHELD DOCUMENTS ARE NOT DELIBERATIVE

1. The Withheld Documents Do Not Involve Policy Discussions

Even assuming the agency met its burden to show that the withheld material is predecisional, it has not met its burden to prove that it is deliberative. “A record is not protected merely by virtue of being a relevant predecisional communication.” *Cause of Action Inst. v. United States DOJ*, 330 F. Supp. 3d 336, 353-54 (D.D.C. 2018) (citing *Citizens for Responsibility and Ethics in Wash. v. U.S. Dep’t of Homeland Sec.*, 648 F. Supp. 2d 152, 158-59 (D.D.C. 2009) (requiring disclosure of redactions in which “no agency policy is being debated or discussed” even though the “redactions are, in the most general sense, part of an intra-agency discussion relating” to agency’s response to media inquiry). A document is deliberative when it “makes recommendations or expresses opinions on *legal or policy matters*.” *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C. Cir. 1975) (emphasis added). The anemic explanations in the declarations and Vaughn Index here do not demonstrate that these requirements are met.

Instead, FEMA relies mainly on its claim that the 2015 SNRA is a nonfinal draft. However, “[e]ven if a document is a draft of what will become a final document, the court must also ascertain whether the document is deliberative in nature.” *Arthur*

Andersen & Co v. IRS, 679 F.2d 254, 257-58 (D.C. Cir. 1982) (internal quotation marks omitted). Thus, draft documents are neither *per se* exempt nor presumptively privileged. *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F.Supp.2d 252, 261 (D.D.C. 2004) (citing *Arthur Andersen*, 679 F.2d at 257 and *Mead Data Cent., Inc. v. Dep't of Air Force*, 566 F.2d 242, 261-62, (D.C. Cir. 1977)); see also *Conservation Force v. Jewell*, 66 F. Supp. 3d 46, 60 (D.D.C. 2014) (draft designation alone does not establish that any document is predecisional and deliberative). Drafts which do not reflect “an agency's preliminary positions or ruminations about a particular policy judgment” are not deliberative. *Heartwood, Inc. v. U.S. Forest Serv.*, 431 F. Supp. 2d 28, 37 (D.D.C. 2006) (quoting *Nat'l Assoc. of Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002) (internal quotation marks omitted)). The withheld documents here are not “preliminary positions or ruminations,” since the documents have been used to support official agency publications, and they have not been shown to be about policy judgments.

FEMA claims that these documents are deliberative “because they consist of proposed factual findings, proposed assessments of information pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors.” Bridges Decl. ¶ 11; Deft. Br. at 5 However, there is no showing that any or all of such material involves policy discussions or “bear[s] on the formulation or exercise of agency policy-oriented *judgment*” required to meet the requirements of the FOIA exemption. *Petroleum Info. Corp.*, 976 F.2d at 1435.

On the contrary, the production itself makes clear that the SNRA is a factual tool to be generally available to any number of decisionmakers to assist in any kind

of decision. *See* Production 000069 (“the nation’s preparedness is dependent upon whole community partners understanding the risks”). The documents explicitly state that “[n]o effort was made to create a single ‘risk judgment’ for any event type,” which “allows stakeholders to apply their own expert judgments to the findings.” Production 000058. Furthermore, the findings of the 2015 SNRA were intended to “be summarized for public dissemination,” and the full documentation of the 2015 SNRA was meant to be “closely scrutinized by responsible leadership, reviewers in the U.S. risk science and policy communities, and state, local, tribal, and territorial planners and emergency managers.” Production 000011. To comply with FEMA’s Scientific Integrity and Information Quality policies, the 2015 SNRA “rel[ie]d upon the peer and public review requirements of these standards as the primary means to ensure quality control.” Production 000011. The agency has decisively failed to meet its burden of proof.

While the SNRA did not itself discuss *policy* conclusions or recommendations, its plenary literature review and body of factual information have been cited by FEMA or DHS on a number of occasions.⁵ The Government Accountability Office (“GAO”) has also cited the SNRA as a source of information regarding threats the nation faces from Electromagnetic Pulse (EMP) weaponry, a threat not appearing in the 2011 edition of the SNRA. *See* GAO-16-243 ELECTROMAGNETIC THREATS 20 (2016). The broad range of

⁵ DHS, NATIONAL PREVENTION FRAMEWORK, SECOND EDITION 4 (2016) (“Results of the Strategic National Risk Assessment (SNRA), contained in the second edition of the National Preparedness Goal, indicate that a wide range of threats and hazards continue to pose a significant risk to the Nation”); *id.* at 23-25 (listing planning considerations specific to terrorist threats identified by the SNRA); DHS, NATIONAL MITIGATION FRAMEWORK, SECOND EDITION 6 (2016) (citing SNRA as evidence of ongoing threats in National Preparedness Goal); DHS, NATIONAL RESPONSE FRAMEWORK, THIRD EDITION 7 (2016).

subsequent publications by DHS and others which have gleaned factual information from the 2015 SNRA suggest that it does not contain specific policy stances, but general information which can and should be used by a broad audience.

The 2015 SNRA also forms the core of the agency's current thinking as reflected in a 2018 report prepared for DHS by the RAND Corporation. In 2016, DHS's Office of Policy—Strategy, Plans, Analysis, and Risk (SPAR) asked the RAND National Defense Research Institute (NDRI) to design and implement a homeland security national risk assessment to help inform DHS strategic planning by identifying and characterizing natural hazards and threats to the nation. *See* RAND CORP., HOMELAND SECURITY NATIONAL RISK CHARACTERIZATION: RISK ASSESSMENT METHODOLOGY (2018), https://www.rand.org/content/dam/rand/pubs/research_reports/RR2100/RR2140/RAND_RR2140.pdf (preface). The report that RAND produced in 2018:

drew on the 2011 Strategic National Risk Assessment (SNRA) documentation files held by DHS Policy (DHS, Office of Policy, no date), an overview briefing of the 2012 HSNRC (DHS, 2014a), the 2015 SNRA results that built on the prior analyses (DHS, 2014b), and the 2014 Flows study conducted in support of the 2014 QHSR (DHS, no date).

Id. RAND's report used "[t]he 2015 SNRA [a]s the starting point for data collection" which "[i]n some cases, such as the assessment of natural disaster hazards, . . . ultimately provided as many as half the citations used in the final risk characterization." *Id.* at 34. Not only has the SNRA been relied upon by DHS and its contractors in generating current threat assessments, thus reflecting FEMA's current position regarding risks.

Even assuming (contrary to fact) that the SNRA did contain policy-oriented judgments, "a document that is predecisional at the time of preparation may lose

exempt status if ‘adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public.’” *Taxation with Representation Fund v. IRS*, 646 F.2d 666, 678 (D.C. Cir. 1981) (quoting *Coastal States*, 617 F.2d at 866; citing *Sears*, 421 U.S. at 161). While the rule against secret agency law expressed in *Sears* deals with legal memoranda which are withheld by agencies as deliberative, “where an underlying memorandum is expressly relied on in a final agency dispositional document, even though only part of it is expressly reproduced, . . . a presumption in favor of disclosability of the memorandum as a whole is created.” *Niemeier v. Watergate Special Prosecution Force*, 565 F.2d 967, 973 (7th Cir. 1977) (adopted in D.C. by *Judicial Watch, Inc. v. United States Dep’t of Defense*, 2016 U.S. Dist. LEXIS 11872 (D.D.C. 2016). Here, the SNRA has been explicitly referenced and its conclusions adopted in subsequent FEMA and DHS public documents, and therefore has lost any exempt status it may have had. The SNRA should be produced in full.

2. There Is No Foreseeable Harm Because There Are No Deliberations to Chill by Disclosure.

A document is deliberative when it “makes recommendations or expresses opinions on legal or policy matters.” *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C. Cir. 1975). For a document to be “deliberative” requires it to “reflect the personal opinions of the writer rather than the policy of the agency.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). “To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency; ‘Human experience teaches that those who expect public dissemination of

their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.” *Id.* (quoting *United States v. Nixon*, 418 U.S. 683, 705 (1974)).

The concern about tempered candor which lies at the heart of deliberative privilege jurisprudence is absent in this case. It bears repeating that the material requested by FOIA “represents a fully adjudicated draft of the 2015 Strategic National Risk Assessment.” Production at 000070. An unredacted release could not chill the free and frank discussion of those who created it, because the internal deliberations took place prior to the creation of this draft.

The only analysis of the potential harm to the interests protected by Exemption 5 by the release of the redacted material in Ms. Stainsby’s Declaration is the following block quote, which is repeated almost verbatim six times by Ms. Stainsby in reference to each withholding:

This document contains data and factual information that is so entangled with the analyses and conclusions that release would reveal specific threats and hazards which are pre-decisional and part of the deliberative process, and may not reflect FEMA’s current position regarding the risks and their impacts on the United States. Disclosure of this deliberative and pre-decisional information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

See Stainsby Decl. ¶¶ 6, 8, 10, 14, 16, 18. It makes no sense for the agency to withhold “data and factual information” because it is “entangled [with] analyses and conclusions,” but not withhold, or even identify, the purported analyses and conclusions themselves. In addition, “specific threats and hazards” cannot themselves be “predecisional.” Apart from not applying the exemption to specific withheld material as required, this boilerplate response does not reveal any actual

deliberations that should be protected or whose disclosure would cause harm to the agency, or how and why such harm would occur.

The only additional support for any foreseeable harm from disclosure is the agency's statements that release "may cause confusion to the public as to the actual threats and hazards perceived by FEMA and the agencies with which it consults," *see* Def.'s Statement of Material Facts ¶ 8; Def's Br. 6; Bridges Decl. ¶ 12; which is equally hollow, conclusory, and contradicted by the agency's public reliance on the withheld material. *See* n. 5, *supra*.

The core concerns of the deliberative process privilege are only raised by Defendant in passing by the boilerplate justifications of the *Vaughn* Index. Not only has Defendant failed to meet its burden to show harm from release, but it is unreasonable to conclude that there are any sensitive deliberations in unreleased final drafts which have passed the adjudicative process and whose anonymous authors knew in advance they would be made public. Further, as a factual document whose undisclosed findings are repeatedly relied upon by the agency and its contractors, it is clear that the publication of the SNRA will not confuse the public as to FEMA's position on which threats to America bear concern. The scientific facts relied on in 2014 and 2015 when the SNRA was drafted have not changed so much. Because there is no possible injury to the integrity of the agency's deliberative processes, the 2015 SNRA should be released in full.

3. That the Factual Material was Culled from a Larger Set of Facts Does Not Make it Deliberative or Provide Grounds to Withhold Production.

Defendant argues that it can withhold even purely factual material in the withheld documents. Factual material normally must be disclosed even if the rest of the document is deliberative. *See e.g. EPA v. Mink*, 410 U.S. at 89. Defendant argues that the factual material in the SNRA should be withheld regardless because the material “is included in documents through the exercise of judgment calls requiring extracting facts from a larger set of facts.” Def’s Br. at 5. The SNRA allegedly and “represents the judgment of what the authors thought were pertinent facts but might not be thought of as pertinent by any FEMA official with authority to finalize these documents.” Def’s Br. at 5-6; Bridges Decl. ¶ 10-11. This claim, while critical to the agency’s argument, is not further explained, and is impossible for Plaintiff to evaluate. Senior FEMA officials with the authority to finalize these documents have relied on their information, confirming that the facts selected by the SNRA authors are still thought of as pertinent. *See* Section A.2, *supra* (discussion of citations to SNRA from 2016-18). There is no evidence that any part of the SNRA was rejected or superseded by the agency, and the use of its conclusions by the agency and its contractors up to the present time indicates otherwise.

The “culling of facts” argument is also impossible to evaluate given the minimal explanation given by the agency. While there is a limited exception to the rule that purely factual information is not protected by the deliberative process privilege, its scope is not so broad as to encompass *any* selection of facts. “Anyone making a report must of necessity select the facts to be mentioned in it; but a report does not become a part of the deliberative process merely because it contains only those facts which the person making the report thinks material.” *Playboy Enters., Inc.*

v. Dep't of Justice, 677 F.2d 931, 935 (D.C. Cir. 1982). Some more detailed explanation of how the factual material is quintessentially “deliberative” must be provided. Nevertheless, Defendant conclusorily claims that disclosure of the facts which were relied upon, including even the references in the footnotes, will irreparably harm the deliberative process within FEMA.

The National Transportation Safety Board was not availed by a similar argument in *Lahr v. NTSB*, 453 F. Supp. 2d 1153 (C.D. Cal. 2006). In that case, the NTSB argued that the “selection of these data culled from hundreds of pages of data give an indication of the preliminary thoughts of how data may be used in the simulation program.” *Id.* at 1187. The argument was “essentially . . . that the release of this data, would reveal the deliberative process, because some staff member selected *this* specific data for a reason.” *Id.* (emphasis in original). The NTSB also argued, as FEMA does here, that “without the protection provided by the exemption, full and frank discussion of options and opinions so vital to the decision-makers would be impossible.” *Id.* (quoting agency declarations). The *Lahr* court rejected this explanation as “only tautological support for this proposition, not an explanation or description of the communicative or evaluative procedures the NTSB followed in doing its ‘culling.’” *Id.* The court ruled that:

the agency must show that the deliberative process (or at least part of it) can be determined from the data alone. Thus, for example, information about how data was evaluated, by whom, and how differing views or results were communicated within the investigative team might have established a stronger basis for defendants' claim of exemption.

Defendants have failed to carry their burden that what has been withheld “represent[ed] the mental processes of the agency in considering alternative courses of action prior to settling on a final

plan." *Nat'l Wildlife Fed'n*, 861 F.2d at 1122. *Defendants' contention would invite agencies to claim that the mere notion that one set of facts was culled from a larger set of facts always and necessarily renders the culled material evidence of the agency's deliberative process.*

Id. (emphasis added). FEMA's boilerplate claim that "the Bridges Declaration makes clear that the factual information here was culled from a larger set of facts" is precisely the outcome that *Lahr* was afraid of. Deft. Br. at 6. It is conclusory because it does not describe what the larger set of facts was, how the information was culled, for what purpose, or by whom. No details are provided. It is tautological because any "set" of facts is by definition "culled" from a larger set of facts. Court rules against the introduction of irrelevant evidence, for example, accept this as a given: *any* factual record will necessarily cull irrelevant facts. In this instance, FEMA will not even provide references to public documents contained in the production, presumably because the references were "culled" from the universe of potentially relevant publications in an earlier stage of the drafting of the SNRA.⁶

Other cases cited by Defendant allowing withholding of factual material are inapplicable. *Mapother v. Dep't of Justice*, 3 F.3d 1533 (D.C. Cir. 1993), built on prior cases that justified withholding drafts of agency work product because releasing both a draft *and* a final public version could reveal which facts the agency decided to include or exclude at which stage of a document's development:

In Russell v. Department of the Air Force, 682 F.2d 1045 (D.C. Cir. 1982), and again in *Dudman Communications Corp. v. Department of the Air Force*, 815 F.2d 1565 (D.C. Cir. 1987), we shielded from disclosure draft versions of official Air Force histories. Each history covered certain Air Force operations conducted during the Vietnam War and was produced

⁶ The *Vaughn* Index attached to the Bridges Declaration contains 429 redactions of "reference" information, predominantly footnotes.

to inform future policy decisions. *Russell*, 682 F.2d at 1046, 1047; *Dudman Communications*, 815 F.2d at 1566. In *Russell*, we reasoned that "disclosure of the material sought ... would reveal the Air Force's deliberative process" because "a simple comparison between the pages sought and the [final, published] document would reveal what material supplied by subordinates senior officials judged appropriate for the history and what material they judged inappropriate." 682 F.2d at 1049; *see also Dudman Communications*, 815 F.2d at 1569 (reaffirming *Russell*'s rationale)."

3 F.3d at 1538. Here there is no final version to compare the draft to, and only one draft is at stake. Furthermore, FEMA's full disclosure of the STRATEGIC NATIONAL RISK ASSESSMENT 2015 UPDATE: BACKGROUND & GENERAL GUIDANCE, STRATEGIC NATIONAL RISK ASSESSMENT 2015 QUALITATIVE DATA INSTRUCTIONS, and STRATEGIC NATIONAL RISK ASSESSMENT 2015 RISK SUMMARY SHEET INSTRUCTIONS AND TEMPLATE (collectively hereinafter "Guidance") has already caused whatever attenuated harm to decisionmaking processes which FEMA has alleged. *See infra* this section.

Mapother itself dealt with fact summaries prepared to assist a specific decisionmaker with "the making of a discretionary decision." 3 F.3d at 1539. The SNRA, while a factual "summary" of a number of threats, is not the kind of special-use fact memo intended to inform a specific discretionary decision that *Mapother* withheld. That case was about specific evidence compiled by the Department of Justice for the Attorney General to determine that a certain individual should be barred from entering the United States because his prior history indicated he was a Nazi.⁷ What specific acts were committed by the individual, which sources of

⁷ "The Report is a 204-page document prepared for the Attorney General by the Office of Special Investigations, a unit within the Justice Department's Criminal Division, that details the wartime activities of Kurt Waldheim, the former Secretary-General of the United Nations and former President

information might be considered, the means by which an investigation was conducted, and other sensitive issues would be implicated by disclosure.

Similarly, in *Ancient Coin Collectors Guild v. United States Dep't of State*, a case concerning reports relating to import restrictions on cultural artifacts from China, Italy, and Cyprus, the “factual summaries . . . reflect an ‘exercise of judgment as to what *issues* are most relevant to the predecisional *findings and recommendations*.’” 641 F.3d 504, 513-14 (2011) (emphasis added). Those judgments included “lists of events selected to show whether a given type of item has been pillaged,” the disclosure of which would harm agency decisionmaking by, *e.g.*, indicating to the public which coin collecting events drew scrutiny as bellwethers for determination that artifacts had been pillaged. *Id.*

The language from *Ancient Coin Collectors* relied upon by Defendant, that “the legitimacy of withholding does not turn on whether the material is purely factual in nature or whether it is already in the public domain, but rather on whether the selection or organization of facts is part of an agency's deliberative process,” is thus highly contingent. *Id.* First there must be a deliberative process, and second, specific aspects of the decisionmaking process must be impacted in specific ways. The factual “culling” in this case is solely from public unclassified documents and concerns a very broad array of risks and harms not specific to any decisionmaker or decision.

of Austria. It provided the basis for an order issued by the Attorney General barring Mr. Waldheim from entering the United States because of evidence that he may have participated in war crimes as an officer in the army of Nazi Germany.” *Mapother*, 3 F.3d at 1535.

Ironically, the only possible “deliberative” material, which reveals how the agency selects facts to use in the SNRA, was disclosed in full. The Guidance for FEMA analysts to follow when making factual selections was produced without redaction. Production 1-43. It discloses essentially the entire deliberative process by laying out the steps which analysts followed in preparing the SNRA. The only new information Plaintiffs could glean about the decisionmaking process from production of the withheld material might be whether and how well the agency’s employees followed those instructions -- which would not be a revelation of any policy-making process. The Guidance instructs FEMA analysts on how to choose data that will be “representative of likely U.S. conditions in the next 3-5 years.” *See* Guidance, at 12, 000021.⁸ Where the selection of factual material is conducted “because it is a representative of the whole, [and] not because it holds significant differences that bear on the agency’s deliberative process,” it should not be withheld. *Cause of Action Inst. v. United States Dep’t of Justice*, 330 F. 3d 336, 354 (D.D.C. 2018).

The information withheld was, according to the Guidance, selected precisely because it is representative of the literature base for each risk. Nothing in the agency’s declarations supports a finding that the factual material withheld here is part of a deliberative process subject to Exemption 5.

II. SEGREGABILITY

Where documents are not withheld in their entirety under an Exemption to FOIA, “if the government can segregate and disclose non-privileged factual

⁸ Discussion of representative data sampling appears throughout the Guidance, but specific examples can be found at pages Bates stamped 000019-21, 25, 28, and 36-38,

information within a document, it must.” *Loving v. Dep’t of Defense*, 550 F.3d 32, 38 (D.C. Cir. 2008). It is “undisputed” that “non-exempt information that is ‘reasonably segregable’ from exempt information must be disclosed.” *Elec. Frontier Found. v. United States DOJ*, 739 F.3d 1, 12 (D.C. Cir. 2014) (citing 5 U.S.C. § 552(b)).

Vaughn v. Rosen involved government affidavits which “made no clear distinction . . . to enable the facts to be distinguished from the evaluative, interpretative, or final conclusions” of allegedly deliberative materials. 523 F.2d at 1144. A *Vaughn* Index is prepared to comply with its holding and reasoning that the government cannot “lump . . . facts, interpretation, evaluation, and recommendations - into one mass to be protected.” *Id.* Even assuming that there is *any* pre-decisional, deliberative material in the withholdings, there is some withheld material that is so obviously not deliberative that it almost certainly indicates the “lumping together” of materials forbidden by *Vaughn*. Production 000114, 146-347. For example, one block of redaction covers the individual table of contents entries for 31-232 of the SNRA Technical Appendix. Those pages, which also have their contents completely redacted, contain the New and/or Updated Risk Summary Sheets from the SNRA, the format of which is described in detail in the Guidance document. Production 000001, 000010-42.

