

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

AMERICAN CENTER FOR LAW AND JUSTICE,)	
)	
Plaintiff,)	Civil No. 1:16-cv-2188
)	
v.)	
)	
UNITED STATES DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	

THIRD DECLARATION OF VANESSA R. BRINKMANN

I, Vanessa R. Brinkmann, declare the following to be true and correct:

1. I am Senior Counsel in the Office of Information Policy (OIP), United States Department of Justice (DOJ or Department). In this capacity, I am responsible for supervising the handling of the Freedom of Information Act (FOIA) requests processed by attorneys on the Initial Request (IR) Staff of OIP. The IR Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from six senior leadership offices of the Department of Justice. These offices are: the Offices of the Attorney General, the Deputy Attorney General, and the Associate Attorney General, and the Offices of Legislative Affairs, Legal Policy, and Public Affairs. The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consult with personnel in the senior leadership offices and, when appropriate, with other components within the DOJ and/or other Executive Branch agencies.

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

3. This declaration supplements and incorporates by reference my November 3, 2017 declaration, filed as ECF No. 22-1, and my January 12, 2018 declaration, filed as ECF No. 25-1.

4. In my declaration dated November 3, 2017 (“First Brinkmann Declaration”), I provided a description of Plaintiff’s July 15, 2016 FOIA request and OIP’s responses thereto and an explanation of the information withheld by OIP in response to Plaintiff’s FOIA request. Specifically, that declaration addressed the withholding of information pursuant to Exemption 5 of the FOIA within eleven documents identified by Plaintiff.¹ These withholdings consisted of talking points, draft press statements, and internal communications among DOJ staff concerning how to respond to the press. *See* First Brinkmann Declaration, ECF No. 22-1 ¶¶ 3, 5-7, 9-17.

5. In my January 12, 2018 declaration (“Second Brinkmann Declaration”), I provided a description of OIP’s standard search methods, as well as the specific records search conducted in response to Plaintiff’s request. Additionally, the Second Brinkmann Declaration identified which documents containing Exemption 5 redactions fell into each of the categories outlined in the First Brinkmann Declaration.

6. By Memorandum Opinion and Order dated September 7, 2018, the Court granted Defendant summary judgment with regard to OIP’s Exemption 5 withholdings for nine of the

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

eleven documents at issue, but directed Defendant to submit this supplemental declaration to provide more context as to the documents identified as control numbers 0.7.9269.5105 and 0.7.9269.6094. Consistent with this order, additional context for document 0.7.9269.5105 is provided below. Subsequent to the Court's order, in light of the passage of time since its drafting, Defendant exercised its discretion to re-release document 0.7.9269.6094 to Plaintiff without Exemption 5 redactions.² Because the challenged information within document 0.7.9269.6094 has now been released, its withholding is no longer at issue and thus is not further addressed in this declaration.

7. As indicated in the Second Brinkmann Declaration, document 0.7.9269.5105 falls into the *Draft and/or Proposed Talking Points* category. This document consists of an email dated July 11, 2016, with an attachment called "Top Line TPs (Final)." The email itself—sent by an employee in the Department's Office of Legislative Affairs to staff in the Office of the Attorney General—has been released in full. The attachment has been redacted in full. The redacted attachment consists of three pages of talking points, entitled "Top Line Messages," which were prepared for Attorney General Lynch. These talking points pertain to Ms. Lynch's decision—publicly announced on July 6, 2016—to accept the recommendation of the Federal Bureau of Investigation (FBI) that its investigation of Secretary Clinton's use of a personal email system during her time as Secretary of State be closed.³ These talking points are responsive to

² OIP continues to protect a cell phone number within this document, pursuant to FOIA Exemption 6. Plaintiff has not challenged the assertion of Exemption 6.

³ See Statement from Attorney General Loretta E. Lynch Regarding State Department Email Investigation, July 6, 2016, found online at: <https://www.justice.gov/opa/pr/statement-attorney-general-loretta-e-lynch-regarding-state-department-email-investigation>.

Plaintiff's request because a portion of them references the Lynch-Clinton tarmac meeting. Like the other talking points protected by OIP in the *Draft and/or Proposed Talking Points* category, Department staff prepared these talking points for Attorney General Lynch for her use when interacting with the public or the press. Each of the three pages of the talking points are marked with the header "Confidential – Pre-Decisional Draft (7-11-2016)." In addition to proposed language regarding the investigation of Secretary Clinton's use of a personal email system, the document includes proposed responses that the Attorney General could consider if asked about other topics. As such, the redaction of the talking points is consistent with OIP's withholding of other talking points in this case. *See, e.g.,* First Brinkmann Declaration, ECF 22-1, ¶¶ 16-17; Memorandum Opinion and Order, ECF 28, at 14-17.

9. OIP thoroughly reviewed document 0.7.9269.5105 and withheld under the Exemption 5 deliberative process privilege only that information which would reveal the Department's pre-decisional decision-making process. OIP conducted a line-by-line review of this document and concluded that only the email to which the redacted document was attached was not deliberative process privileged information. Just as OIP did in numerous documents in the August 1, 2017 production, for document 0.7.9269.5105 OIP withheld in full only those three pages of the four-page record which contained the draft talking points. No unprotected information was segregable because the attachment is comprised entirely of proposed talking points for Ms. Lynch.

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



Vanessa R. Brinkmann

Executed this 5th day of October 2018.