Those summaries are the “quantitative evidence base” of the SNRA. Production 000012. They “typically include[] nice things to know about the threat/hazard like qualitative descriptions, overview, narrative, [and] potential mitigating factors.” Production 000016. While there may be defined areas in which subject matter expert judgment is needed, there is no indication that *policy* judgment

or recommendations are made. And where they are made, “judgments in the SNRA *are made explicit* in a way that stakeholders, political leadership, and technical reviewers can scrutinize, and which are expressed in quantitative terms having the same, unambiguous meaning for all audiences.” Production 000035. Even assuming those technical expert judgments are covered by the deliberative process, they are clearly distinct from any underlying raw evidence in the structure established for those pages, so there must be some purely factual material which can be produced.

Defendant’s assertions of deliberative privilege appear to depend on whether the subject matter appeared in the 2011 SNRA or not. The sweeping redaction of all material that was not included in the 2011 SNRA, including even the table of contents, is incompatible with FOIA’s requirement that the context matters. When making determinations about segregability, “the context in which factual statements were made in asserting that factual material cannot generally be withheld under the deliberative process privilege” is a core concern. *Elec. Frontier Found. v. U.S. Dep’t of Justice*, 739 F.3d 1, 12 (D.C. Cir. 2014). The SNRA Guidance shows that there is plentiful factual information that could be extracted, at least including the table of contents, references, and the factual bases in the technical appendix. The most heavily redacted document is, ironically, the Technical Appendix which provides the *factual basis* for the findings of the SNRA. Production 112-716.

The Government is “entitled to a presumption that [it] complied with the obligation to disclose reasonably segregable material,” *Hodge v. FBI*, 703 F.3d 575, 582 (D.C. Cir. 2013) (citations omitted). This presumption however “does not obviate its obligation to carry its evidentiary burden and fully explain its decisions on

segregability.” *Cause of Action Inst. v. United States DOJ*, 330 F. Supp. 3d 336, 355 (D.D.C. 2018) (citing *Mead Data Cent.*, 566 F.2d at 261-62). To explain such decisions, the agency must provide “a detailed justification and not just conclusory statements to demonstrate that all reasonably segregable information has been released.” *Valfells v. CIA*, 717 F. Supp. 2d 110, 120 (D.D.C. 2010); *see also Armstrong v. Exec. Office of the President*, 97 F.3d 575, 578 (D.C. Cir. 1996) (determining government affidavits explained nonsegregability of documents with “reasonable specificity”).

Where it is not clear from the agency’s affidavits whether all reasonably segregable information has been produced, “it will plainly be necessary and appropriate” to conduct *in camera* review of the withheld materials. *Quinon v. FBI*, 86 F.3d 1222, 1227 (D.C. Cir. 1996) (citing S. Conf. Rep. No. 1200, 93d Cong., 2d Sess. 9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6267, 6287). In this case, the affidavits presented by the agency plainly lack “specific information sufficient to place the documents within the exemption” or specific analysis as to why each exemption furthers the purpose of Exemption 5 over the public’s interest in disclosure. *See* 2016 FOIA Improvements Act, Pub. L. No. 114-185, 130 Stat. 538 (codified at 5 U.S.C. § 552). “The burden is, of course, on the agency resisting disclosure, and if it fails to meet its burden without *in camera* inspection, the District Court may order such inspection.” *EPA v. Mink*, 410 U.S. 73, 93 (1973). Because *in camera* review is time-consuming and burdensome for the court, this Court should instead grant summary judgment in favor of disclosure.

CONCLUSION

Congress enacted FOIA in order "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citation omitted). FEMA is masking a fully adjudicated factual report behind the thin justification that it never received a political stamp of approval while continuing to rely on it in subsequent risk-based documents. In *Star Wars: Return of the Jedi* (1983), Emperor Palpatine presented the illusion that the second Death Star was a work in progress and incapable of defending itself, only to reveal when approached that it's a trap: it was a fully armed and operational battle station. Similarly, FEMA is hiding a fully armed and operational SNRA from FOIA as a predecisional draft while relying on the legitimacy of its analysis even today.

For the reasons articulated above, and to uphold the will of Congress in enacting FOIA and its amendments, Defendant's motion for summary judgment should be denied and Plaintiff's cross-motion for summary judgment should be granted as to all of the materials that the agency has wrongfully withheld. In the alternative, the Court should take a representative section of the withheld materials for *in camera* review and issue a ruling on the application of Exemption 5 to the withheld materials based on such review.

Respectfully submitted on March 29, 2019,

/s/ Paula Dinerstein
Paula Dinerstein, DC Bar # 333971

Responsibility

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

Defendant.

Civil Case No. 18-158

DECLARATION OF PAULA DINERSTEIN

I, Paula Dinerstein, hereby declare, pursuant to 28 U.S.C. § 1746, the following to be true and correct:

1. I am General Counsel for Plaintiff in this action, Public Employees for Environmental Responsibility ("PEER"). In this capacity I am responsible for overseeing all of PEER's legal activities, including the filing of Requests under the Freedom of Information Act ("FOIA") and litigation.

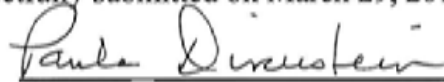
2. The purpose of this declaration is to provide information concerning the documents produced by the Federal Emergency Management Agency ("FEMA") in response to PEER's September 1, 2017 FOIA request. I make this declaration based on my personal knowledge of PEER's FOIA request and FEMA's response to it.

3. In response to PEER's FOIA request, FEMA produced 716 Bates-stamped pages of documentation in three productions dated May 9, 2018, June 22, 2018, and June 25, 2018, which are accurately described in paragraphs 4 and 5 of the Declaration of Gregory

Bridges submitted in support of Defendant's Motion for Summary Judgment (Doc. 22-1). Because the materials produced by FEMA were not included in the declarations submitted by Defendant in this action, they are attached to this declaration as Exhibit A.

4. On September 10, 2018, FEMA delivered to Plaintiff a *Vaughn* Declaration identifying the withholdings and redactions made by FEMA across the production, beginning at page 46 and ending at page 716. That Declaration is identical to the declaration attached as Exhibit B to the Declaration of Gregory Bridges.

Respectfully submitted on March 29, 2019,

A handwritten signature in cursive script, reading "Paula Dinerstein", is written over a horizontal line.

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Counsel for Plaintiff

Document 24-3 (FOIA release to PEER) at
<https://ia800105.us.archive.org/18/items/gov.uscourts.dcd.192957/gov.uscourts.dcd.192957.24.3.pdf>

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

Defendant.

Civil Case No. 18-158

**PLAINTIFF'S STATEMENT OF DISPUTED MATERIAL FACTS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

As there are no genuine issues of material fact, we believe this case can be decided on summary judgment. However, Plaintiff does not concede to all of Defendant's Statement of Material Facts, which includes statements which are not facts but conclusions of law which Plaintiff disputes. Specifically, Plaintiff disputes the following paragraphs from Defendant's statement of material facts:

- ¶ 6. Plaintiff disputes FEMA invoked of Exemption 5 of the FOIA to protect information that is protected by the deliberative process privilege, as Defendant has not demonstrated that the information withheld falls within that privilege.
- ¶ 7. Plaintiff disputes that the documents are predecisional, that they were never adopted by FEMA, and that they contain candid, predecisional views and deliberations.

- ¶ 8. Plaintiff disputes that release of the information would harm FEMA's decisionmaking process by chilling the free exchange of information, ideas, opinions, recommendations, and selectively chosen facts. Plaintiff also disputes that release of the information could cause confusion to the public as to the actual threats and hazards perceived by FEMA and the agencies with which it consults.
- ¶ 9 (numbered as ¶ 5 in Defendant's Statement of Material Facts but appearing after ¶ 8) Plaintiff disputes that FEMA has released all reasonably segregable non-exempt information to Plaintiff.

Respectfully submitted on March 29, 2019,

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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

Defendant.

Civil Case No. 18-158

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

Pursuant to Local Rule 7(h), Plaintiff Public Employees for Environmental Responsibility ("Plaintiff" or "PEER") submits this statement of material facts as to which there is no genuine issue:

1. On September 1, 2017, Plaintiff submitted a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to the Federal Emergency Management Agency ("FEMA") for documents related to the 2015 update to the Strategic National Risk Assessment ("SNRA"). Bridges Decl. ¶ 3, Exhibit A.

2. In response to PEER's FOIA Request, FEMA produced 716 Bates-stamped pages of documentation in three productions dated May 9, 2018, June 22, 2018, and June 25, 2018. Dinerstein Decl. ¶ 3, Exhibit A; Bridges Decl. ¶ 4-5.

3. On September 10, 2018, FEMA delivered to Plaintiff a *Vaughn* Declaration identifying the withholdings and redactions made by FEMA across the

production, beginning at page 46 and ending at page 716. Dinerstein Decl. ¶ 4; Bridges Decl. ¶ 6, Exhibit B.

Respectfully submitted on March 29, 2019,

/s/ Paula Dinerstein
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Counsel for Plaintiff

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

Defendant.

Civil Case No. 18-158

ORDER

Upon consideration of the Cross-Motions for Summary Judgment filed by the parties, and the oppositions and replies thereto, and the entire record in this case, it is on this ____ day of _____, hereby

ORDERED that Plaintiff's Motion for Summary Judgment is granted; and it is

FURTHER ORDERED, that Defendant's Motion for Summary Judgment is denied; and it is

FURTHER ORDERED that Defendant shall produce to Plaintiff all of the formerly withheld documents and portions of documents which are responsive to Plaintiff's FOIA request.

This is a final appealable order.

United States District Judge

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY

Defendant.

Civil Action No. 18-0158 (CKK)

**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO FILE MOTION FOR
EXTENSION OF TIME AND MOTION FOR EXTENSION OF TIME OF ONE DAY**

Pursuant to Fed. R. Civ. P. 6(b), defendant Department of Homeland Security, moves for an extension of time of one day, to and including April 30, 2019, in which to file defendant’s opposition/reply brief, and moves for leave to file this motion on the day the opposition/reply brief is due. The brief is currently due today, April 29, 2019. This is defendant’s first motion for extension of time in this case. This may affect the briefing schedule in this case if plaintiff asks for an additional day in which to file its reply brief, which will be the last brief to be filed, but this is currently unknown. Plaintiff’s counsel has consented to both motions.

Defense counsel is mindful of this Court’s scheduling orders in this case, requiring that any motion for extension of time be filed four business days in advance of the deadline. Defense counsel did not do this because until this afternoon she expected to be able to meet today’s deadline, even though she had two other briefs to file today as well. However, in order to ensure that defendant provides the Court with as much information as possible in order to decide the

issues, defendant has been working on a declaration to accompany defendant's filing. This declaration has taken longer to prepare than expected, because certain individuals with knowledge relevant to the issues plaintiff raised have left the agency. Thus, it has been more time consuming than expected for the agency to gather certain necessary information. And defense counsel needs a completed declaration in order to complete defendant's filing.

Defendant has sought the least amount of time possible – one day – in which to complete its declaration and opposition/reply brief. Defense counsel apologizes for not complying with this Court's "4-day" rule but, as noted above, until late this afternoon defense counsel and agency counsel thought they could meet the due date of today.

For the foregoing reasons, defendant requests that these unopposed motions be granted.

Respectfully submitted,

JESSIE K. LIU, D.C.
D.C. Bar # 472845
United States Attorney
for the District of Columbia

DANIEL VAN HORN,
D.C. Bar #924092
Chief, Civil Division

/s/ Marina Utgoff Braswell
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL)	
RESPONSIBILITY)	
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Plaintiff,)	
)	
v.)	Civil Action No. 18-0158 (CKK)
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

ORDER

Upon consideration of Defendant's Unopposed Motion for Leave to File Motion for Extension of Time, and Motion for Extension of Time of One Day, and for good cause shown, it is hereby

ORDERED that the unopposed motions are GRANTED, and it is further

ORDERED that Defendant shall have to and including April 30, 2019, in which to file Defendant's opposition/reply brief in this case.

Date: _____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

Plaintiff,

V.

U.S. DEPARTMENT OF
HOMELAND SECURITY

Defendant.

Civil Action No. 18-0158 (CKK)

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S
CROSS-MOTION FOR SUMMARY JUDGMENT AND IN REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT**

PRELIMINARY STATEMENT

Plaintiff filed this civil action against defendant United States Department of Homeland Security (“DHS”), alleging that DHS’s Federal Emergency Management Agency (“FEMA”) violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in connection with plaintiff’s request for certain specified information concerning FEMA’s 2015 Strategic National Risk Assessment (“SNRA”). Plaintiff has challenged FEMA’s withholding of certain information pursuant to FOIA Exemption 5, primarily on the grounds that the information was sufficiently final, that FEMA allegedly has released the information withheld to other entities, relied upon it publicly and within the agency, and that certain factual information can be released without harming the decisionmaking process.

Plaintiff is wrong on all counts. The 2015 SNRA, which was intended to identify risks and hazards FEMA concluded were significant and assess ways to address them, was never finalized by FEMA. Its contents were never represented by FEMA to be final in any way, or to be used as a final product. The factual information plaintiff claims can be released lies at the heart of the decisionmaking process. Its release would reveal FEMA's deliberative process, harm the decisionmaking to which it relates, and cause confusion for the public as to which risks and hazards FEMA deemed significant and how such risks and hazards should be addressed.

As set forth in the defendant's prior memorandum, the Declaration of Gregory Bridges ("Bridges Decl."), the Declaration of Leiloni Stainsby ("Stainsby Decl."), and the attached Supplemental Declaration of Leiloni Stainsby ("Supp. Stainsby Decl."), FEMA has properly withheld certain information pursuant to Exemption 5 of the FOIA.

ARGUMENT

I. Pursuant to Exemption 5, FEMA Properly Withheld Information Subject to the Deliberative Process Privilege

Until 2015, FEMA used the SNRA as a vehicle to identify risks and hazards that needed to be addressed in various jurisdictions and to assess how such threats and hazards should be addressed. Supp. Stainsby Decl., ¶¶ 2-3. In 2015, FEMA choose the National Threat and Hazard Identification and Risk Assessment ("National THIRA") as its main risk assessment vehicle. *Id.* at ¶ 2. Certain data from the SNRA was to be used in developing the THIRA. *Id.* at ¶ 3. As Ms. Stainsby explains:

Both the THIRA and the SNRA were part of the formulation of a decision that would identify threats and hazards that needed to be addressed in various jurisdictions and how they should go about addressing the threats and hazards identified, pursuant to Presidential Policy Directive 8. [footnote omitted] This

involves policy judgments made by FEMA based on selectively culled factual information.

Id. at ¶ 3.

Ms. Stainsby further states that “[i]n 2015, the National THIRA became FEMA’s primary national assessment tool to identify national catastrophic threats facing the United States, its tribes and territories, and identifying resources that would be needed to prepare for, mitigate against and most effectively respond to these threats. The 2015 SNRA that had been drafted was never finalized.” Id. at ¶ 8.

A. The Withheld 2015 SNRA Information is Predecisional

FEMA previously demonstrated that the 2015 SRNA documents withheld are predecisional because they were never finalized or publicly released. Stainsby Decl., ¶¶ 3-4; Bridges Decl., ¶ 10. Plaintiff challenges the predecisional nature of these documents in various ways.

First, plaintiff argues that “there was no ultimate *policy* decision, or even a process of formulating policy, which disclosure of the SNRA might harm.” Plaintiff’s Opp. at 10. Plaintiff reaches this conclusion based on its claim that FEMA has failed to show the SNRA contained specific policy recommendations or led to any policy decision. Id. Plaintiff is wrong on the facts and, to the extent that plaintiff argues that there must be an ultimate policy decision, plaintiff is wrong on the law.

As FEMA demonstrated in its opening memorandum, the Supreme Court has made clear that FEMA is not required to demonstrate that these documents led to any final policy decision. See Def’s Mem. at 4, *quoting* Nat’l Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 151 n.18 (1975). Plaintiff’s claim to the contrary, made without support, is thus without basis.

Additionally, FEMA has demonstrated that the SNRA was indeed part of a policy process intended to carry out FEMA's responsibility to "develop[] guidance and tools to assist communities in tackling their unique preparedness challenges and coordinates the adoption and implementation of a common incident management platform for emergency responders and officials." Stainsby Decl., ¶¶ 3-4; Supplemental Stainsby Decl., ¶ 3. FEMA's National Integration Center (NIC) is charged with "helping people and communities become more resilient by developing the capabilities needed to prevent, protect against, respond to, recover from, and mitigate against all threats and hazards." Stainsby Decl., ¶¶ 3-4. Deciding which threats and hazards should be identified, as required by Presidential Policy Directive 8,¹ involves policy judgments made by FEMA. Supp. Stainsby Decl., ¶ 3. Plainly deciding which threats and hazards need to be addressed, and in which manner, involves policy formulation every bit as much as the State Department deciding which foreign countries pose a threat to this country, and how those threats should be managed, involves foreign "policy" decisions. Plaintiff's argument to the contrary is untenable.

Plaintiff argues that the 2015 SNRA findings were intended to be a stand-alone document and summarized for public dissemination. Plaintiff's Opp. at 10. Even if true, that would only have happened once the 2015 SNRA was finalized. The fact that a final decision as to which risks and threats merited which type of response was to be made public does not transform the

¹ Presidential Policy Directive 8 is designed to strengthen "the security and resilience of the United States through systemic preparation for the threats that pose the greatest risk to the security of the Nation, including acts of terrorism, cyber attacks, pandemics, and catastrophic natural disasters." PPD-8, p. 1.

predecisional documents addressing this information into final documents. Supp. Stainsby Decl., ¶ 12.

Plaintiff argues that the documents were “sufficiently final” to be released but cites no facts to demonstrate such a standard. Plaintiff’s Opp. at 10-11. Moreover, plaintiff cites no authority for the proposition that “sufficiently final” documents somehow lose their predecisional status, even if it could be ascertained what “sufficiently final” actually means.

Plaintiff argues that the 2015 SNRA “has been relied upon by the agency in subsequent materials and communications with Congress.” Plaintiff’s Opp. at 7. Although plaintiff cites no example of the 2015 SNRA being provided to Congress, id., plaintiff cites GAO Acting Director Nathan Anderson and certain public comments he made on February 27, 2019. Id.

Ms. Stainsby responds that on February 27, 2019:

Mr. Anderson stated that in June 2016 the Department of Homeland Security (DHS) reported it had completed a planned refresh of the SNRA, which included information on electromagnetic events. Reply Brief 7-8. The SNRA documents were intra-agency documents, so other agencies were likely to have possessed and reviewed the drafts. In addition, as Plaintiff’s citation makes clear, Mr. Anderson referenced GAO-16-243 Electromagnetic Threats (2016). The GAO-16-243 was published in March of 2016, and regarding the SNRA, it states that ‘DHS acknowledged this responsibility through its inclusion of EMP as a risk event in the 2015 update of the Strategic National Risk Assessment (SNRA), noting that damage from a deliberate attack on the grid could cause cascading impacts through other infrastructure systems, leading to economic disruption and the potential loss of life.’ GAO-16-243 at 20. In 2019, Mr. Anderson was not able to reference documents later than the 2016 GAO-16-243 because the 2015 SNRA was never finalized. This further illustrates that releasing the draft SNRA would cause confusion not just with other federal agencies, but with the public as well, as they would believe the SNRA is still the main national risk assessment vehicle, when it is not.

Supp. Stainsby Decl., ¶ 10.

Plaintiff points to the SNRA Findings that references stakeholder review of assessments, and argues that this demonstrates the deliberative process has been completed. Plaintiff's Opp. at 8. Ms. Stainsby responds that "[s]takeholders reviewing the draft findings is only one part of the deliberative process, not the beginning, and certainly not the ending of the process." Supp. Stainsby Decl., ¶ 11. Having stakeholders review draft findings as part of the decisionmaking process makes sense, but the 2015 SNRA was never finalized by NPD leadership or publicly released. Id.

Plaintiff also claims that FEMA has taken an inconsistent position by arguing that the SNRA is predecisional while simultaneously stating that "it was employed as the 'analytical foundation' of the final published National Preparedness Goal and the Planning Frameworks." Plaintiff's Opp. at 11. Plaintiff cites the Stainsby Declaration as purported support for this second point. Id. But the Stainsby Declaration says no such thing. In that declaration, Ms. Stainsby states that "[t]he NIC *intended* the 2015 SNRA Documents to be the risk-based analytic foundation of the National Preparedness Goal." Id. at ¶ 3 (emphasis added). That is a far cry from saying that the 2015 SNRA was in fact the analytic foundation of a published National Preparedness Goal.

The Supplemental Stainsby Declaration explains that:

The National Planning Frameworks documents say the results of the SNRA appear in the National Preparedness Goal, 2nd Edition, but they do not say which version of the SNRA results appear. That's because only one version of the SNRA was finalized and published: the December 2011 SNRA. In addition, the National Preparedness Goal, 2nd Edition, was published in September 2015, while the SNRA was still in draft form in November 2015, as indicated in Production 000044.

Id. at ¶ 9.

Plaintiff argues that “there is nothing in the record to indicate what the process was or that it actually concluded or how or why.” Plaintiff’s Opp. at 12. On the contrary, the Stainsby Declaration explained that the 2015 draft SNRA was developed by FEMA’s National Integration Center (NIC), to serve as recommended guidance and tools to assist communities in tackling their unique preparedness challenges. *Id.* at 3. The NIC forwarded the draft SNRA to several offices within FEMA for review. *Id.* at 4. The next step was for FEMA’s National Preparedness Directorate (NPD) leadership to approve the draft SNRA but that never happened. *Id.* at 4 & 6. So the process concluded with the 2015 SNRA remaining in draft form, lacking approval by the NPD leadership charged with approving the draft.

Plaintiff tries to make much of the fact that the 2015 SNRA was labelled a “fully adjudicated draft.” *See, e.g.*, Plaintiff’s Opp. at 14. This label, however, further supports the fact that the documents were predecisional. The term “fully adjudicated draft” as used by FEMA simply meant that it was ready to be reviewed by the NPD leadership. Supp. Stainsby Decl., ¶ 13. Plaintiff’s attempt to seize on the words “fully adjudicated” while ignoring the word “draft” is unavailing.

Plaintiff argues, repeatedly, that the withheld information cannot be predecisional because it was used by others outside of FEMA. For example, plaintiff argues that the Rand Corporation prepared a report for DHS in 2018 and referenced the 2015 SNRA results. Plaintiff’s Opp. at 18.

Ms. Stainsby responds that:

Plaintiff did not fully quote RAND, which stated the following:

‘We began data collection by conducting our own search for relevant open-source assessments. The 2015 SNRA was the starting point for data collection,

although it did not address all threats and hazards included in the HSNRC. The documents found during these initial searches provided a useful, if incomplete, set of data on which to develop the risk summary sheets. In some cases, such as the assessment of natural disaster hazards, the data collected from these initial searches ultimately provided as many as half the citations used in the final risk characterization.’

Homeland Security National Risk Characterization: Risk Assessment Methodology (2018) at 34.

Although RAND believed the draft 2015 SNRA documents were ‘useful,’ it also believed they were ‘incomplete.’ This describes draft documents that weren’t finalized, the types of documents Exemption 5 was intended to protect. Releasing these documents would cause confusion to federal agencies and the public regarding what FEMA’s actual position is regarding risks.

Supp. Stainsby Decl., ¶ 14.

Plaintiff’s attempts to show that the information at issue is not predecisional clearly fail. Plaintiff has failed to undermine FEMA’s showing that the 2015 SNRA documents were never finalized and thus are predecisional.

2. The Withheld Information is Deliberative

Plaintiff argues that the withheld documents cannot be considered deliberative because they have been used to support agency publications. Plaintiff’s Opp. at 16. Plaintiff fails to identify any agency publications. *Id.* To the extent that plaintiff is referring to the Rand Report or the National Planning Frameworks, or GAO, defendant has demonstrated above that the 2015 SNRA was not used in the manner plaintiff suggested. *See, supra*, at 5 & 7.

Plaintiff argues that the SNRA was a factual tool to be made available to various decisionmakers dealing with preparedness issues. Plaintiff’s Opp. at 16-17. In its final form that was the intent of the 2015 SNRA. But since it never was finalized, the information contained in these documents consisted of “proposed factual findings, proposed assessments of information

pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors.” Bridges Decl., ¶ 11. Had the 2015 SNRA received final approval, the factual findings and recommendations contained therein would no longer have been deliberative, because they would have been incorporated into the final document. But that never happened.

Plaintiff argues that there are no deliberations to chill by disclosing the withheld information “because internal deliberations took place prior to the creation of this draft.” Plaintiff’s Opp. at 20. Although what plaintiff means by this unsupported statement is unclear, perhaps plaintiff is arguing that the draft represents the final conclusions of the authors. Not only does plaintiff cite no support for this statement, but it is undermined by the Bridges and Stainsby declarations.

As Mr. Bridges explains, these documents contain facts concerning threats and hazards perceived by the authors and analyses and proposed conclusions. The contents of these documents may not reflect FEMA’s actual position regarding threats and hazards and how they should be addressed. Bridges Decl., ¶ 11; Stainsby Decl., ¶ 6. The contents of these documents were part of the give and take by which FEMA had intended to arrive at a final decision as to which threats and hazards existed and how FEMA recommended they be addressed. Thus, plaintiff’s claim that “‘specific threats and hazards’ cannot be ‘predecisional’”, or presumably deliberative, is without basis. Plaintiff’s Opp. at 20. Specific threats and hazards identified in the withheld documents represent what the authors recommended that their leadership find to be the pertinent hazards and threats, but their assessment was subject to being overruled by FEMA NPD leadership. Supp. Stainsby Decl., ¶ 11.

Plaintiff argues that it makes no sense that FEMA withheld data and factual information on the ground that it was entangled with FEMA's analyses and conclusions "but [did] not withhold or even identify, the purported analyses and conclusions themselves." Plaintiff's Opp. at 20. Plaintiff's point is unclear, given that plaintiff points to no evidence where FEMA's analyses or conclusions were released. *Id.*

Plaintiff also argues that FEMA's claim that release of these predecisional, deliberative documents might cause confusion to the public is belied by the fact that the agency publicly relied on this information. Plaintiff's Opp. at 21, *citing* footnote 5 at 17. Ms. Stainsby explains plaintiff is wrong:

In footnote 5, the quote from the National Prevention Framework, Second Edition (2016) references the National Preparedness Goal, Second Edition, which was published in September 2015, while the 2015 SNRA was still being drafted through November 2015. Production 000044. The same is true for Plaintiff's citations to the National Mitigation Framework, Second Edition (2016), and the National Response Framework, Third Edition (2016): both documents explicitly reference the National Preparedness Goal, Second Edition (2015). In addition, the National Preparedness Goal fails to state which version of the SNRA results appear, because only one version of the SNRA was finalized and published: the December 2011 SNRA.

Supp. Stainsby Decl., ¶ 9.

Plaintiff argues that "it is unreasonable to conclude that there are sensitive deliberations in unreleased final drafts which have passed the adjudicative process and whose anonymous authors knew in advance would be made public." Plaintiff's Opp. at 21. Plaintiff misunderstands the process as well as the purpose of Exemption 5.

This Circuit has made clear that Exemption 5 is intended to protect the agency's decision-making process, not just the contents of specific documents. Mead Data Central Inc. v. U.S. Dep't of Air Force, 566 F.2d 242, 256 (D.C. Cir. 1977) ("Exemption five is intended to protect

the deliberative process of government and not just deliberative material.”). FEMA decisionmakers need to be able to rely on their employees participating in the creation of the SNRA draft documents to identify all potential threats and hazards that the drafters believe constitutes a threat and/or hazard that needs to be addressed, in the manner recommended by the authors. But drafters may well be hesitant to recommend certain threats and hazards, or ways to address them, if they knew that any of their suggestions not be adopted by FEMA leadership would still be made public, or be made public even in the absence of a final agency decision. Supp. Stainsby Decl., ¶ 12.

Plaintiff argues that the factual information withheld, which FEMA explained consists of judgment calls made to select facts from a larger set of facts concerning possible threats and hazards, is “impossible for Plaintiff to evaluate” but that there is no evidence that any part of the SNRA was rejected or superseded by the agency. Plaintiff’s Opp. at 22. This presupposes that the next step was for the SNRA to be rejected or superceded. In fact, the next step was for the SNRA to be adopted, in whole, or in part or in amended form, as the final FEMA position on threats and hazards in need of being addressed. But this did not happen.

Plaintiff cites to Playboy Enterprises, Inc. v. Dep’t of Justice, 677 F.2d 931 (D.C. Cir. 1982), as purported support for the proposition that selecting facts from a larger set of facts does not bring the smaller set of facts within the protection of Exemption 5. Plaintiff’s Opp. at 22-23. But the factual information and decisionmaking process in Playboy Enterprises were far different. In that case, a task force was charged with investigating facts surrounding an FBI informant and how he was treated by the FBI and issuing a report to the Attorney General, who was then charged with making the factual information available to Congress; that was the task

force's sole mission. Id. at 933, 935-36. The Court of Appeals held that purely factual information that could be segregated from the task force's recommendations should be released. Id.

In Playboy Enterprises, there was no judgment call involving assessing the significance of a particular fact and its relevance to a final decision as to whether the fact should be considered for a final assessment-type of report; it was simply pure fact gathering. By contrast, here the factual information and data was compiled to allow FEMA leadership an opportunity to decide if the threats and hazards purportedly identified by the facts chosen should in fact be considered threats and hazards by FEMA in need of being addressed.

Plaintiff also relies on Lahr v. NTSB, 453 F. Supp.2d 1153 (C.D. Cal. 2006). In that case, the Court held that radar data associated with an airplane crash could not be withheld simply because it consisted of facts taken from a larger set of facts. Id. at 1187. The Court concluded that the government had failed to show how release of the factual information would impinge on the deliberative process. Id.

Here, by contrast, defendant has demonstrated that the factual information is completely entangled with the analyses of proposed threats and hazards. Bridges Decl., ¶ 11. As Ms. Stainby explains:

Each of the updated risks is based on sets of facts selected from a larger set of facts by the drafters who were recommending that a specific risk or hazard be included in the final SNRA. Releasing these facts would allow for the updated recommended risks to be identified, which would cause confusion to the public, as these updated risks do not represent FEMA's current position regarding risks.

Supp. Stainby Decl., ¶ 17.

Plaintiff argues that FEMA's disclosure of certain SNRA Guidance documents "has

already caused whatever attenuated harm to decisionmaking processes which FEMA has alleged.” Plaintiff’s Opp. at 25. On the contrary. Ms. Stainsby points out that:

These documents are guidance documents, containing instructions and templates. They do not include any of the threats, risks, analysis, data, or conclusions that were redacted. Plaintiff’s claim that the disclosure of these guidance documents “discloses essentially the entire deliberative process” is inaccurate. *Id.* at 27. These guidance documents show stakeholders how to participate in the SNRA process: to send data and risk summary sheets to FEMA. They do not describe the approval process mentioned in paragraph 4 of my previous Declaration or reveal any of the deliberative material that was redacted.

Supp. Stainsby Decl., ¶ 15. Thus, FEMA’s disclosure of these Guidance documents has nothing to do with FEMA’s need to withhold factual data underlying recommended risks in a predecisional document.

Plaintiff attempts to undercut defendant’s reliance on Mapother v. Department of justice, 3 F.3d 1533 (D.C. Cir. 1993), by arguing that Mapother dealt with fact summaries prepared to help the decisionmaker make a discretionary decision as to whether a specific person should be barred from entering the country. Plaintiff’s Opp. at 25. Plaintiff claims that this is different than “a factual ‘summary’ of a number of threats[.]” Plaintiff’s Opp. at 25.

On the contrary, the factual information withheld here is very similar to what was at issue in Mapother. In both cases factual information was compiled to determine whether a threat existed, and the decisionmaker had to decide whether the threat in fact existed and, if so, how it should be addressed. The fact that there was a final decision in Mapother, and no final decision here, fails to undercut the similarity of these cases.

Plaintiff also fails to undercut defendant’s reliance on Ancient Coin Collectors Guild v. U.S. Dep’t of State, 641 F.3d 504, 513 (D.C. Cir. 2011). Plaintiff concedes that this case stands for the proposition that factual information that reflects what issues are important to the

predecisional findings and recommendations are properly withheld. Plaintiff's Opp. at 26.

Plaintiff argues that in the instant case the factual information "concerns a very broad array of risks and harms not specific to any decisionmaker or decision." Plaintiff's Opp. at 26.

This observation is manifestly erroneous. The decision at issue in this case involved which risks and threats FEMA would deem appropriate to include in a national risk assessment document. The risks and threats identified in the draft 2015 SNRA included factual information the drafters thought FEMA leadership should adopt as the agency's final position. Thus, the information was a critical part of the decisionmaking process.

Finally, plaintiff fails to overcome the fact that release of the draft SNRA could cause confusion for the public by revealing potential threats and hazards that FEMA never adopted as actual threats and hazards that needed to be addressed in the manner suggested by the analyses and recommendations. "Release of this information would therefore cause confusion to the public and may result in members of the public taking action on potential threats and hazards where no action is warranted, or not the action suggested by a recommendation contained in the documents." Bridges Decl., ¶ 12.

Accordingly, plaintiff has failed to undermine defendant's showing that the information withheld here is predecisional and deliberative in nature, including the factual information, and that its release would harm the agency's decision-making process in ways courts have recognized should be prevented through the application of FOIA Exemption 5.

Consequently, defendant's invocation of Exemption 5 here should be upheld.

II. FEMA Has Complied with FOIA's Segregability Requirement.

Plaintiff argues that FEMA has failed to reasonably segregate all non-exempt information. As an example, plaintiff points to the Risk Summary Sheets table of contents in the SNRA technical Appendix. Plaintiff's Opp. at 28. Ms. Stainby responds that:

The redacted portions of the table of contents contains "[a] list of new and updated risks identified in the 2015 SNRA." Vaughn Index 51. Withholding the new and updated risks identified in the table of contents is consistent with the withholdings throughout the SNRA documents. Even though the Risk Summary Sheet authors were told to expect scrutiny from the public and other stakeholders, the underlying assumption is that this would happen after the 2015 SNRA documents were finalized and published, which did not occur. Releasing the new and updated risks in the SNRA would cause public confusion, as they would not represent FEMA's current position regarding risks, which can be found in the National THIRA.

Supp. Stainby Decl., ¶ 16.

Plaintiff also points to the SNRA Guidance and Technical Appendix. Plaintiff's Opp. at 29. The Guidance documents were released. Supp. Stainby Decl., ¶ 15. The Technical Appendix cannot be released because it contains a description of the risks identified. *Id.* at ¶ 15.

FEMA conducted a line-by-line review of all of the withheld information to ensure that it contained no segregable, nonexempt information, and concluded that no further information could be reasonably segregated from the exempt information and released, including factual information. Bridges Decl., ¶ 15. Plaintiff has failed to show any error with respect to this issue.

CONCLUSION

Accordingly, for all of the reasons set forth above, in defendant's prior memorandum, and in defendant's declarations, defendant respectfully submits that its motion for summary

judgment should be granted, and plaintiff's cross-motion for summary judgment should be denied.

Respectfully submitted,

JESSIE K. LIU,
D.C. BAR # 472845
United States Attorney
for the District of Columbia

DANIEL F. VAN HORN,
D.C. BAR #924092
Chief, Civil Division

/s/ Marina Utgoff Braswell
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL)	
RESPONSIBILITY)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 18-0158 (CKK)
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

ORDER

Upon consideration of defendant's motion for summary judgment, plaintiff's opposition and cross-motion for summary judgment, and the entire record in this case, the Court finds that there are no issues of material fact and the defendant is entitled to judgment as a matter of law. Therefore, it is hereby

ORDERED that plaintiff's cross-motion for summary judgment is denied; and it is further

ORDERED that defendant's motion for summary judgment is granted.

This is a final, appealable order.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL)	
RESPONSIBILITY)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 18-0158 (CKK)
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

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

Pursuant to Local Rule 7(h), defendant United States Department of Homeland Security (“DHS”), on behalf of the Federal Emergency Management Agency (“FEMA”), submits this response to plaintiff’s statement of material facts as to which there is no genuine issue:

1. On September 1, 2017, Plaintiff submitted a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to the Federal Emergency Management Agency (“FEMA”) for documents related to the 2015 update to the Strategic National Risk Assessment (“SNRA”). Bridges Decl. ¶ 3, Exhibit A.

Not disputed.

2. In response to PEER’s FOIA Request, FEMA produced 716 Bates- stamped pages of documentation in three productions dated May 9, 2018, June 22, 2018, and June 25, 2018. Dinerstein Decl. ¶ 3, Exhibit A; Bridges Decl. ¶4-5.

Not disputed.

3. On September 10, 2018, FEMA delivered to Plaintiff a *Vaughn*

Declaration identifying the withholdings and redactions made by FEMA across the production, beginning at page 46 and ending at page 716. Dinerstein Decl. ¶ 4; Bridges Decl. ¶ 6, Exhibit B.

Not disputed although note that a paginated copy of the Vaughn Index was filed on March 5, 2019, at ECF No. 23.

Respectfully submitted,

JESSIE K. LIU,
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United States Attorney
for the District of Columbia

DANIEL F. VAN HORN,
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Chief, Civil Division

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

PUBLIC EMPLOYEES FOR ENVIRONMENTAL
RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

Civil Action No. 18-cv-158 (CKK)

SUPPLEMENTAL DECLARATION OF LEILONI STAINSBY

I, Leiloni Stainsby, hereby declare, pursuant to 28 U.S.C. § 1746, the following to be true and correct:

1. I am the Acting Director for the National Preparedness Directorate, Federal Emergency Management Agency (“FEMA”), United States Department of Homeland Security (“DHS”). I have held this position since July 2018. In this capacity, I am responsible for the development and delivery of national risk and capability assessments. I have been with the Department since November 2011.

2. I make this supplemental declaration based on my personal knowledge of FEMA’s intent to choose the National Threat and Hazard Identification and Risk Assessment (THIRA) as its main risk assessment vehicle in 2015. The purpose of this declaration is to provide information concerning why FEMA began using the THIRA instead of the Strategic National Risk Assessment (SNRA) as its national risk assessment vehicle, what FEMA hoped to accomplish through use of a National THIRA, and to address specific points made in Plaintiff’s motion/opposition brief.

Moving to the National THIRA

3. In 2015, Timothy W. Manning, then-Deputy Administrator of Protection and National Preparedness,¹ recommended to then-Administrator W. Craig Fugate the inclusion of the THIRA as part of Fiscal Year 2016 Annual Planning Guidance.² Certain data from the SNRA would be used in developing the National THIRA. Both the THIRA and the SNRA were part of the formulation of a decision that would identify threats and hazards that needed to be addressed in various jurisdictions and how they should go about addressing the threats and hazards identified, pursuant to Presidential Policy Directive 8.³ This involves policy judgments made by FEMA based on selectively culled factual information.

4. The THIRA process enables a jurisdiction to examine current and future risks and resource requirements. Those jurisdictions and regions completing a THIRA use the information to support planning and investment strategies.

5. Starting in 2011, the major urban areas, states, tribal nations, and territories receiving Homeland Security Grant Program (HSGP) or Tribal Homeland Security Grant Program (THSGP) funds and the ten (10) FEMA Regions completed an annual THIRA.

6. The National Preparedness Directorate used the information to promote data-driven policy decisions to prioritize the development of planning guidance, training courses, and exercises.

¹ Currently the National Preparedness Directorate.

² Timothy W. Manning and W. Craig Fugate are no longer with FEMA.

³ Presidential Policy Directive 8 is meant to strengthen “the security and resilience of the United States through systemic preparation for the threats that pose the greatest risk to the security of the Nation, including acts of terrorism, cyber attacks, pandemics, and catastrophic natural disasters.” PPD-8, p. 1.

7. THIRA data, through 2015, was specific to the jurisdiction completing the assessment and could not be “rolled up” into a national perspective. To further the strategic plan objectives identified in FEMA’s FY 2016 Annual Planning Guidance, the then-Protection and National Preparedness component proposed adding a National THIRA to the guidance to gain a risk-informed understanding of the catastrophic threats and hazards that affect the Nation, and the resources necessary to address those catastrophic incidents.

8. In 2015, the National THIRA became FEMA’s primary national assessment tool to identify national catastrophic threats facing the United States, its tribes and territories, and identifying resources that would be needed to prepare for, mitigate against and most effectively respond to these threats. The 2015 SNRA that had been drafted was never finalized.

Response to Plaintiff’s Points

9. Plaintiff claims the “plenary literature review and body of factual information have been cited by FEMA or DHS on a number of occasions.” Reply Brief at 17. In footnote 5, the quote from the National Prevention Framework, Second Edition (2016) references the National Preparedness Goal, Second Edition, which was published in September 2015, while the 2015 SNRA was still being drafted through November 2015. Production 000044. The same is true for Plaintiff’s citations to the National Mitigation Framework, Second Edition (2016), and the National Response Framework, Third Edition (2016): both documents explicitly reference the National Preparedness Goal, Second Edition (2015). In addition, the National Preparedness Goal fails to state which version of the SNRA results appear, because only one version of the SNRA was finalized and published: the December 2011 SNRA.

10. Plaintiff mentions Nathan Anderson, Acting Director of the Government Accountability Office, and his public comments on February 27, 2019, regarding the updated

SNRA. Reply Brief at 7. Mr. Anderson stated that in June 2016 DHS reported it had completed a planned refresh of the SNRA, which included information on electromagnetic events. *Id.* at 7-8. The SNRA documents were intra-agency documents, so other agencies were likely to have possessed and reviewed the drafts. In addition, as Plaintiff's citation makes clear, Mr. Anderson referenced GAO-16-243 Electromagnetic Threats (2016). The GAO-16-243 was published in March of 2016, and regarding the SNRA, it states that "DHS acknowledged this responsibility through its inclusion of EMP as a risk event in the 2015 update of the Strategic National Risk Assessment (SNRA), noting that damage from a deliberate attack on the grid could cause cascading impacts through other infrastructure systems, leading to economic disruption and the potential loss of life." GAO-16-243 at 20. In 2019, Mr. Anderson was not able to reference documents later than the 2016 GAO-16-243 because the 2015 SNRA was never finalized. This further illustrates that releasing the draft SNRA would cause confusion not just with other federal agencies, but with the public as well, as they would believe the SNRA is still the main national risk assessment vehicle, when it is not.

11. Plaintiff quotes the May 2015 Findings Review of the SNRA⁴ to claim that "[c]learly the deliberative process was completed by the time this document was created." Reply Brief at 8. Plaintiff believes that if stakeholders reviewed draft findings, then the deliberative process was completed. Stakeholders reviewing the draft findings is only one part of the deliberative process, not the beginning, and certainly not the ending of the process. As I stated in my previous Declaration, FEMA's National Integration Center (NIC) "did not send the SNRA

⁴ "... the assessment treated impact categories separately (e.g. economic impacts are reported separately from fatality impacts). This allowed stakeholders to apply their own expert judgments to the findings and decide how those findings should inform core capabilities in the Goal." Production 000084.

Documents through the formal concurrence process and NPD leadership did not approve them. Without review and concurrence, the SNRA Documents were never finalized or publicly released.” Stainsby Decl. at ¶4. The deliberative process could not be completed without review and approval from NPD leadership, which had the authority to reject any of the draft findings and recommendations.

12. Plaintiff claims that because FEMA acknowledges the 2015 SNRA documents were intended to be released, they could not have been deliberative. Reply Brief at 10. The fact that a final approved SNRA was intended to be released does not mean that the predecisional version was not deliberative. The facts in the 2015 SNRA documents reflect FEMA’s deliberative process involving judgment calls as to what to include, as well as analyses and recommendations as to threats and hazards that should be included in a final SNRA. Specific facts were selectively chosen out of larger sets of facts, and any of these could have been rejected during the final approval process. The authors of the draft SNRA may well have been chilled from including certain facts, analyses and recommendations if they knew that these would be released even if rejected during the final approval process. Exemption 5 provides protection for this part of the process.

13. Plaintiff quotes Production 000070, which states that the draft SNRA documents “represents a fully adjudicated draft of the 2015 Strategic National Risk Assessment (SNRA) Findings document.” Production 000070. Plaintiff claims this quote shows the entire review process was completed. Reply Brief at 7, 14, and 20. What this shows is that the draft SNRA documents were ready for NPD leadership to review. The term “fully adjudicated draft” shows that it was still a draft. As previously stated, NPD leadership failed to provide its review and concurrence so the SNRA remained a draft document.

14. Plaintiff mentions the RAND Corporation's Homeland Security National Risk Characterization: Risk Assessment Methodology (2018) to claim that the SNRA reflects FEMA's current position regarding risks. Reply Brief at 18. Plaintiff did not fully quote RAND, which stated the following:

We began data collection by conducting our own search for relevant open-source assessments. The 2015 SNRA was the starting point for data collection, although it did not address all threats and hazards included in the HSNRC. The documents found during these initial searches provided a useful, if incomplete, set of data on which to develop the risk summary sheets. In some cases, such as the assessment of natural disaster hazards, the data collected from these initial searches ultimately provided as many as half the citations used in the final risk characterization.

Homeland Security National Risk Characterization: Risk Assessment Methodology (2018) at 34.

Although RAND believed the draft 2015 SNRA documents were "useful," it also believed they were "incomplete." This describes draft documents that were not finalized, the types of documents Exemption 5 was intended to protect. Releasing these documents would cause confusion to federal agencies and the public regarding what FEMA's actual position is regarding risks.

15. Plaintiff claims that the release of the SNRA 2015 Update Background and General Guidance, SNRA 2015 Qualitative Data Instructions, and SNRA 2015 Risk Summary Sheet Instructions & Template, "has already caused whatever attenuated harm to decisionmaking processes which FEMA has alleged." Reply Brief at 25. These documents are guidance documents, containing instructions and templates. They do not include any of the threats, risks, analysis, data, or conclusions that were redacted. Plaintiff's claim that the disclosure of these guidance documents "discloses essentially the entire deliberative process" is inaccurate. *Id.* at 27. These guidance documents show stakeholders how to participate in the SNRA process: to send

data and risk summary sheets to FEMA. They do not describe the approval process mentioned in paragraph 4 of my previous Declaration or reveal any of the deliberative material that was redacted.

16. Plaintiff claims there is no explanation for why subjects of the Risk Summary Sheets in the table of contents of the SNRA Technical Appendix were withheld. *Id.* at 13 & 28. The redacted portions of the table of contents contains “[a] list of new and updated risks identified in the 2015 SNRA.” Vaughn Index 51. Withholding the new and updated risks identified in the table of contents is consistent with the withholdings throughout the SNRA documents. Even though the Risk Summary Sheet authors were told to expect scrutiny from the public and other stakeholders, the underlying assumption is that this would happen after the 2015 SNRA documents were finalized and published, which did not occur. Releasing the new and updated risks in the SNRA would cause public confusion, as they would not represent FEMA’s current position regarding risks, which can be found in the National THIRA.

17. Plaintiff claims there is more factual information that may be released. Reply Brief at 29. The Declaration of Gregory Bridges outlines why releasing more factual information is problematic:

The information in these documents is deliberative because they consist of proposed factual findings, proposed assessments of information pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors. Any factual information included in these documents consists of facts culled from a larger set of facts concerning threats and hazards. The authors of these documents used their judgment as to which facts to include and which facts to exclude, and thus release of this factual information would reveal their deliberative process in selecting pertinent facts to include in these draft documents. Additionally, the factual information is so entangled with the analyses and proposed conclusions in these documents that its release would reveal the deliberative process and, because the documents were never finalized, may not reflect FEMA’s actual position regarding the risks and impacts such threats and hazards could present.

Bridges Decl. at ¶11.

Each of the updated risks is based on sets of facts selected from a larger set of facts by the drafters who were recommending that a specific risk or hazard be included in the final SNRA. Releasing these facts would allow for the updated recommended risks to be identified, which would cause confusion to the public, as these updated risks do not represent FEMA's current position regarding risks.

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

Executed on this 30th day of April 2019.


LEILONI STAINSBY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

Plaintiff,

V.

U.S. DEPARTMENT OF
HOMELAND SECURITY

Defendant.

Civil Action No. 18-0158 (CKK)

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S
CROSS-MOTION FOR SUMMARY JUDGMENT AND IN REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT**

PRELIMINARY STATEMENT

Plaintiff filed this civil action against defendant United States Department of Homeland Security (“DHS”), alleging that DHS’s Federal Emergency Management Agency (“FEMA”) violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in connection with plaintiff’s request for certain specified information concerning FEMA’s 2015 Strategic National Risk Assessment (“SNRA”). Plaintiff has challenged FEMA’s withholding of certain information pursuant to FOIA Exemption 5, primarily on the grounds that the information was sufficiently final, that FEMA allegedly has released the information withheld to other entities, relied upon it publicly and within the agency, and that certain factual information can be released without harming the decisionmaking process.

Plaintiff is wrong on all counts. The 2015 SNRA, which was intended to identify risks and hazards FEMA concluded were significant and assess ways to address them, was never finalized by FEMA. Its contents were never represented by FEMA to be final in any way, or to be used as a final product. The factual information plaintiff claims can be released lies at the heart of the decisionmaking process. Its release would reveal FEMA's deliberative process, harm the decisionmaking to which it relates, and cause confusion for the public as to which risks and hazards FEMA deemed significant and how such risks and hazards should be addressed.

As set forth in the defendant's prior memorandum, the Declaration of Gregory Bridges ("Bridges Decl."), the Declaration of Leiloni Stainsby ("Stainsby Decl."), and the attached Supplemental Declaration of Leiloni Stainsby ("Supp. Stainsby Decl."), FEMA has properly withheld certain information pursuant to Exemption 5 of the FOIA.

ARGUMENT

I. Pursuant to Exemption 5, FEMA Properly Withheld Information Subject to the Deliberative Process Privilege

Until 2015, FEMA used the SNRA as a vehicle to identify risks and hazards that needed to be addressed in various jurisdictions and to assess how such threats and hazards should be addressed. Supp. Stainsby Decl., ¶¶ 2-3. In 2015, FEMA choose the National Threat and Hazard Identification and Risk Assessment ("National THIRA") as its main risk assessment vehicle. *Id.* at ¶ 2. Certain data from the SNRA was to be used in developing the THIRA. *Id.* at ¶ 3. As Ms. Stainsby explains:

Both the THIRA and the SNRA were part of the formulation of a decision that would identify threats and hazards that needed to be addressed in various jurisdictions and how they should go about addressing the threats and hazards identified, pursuant to Presidential Policy Directive 8. [footnote omitted] This

involves policy judgments made by FEMA based on selectively culled factual information.

Id. at ¶ 3.

Ms. Stainsby further states that “[i]n 2015, the National THIRA became FEMA’s primary national assessment tool to identify national catastrophic threats facing the United States, its tribes and territories, and identifying resources that would be needed to prepare for, mitigate against and most effectively respond to these threats. The 2015 SNRA that had been drafted was never finalized.” Id. at ¶ 8.

A. The Withheld 2015 SNRA Information is Predecisional

FEMA previously demonstrated that the 2015 SRNA documents withheld are predecisional because they were never finalized or publicly released. Stainsby Decl., ¶¶ 3-4; Bridges Decl., ¶ 10. Plaintiff challenges the predecisional nature of these documents in various ways.

First, plaintiff argues that “there was no ultimate *policy* decision, or even a process of formulating policy, which disclosure of the SNRA might harm.” Plaintiff’s Opp. at 10. Plaintiff reaches this conclusion based on its claim that FEMA has failed to show the SNRA contained specific policy recommendations or led to any policy decision. Id. Plaintiff is wrong on the facts and, to the extent that plaintiff argues that there must be an ultimate policy decision, plaintiff is wrong on the law.

As FEMA demonstrated in its opening memorandum, the Supreme Court has made clear that FEMA is not required to demonstrate that these documents led to any final policy decision. See Def’s Mem. at 4, *quoting* Nat’l Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 151 n.18 (1975). Plaintiff’s claim to the contrary, made without support, is thus without basis.

Additionally, FEMA has demonstrated that the SNRA was indeed part of a policy process intended to carry out FEMA's responsibility to "develop[] guidance and tools to assist communities in tackling their unique preparedness challenges and coordinates the adoption and implementation of a common incident management platform for emergency responders and officials." Stainsby Decl., ¶¶ 3-4; Supplemental Stainsby Decl., ¶ 3. FEMA's National Integration Center (NIC) is charged with "helping people and communities become more resilient by developing the capabilities needed to prevent, protect against, respond to, recover from, and mitigate against all threats and hazards." Stainsby Decl., ¶¶ 3-4. Deciding which threats and hazards should be identified, as required by Presidential Policy Directive 8,¹ involves policy judgments made by FEMA. Supp. Stainsby Decl., ¶ 3. Plainly deciding which threats and hazards need to be addressed, and in which manner, involves policy formulation every bit as much as the State Department deciding which foreign countries pose a threat to this country, and how those threats should be managed, involves foreign "policy" decisions. Plaintiff's argument to the contrary is untenable.

Plaintiff argues that the 2015 SNRA findings were intended to be a stand-alone document and summarized for public dissemination. Plaintiff's Opp. at 10. Even if true, that would only have happened once the 2015 SNRA was finalized. The fact that a final decision as to which risks and threats merited which type of response was to be made public does not transform the

¹ Presidential Policy Directive 8 is designed to strengthen "the security and resilience of the United States through systemic preparation for the threats that pose the greatest risk to the security of the Nation, including acts of terrorism, cyber attacks, pandemics, and catastrophic natural disasters." PPD-8, p. 1.

predecisional documents addressing this information into final documents. Supp. Stainsby Decl., ¶ 12.

Plaintiff argues that the documents were “sufficiently final” to be released but cites no facts to demonstrate such a standard. Plaintiff’s Opp. at 10-11. Moreover, plaintiff cites no authority for the proposition that “sufficiently final” documents somehow lose their predecisional status, even if it could be ascertained what “sufficiently final” actually means.

Plaintiff argues that the 2015 SNRA “has been relied upon by the agency in subsequent materials and communications with Congress.” Plaintiff’s Opp. at 7. Although plaintiff cites no example of the 2015 SNRA being provided to Congress, id., plaintiff cites GAO Acting Director Nathan Anderson and certain public comments he made on February 27, 2019. Id.

Ms. Stainsby responds that on February 27, 2019:

Mr. Anderson stated that in June 2016 the Department of Homeland Security (DHS) reported it had completed a planned refresh of the SNRA, which included information on electromagnetic events. Reply Brief 7-8. The SNRA documents were intra-agency documents, so other agencies were likely to have possessed and reviewed the drafts. In addition, as Plaintiff’s citation makes clear, Mr. Anderson referenced GAO-16-243 Electromagnetic Threats (2016). The GAO-16-243 was published in March of 2016, and regarding the SNRA, it states that ‘DHS acknowledged this responsibility through its inclusion of EMP as a risk event in the 2015 update of the Strategic National Risk Assessment (SNRA), noting that damage from a deliberate attack on the grid could cause cascading impacts through other infrastructure systems, leading to economic disruption and the potential loss of life.’ GAO-16-243 at 20. In 2019, Mr. Anderson was not able to reference documents later than the 2016 GAO-16-243 because the 2015 SNRA was never finalized. This further illustrates that releasing the draft SNRA would cause confusion not just with other federal agencies, but with the public as well, as they would believe the SNRA is still the main national risk assessment vehicle, when it is not.

Supp. Stainsby Decl., ¶ 10.

Plaintiff points to the SNRA Findings that references stakeholder review of assessments, and argues that this demonstrates the deliberative process has been completed. Plaintiff's Opp. at 8. Ms. Stainsby responds that "[s]takeholders reviewing the draft findings is only one part of the deliberative process, not the beginning, and certainly not the ending of the process." Supp. Stainsby Decl., ¶ 11. Having stakeholders review draft findings as part of the decisionmaking process makes sense, but the 2015 SNRA was never finalized by NPD leadership or publicly released. Id.

Plaintiff also claims that FEMA has taken an inconsistent position by arguing that the SNRA is predecisional while simultaneously stating that "it was employed as the 'analytical foundation' of the final published National Preparedness Goal and the Planning Frameworks." Plaintiff's Opp. at 11. Plaintiff cites the Stainsby Declaration as purported support for this second point. Id. But the Stainsby Declaration says no such thing. In that declaration, Ms. Stainsby states that "[t]he NIC *intended* the 2015 SNRA Documents to be the risk-based analytic foundation of the National Preparedness Goal." Id. at ¶ 3 (emphasis added). That is a far cry from saying that the 2015 SNRA was in fact the analytic foundation of a published National Preparedness Goal.

The Supplemental Stainsby Declaration explains that:

The National Planning Frameworks documents say the results of the SNRA appear in the National Preparedness Goal, 2nd Edition, but they do not say which version of the SNRA results appear. That's because only one version of the SNRA was finalized and published: the December 2011 SNRA. In addition, the National Preparedness Goal, 2nd Edition, was published in September 2015, while the SNRA was still in draft form in November 2015, as indicated in Production 000044.

Id. at ¶ 9.

Plaintiff argues that “there is nothing in the record to indicate what the process was or that it actually concluded or how or why.” Plaintiff’s Opp. at 12. On the contrary, the Stainsby Declaration explained that the 2015 draft SNRA was developed by FEMA’s National Integration Center (NIC), to serve as recommended guidance and tools to assist communities in tackling their unique preparedness challenges. *Id.* at 3. The NIC forwarded the draft SNRA to several offices within FEMA for review. *Id.* at 4. The next step was for FEMA’s National Preparedness Directorate (NPD) leadership to approve the draft SNRA but that never happened. *Id.* at 4 & 6. So the process concluded with the 2015 SNRA remaining in draft form, lacking approval by the NPD leadership charged with approving the draft.

Plaintiff tries to make much of the fact that the 2015 SNRA was labelled a “fully adjudicated draft.” *See, e.g.*, Plaintiff’s Opp. at 14. This label, however, further supports the fact that the documents were predecisional. The term “fully adjudicated draft” as used by FEMA simply meant that it was ready to be reviewed by the NPD leadership. Supp. Stainsby Decl., ¶ 13. Plaintiff’s attempt to seize on the words “fully adjudicated” while ignoring the word “draft” is unavailing.

Plaintiff argues, repeatedly, that the withheld information cannot be predecisional because it was used by others outside of FEMA. For example, plaintiff argues that the Rand Corporation prepared a report for DHS in 2018 and referenced the 2015 SNRA results. Plaintiff’s Opp. at 18.

Ms. Stainsby responds that:

Plaintiff did not fully quote RAND, which stated the following:

‘We began data collection by conducting our own search for relevant open-source assessments. The 2015 SNRA was the starting point for data collection,

although it did not address all threats and hazards included in the HSNRC. The documents found during these initial searches provided a useful, if incomplete, set of data on which to develop the risk summary sheets. In some cases, such as the assessment of natural disaster hazards, the data collected from these initial searches ultimately provided as many as half the citations used in the final risk characterization.’

Homeland Security National Risk Characterization: Risk Assessment Methodology (2018) at 34.

Although RAND believed the draft 2015 SNRA documents were ‘useful,’ it also believed they were ‘incomplete.’ This describes draft documents that weren’t finalized, the types of documents Exemption 5 was intended to protect. Releasing these documents would cause confusion to federal agencies and the public regarding what FEMA’s actual position is regarding risks.

Supp. Stainsby Decl., ¶ 14.

Plaintiff’s attempts to show that the information at issue is not predecisional clearly fail. Plaintiff has failed to undermine FEMA’s showing that the 2015 SNRA documents were never finalized and thus are predecisional.

2. The Withheld Information is Deliberative

Plaintiff argues that the withheld documents cannot be considered deliberative because they have been used to support agency publications. Plaintiff’s Opp. at 16. Plaintiff fails to identify any agency publications. *Id.* To the extent that plaintiff is referring to the Rand Report or the National Planning Frameworks, or GAO, defendant has demonstrated above that the 2015 SNRA was not used in the manner plaintiff suggested. *See, supra*, at 5 & 7.

Plaintiff argues that the SNRA was a factual tool to be made available to various decisionmakers dealing with preparedness issues. Plaintiff’s Opp. at 16-17. In its final form that was the intent of the 2015 SNRA. But since it never was finalized, the information contained in these documents consisted of “proposed factual findings, proposed assessments of information

pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors.” Bridges Decl., ¶ 11. Had the 2015 SNRA received final approval, the factual findings and recommendations contained therein would no longer have been deliberative, because they would have been incorporated into the final document. But that never happened.

Plaintiff argues that there are no deliberations to chill by disclosing the withheld information “because internal deliberations took place prior to the creation of this draft.” Plaintiff’s Opp. at 20. Although what plaintiff means by this unsupported statement is unclear, perhaps plaintiff is arguing that the draft represents the final conclusions of the authors. Not only does plaintiff cite no support for this statement, but it is undermined by the Bridges and Stainsby declarations.

As Mr. Bridges explains, these documents contain facts concerning threats and hazards perceived by the authors and analyses and proposed conclusions. The contents of these documents may not reflect FEMA’s actual position regarding threats and hazards and how they should be addressed. Bridges Decl., ¶ 11; Stainsby Decl., ¶ 6. The contents of these documents were part of the give and take by which FEMA had intended to arrive at a final decision as to which threats and hazards existed and how FEMA recommended they be addressed. Thus, plaintiff’s claim that “‘specific threats and hazards’ cannot be ‘predecisional’”, or presumably deliberative, is without basis. Plaintiff’s Opp. at 20. Specific threats and hazards identified in the withheld documents represent what the authors recommended that their leadership find to be the pertinent hazards and threats, but their assessment was subject to being overruled by FEMA NPD leadership. Supp. Stainsby Decl., ¶ 11.

Plaintiff argues that it makes no sense that FEMA withheld data and factual information on the ground that it was entangled with FEMA's analyses and conclusions "but [did] not withhold or even identify, the purported analyses and conclusions themselves." Plaintiff's Opp. at 20. Plaintiff's point is unclear, given that plaintiff points to no evidence where FEMA's analyses or conclusions were released. *Id.*

Plaintiff also argues that FEMA's claim that release of these predecisional, deliberative documents might cause confusion to the public is belied by the fact that the agency publicly relied on this information. Plaintiff's Opp. at 21, *citing* footnote 5 at 17. Ms. Stainsby explains plaintiff is wrong:

In footnote 5, the quote from the National Prevention Framework, Second Edition (2016) references the National Preparedness Goal, Second Edition, which was published in September 2015, while the 2015 SNRA was still being drafted through November 2015. Production 000044. The same is true for Plaintiff's citations to the National Mitigation Framework, Second Edition (2016), and the National Response Framework, Third Edition (2016): both documents explicitly reference the National Preparedness Goal, Second Edition (2015). In addition, the National Preparedness Goal fails to state which version of the SNRA results appear, because only one version of the SNRA was finalized and published: the December 2011 SNRA.

Supp. Stainsby Decl., ¶ 9.

Plaintiff argues that "it is unreasonable to conclude that there are sensitive deliberations in unreleased final drafts which have passed the adjudicative process and whose anonymous authors knew in advance would be made public." Plaintiff's Opp. at 21. Plaintiff misunderstands the process as well as the purpose of Exemption 5.

This Circuit has made clear that Exemption 5 is intended to protect the agency's decision-making process, not just the contents of specific documents. Mead Data Central Inc. v. U.S. Dep't of Air Force, 566 F.2d 242, 256 (D.C. Cir. 1977) ("Exemption five is intended to protect

the deliberative process of government and not just deliberative material.”). FEMA decisionmakers need to be able to rely on their employees participating in the creation of the SNRA draft documents to identify all potential threats and hazards that the drafters believe constitutes a threat and/or hazard that needs to be addressed, in the manner recommended by the authors. But drafters may well be hesitant to recommend certain threats and hazards, or ways to address them, if they knew that any of their suggestions not be adopted by FEMA leadership would still be made public, or be made public even in the absence of a final agency decision. Supp. Stainsby Decl., ¶ 12.

Plaintiff argues that the factual information withheld, which FEMA explained consists of judgment calls made to select facts from a larger set of facts concerning possible threats and hazards, is “impossible for Plaintiff to evaluate” but that there is no evidence that any part of the SNRA was rejected or superseded by the agency. Plaintiff’s Opp. at 22. This presupposes that the next step was for the SNRA to be rejected or superceded. In fact, the next step was for the SNRA to be adopted, in whole, or in part or in amended form, as the final FEMA position on threats and hazards in need of being addressed. But this did not happen.

Plaintiff cites to Playboy Enterprises, Inc. v. Dep’t of Justice, 677 F.2d 931 (D.C. Cir. 1982), as purported support for the proposition that selecting facts from a larger set of facts does not bring the smaller set of facts within the protection of Exemption 5. Plaintiff’s Opp. at 22-23. But the factual information and decisionmaking process in Playboy Enterprises were far different. In that case, a task force was charged with investigating facts surrounding an FBI informant and how he was treated by the FBI and issuing a report to the Attorney General, who was then charged with making the factual information available to Congress; that was the task

force's sole mission. Id. at 933, 935-36. The Court of Appeals held that purely factual information that could be segregated from the task force's recommendations should be released. Id.

In Playboy Enterprises, there was no judgment call involving assessing the significance of a particular fact and its relevance to a final decision as to whether the fact should be considered for a final assessment-type of report; it was simply pure fact gathering. By contrast, here the factual information and data was compiled to allow FEMA leadership an opportunity to decide if the threats and hazards purportedly identified by the facts chosen should in fact be considered threats and hazards by FEMA in need of being addressed.

Plaintiff also relies on Lahr v. NTSB, 453 F. Supp.2d 1153 (C.D. Cal. 2006). In that case, the Court held that radar data associated with an airplane crash could not be withheld simply because it consisted of facts taken from a larger set of facts. Id. at 1187. The Court concluded that the government had failed to show how release of the factual information would impinge on the deliberative process. Id.

Here, by contrast, defendant has demonstrated that the factual information is completely entangled with the analyses of proposed threats and hazards. Bridges Decl., ¶ 11. As Ms. Stainby explains:

Each of the updated risks is based on sets of facts selected from a larger set of facts by the drafters who were recommending that a specific risk or hazard be included in the final SNRA. Releasing these facts would allow for the updated recommended risks to be identified, which would cause confusion to the public, as these updated risks do not represent FEMA's current position regarding risks.

Supp. Stainby Decl., ¶ 17.

Plaintiff argues that FEMA's disclosure of certain SNRA Guidance documents "has

already caused whatever attenuated harm to decisionmaking processes which FEMA has alleged.” Plaintiff’s Opp. at 25. On the contrary. Ms. Stainsby points out that:

These documents are guidance documents, containing instructions and templates. They do not include any of the threats, risks, analysis, data, or conclusions that were redacted. Plaintiff’s claim that the disclosure of these guidance documents “discloses essentially the entire deliberative process” is inaccurate. *Id.* at 27. These guidance documents show stakeholders how to participate in the SNRA process: to send data and risk summary sheets to FEMA. They do not describe the approval process mentioned in paragraph 4 of my previous Declaration or reveal any of the deliberative material that was redacted.

Supp. Stainsby Decl., ¶ 15. Thus, FEMA’s disclosure of these Guidance documents has nothing to do with FEMA’s need to withhold factual data underlying recommended risks in a predecisional document.

Plaintiff attempts to undercut defendant’s reliance on Mapother v. Department of justice, 3 F.3d 1533 (D.C. Cir. 1993), by arguing that Mapother dealt with fact summaries prepared to help the decisionmaker make a discretionary decision as to whether a specific person should be barred from entering the country. Plaintiff’s Opp. at 25. Plaintiff claims that this is different than “a factual ‘summary’ of a number of threats[.]” Plaintiff’s Opp. at 25.

On the contrary, the factual information withheld here is very similar to what was at issue in Mapother. In both cases factual information was compiled to determine whether a threat existed, and the decisionmaker had to decide whether the threat in fact existed and, if so, how it should be addressed. The fact that there was a final decision in Mapother, and no final decision here, fails to undercut the similarity of these cases.

Plaintiff also fails to undercut defendant’s reliance on Ancient Coin Collectors Guild v. U.S. Dep’t of State, 641 F.3d 504, 513 (D.C. Cir. 2011). Plaintiff concedes that this case stands for the proposition that factual information that reflects what issues are important to the

predecisional findings and recommendations are properly withheld. Plaintiff's Opp. at 26.

Plaintiff argues that in the instant case the factual information "concerns a very broad array of risks and harms not specific to any decisionmaker or decision." Plaintiff's Opp. at 26.

This observation is manifestly erroneous. The decision at issue in this case involved which risks and threats FEMA would deem appropriate to include in a national risk assessment document. The risks and threats identified in the draft 2015 SNRA included factual information the drafters thought FEMA leadership should adopt as the agency's final position. Thus, the information was a critical part of the decisionmaking process.

Finally, plaintiff fails to overcome the fact that release of the draft SNRA could cause confusion for the public by revealing potential threats and hazards that FEMA never adopted as actual threats and hazards that needed to be addressed in the manner suggested by the analyses and recommendations. "Release of this information would therefore cause confusion to the public and may result in members of the public taking action on potential threats and hazards where no action is warranted, or not the action suggested by a recommendation contained in the documents." Bridges Decl., ¶ 12.

Accordingly, plaintiff has failed to undermine defendant's showing that the information withheld here is predecisional and deliberative in nature, including the factual information, and that its release would harm the agency's decision-making process in ways courts have recognized should be prevented through the application of FOIA Exemption 5.

Consequently, defendant's invocation of Exemption 5 here should be upheld.

II. FEMA Has Complied with FOIA's Segregability Requirement.

Plaintiff argues that FEMA has failed to reasonably segregate all non-exempt information. As an example, plaintiff points to the Risk Summary Sheets table of contents in the SNRA technical Appendix. Plaintiff's Opp. at 28. Ms. Stainby responds that:

The redacted portions of the table of contents contains "[a] list of new and updated risks identified in the 2015 SNRA." Vaughn Index 51. Withholding the new and updated risks identified in the table of contents is consistent with the withholdings throughout the SNRA documents. Even though the Risk Summary Sheet authors were told to expect scrutiny from the public and other stakeholders, the underlying assumption is that this would happen after the 2015 SNRA documents were finalized and published, which did not occur. Releasing the new and updated risks in the SNRA would cause public confusion, as they would not represent FEMA's current position regarding risks, which can be found in the National THIRA.

Supp. Stainby Decl., ¶ 16.

Plaintiff also points to the SNRA Guidance and Technical Appendix. Plaintiff's Opp. at 29. The Guidance documents were released. Supp. Stainby Decl., ¶ 15. The Technical Appendix cannot be released because it contains a description of the risks identified. *Id.* at ¶ 15.

FEMA conducted a line-by-line review of all of the withheld information to ensure that it contained no segregable, nonexempt information, and concluded that no further information could be reasonably segregated from the exempt information and released, including factual information. Bridges Decl., ¶ 15. Plaintiff has failed to show any error with respect to this issue.

CONCLUSION

Accordingly, for all of the reasons set forth above, in defendant's prior memorandum, and in defendant's declarations, defendant respectfully submits that its motion for summary

judgment should be granted, and plaintiff's cross-motion for summary judgment should be denied.

Respectfully submitted,

JESSIE K. LIU,
D.C. BAR # 472845
United States Attorney
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DANIEL F. VAN HORN,
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Chief, Civil Division

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL)	
RESPONSIBILITY)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 18-0158 (CKK)
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY)	
)	
Defendant.)	
_____)	

ORDER

Upon consideration of defendant's motion for summary judgment, plaintiff's opposition and cross-motion for summary judgment, and the entire record in this case, the Court finds that there are no issues of material fact and the defendant is entitled to judgment as a matter of law. Therefore, it is hereby

ORDERED that plaintiff's cross-motion for summary judgment is denied; and it is further

ORDERED that defendant's motion for summary judgment is granted.

This is a final, appealable order.

UNITED STATES DISTRICT JUDGE

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

PUBLIC EMPLOYEES FOR ENVIRONMENTAL
RESPONSIBILITY,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

Civil Action No. 18-cv-158 (CKK)

SUPPLEMENTAL DECLARATION OF LEILONI STAINSBY

I, Leiloni Stainsby, hereby declare, pursuant to 28 U.S.C. § 1746, the following to be true and correct:

1. I am the Acting Director for the National Preparedness Directorate, Federal Emergency Management Agency (“FEMA”), United States Department of Homeland Security (“DHS”). I have held this position since July 2018. In this capacity, I am responsible for the development and delivery of national risk and capability assessments. I have been with the Department since November 2011.

2. I make this supplemental declaration based on my personal knowledge of FEMA’s intent to choose the National Threat and Hazard Identification and Risk Assessment (THIRA) as its main risk assessment vehicle in 2015. The purpose of this declaration is to provide information concerning why FEMA began using the THIRA instead of the Strategic National Risk Assessment (SNRA) as its national risk assessment vehicle, what FEMA hoped to accomplish through use of a National THIRA, and to address specific points made in Plaintiff’s motion/opposition brief.

Moving to the National THIRA

3. In 2015, Timothy W. Manning, then-Deputy Administrator of Protection and National Preparedness,¹ recommended to then-Administrator W. Craig Fugate the inclusion of the THIRA as part of Fiscal Year 2016 Annual Planning Guidance.² Certain data from the SNRA would be used in developing the National THIRA. Both the THIRA and the SNRA were part of the formulation of a decision that would identify threats and hazards that needed to be addressed in various jurisdictions and how they should go about addressing the threats and hazards identified, pursuant to Presidential Policy Directive 8.³ This involves policy judgments made by FEMA based on selectively culled factual information.

4. The THIRA process enables a jurisdiction to examine current and future risks and resource requirements. Those jurisdictions and regions completing a THIRA use the information to support planning and investment strategies.

5. Starting in 2011, the major urban areas, states, tribal nations, and territories receiving Homeland Security Grant Program (HSGP) or Tribal Homeland Security Grant Program (THSGP) funds and the ten (10) FEMA Regions completed an annual THIRA.

6. The National Preparedness Directorate used the information to promote data-driven policy decisions to prioritize the development of planning guidance, training courses, and exercises.

¹ Currently the National Preparedness Directorate.

² Timothy W. Manning and W. Craig Fugate are no longer with FEMA.

³ Presidential Policy Directive 8 is meant to strengthen “the security and resilience of the United States through systemic preparation for the threats that pose the greatest risk to the security of the Nation, including acts of terrorism, cyber attacks, pandemics, and catastrophic natural disasters.” PPD-8, p. 1.

7. THIRA data, through 2015, was specific to the jurisdiction completing the assessment and could not be “rolled up” into a national perspective. To further the strategic plan objectives identified in FEMA’s FY 2016 Annual Planning Guidance, the then-Protection and National Preparedness component proposed adding a National THIRA to the guidance to gain a risk-informed understanding of the catastrophic threats and hazards that affect the Nation, and the resources necessary to address those catastrophic incidents.

8. In 2015, the National THIRA became FEMA’s primary national assessment tool to identify national catastrophic threats facing the United States, its tribes and territories, and identifying resources that would be needed to prepare for, mitigate against and most effectively respond to these threats. The 2015 SNRA that had been drafted was never finalized.

Response to Plaintiff’s Points

9. Plaintiff claims the “plenary literature review and body of factual information have been cited by FEMA or DHS on a number of occasions.” Reply Brief at 17. In footnote 5, the quote from the National Prevention Framework, Second Edition (2016) references the National Preparedness Goal, Second Edition, which was published in September 2015, while the 2015 SNRA was still being drafted through November 2015. Production 000044. The same is true for Plaintiff’s citations to the National Mitigation Framework, Second Edition (2016), and the National Response Framework, Third Edition (2016): both documents explicitly reference the National Preparedness Goal, Second Edition (2015). In addition, the National Preparedness Goal fails to state which version of the SNRA results appear, because only one version of the SNRA was finalized and published: the December 2011 SNRA.

10. Plaintiff mentions Nathan Anderson, Acting Director of the Government Accountability Office, and his public comments on February 27, 2019, regarding the updated

SNRA. Reply Brief at 7. Mr. Anderson stated that in June 2016 DHS reported it had completed a planned refresh of the SNRA, which included information on electromagnetic events. *Id.* at 7-8. The SNRA documents were intra-agency documents, so other agencies were likely to have possessed and reviewed the drafts. In addition, as Plaintiff's citation makes clear, Mr. Anderson referenced GAO-16-243 Electromagnetic Threats (2016). The GAO-16-243 was published in March of 2016, and regarding the SNRA, it states that "DHS acknowledged this responsibility through its inclusion of EMP as a risk event in the 2015 update of the Strategic National Risk Assessment (SNRA), noting that damage from a deliberate attack on the grid could cause cascading impacts through other infrastructure systems, leading to economic disruption and the potential loss of life." GAO-16-243 at 20. In 2019, Mr. Anderson was not able to reference documents later than the 2016 GAO-16-243 because the 2015 SNRA was never finalized. This further illustrates that releasing the draft SNRA would cause confusion not just with other federal agencies, but with the public as well, as they would believe the SNRA is still the main national risk assessment vehicle, when it is not.

11. Plaintiff quotes the May 2015 Findings Review of the SNRA⁴ to claim that "[c]learly the deliberative process was completed by the time this document was created." Reply Brief at 8. Plaintiff believes that if stakeholders reviewed draft findings, then the deliberative process was completed. Stakeholders reviewing the draft findings is only one part of the deliberative process, not the beginning, and certainly not the ending of the process. As I stated in my previous Declaration, FEMA's National Integration Center (NIC) "did not send the SNRA

⁴ "... the assessment treated impact categories separately (e.g. economic impacts are reported separately from fatality impacts). This allowed stakeholders to apply their own expert judgments to the findings and decide how those findings should inform core capabilities in the Goal." Production 000084.

Documents through the formal concurrence process and NPD leadership did not approve them. Without review and concurrence, the SNRA Documents were never finalized or publicly released.” Stainsby Decl. at ¶4. The deliberative process could not be completed without review and approval from NPD leadership, which had the authority to reject any of the draft findings and recommendations.

12. Plaintiff claims that because FEMA acknowledges the 2015 SNRA documents were intended to be released, they could not have been deliberative. Reply Brief at 10. The fact that a final approved SNRA was intended to be released does not mean that the predecisional version was not deliberative. The facts in the 2015 SNRA documents reflect FEMA’s deliberative process involving judgment calls as to what to include, as well as analyses and recommendations as to threats and hazards that should be included in a final SNRA. Specific facts were selectively chosen out of larger sets of facts, and any of these could have been rejected during the final approval process. The authors of the draft SNRA may well have been chilled from including certain facts, analyses and recommendations if they knew that these would be released even if rejected during the final approval process. Exemption 5 provides protection for this part of the process.

13. Plaintiff quotes Production 000070, which states that the draft SNRA documents “represents a fully adjudicated draft of the 2015 Strategic National Risk Assessment (SNRA) Findings document.” Production 000070. Plaintiff claims this quote shows the entire review process was completed. Reply Brief at 7, 14, and 20. What this shows is that the draft SNRA documents were ready for NPD leadership to review. The term “fully adjudicated draft” shows that it was still a draft. As previously stated, NPD leadership failed to provide its review and concurrence so the SNRA remained a draft document.

14. Plaintiff mentions the RAND Corporation's Homeland Security National Risk Characterization: Risk Assessment Methodology (2018) to claim that the SNRA reflects FEMA's current position regarding risks. Reply Brief at 18. Plaintiff did not fully quote RAND, which stated the following:

We began data collection by conducting our own search for relevant open-source assessments. The 2015 SNRA was the starting point for data collection, although it did not address all threats and hazards included in the HSNRC. The documents found during these initial searches provided a useful, if incomplete, set of data on which to develop the risk summary sheets. In some cases, such as the assessment of natural disaster hazards, the data collected from these initial searches ultimately provided as many as half the citations used in the final risk characterization.

Homeland Security National Risk Characterization: Risk Assessment Methodology (2018) at 34.

Although RAND believed the draft 2015 SNRA documents were "useful," it also believed they were "incomplete." This describes draft documents that were not finalized, the types of documents Exemption 5 was intended to protect. Releasing these documents would cause confusion to federal agencies and the public regarding what FEMA's actual position is regarding risks.

15. Plaintiff claims that the release of the SNRA 2015 Update Background and General Guidance, SNRA 2015 Qualitative Data Instructions, and SNRA 2015 Risk Summary Sheet Instructions & Template, "has already caused whatever attenuated harm to decisionmaking processes which FEMA has alleged." Reply Brief at 25. These documents are guidance documents, containing instructions and templates. They do not include any of the threats, risks, analysis, data, or conclusions that were redacted. Plaintiff's claim that the disclosure of these guidance documents "discloses essentially the entire deliberative process" is inaccurate. *Id.* at 27. These guidance documents show stakeholders how to participate in the SNRA process: to send

data and risk summary sheets to FEMA. They do not describe the approval process mentioned in paragraph 4 of my previous Declaration or reveal any of the deliberative material that was redacted.

16. Plaintiff claims there is no explanation for why subjects of the Risk Summary Sheets in the table of contents of the SNRA Technical Appendix were withheld. *Id.* at 13 & 28. The redacted portions of the table of contents contains “[a] list of new and updated risks identified in the 2015 SNRA.” Vaughn Index 51. Withholding the new and updated risks identified in the table of contents is consistent with the withholdings throughout the SNRA documents. Even though the Risk Summary Sheet authors were told to expect scrutiny from the public and other stakeholders, the underlying assumption is that this would happen after the 2015 SNRA documents were finalized and published, which did not occur. Releasing the new and updated risks in the SNRA would cause public confusion, as they would not represent FEMA’s current position regarding risks, which can be found in the National THIRA.

17. Plaintiff claims there is more factual information that may be released. Reply Brief at 29. The Declaration of Gregory Bridges outlines why releasing more factual information is problematic:

The information in these documents is deliberative because they consist of proposed factual findings, proposed assessments of information pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors. Any factual information included in these documents consists of facts culled from a larger set of facts concerning threats and hazards. The authors of these documents used their judgment as to which facts to include and which facts to exclude, and thus release of this factual information would reveal their deliberative process in selecting pertinent facts to include in these draft documents. Additionally, the factual information is so entangled with the analyses and proposed conclusions in these documents that its release would reveal the deliberative process and, because the documents were never finalized, may not reflect FEMA’s actual position regarding the risks and impacts such threats and hazards could present.

Bridges Decl. at ¶11.

Each of the updated risks is based on sets of facts selected from a larger set of facts by the drafters who were recommending that a specific risk or hazard be included in the final SNRA. Releasing these facts would allow for the updated recommended risks to be identified, which would cause confusion to the public, as these updated risks do not represent FEMA's current position regarding risks.

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

Executed on this 30th day of April 2019.


— LEILONI STAINSBY —

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY

Defendant.

Civil Action No. 18-0158 (CKK)

NOTICE OF FILING OF TABLE OF AUTHORITIES
IN SUPPORT OF DEFENDANT’S MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT
AND IN REPLY TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION FOR
SUMMARY JUDGEMENT

Defendant hereby files a Table of Authorities in support of Defendant’s Memorandum of Points and Authorities in Opposition to Plaintiff’s Cross-Motion for Summary Judgment and in Reply to Plaintiff’s Opposition to Defendant’s Motion for Summary Judgement (Docket No. 28) filed on April 30, 2019.

Respectfully submitted,

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

Defendant.

Civil Case No. 18-158

**MEMORANDUM IN REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

Plaintiff Public Employees for Environmental Responsibility (“Plaintiff” or “PEER”) has clearly demonstrated its right to information wrongfully withheld by Defendant U.S. Department of Homeland Security (“Defendant” or “DHS”), the 2015 update to the Strategic National Risk Assessment (“SNRA”) completed by the Federal Emergency Management Agency (“FEMA”). Defendant attempts to imply that Plaintiff’s argument is advancing novel but baseless legal theories by seizing on cherry-picked language cross-motion, such as “sufficiently final” or “internal deliberations.” *See* Def.’s Mem. of P. & A. in Opp’n to Pl.’s Cross.-Mot. for Summ. J. 1, 5, 9 [*hereinafter* Def.’s Opp.]. The Court should discard these straw-men arguments and rule on the simple grounds that there is no clearly articulated way that disclosure of the SNRA materials will harm the decisionmaking process within FEMA. Defendant does not discuss or attempt to meet the “foreseeable harm” standard in its supplementary declaration or briefing. This is because Defendant cannot meet that standard on this record, and consequently lacks grounds to withhold the SNRA.

ARGUMENT

I. DEFENDANT DOES NOT IDENTIFY A FORESEEABLE HARM TO AN INTEREST PROTECTED BY EXEMPTION 5 FROM RELEASING THE SNRA

Defendant’s supplementary declaration and briefing spends some time discussing an unrelated document, the National Threat Hazard Identification and Risk Assessment (“THIRA”). This discussion takes place before the arguments that the SNRA is predecisional or deliberative and is not mentioned again, but to the extent it is relative to those discussions, it only provides further evidence that the SNRA is not

predecisional. Any role played by the SNRA in the ongoing examination of agency policy was supplanted by the THIRA in 2015 as “FEMA’s primary national assessment tool to identify national catastrophic threats.” Supp. Decl. of Leiloni Stainsby ¶¶ 3-8 [*hereinafter* Supp. Decl.]; Def.’s Opp. 2-3.

The discussion also excludes any mention of the “foreseeable harm” rule, that an agency can withhold information *only* if it “reasonably foresees that disclosure would harm an interest protected” by the claimed exemption. 5 U.S.C. § 552(a)(8)(A)(i)(I). The closest Defendant comes to identifying such a harm is the claim that “authors of the draft SNRA *may well have been* chilled from including certain facts, analyses, and recommendations if they knew that these would be released even if rejected during the final approval process.” Supp. Decl. ¶ 12 (emphasis added). This speculative explanation fails to meet FOIA’s standards. “The question is not whether disclosure could chill speech, but rather if it is reasonably foreseeable that it will chill speech and, if so, what is the link between this harm and the specific information contained in the material withheld.” *Judicial Watch, Inc. v. United States Dep’t of Commerce*, 2019 U.S. Dist. LEXIS 48374, *15 (D.D.C. 2019) (rejecting affidavit stating “that such disclosures ‘*could* chill speech’ and could have an effect on interagency discussion” (emphasis in original)).

There is no discussion of how this specific disclosure would harm future decisionmaking processes, nor is there an explanation of why agency line staff would feel chilled. It is not clear that agency experts had any foreknowledge while they were preparing the SNRA of whose decision it would be to finalize the SNRA, and they also knew in advance that “[t]he 2015 SNRA is likely to be one of FEMA’s most scrutinized

analytic products.” Decl. of Paula Dinerstein, Exhibit A 33 (guidance section for analysts) [*hereinafter* Production]. They knew that the document would include the caveat that it reflected “the best, but human, judgment of the SNRA project team.” Production 120. What might *actually* chill the SNRA project team experts would be knowledge that the data sources they relied upon in reaching their conclusion might be redacted, leaving any other judgments they made unsupported. *See* Production 122 (Data Sources Used); 74-75, 79-83, 124-25 (footnotes supporting unredacted text); 85 (“All sources and estimates were documented to promote credibility, defensibility, and transparency within the assessment.”).

The agency’s attempts at clarification further confuse understanding of the 2015 SNRA, and do nothing to articulate an actual harm to agency processes by disclosure. DHS has the powerful advantage of having a presumption of good faith attach to their declarations. As the side that also has exclusive access to the evidence, Defendant is obligated under FOIA to do far more to answer the “key question” here: whether disclosure would tend to “discourage candid discussion within the agency.” *Access Reports v. Dep’t of Justice*, 926 F.2d 1192, 1195 (D.C. Cir. 1991) (*quoting* *Dudman Communications Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1567-68 (D.C. Cir. 1987)).

II. THE WITHHELD MATERIALS ARE NOT PREDECISIONAL BECAUSE THEY DO NOT CONTRIBUTE TO ANY PARTICULAR DECISION OR INVOLVE THE ONGOING DEVELOPMENT OF AGENCY POLICY

Defendant continues to rely solely on the Supreme Court’s note in *NLRB v. Sears, Roebuck, & Co.*, that it need not identify “a specific decision in connection with which a memorandum is prepared. Agencies are, and properly should be, engaged in

a continuing process of examining their policies.” 421 U.S. 132, 151 n.18 (1975). Plaintiff does not dispute that predecisional documents include those which are a part of the continuing process of examining agency policies, and neither did the D.C. Circuit Court of Appeals eight years later when it decided *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983). Nevertheless, the “continuing process of examining their policies” the Supreme Court referenced in *NLRB*, 421 U.S. at 151 n.18, is not a grant of *carte blanche* to hide all nonpublic documents because they might relate generally to the factual basis for some unspecified agency decisions.

Furthermore, Defendant flatly contradicts itself on the role of the SNRA in the policymaking process. DHS first argues that “the SNRA was indeed part of a policy process intended to carry out FEMA’s responsibility” relating to implementing a threat management and incident response platform. Def.’s Opp. 4 (citing Decl. of Leiloni Stainsby ¶¶ 3-4 (supporting opening brief); Supp. Decl. ¶ 3). Two pages later, DHS contends that SNRA was *not* part of the policymaking process related to the National Preparedness Goal and Planning Frameworks because saying “[t]he NIC *intended* the 2015 SNRA Documents to be the risk-based analytic foundation of the National Preparedness Goal’ . . . is a far cry from saying that the 2015 SNRA was in fact” such foundation. Def.’s Opp. 6 (emphasis in original). DHS then goes on to claim that the National Preparedness Goal could not have possibly relied on the 2015 SNRA because it was published in advance of the SNRA’s completion. *Id.* DHS has been very unclear about the role of the SNRA in the “continuing process of examining their policies,” *NLRB*, 421 U.S., at 151 n.18, and the agency has declared that the only agency

policies it could have contributed to examination of, the National Preparedness Goal and other PPD-8 documents, were unrelated to it.

DHS acknowledges this inconsistency but does little to clarify it. Def.'s Opp. 6. The agency does not have to point to a specific rulemaking in the Federal Register or prosecution decision for a document to be predecisional, but it must at least specify which, if any, policies it examined or contributed to. The agency claims that the 2015 SNRA could not have been the basis for the 2015 National Preparedness Goal ("NPG") update because there was only one SNRA in existence when the NPG update was published in 2015, and the NPG does not specify the date of the SNRA it is citing to. See Def.'s Opp. 6.¹ The 2015 NPG contains a brief summary of the SNRA's findings, however, which includes several items not appearing in the 2011 SNRA, identified in bold:

- Natural hazards, including hurricanes, earthquakes, tornadoes, **droughts**, wildfires, **winter storms**, and floods, present a significant and varied risk across the country. **Climate change has the potential to cause the consequence of weather-related hazards to become more severe.** [...]
- Technological and accidental hazards, such as **transportation system failures**, dam failures, chemical spills or releases, have the potential to cause extensive fatalities and severe economic impacts. In addition, these hazards may increase due to aging infrastructure

DHS, NATIONAL PREPAREDNESS GOAL 2D ED. 4-5 (2015) (emphasis added)

[*hereinafter* "NPG"].² These risks are not only absent from the 2011 SNRA, which is

¹ The block quote appearing at Def.'s Opp. 6 cites to Supp. Decl. ¶ 9, but the text of the quote on page 6 of the opposition brief do not appear to be in either declaration submitted by Leiloni Stainsby. The analysis that the NPG does not specify which SNRA it cites to, however, is accurate.

² available at https://www.fema.gov/media-library-data/1443799615171-2aae90be55041740f97e8532fc680d40/National_Preparedness_Goal_2nd_Edition.pdf.

nonpublic, but were explicitly *not* included in the publicly available summary of the 2011 SNRA:

Table 1 is not a complete list of risks that exist and will be reconsidered in future iterations of the assessment. Additional threats and hazards, such as **droughts**, heat waves, **winter storms**, rain storms, and different types of technological/accidental or human-caused hazards, can also pose a risk to jurisdictions across the country and should be considered, as appropriate, in preparedness planning. [. . .] In addition, assessment **participants identified a number of events for possible inclusion in future iterations of the SNRA, including** electric grid failure, plant disease outbreak, and **transportation system failure**.

DHS, STRATEGIC NATIONAL RISK ASSESSMENT, Unclassified Overview 4-5 (2011).³

The 2011 SNRA also explicitly excludes analysis of “environmental, and societal trends that may contribute to a changing risk environment but are not explicitly homeland security national-level events,” such as climate change, which does not appear as “global warming” or “climate change” in the 2011 summary. *Id.*, at 2.

The takeaway is that while DHS argues the 2015 SNRA is predecisional, it refuses to point to an agency policy that it contributed to, even though it appears that the 2015 SNRA contributed to the 2015 NPG. The agency says that is impossible, presumably because to admit the 2015 NPG relied on the 2015 SNRA could undercut the argument that the 2015 SNRA is deliberative. These confusing stances are highlighted to urge the Court to take a closer look at the evidence and arguments put forward by the agency. “Agency affidavits [submitted in FOIA cases] are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (quoting *Ground*

³ available at https://www.fema.gov/media-library-data/20130726-1854-25045-5035/rma_strategic_national_risk_assessment_ppd8_1_.pdf

Saucer Watch, Inc. v. CIA, 692 F.2d 770, 771 (D.C. Cir. 1981)). While this dispute does not involve an insufficient search claim, applying the same standard, Plaintiff has “point[ed] to evidence sufficient to put the Agency’s good faith into doubt” regarding why the 2015 SNRA is predecisional, its role in the decisionmaking process, and the deliberations in that document. *Ground Saucer Watch*, 692 F.2d at 771.

The inconsistent position taken by DHS is worsened by the agency’s further attempts at explanation. The agency states that the 2015 SNRA update was never provided to Congress, yet the 2016 GAO Report GAO-16-243 on Electromagnetic Threats both cites to the 2015 SNRA update and discusses its completion. *See* Supp. Decl. ¶ 10; Def.’s Opp. 5. This explanation seems to imply that GAO, which is undeniably an agency of Congress,⁴ was either wrong about the SNRA and never corrected by FEMA, or actively misled when “[i]n June, 2016 *DHS reported* that the department completed the planned refresh of the Strategic National Risk Assessment.” Nathan Anderson, GAO, *Electromagnetic Events Roundtable Discussion: Key GAO Findings and Recommendations* (Feb. 27, 2019), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Anderson-2019-02-27.pdf> (emphasis added).

For the RAND report which cites to the SNRA, DHS finds special significance in the language “useful, if incomplete” in RAND’s description of the 2015 SNRA. *See*

⁴ *See* GAO, ABOUT GAO, OVERVIEW (last visited May 28, 2019), <https://www.gao.gov/about/> (“The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the “congressional watchdog,” GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently.”).

Supp. Decl. ¶ 14; Def.'s Opp. 8. Leilani Stainsby declares that this was meant to describe unfinished documents. *Id.* This is not supported by the context of the statement, which emphasizes that the SNRA “did not address all threats and hazards included in the HSNRC,” the report RAND ultimately prepared. RAND CORP., HOMELAND SECURITY NATIONAL RISK CHARACTERIZATION: RISK ASSESSMENT METHODOLOGY 34 (2018), https://www.rand.org/content/dam/rand/pubs/research_reports/RR2100/RR2140/RAND_RR2140.pdf. The “incomplete” descriptor of the SNRA was thus not in reference to its state of readiness, but to its scope of analysis. To the extent the Supplemental Declaration seeks to act as independent evidence of the RAND authors’ state of mind it is also hearsay. To the extent FEMA relies on the unfinished nature of SNRA as grounds for withholding, it is clearly unfinished in name only, and the only public confusion created is by the agency’s insistence on hiding it.

III. THE 2015 SNRA DOCUMENTS DO NOT REVEAL THE DELIBERATIVE PROCESS

The most important thing to remember about the withheld materials is that they reflect a “fully adjudicated draft” of the SNRA. Production 70. Subsequent reliance by GAO, RAND, and implicit reliance by FEMA itself in the 2015 NPG’s risk summary of SNRA’s contents all demonstrate that the “give and take” of agency decisionmaking was completed. *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Plaintiff’s cross-motion argued that because it is unclear what the final stage of review for SNRA’s 2015 update actually was, it was impossible to understand the state of ongoing deliberations in the 2015 SNRA. Certainly the reviewing and authoring agency experts anticipated that, when approved, it was in a state that would be publicly released without unreasonably

disclosing their deliberations. Defendant admits in its briefing that if signed the documents would no longer be deliberative. Def.'s Opp. 9.

A. There is No Risk of Public Confusion.

The specific harm repeated by the agency in its briefing and declaration is that disclosure would cause public confusion about the agency's actual stance on risks and confusion among other federal agencies about what FEMA's stance was on national risks. Supp. Decl. ¶¶ 10, 14, 16, 17; Def.'s Opp. 9-11, 14. This generic and speculative threat of harm has been repeatedly rejected in this Circuit. *See Petroleum Info. Corp. v. United States Dep't of Interior*, 976 F.2d 1429 (D.C. Cir. 1992) (holding confusion could be prevented by disclosing incomplete nature of documents to requester).

In *Petroleum Info. Corp.*, the Department of the Interior argued that public release of older draft documents compiled from publicly available information would cause confusion because it may be inaccurate or inconsistent with the Department's then-current data. *Id.* The court ruled that the agency failed to explain how "its concerns with public confusion and harming its own reputation could not be allayed by conspicuously warning FOIA requesters that the LLD file is as yet unofficial and that the Bureau disclaims responsibility for any errors or gaps." *Id.*, at 1437. The SNRA, like the materials in *Petroleum Info. Corp.*, was meant to be based on "unclassified data, analysis, and models used to derive the top level numbers from publicly accessible cited sources" and "documented in sufficient detail that an independent reanalysis could be undertaken by a qualified member of the public." Production 13.

The law is clear that “the risk of public confusion as a subsidiary rationale for the deliberative process privilege . . . does not support a blanket exemption for information marred by errors, particularly when the information is in large part already public.” *Petroleum Info. Corp.*, 976 F.2d at 1437 n.10. Even though Defendant claims it has shifted to a new THIRA risk reporting system, “nothing prevents [the agency] from warning users that the file is unfinished, subject to change, [or] part of a total [] system still in progress.” *Id.*, at 1439.⁵

B. DHS Overstates the Deliberative Value of Facts Culled from Larger Sets of Facts

There are four disputed cases on the deliberative nature of selectively chosen factual material under Exemption 5 of FOIA. DHS misreads them as providing blanket protection for any portions of any unreleased documents that conduct any analysis or application of those facts. Not only is this a flawed interpretation, it would cause Exemption 5 to swallow almost all of FOIA.

First, the agency challenges that *Playboy Enters., Inc. v. Dep't of Justice*, 677 F.2d 931 (1982), does not involve agency employees making judgment calls about the relevance of particular facts for a “final assessment-type of report” as FEMA’s analysts have in this case.; Def.’s Opp. 12. This is not only incorrect, it *repeats* the excuse used by DOJ in *Playboy* when they argued “that the entire Rowe Report reflects the ‘choice, weighing and analysis of facts’ by the task force” and “the very narration of the facts

⁵ Such caveats already litter portions of the SNRA which were not redacted. *See* Production at 2 (“: The SNRA is not intended to include a definitive list of all risks, real or potential.”), 77 (data limitations), 85 (stating that SNRA does not exercise final “risk judgment”), 118 (redacting limitations), 363 (discussing limitations), 368 (same).

that reflects the evidence selected and credited.” *Id.*, at 935 (quoting *Playboy* Defendant’s brief). That court rejected the agency’s argument for the same reason this Court should:

Anyone making a report must of necessity select the facts to be mentioned in it; but a report does not become a part of the deliberative process merely because it contains only those facts which the person making the report thinks material. If this were not so, every factual report would be protected as a part of the deliberative process.

Id. DHS’s argument that that case did not involve “assessing the significance of a particular fact” is incompatible with DOJ’s characterization of its activities, and is fundamentally a disagreement with the reasoning of the *Playboy* court. Def.’s Opp. 12.

Second, DHS attempts to distinguish *Lahr v. NTSB*, 453 F. Supp.2d 1153 (C.D. Cal. 2006), on the grounds that DHS has demonstrated that factual information is hopelessly intertwined with sensitive deliberations. Def.’s Opp. 12. No such demonstration has been made beyond the conclusory statements made in the agency’s original declarations and addressed in Plaintiff’s cross-motion briefing. In supplemental declaration, DHS adds only that there are new risks as yet undisclosed by FEMA which could be inferred if factual material underlying those analyses were released, causing confusion to the public. This could be possible, but that harm was already caused by subsequent reliance on the 2015 SNRA by, *inter alia*, the 2015 NPG, which summarized the risks in the SNRA as including risks not appearing in its 2011 incarnation, such as climate change and winter storms, which almost certainly came from the 2015 update to the SNRA. *See* Section I, *supra* p. 4-6 (comparison of 2015 NPG and 2011 SNRA). It also does not justify the redaction of information copied directly from the 2011 SNRA. *See* Production 79-80 (redaction of table containing

information from the 2011 SNRA); 350-563 (redacted reproduction of the 2011 SNRA). Furthermore, there is no risk of public confusion because FEMA can include a disclaimer that the risks and information identified may not reflect the agency's current thinking. *See* Subsection A, *supra* this Section.

Third, DHS seeks to rehabilitate its reliance on *Mapother v. Dep't of Justice*, 3 F.3d 1533 (D.C. Cir. 1993), by suggesting that the SNRA is analytically indistinguishable from a special-purpose factual report prepared to assist a single decisionmaker in making a sensitive discretionary decision. Def.'s Opp. 13. While it is true that the SNRA is designed to assist a broad array of decisionmakers make determinations about the severity of threats and decide how to respond, the SNRA explicitly refrains from making all-risk judgment calls and is overwhelmingly clear that it is meant to be scrutinized by a broad set of stakeholders for an inconceivable number of decisions. *See* Production 28 (SNRA "must make comparative judgments of national risk across many contexts for many decision-makers and many stakeholders having a diversity of values.").⁶ The interest in protecting the sensitive thoughts and opinions of an agency expert relating to a politically sensitive decision regarding the Nazi past of a foreign head of state, the decision in *Mapother*, is of an entirely different character than the interest in hiding the elsewhere-disclosed final draft of a general-purpose and publicly-sourced guide to the details of high visibility

⁶ *See also* Production at 2 ("The SNRA is not intended to include a definitive list of all risks, real or potential."), 11 (the SNRA "will be closely scrutinized by responsible leadership, reviewers in the U.S. risk science and policy communities, and state, local, tribal, and territorial planners and emergency managers."), 85 (stating that SNRA does not exercise final "risk judgment").

risks such as hurricanes or space weather for municipal, state, or federal employees to understand. Additionally, the absence of a final draft against which to compare an earlier draft gets to the heart of the deliberative character of a document:

The court has thus treated certain draft agency histories as protected from disclosure under Exemption 5, reasoning that the "disclosure of editorial judgments" made during the agency's deliberative process "would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work." *Dudman Commc'ns Corp. v. Dep't of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987); see *Russell v. Dep't of Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982). In each case, the court shielded draft histories from disclosure because the agency's deliberative process would be revealed by means of "a simple comparison between the pages sought and the final, published document," which "would reveal what material supplied by subordinates senior officials judged appropriate for the history and" what they did not. *Mapother*, 3 F.3d at 1538 (quoting *Russell*, 682 F.2d at 1049, and noting that *Dudman Commc'ns*, 815 F.2d at 1569, reaffirmed *Russell's* rationale)

[. . .]

It is one thing to conclude that disclosure of a draft could 'stifle . . . creative thinking and candid exchange of ideas,' *Dudman Communications*, 815 F.2d at 1569, where it is possible to identify editorial judgments by comparing the draft and the final version, and quite another to conclude stifling could occur where there is no final version

Nat'l Sec. Archive v. CIA, 752 F.3d 460, 467-68 (2014) (Rogers, J., dissenting). The rationale of *Mapother*, ultimately, affirms that Exemption 5 has to do with the candid nature of ideas in sensitive settings. There is nothing potentially candid or unguarded about a meticulously sourced, thoroughly reviewed risk assessment prepared after participation from several agencies and a diverse team of experts into a final version.

Finally, DHS argues that Plaintiff's characterization of the SNRA as a set of factual information concerning a "broad array of risks and harms not specific to any decisionmaker or decision" is "manifestly erroneous." This post-hoc description of

SNRA is belied by the document itself, which plainly states that it “must make comparative judgments of national risk across many contexts for many decision-makers and many stakeholders having a diversity of values.” Production 28, *see also* n. 6, *supra*. Defendant’s argument that the 2015 SNRA is deliberative as to whether to approve the 2015 SNRA is tautological and would justify withholding *any* draft of *any* document, regardless of content. Def.’s Opp. 14 (“The decision at issue in this case involved which risks and threats FEMA would deem appropriate to include in a national risk assessment document.”).

CONCLUSION

DHS has demonstrated an improper disregard for FOIA and the judicial decisions applying it. This is evident from the cursory nature of its attempt to comply with Plaintiff’s FOIA request by refusing to segregate non-deliberative or non-pre-decisional materials. Even accepting every legal argument made by the department, there is *no* justification for withholding the reproduction of the 2011 SNRA, clearly a final document, on Exemption 5 grounds. *See* Production 350-563. It is also evident from the agency’s shallow and generic prophesies of public chaos or a chilling effect on agency deliberations should the 2015 SNRA be disclosed. It is unclear why FEMA actually wants to withhold this document, which was prepared at great expense by an elite team of specialists to help all levels of government make the country safer. What is clear is that the agency is unable to present a plausible, non-superficial reason why it chose not to release the 2015 SNRA update in response to a proper FOIA request. For these reasons the Court should enter an order granting Plaintiff’s cross-motion for summary judgment in full.

Respectfully Submitted on May 29, 2019

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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR
ENVIROMENTAL RESPONSIBILITY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 18-0158 (CKK)

NOTICE OF SUBSTITUTION OF COUNSEL

The Clerk of the Court will please enter the appearance of Assistant United States Attorney Michael A. Tilghman II as counsel for Defendant in the above captioned case substituting for Assistant United States Attorney Marina Utgoff Braswell, whose appearance should be withdrawn.

Dated: May 28, 2020
Washington, DC

Respectfully submitted,

/s/ Michael A. Tilghman II

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 18-0158 (CKK)

ORDER

(December 17, 2021)

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 17th day of December, 2021,

ORDERED that Defendant U.S. Department of Homeland Security's [22] Motion for Summary Judgment is **GRANTED**; it is further

ORDERED, that Plaintiff's [24] Cross-Motion for Summary Judgment is **DENIED**.

SO ORDERED.

This is a final appealable order.

/s/

COLLEEN KOLLAR-KOTELLY

United States District Judge

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

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 18-0158 (CKK)

MEMORANDUM OPINION
(December 17, 2021)

This lawsuit arises from a Freedom of Information Act (“FOIA”) request made by Plaintiff Public Employees for Environmental Responsibility (“PEER”) to Defendant Department of Homeland Security (“DHS”). PEER requested information relating to the 2015 Strategic National Risk Assessment (“SNRA”) prepared by the Federal Emergency Management Agency (“FEMA”).¹ In response, FEMA withheld certain documents from PEER pursuant to FOIA Exemption 5.

Currently before the Court are Defendant Department of Homeland Security’s [22] Motion for Summary Judgment and Plaintiff PEER’s [24] Cross Motion for Summary Judgment. Upon consideration of the pleadings,² the relevant legal authorities, and the record as whole, for the

¹ FEMA is a federal agency within the Department of Homeland Security. *See* FEMA, *Organization*, <https://www.fema.gov/about/organization>.

² The Court’s consideration has focused on the following documents:

- Defendant’s Motion for Summary Judgment (“Def.’s Mot.”), ECF No. 22;
- Plaintiff’s Cross-Motion for Summary Judgment and Opposition to Defendant’s Motion for Summary Judgment (“Pl.’s Mot. & Opp’n”), ECF No. 24;
- Defendant’s Reply in Support of its Motion for Summary Judgment and Opposition to Plaintiff’s Cross-Motion for Summary Judgment (“Def.’s Reply & Opp’n”), ECF No. 27; and
- Plaintiff’s Reply in Support of its Cross-Motion for Summary Judgment (“Pl.’s Reply”), ECF No. 30.

reasons stated below, the Court finds that DHS properly withheld records pursuant to FOIA Exemption 5, and so shall **GRANT** DHS's Motion for Summary Judgment and **DENY** PEER's Cross-Motion for Summary Judgment.

I. BACKGROUND

This case concerns a FOIA request for, in relevant part, drafts of DHS's Strategic National Risk Assessment, one of two reports DHS has historically compiled to address systemic risks to national security (e.g., natural disasters and terrorist attacks). The SNRA was initially executed in 2011 in support of Presidential Policy Directive 8 ("PPD-8") which called for the creation of a National Preparedness Goal, for which the SNRA served as the main risk assessment tool. *See* Dep't of Homeland Sec., The Strategic National Risk Assessment in Support of PPD 8: A Comprehensive Risk-Based Approach toward a Secure and Resilient Nation 1 (2011), <https://www.dhs.gov/xlibrary/assets/rma-strategic-national-risk-assessment-ppd8.pdf>. The SNRA was FEMA's comprehensive collection of the risks and hazards facing the United States, containing information and advice for how jurisdictions within the United States should address threats ranging from natural disasters to terrorism. *Id.*

At the same time, DHS developed a separate risk assessment vehicle, the Threat and Hazard Identification and Risk Assessment ("THIRA"). THIRA required the "major urban areas, states, tribal nations, and territories receiving Homeland Security Grant Program (HSGP) or Tribal Homeland Security Grant Program (THSGP) funds and the ten (10) FEMA regions" to complete an annual THIRA particular to their own geographic areas. Supplemental Declaration of Leiloni Stainsby ("Stainsby Suppl. Decl.") ¶ 5, ECF No. 28-1. THIRA enabled each "jurisdiction to examine current and future risks and resource requirements," and "use the information to support planning and investment strategies." *Id.* ¶ 4.

Multiple agencies and offices participated in the drafting of the SNRA, including FEMA's National Integration Center (NIC), which helps to develop "guidance and tools to assist communities in tackling their unique preparedness challenges and coordinates the adoption and implementation of a common incident management platform for emergency responders and officials." Declaration of Leiloni Stainsby ("Stainsby Decl.") ¶ 3, ECF No. 22-2. The NIC is a part of the National Preparedness Directorate (NPD), an organization within FEMA which assists people and communities in preventing and mitigating "against all threats and hazards." *Id.* The 2015 SNRA was intended to be the "risk-based analytic foundation of the National Preparedness Goal." *Id.* The NIC sent the draft SNRA documents in April of 2015 to several offices within FEMA for review.³ *Id.* ¶ 4.

As the SNRA was in the process of being drafted, FEMA decided to make the new National THIRA its main risk assessment tool, as opposed to the SNRA. Stainsby Suppl. Decl. ¶ 8. While THIRA data up to that point had been jurisdiction-specific and "could not be 'rolled up' into a national perspective," Stainsby Suppl. Decl. ¶ 7, the National THIRA was intended to "identify national catastrophic threats facing the United States, its tribes and territories, and identifying resources that would be needed to prepare for, mitigate against and most effectively respond to these threats," *id.* ¶ 8.

On September 1, 2017, PEER submitted a FOIA request to FEMA seeking to acquire the "SNRA 2015 Findings [Report], May 2015; (2) SNRA 2015 Technical Appendix, May 2015; (3) SNRA 2015 Working Papers, May 2015; (4) PPD-8 Implementation Plan, May 2011; (5) SNRA Terms of Reference, June 2011; (6) SNRA 2015 Update Background and General Guidance,

³ These offices included the National Preparedness Assessment Division, "FEMA's Office of External Affairs, Office of Chief Counsel, National Preparedness Directorate, and Office of Response and Recovery." Stainsby Decl. ¶ 4 n.2.

February 2015; (7) SNRA 2015 Qualitative Data Instructions, February 2015; (8) SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015; and (9) any successor SNRA versions later than May 2015.” Compl. ¶ 3, 20, ECF No. 1; *see also* Pl.’s Mot. at 1. PEER is a “non-profit organization dedicated to research and public education concerning the activities and operation of federal, state, and local governments.” *Compl.* ¶ 2.

FEMA acknowledged receipt of PEER’s FOIA request on September 12, 2017. *Id.* ¶ 22; Def.’s Answer ¶ 1, ECF No. 9. On December 12, 2017, PEER contacted both the DHS and FEMA FOIA Officers about the status of its FOIA request. Compl. ¶ 23; Def.’s Answer ¶ 23. PEER allegedly received contradictory responses regarding which component of DHS handles such FOIA requests. Compl. ¶ 23. *But see* Def.’s Answer ¶ 23 (“FEMA avers it replied to the email and informed Plaintiff that the FOIA request was closed.”).

PEER filed this lawsuit on January 25, 2018 after FEMA failed to respond to PEER’s FOIA request within the statutory deadline. Compl. ¶ 24; Def.’s Answer ¶ 24. As a response to PEER’s lawsuit, FEMA produced, in full, the SNRA 2015 Update Background and General Guidance, February 2015; the SNRA 2015 Qualitative Data Instructions, February 2015; and the SNRA 2015 Risk Summary Sheet Instructions & Template, February 2015. Declaration of Gregory Bridges (“Bridges Decl.”) ¶ 4, ECF No. 22-1. FEMA further partially released several other SNRA documents under FOIA Exemption 5. *See id.* ¶ 5.

In total, FEMA produced 716 Bates-stamped pages of material. *See* Declaration of Paula Dinerstein (“Dinerstein Decl.”) ¶ 3, ECF No. 24-2. On September 10, 2018, FEMA produced a *Vaughn* Index identifying and detailing the redactions and withholdings. Bridges Decl. ¶ 6; Dinerstein Decl. ¶ 4. FEMA claimed an exemption pursuant to FOIA Exemption 5. Bridges Decl. ¶ 9.

Each party then cross-moved for summary judgment. *See* Def.’s Mot.; Pl.’s Mot. & Opp’n. PEER challenges FEMA’s withholding of certain documents pursuant to FOIA Exemption 5. Pl.’s Mot. & Opp’n. FEMA claims that they validly withheld documents pursuant to the Deliberative Process Privilege under FOIA Exemption 5. Def.’s Mot.

II. LEGAL STANDARD

The FOIA authorizes a district court only “to enjoin [a federal] agency from withholding agency records or to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B). This case, like a “vast majority” of FOIA cases, can be decided on summary judgment. *See Brayton v. Office of U.S. Trade Representative*, 641 F.3d 521, 527 (D.C. Cir. 2011).

Summary judgment is appropriate upon a showing that there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In a FOIA case, the Court may award summary judgment to an agency solely on the information provided in affidavits or declarations when they describe “the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981); *accord Am. Civil Liberties Union v. U.S. Dep’t of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011); *see also Vaughn v. Rosen*, 484 F.2d 820, 826 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). Such affidavits or declarations are accorded “a presumption of good faith, which cannot be rebutted by ‘purely speculative claims about the existence and discoverability of other documents.’” *SafeCard Servs., Inc. v. Sec. & Exch. Comm’n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (quoting *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981)). Rather, a plaintiff “must point to

evidence sufficient to put the Agency's good faith into doubt." *Ground Saucer*, 692 F.2d at 771. Otherwise, "'uncontradicted, plausible affidavits showing reasonable specificity and a logical relation to the exemption are likely to prevail.'" *Schoenman v. FBI*, 841 F. Supp. 2d 69, 80 (D.D.C. 2012) (quoting *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 641 F.3d 504, 509 (D.C. Cir. 2011) (alteration omitted)).

On summary judgment, the district court must conduct a "de novo" review of the record, 5 U.S.C. § 552(a)(4)(B), "to ascertain whether the agency has sustained its burden of demonstrating that the documents requested . . . are exempt from disclosure." *Assassination Archives & Research Ctr. v. CIA*, 334 F.3d 55, 57 (D.C. Cir. 2003) (citation and internal quotation marks omitted). "Consistent with the purpose of the Act, the burden is on the agency to justify withholding requested documents." *Beck v. Dep't of Just.*, 997 F.2d 1489, 1491 (D.C. Cir. 1993). Only after an agency has proven that "it has fully discharged its disclosure obligations" is summary judgment appropriate. *Weisberg v. U.S. Dep't of Just.*, 705 F.2d 1344, 1350 (D.C. Cir. 1983).

III. DISCUSSION

Exemption 5 of the FOIA protects "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." 5 U.S.C. § 552(b)(5). To fall within Exemption 5, "a document must meet two conditions: 'its source must be a Government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it.'" *Stolt-Nielsen Transp. Grp. v. United States*, 534 F.3d 728, 733 (D.C. Cir. 2008) (quoting *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001)). In essence, Exemption 5 provides grounds for withholding documents that would fall under a variety of recognized privileges available to Government agencies in civil litigation including, of relevance to this case,

the deliberative process privilege. However, establishing that a document falls under a particular privilege is not enough to justify withholding; the agency must also demonstrate that disclosure of the document will lead to a foreseeable harm. 5 U.S.C. § 552(a)(8)(A)(i) (“An agency shall . . . withhold information under this section only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption . . .”).

A. The Deliberative Process Privilege

The deliberative process privilege is intended to “prevent injury to the quality of agency decisions.” *Nat’l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). More specifically, the privilege “serves to assure that subordinates within an agency will feel free to provide the decisionmaker with their uninhibited opinions and recommendations without fear of later being subject to public ridicule or criticism; to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and 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 that end, the privilege protects “documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (internal quotation marks and citation omitted).

For the privilege to apply, the government must establish that the material at issue is both “predecisional” and “deliberative” in nature. *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 785–86 (2021). “A document is predecisional if it was ‘prepared in order to assist an agency decision maker in arriving at his decision,’ rather than to support a decision already made.”

Petroleum Info. Corp. v. Dep't of the Interior, 976 F.2d 1429, 1434 (D.C. Cir. 1992) (quoting *Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 184 (1975)). A document is deliberative if “it reflects the give-and-take of the consultative process,” *Coastal States*, 617 F.2d at 866, and if it was “prepared to help the agency formulate its position.” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786; *see also Pub. Citizen, Inc. v. OMB*, 598 F.3d 865, 876 (D.C. Cir. 2010) (“To qualify under Exemption 5, a document must also be a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.”) (internal quotation marks omitted).

1. The SNRA Documents are Predecisional

First, both the Government and PEER point out that the SNRA documents were labelled a “fully-adjudicated draft,” with the Government emphasizing the “draft” language and PEER emphasizing the “fully-adjudicated” aspect. Although draft documents are not per se exempt from disclosure, *see Arthur Andersen & Co. v. IRS*, 679 F.2d 254, 257 (D.C. Cir. 1982), they often fall within the protection of the deliberative process privilege because “[a] draft is, by definition, a preliminary version of a piece of writing subject to feedback and change,” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786. “It is true that a draft document will typically be predecisional because . . . calling something a draft communicates that it is not yet final.” *Id.* at 788; *see also People for the Am. Way. Found. v. Nat'l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007) (noting that drafts are “commonly found exempt under the deliberative process exemption” because they precede the final decision).

Although labelling a document a “draft” is not dispositive as to the question of whether a document is pre-decisional, evaluating the SNRA documents “in the context of the administrative process which generated them,” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786 (quoting *Sears*,

421 U.S. at 138), compels the conclusion that the documents are pre-decisional. The Bridges Declaration explains that:

[T]he 2015 SNRA documents were developed to be used in preparing the 2015 National Preparedness Goal, which was published in September 2015. None of the documents with Exemption 5 withholdings could become final without formal federal interagency concurrence and senior-level White House approval. This included approval of the factual information contained within these documents, all of which was culled from a broader set of facts pertaining to threats and hazards, through the exercise of judgment by the authors of these 5 documents. Since FEMA never received the required interagency concurrence and White House approval, the SNRA documents received no formal approval within FEMA.

Bridges Decl. ¶ 10.

The Stainsby Declaration further explains that “the NIC [National Integration Center] did not send the SNRA Documents through the formal concurrence process and NPD [National Preparedness Directorate] did not approve them. Without review and concurrence, the SNRA Documents were never finalized or publicly released.” Stainsby Decl. ¶ 4. Thus, the SNRA documents were generated before FEMA’s final agency decision and are predecisional.

Moreover, that FEMA characterized the SNRA draft documents as “fully-adjudicated” does not imply that the agency viewed them as final or as the consummation of the agency’s views on the matter. *See U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 788 (explaining that determining whether an “agency’s position is final for purposes of the deliberative process privilege is a *functional* rather than *formal* inquiry) (emphasis added). At most, the term “fully-adjudicated draft” implies that the SNRA documents were considered by the agency to be sufficiently complete such that the agency could then decide on particular policies and actions it could take. Although “the draft SNRA documents were ready for NPD leadership to review . . . NPD leadership failed to provide its review and concurrence,” Stainsby Suppl. Decl. ¶ 13, meaning the documents do not represent the agency’s final position or view. Further, the determinative fact for whether a

document is “predecisional” is not the document’s “level of polish,” but whether a document represents an agency’s final decision. *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 788.

PEER also argues that the SNRA documents are not pre-decisional because “[t]here has been no showing that the SNRA [documents] . . . led to any policy decision.” Pl.’s Mot. & Opp’n at 10. PEER further argues that a “court must ‘be able to pinpoint an agency decision or policy to which these documents contributed.’” *Id.* at 9 (quoting *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983)). Not so.

Recently, the Supreme Court clarified that “[a] document is not final solely because nothing else follows it. Sometimes a proposal dies on the vine.” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786 (citing *National Security Archive v. CIA*, 752 F.3d 460, 463 (D.C. Cir. 2014)). Thus, a document may be predecisional despite no final decision being made. *Id.* Moreover, “documents discussing such dead-end ideas can hardly be described as reflecting the agency’s chosen course.” *Id.* (citing *Sears*, 421 U.S. at 150–151). “What matters, then, is not whether a document is last in line, but whether it communicates a policy on which the agency has settled.” *Id.* That the SNRA documents did not lead to any final policy decision by FEMA is, therefore, irrelevant as to whether the documents are predecisional.

Finally, PEER argues that the SNRA documents are not predecisional because FEMA itself has referenced the SNRA documents and other entities outside of FEMA have either referenced or used information from the SNRA. *See* Pl.’s Mot. & Opp’n at 17–18; Pl.’s Reply at 4–8. Whereas the agency usually holds the burden to show why an exemption applies, the requester bears the burden to show why “an otherwise predecisional and deliberative document has lost its privileged status through adoption.” *Gellman v. Dep’t of Homeland Sec.*, 525 F. Supp. 3d 1, 7 (D.D.C. 2021);

see also McKinley v. Bd. of Governors of the Fed. Reserve Sys., 849 F. Supp. 2d 47, 63 n.14 (D.D.C. 2012). For the following reasons, the Court finds that PEER has not met this burden.

PEER first points to several publications released by FEMA that reference the SNRA.⁴ *See, e.g.*, Pl. Mot. & Opp’n at 17 n.5 (“Results of the Strategic National Risk Assessment (SNRA), contained in the second edition of the National Preparedness Goal, indicate that a wide range of threats and hazards continue to pose a significant risk to the Nation.” (quoting Dep’t of Homeland Sec., *National Prevention Framework, Second Edition* 4 (2016))). The Stainsby Supplemental Declaration responds:

In footnote 5, the quote from the National Prevention Framework, Second Edition (2016) references the National Preparedness Goal, Second Edition, which was published in September 2015, while the 2015 SNRA was still being drafted through November 2015. The same is true for Plaintiff’s citations to the National Mitigation Framework, Second Edition (2016), and the National Response Framework, Third Edition (2016): both documents explicitly reference the National Preparedness Goal, Second Edition (2015). In addition, the National Preparedness Goal fails to state which version of the SNRA results appear, because only one version of the SNRA was finalized and published: the December 2011 SNRA.

Stainsby Suppl. Decl. ¶9. Given that the 2015 SNRA was still being drafted several months after the release of the Second Edition of the National Preparedness Goal, the Court finds that it is reasonable that the version of the SNRA referenced by the NPG is the 2011 SNRA. Moreover, even if PEER is correct that the NPG relies, in part, on findings from the 2015 SNRA, that fact alone would not change the predecisional nature of the 2015 SNRA; the 2015 SNRA would be both predecisional and deliberative as to the NPG.

PEER next points to comments made by the Acting Director of the Government Accountability Office (“GAO”), Nathan Anderson, on February 27, 2019 that “[i]n June 2016,

⁴ These documents include the 2015 National Preparedness Goal, Second Edition (“NPG”); the National Prevention Framework, Second Edition; the National Mitigation Framework, Second Edition; and the National Response Framework, Third Edition. *See* Stainsby Suppl. Decl. ¶9.

DHS reported that the department completed the planned refresh of the Strategic National Risk Assessment.” Pl.’s Reply at 7. Anderson further referenced a 2016 GAO Report on Electromagnetic Threats that cites to the 2015 SNRA. *Id.*; Pl.’s Mot. & Opp’n at 17.

In response, the government explains that “Mr. Anderson stated that in June 2016 DHS reported it had completed a planned refresh of the SNRA, which included information on electromagnetic events. The SNRA documents were intra-agency (sic) documents, so other agencies were likely to have possessed and reviewed the drafts.” Stainsby Suppl. Decl. ¶ 10.

In addition, as Plaintiff’s citation makes clear, Mr. Anderson referenced GAO-16-243 Electromagnetic Threats (2016). The GAO-16-243 was published in March of 2016, and regarding the SNRA, it states that “DHS acknowledged this responsibility through its inclusion of EMP as a risk event in the 2015 update of the Strategic National Risk Assessment (SNRA), noting that damage from a deliberate attack on the grid could cause cascading impacts through other infrastructure systems, leading to economic disruption and the potential loss of life.” In 2019, Mr. Anderson was not able to reference documents later than the 2016 GAO-16-243 because the 2015 SNRA was never finalized.

Id.

While Anderson’s 2019 comments suggest that, from his understanding, DHS had finalized the 2015 SNRA, “courts must consider whether the agency treats the document as its final view on the matter.” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786 (citing *Sears*, 421 U.S. at 161). Thus, it is not the GAO’s treatment of the SNRA that is relevant to whether the documents are pre-decisional, but DHS’s. While the GAO may have relied upon findings from the 2015 SNRA for its own reports, that fact alone bears no weight on whether DHS treated the SNRA “as its final view on the matter.” *Id.* A document does not necessarily lose its predecisional status merely because it is shared inter-agency. After all, Exemption 5 specifically applies to both intra and inter-agency documents. *See* 5 U.S.C. § 552(b)(5) (“This section does not apply to matters that are . . .

inter-agency or intra-agency memorandums or letters . . .”). Therefore, the Court finds that GAO’s references to the 2015 SNRA do not strip the SNRA of predecisional status.

Finally, PEER points out that the RAND Corporation referenced the 2015 SNRA documents in its 2018 Homeland Security National Risk Characterization: Risk Assessment Methodology. Pl.’s Mot. & Opp’n at 18. RAND, a private organization, contracted with DHS in 2016 to prepare this report. *Id.*; Def.’s Opp’n & Reply at 7. PEER argues that RAND’s reference to the 2015 SNRA suggests that the SNRA “is clearly unfinished in name only,” and thus not predecisional or deliberative. Pl.’s Reply at 8. RAND described the 2015 SNRA as “the starting point for data collection, although it did not address all threats and hazards included in the HSNRC. The documents found during these initial searches provided a *useful, if incomplete*, set of data on which to develop the risk summary sheets.” Stainsby Suppl. Decl. ¶ 14 (quoting RAND Corp., *Homeland Security National Risk Characterization: Risk Assessment Methodology* (2018)) (emphasis added).

That RAND relied on certain data from the 2015 SNRA in formulating the 2018 HSNRC does not, by itself, cause the SNRA documents to lose their predecisional status. While it is true that a draft may “lose that status if it is adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public,” *Arthur Andersen*, 679 F.2d at 258, the mere fact that a draft document has some practical effect or consequence on an agency does not mean that the draft “constitutes a final administrative decision.” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 788. As the Stainsby Supplemental Declaration makes clear, “[a]lthough RAND believed the draft 2015 SNRA documents were ‘useful,’ it also believed they were ‘incomplete.’ This describes draft documents that were not finalized, the types of documents Exemption 5 was intended to protect.” Stainsby Suppl. Decl. ¶ 14. Because the 2015 SNRA draft

documents were neither finalized by agency leadership nor completed, their later use by RAND does not strip them of their predecisional and deliberative character.

2. *The SNRA Documents are Deliberative*

The Court also finds that the SNRA documents are “deliberative.” The Supreme Court has recently explained that there is considerable overlap between predecisional and deliberative “because a document cannot be deliberative unless it is predecisional.” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786. Thus, much of the prior discussion as to the predecisional status of the SNRA documents bears on the deliberative nature of the documents as well.

PEER argues that the SNRA documents do not involve “policy discussions or ‘bear[] on the formulation or exercise of agency policy-oriented *judgment*,’” but are, instead, “a factual tool . . . generally available to any number of decisionmakers to assist in any kind of decision.” Pl.’s Mot. & Opp’n at 16. Further, PEER contends that the 2015 SNRA documents do “not contain specific policy stances, but general information which can and should be used by a broad audience.” *Id.* at 18.

In response, the Bridges Declaration explains that the SNRA documents contain “proposed factual findings, proposed assessments of information pertaining to threats and hazards, and other opinions, recommendations, and proposed conclusions made by the authors.” Def.’s Mot. at 5 (quoting Bridges Decl. ¶ 11). The Court is unpersuaded by PEER’s argument that the SNRA contains no policy stances or “policy-oriented judgment.” Pl.’s Mot. & Opp’n at 16. The SNRA documents were drafted with the intent to form the basis of the 2015 National Preparedness Goal, *see* Stainsby Decl. ¶ 3, and, thus, were “prepared to help the agency formulate its position.” *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786 (citations omitted).

As discussed *supra*, that there was no final agency decision or document to which the SNRA contributed is irrelevant because “[a] document is not final solely because nothing else follows it.” *Id.* As the agency’s declaration makes clear, the SNRA reflects the give-and-take of the agency decision-making process. *See Coastal States*, 617 F.2d at 866. The documents contain information “entangled with . . . analyses and proposed conclusions” expressing the author’s preliminary views on a variety of threats and risks facing the United States. Def.’s Mot. at 5 (quoting Bridges Decl. ¶ 11). Moreover, the SNRA documents are deliberative because they were drafted “to help the agency formulate its position” regarding various risks and hazards that, in the opinion of the drafters, the United States faced. *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786 (citations omitted).

PEER further argues that even if the SNRA documents are, in part, deliberative, DHS must disclose the purely factual material contained within the SNRA. *See Pl.’s Mot & Opp’n* at 21–27. In general, purely factual material cannot be withheld unless it reflects an “exercise of discretion and judgment calls.” *Ancient Coin Collectors*, 641 F.3d at 513 (quoting *Mapother v. Dep’t of Just.*, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). “[T]he legitimacy of withholding does not turn on whether the material is purely factual in nature . . . but rather on whether the selection or organization of facts is part of an agency’s deliberative process.” *Id.* (citing *Montrose Chem. Corp. of Cal. v. Train*, 491 F.2d 63, 71 (D.C. Cir. 1974)). DHS responds that the entirety of the SNRA must be withheld because the factual material “is included in documents through the exercise of judgment calls requiring extracting facts from a larger set of facts.” Def.’s Mot. at 5.

Further, the Bridges Declaration explains:

Any factual information included in these documents consists of facts culled from a larger set of facts concerning threats and hazards. The authors of these documents used their judgment as to which facts to include and which facts to exclude, and thus release of this factual information would reveal

their deliberative process in selecting pertinent facts to include in these draft documents.

Def.'s Mot. at 5 (quoting Bridges Decl. ¶ 11).

The D.C. Circuit has considered the withholding of purely factual material in several cases. In *Mapother*, the court recognized that while, in general, “factual material must be disclosed but advice and recommendations may be withheld,” 3 F.3d at 1537 (quoting *Wolfe v. Dep’t of Health & Human Servs.*, 839 F.2d 768, 774 (D.C. Cir. 1988) (en banc)), this fact/opinion distinction “is not infallible and must not be applied mechanically.” *Id.* (citing *Wolfe*, 839 F.2d at 774). As the court noted, “[t]his is so because the privilege serves to protect the deliberative process itself, not merely documents containing deliberative material.” *Id.* (citations omitted).

At issue in *Mapother* was whether a report prepared for the Attorney General by the Office of Special Investigations (“OSI”) regarding whether a particular individual “may have participated in war crimes as an officer in the army of Nazi Germany” could be withheld. *Id.* at 1535. Although the report contained mainly factual material, the court found that because the report required the authors “to cull the relevant documents, extract pertinent facts, organize them to suit a specific purpose, and to identify the significant issues they encountered along the way,” disclosure of such facts would reveal the deliberative process at play. *Id.* at 1538. The court distinguished the OSI Report from that of an earlier case, *Playboy Enterprises, Inc. v. Department of Justice*, 677 F.2d 931 (D.C. Cir. 1982), relied upon by PEER here, on the grounds that the disputed documents in *Playboy Enterprises* were merely an investigative report “prepared only to inform,” while the OSI Report was “assembled through an exercise of judgment in extracting pertinent material from a vast number of documents for the benefit of an official called upon to take discretionary action.” *Mapother*, 3 F.3d at 1539.

Similarly, in *Ancient Coin Collectors*, the D.C. Circuit held as sufficient the agency's declaration that the factual summaries contained in the withheld reports "'were culled by the [agency] from the much larger universe of facts presented to it' and reflect an 'exercise of judgment as to what issues are most relevant to the pre-decisional findings and recommendations.'" 641 F.3d at 513.

PEER attempts to distinguish *Mapother* and *Ancient Coin Collectors* from the instant case by arguing that the factual "culling" in the SNRA "is solely from public unclassified documents and concerns a very broad array of risks and harms not specific to any decisionmaker or decision." Pl.'s Mot. & Opp'n at 26. This is a distinction without a difference. Neither *Mapother* nor *Ancient Coin Collectors* base their holding on the breadth of risks or scope of decisions that the factual material relates to. A document does not lose its deliberative status merely because its author intended that the material have broad application. If anything, that the SNRA documents were intended to benefit multiple officials in taking multiple discretionary actions emphasizes their deliberative nature. And unlike the report at issue in *Playboy Enterprises*, the SNRA was drafted not as a mere investigative report designed only to inform, but instead to provide agency decisionmakers and policy makers materials and analyses which they could rely upon in formulating policy and taking actions. Moreover, *Ancient Coin Collectors* makes clear that whether the withheld factual material "is already in the public domain," is irrelevant to whether that material is deliberative. *Ancient Coin Collectors*, 641 F.3d at 513.

B. The Foreseeable Harm Requirement

Pursuant to the FOIA Improvement Act of 2016, "[a]n agency shall withhold information" under the discretionary FOIA exemptions, including Exemption 5, "only if the agency reasonably foresees that disclosure would harm an interest protected by" a discretionary exemption or if

“disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). “Stated differently, pursuant to the FOIA Improvement Act, an agency must release a record—even if it falls within a FOIA exemption—if releasing the record would not reasonably harm an exemption-protected interest and if its disclosure is not prohibited by law.” *Rosenberg v. Dep’t of Def.*, 342 F. Supp. 3d 62, 73 (D.D.C. 2018); *see also Ctr. for Investigative Reporting v. CBP*, 436 F. Supp. 3d 90, 106 (D.D.C. 2019).

Although the Court is satisfied that the SNRA documents fall under the deliberative process privilege, the documents may be withheld only if the government clearly establishes a risk of foreseeable harm from disclosure. *See, e.g., Rosenberg*, 342 F. Supp. 3d at 73. “Agencies cannot rely on ‘mere “speculative or abstract fears,” or fear of embarrassment’ to withhold information.” *Reps. Comm. for Freedom of the Press v. FBI*, 3 F.4th 350, 369 (D.C. Cir. 2021) (quoting S. Rep. No. 4, 114th Cong., 1st Sess. 8 (2015)). Nor may the government meet its burden with “generalized assertions[.]” *Machado Amadis v. Department of State*, 971 F.3d 364, 371 (D.C. Cir. 2020). The agency must articulate, in a “focused and concrete” way, the harm that would result from disclosure, including the basis and likelihood of that harm. *Reporters Comm.*, 3 F.4th at 369.

The D.C. Circuit has addressed the foreseeable harm requirement in two recent cases. In *Machado Amadis*, the court upheld the agency’s withholding of so-called “Blitz Forms” containing certain legal “recommendations, discussion, and search notes” for FOIA appeals, finding that the agency had met the foreseeable harm requirement. *Machado Amadis*, 971 F.3d at 370–71. The agency’s declaration stated that disclosure of the forms would discourage line attorneys from “candidly discuss[ing] their ideas, strategies, and recommendations,” thereby hindering “the forthright internal discussions necessary for efficient and proper adjudication of administrative appeals.” *Id.* at 371 (quoting agency declaration). The court rejected the plaintiff’s argument that

the agency had provided only “generalized assertions that ‘could’ chill deliberations.” *Id.* (quoting plaintiff’s brief). Instead, the court explained, the agency “specifically focused on the information at issue” in the withheld material and had “concluded that disclosure of that information ‘would’ chill future discussions.” *Id.* (quoting agency declaration). Accordingly, the agency met the foreseeable harm requirement.

The D.C. Circuit again addressed the foreseeable harm requirement in *Reporters Committee*. There, the plaintiff had submitted multiple FOIA requests for records about FBI agents impersonating reporters. *Reporters Comm.*, 3 F.4th at 356–57. The FBI withheld information under the deliberative process privilege, including emails between Director James Comey and agency officials on a public editorial written by Comey about the incident. *See id.* at 360–61.

The FBI provided several reasons as to why disclosure of the requested materials would lead to harm, all of which the court deemed “boilerplate and generic assertions” insufficient to meet the foreseeable harm requirement. *See id.* at 370–72. First, the FBI’s main declaration said that disclosing the material “would have an inhibiting effect upon agency decisionmaking and the development of policy” because disclosure “would chill full and frank discussions” within the agency. *Id.* at 370. Further, the declaration proclaimed that agency personnel would be “less candid and more circumspect in expressing their thoughts, which would impede the fulsome discussion of issues necessary to reach a well-reasoned decision.” *Id.* The court rejected the sufficiency of this explanation, finding that the FBI had merely “mouth[ed] the generic rationale for the deliberative process privilege itself.” *Id.*

The other declarations provided by the FBI and the Justice Department similarly failed to demonstrate in a specific manner the harm that would result from disclosure. *See, e.g., id.* (disclosure “would set a precedent where employees would come to fear their unrefined opinions

could become subject to public disclosure through the FOIA” (quoting agency declaration)). The court held that the government’s assertion that disclosure “would be harmful as the draft would also reveal the thought and decision-making processes,” *id.* at 371, of the agency was a “cookie-cutter formulation[.]” that failed to adequately explain “why actual harm would foreseeably result from release of the *specific* type of material at issue here,” *id.* (emphasis added). The court further explained that the declaration’s contention that disclosure “would potentially confuse the public about the reasons” for the agency’s actions “is *precisely* the kind of boilerplate, unparticularized, and hypothesized assertion of harm that we said would be insufficient in *Machado Amadis*.” *Id.* (citing 971 F.3d at 371).

To satisfy the foreseeable harm requirement, the FBI needed to give a “focused and concrete” explanation for why disclosure of the withheld material would, “in the specific context of the agency action at issue, actually impede those same agency deliberations moving forward.” *Id.* at 370. Instead, the FBI submitted “perfunctory, sweeping, and undifferentiated declaration[s]” which failed to “explain the particular sensitivity of the types of information at issue or the role that they play in the relevant agency decisional processes (and, therefore, whether and how their release would harm similar deliberations in the future).” *Id.* at 372.

With these D.C. Circuit cases in mind, the Court finds that DHS has adequately demonstrated how release of the SNRA “would harm an interest protected by the [deliberative process] exemption,” *Reporters Comm.*, 3 F.4th at 372 (quoting 5 U.S.C. § 552(a)(8)(A)(i)(I)), and has “articulate[d] . . . the link between the specified harm and specific information contained in the material withheld,” *id.* (quoting H.R. Rep. No. 391, 114th Cong., 2d Sess. 9 (2016)).

Admittedly, the first Stainsby Declaration fails to assert anything more than the type of boilerplate language rejected in *Reporters Commission*. For example, the declaration repeatedly

states that disclosure “would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.” Stainsby Decl. ¶¶ 6, 8, 10, 12, 14, 16, 18. This language, which appears seven times in the seven-page declaration, is exactly the type of “cookie-cutter” and undifferentiated assertion of harm that fails to satisfy the foreseeable harm requirement. *See Reporters Comm.*, 3 F.4th at 371 (“Its cookie-cutter formulations nowhere explain why actual harm would foreseeably result from release of the specific type of material at issue here.”).

However, the Bridges Declaration fares better than the Stainsby Declaration as it goes beyond the merely formulaic and boilerplate by addressing how the specific information within the documents relates to a particular risk of harm. The declaration explains that disclosure of the SNRA would harm FEMA “by prematurely revealing threats and hazards . . . [which] would . . . cause confusion to the public and may result in members of the public taking action on potential threats and hazards where no action is warranted,” or in a manner not “suggested by a recommendation contained in the documents.” Bridges Decl. ¶ 12. Unlike the boilerplate language rejected in *Reporters Commission* that disclosure of the disputed documents “would potentially confuse the public,” *Reporters Comm.*, 3 F.4th at 371, the agency’s declaration here articulates a specific link between the specified harm—public confusion—and the nature of the withheld documents. Indeed, this articulation of the foreseeable harm of disclosure is arguably more specific and focused than that approved of in *Machado Amadis*. *See* 971 F.3d at 371 (“[The agency’s] affidavit adequately explained that full disclosure of the Blitz Forms would discourage line attorneys from ‘candidly discuss[ing] their ideas, strategies, and recommendations,’ thus impairing ‘the forthright internal discussions necessary for efficient and proper adjudication of administrative appeals.’”).

FEMA has explained not just that release of the 2015 SNRA would cause public confusion, but specifically articulated how the nature of the information contained within the documents—threats, hazards, and recommendations—would cause such confusion. Further, the D.C. Circuit has long recognized that the risk of public confusion “has a special force with respect to disclosures of agency positions or reasoning concerning proposed policies.” *Petroleum Info. Corp. v. Dep’t of Interior*, 976 F.2d 1429, 1436 n.10 (D.C. Cir. 1992).

The government provides other explanations of the foreseeable harm resulting from disclosure of the SNRA documents that similarly satisfy its burden under the 2016 FOIA Improvement Act. The Supplemental Stainsby Declaration explains that release of the SNRA “would cause confusion not just with other federal agencies, but with the public as well,” because they might incorrectly believe “the SNRA is still the main national risk assessment vehicle, when it is not.” Stainsby Suppl. Decl. ¶ 10. Such an explanation does not merely “mouth[] the generic rationale for the deliberative process privilege itself,” *Reporters Comm.*, 3 F.4th at 370, but instead specifies how exactly the risk of confusion arises from the disclosure of the particular information contained within the documents. As the SNRA is no longer used by FEMA as the main risk assessment vehicle, the declaration’s explanation that the public and other agencies may mistakenly think that the opposite is true if disclosed is neither conclusory nor generalized; it links the harm with the particulars of the documents at issue. Relatedly, the declaration also explains that disclosure of the SNRA would cause confusion among both the public and other federal agencies regarding “FEMA’s actual position is regarding risks,” Stainsby Suppl. Decl. ¶ 14, as the risks and threats discussed in the SNRA “would not represent FEMA’s current position regarding risks, which can be found in the National THIRA,” *id.* ¶ 16.

C. Segregability

Although the Court concludes that GSA properly withheld the Category 2, 3, and 4 records, it must also “make specific findings of segregability regarding the documents to be withheld.” *Stolt-Nielsen Transp. Grp.*, 534 F.3d at 734 (internal quotation marks omitted) (quoting *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1116 (D.C. Cir. 2007)); *see also Morley v. CIA*, 508 F.3d 1108, 1123 (D.C. Cir. 2007) (explaining that a district court has “an affirmative duty to consider the segregability issue *sua sponte*”) (internal quotation marks omitted) (quoting *Trans-Pac. Policing Agreement v. U.S. Customs Serv.*, 177 F. 3d 1022, 1028 (D.C. Cir. 1999)).

“Agencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material.” *Sussman*, 494 F.3d at 1117. Affidavits attesting to the agency's “line-by-line review of each document withheld in full” and the agency's determination “that no documents contained releasable information which could be reasonably segregated from the nonreleasable portions,” in conjunction with a *Vaughn* index describing the withheld record, suffice. *Id.* (internal quotation marks omitted); *see also Loving v. Dep’t of Def.*, 550 F.3d 32, 41 (D.C. Cir. 2008) (stating that “the description of the document set forth in the *Vaughn* index and the agency’s declaration that it released all segregable material” are “sufficient for [the segregability] determination”).

Granting DHS its due presumption of regularity, the Court finds that DHS has discharged its burden concerning segregability with respect to the SNRA documents. DHS’s *Vaughn* Index provides a statement of its reasons for withholding the requested documents and its sworn declaration establishes that the records were reviewed “line-by-line” to ensure that the withheld information “contained no segregable, nonexempt information.” Bridges Decl. ¶ 15 (“With respect to each piece of information withheld, no further information could be reasonably segregated from

the exempt information.”). The Court has also conducted its own independent review of these documents and is satisfied that any non-exempt information contained therein is not reasonably segregable.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** DHS’s Motion for Summary judgment, and **DENIES** PEER’s Cross-Motion for Summary Judgment. An appropriate order accompanies this Memorandum Opinion.

Dated: December 17, 2021

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge