2-25-2011

Judicial Watch Inc. Supplemental Motion for Summary Judgment

United States District Court: District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC., Plaintiff, vs. U.S. DEPARTMENT OF THE TREASURY, Defendant.	)	Civil Action No. 1:09-CV-1508 (BAH)

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, hereby submits this opposition to Defendant Department of Treasury's ("DOT's") supplemental motion for summary judgment. As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF LAW

I. INTRODUCTION.

The instant motion concerns the technical application of several Freedom of Information Act exemptions to a relative handful of documents. At bottom however, this Freedom of Information Act ("FOIA") case concerns Plaintiff's efforts to obtain information about a possible misuse of taxpayer money from the Troubled Asset Relief Program ("TARP") to assist a financial institution favored by members of Congress, OneUnited Bank ("OneUnited"). While it is possible that no misconduct actually occurred in this matter, the public has a right to *full* disclosure about how and why the federal government distributed taxpayer money to this troubled bank.

A. Background of TARP and OneUnited Bank.

TARP was created shortly after Congress enacted the Emergency Economic Stabilization Act ("EESA") in October of 2008, in response to a severe economic crisis. *See* Motion for Summary Judgment of the U.S. Department of Treasury, Docket No. 15, ("Def. Mot.") at 3. The EESA created the Office of Financial Stability ("OFS") within DOT, which implements TARP. *Id.* TARP in turn authorized the government to invest in mortgage backed securities, corporate debt, or, in the case of OneUnited Bank, stock, to strengthen the capital base of *qualified* financial institutions and increase market confidence in the entire banking system. Def. Mot. at 3, 5. (emphasis added). Through TARP, DOT ultimately purchased $12,063,000 of OneUnited Bank's preferred stock on December 19, 2008. *Id.* at 5.

Defendant's summary judgment motion does an adequate job of explaining the creation and implementation of TARP. However, the motion omits several critical facts that demonstrate that the use of TARP funds to purchase OneUnited stock was an extremely unusual, and possibly, improper use of those funds.

First, OneUnited was under heavy scrutiny by both the FDIC and Massachusetts regulatory officials in the months before it received its TARP funds. Specifically, on October 27, 2008, the bank was issued a cease and desist order regarding executive compensation abuses including, among other things, the use of new Porsche for bank executives. *See* Damian Paletta and David Enrich, *Political Interference Seen In Bank Bailout Decisions*, Wall Street Journal, January 22, 2009 at A1.

Second, OneUnited received TARP funds despite being under exceptionally severe financial distress. TARP was intended to encourage fundamentally healthy banks to restart

lending, whereas distressed loans at OneUnited increased by 66% in the 4th quarter of 2008, right around the time OneUnited received its bailout. *See* Tim McLaughlin, *One United's Bad Loans Spiked in Q4*, Boston Business Journal, January 29, 2009. By the end of 2008, the number of OneUnited loans actually delinquent nearly doubled from 2.6% to 4.5%. *Id.*

Third, at least two politicians interceded on OneUnited's behalf in an effort to secure TARP funds for the bank. Congressman Barney Frank (D-MA) has admitted that he spoke to federal regulators urging that OneUnited at least be considered for TARP funds. Paletta and Enrich, *supra; see also* Michael Kranish and Ross Kerber, *Frank Tried to get Hub Bank a Bailout*, The Boston Globe, January 23, 2009. Subsequent media reports revealed that Congressman Maxine Waters (D-CA), who once owned stock in OneUnited, contacted the Treasury Department in September of 2008 to set up a meeting at which executives of OneUnited made a highly unusual request for $50,000,000 in federal assistance. *See* Susan Schmidt, *Waters Helped Bank Whose Stock She Once Owned*, The Wall Street Journal, March 12, 2009; *see also* Eric Lipton and Jim Ruttenberg, *A Representative, Her Ties and a Bank Meeting*, The New York Times, March 13, 2009.[1] OneUnited did not receive any federal funds immediately following this September 2008 meeting, but it did receive such funds several months later, after the creation of TARP.

Finally, OneUnited missed seven of eight of the quarterly dividend payments it was required to make to DOT to pay back the funds it received from TARP, including the last seven payments in a row. Todd Wallack, *Bank Misses Seventh Dividend Payment*, The Boston Globe, December 14, 2010. OneUnited's failure to reimburse taxpayer bailout money thus raises further

[1] Congressman Waters's husband, Sidney Williams served on OneUnited's board of directors until early 2008, and reportedly still owns $250,000 of OneUnited stock in 2009. Lipton and Ruttenberg, supra.

questions about whether OneUnited should have received federal assistance in the first place. In light of all these facts, which are clearly of great importance and interest to the public, as much information as possible about the government's decision to distribute TARP funds to OneUnited Bank should be made available for public scrutiny.

B. Plaintiff's FOIA Request.

In furtherance of its investigation into OneUnited's receipt of TARP funds, on January 23, 2009, Plaintiff sent Defendant, by certified U.S. mail and facsimile, a FOIA request seeking access to any and all records concerning or relating to the following topics:

> 1. Any and all records concerning evaluation procedures for federal banking agencies and the Treasury Department to distribute/award TARP Funds (Trance Report to Congress for the Period Through November 14, 2008 states on page 2 "Treasury has worked with the Federal banking agencies to establish streamlined evaluation procedures;" disclosure should include a copy of evaluation procedures produced to federal banking agencies, any correspondence between the Treasury and any federal banking agencies concerning such procedures, memos, briefing materials, etc).
>
> 2. Correspondence with Congressman Barney Frank or any representative of his Office concerning TARP Funds and/or any bank in Massachusetts.
>
> 3. Any and all records concerning OneUnited Bank in Boston, Massachusetts (including correspondence from any lobbyist, correspondence from any other government agency, correspondence with any elected official, correspondence directly with the Bank, the Bank's application for TARP funds, etc).

See Exhibit B to the Declaration of Joseph J. Samarias, attached to Def. Mot. as Exhibit 3 ("Samarias Dec.").

By letter dated February 11, 2009, Defendant acknowledged receipt of Plaintiff's FOIA request and granted itself a ten (10) day extension of time to respond to the request. *See* Complaint at ¶7. On March 31, 2009, approximately 3 weeks after Defendant's response was due, Plaintiff sent Defendant a letter inquiring about the status of Plaintiff's January 23, 2009

FOIA request. *See* Complaint at ¶9. Defendant acknowledged receipt of Plaintiff's March 31, 2009 letter on April 7, 2009. *Id.* However, the letter did not include any responsive documents, nor did it state when Plaintiff could expect to receive a substantive response. *Id.* Plaintiff was forced to file this lawsuit when Defendant failed to respond to Plaintiff's request by August 11, 2009 and gave no indication to Plaintiff as to when it could expect to receive a substantive response.

After this lawsuit was filed, the parties entered into negotiations regarding document production. Pursuant to these negotiations and the Court's November 18, 2009 Minute Order, Defendant produced approximately 596 pages of responsive documents in whole or in part to Plaintiff in December of 2009. Def. Mot. at 7-8. Defendant made a subsequent, discretionary release of an additional 12 pages of documents on February 23, 2010. *Id.* at 8. After further negotiations, the parties narrowed the scope of documents at issue to 11 specific documents totaling approximately 26 pages. *Id.* Defendant then moved for summary judgment in June of 2010.

On September 13, 2010, after Defendant's initial motion for summary judgment had been fully briefed, Defendant informed Plaintiff that it had discovered an additional 44 pages of responsive records, which it released to Plaintiff with some information redacted. *See* Defendant's Supplemental Motion for Summary Judgment ("Def. Supp. Mot.") at 2. Further negotiations between the parties narrowed to six the number of pages remaining in dispute. *Id.*

II. Argument.

A. Summary Judgment Standard.

FOIA generally requires complete disclosure of requested agency information unless the information falls into one of FOIA's nine clearly delineated exemptions. 5 U.S.C. § 552(b); *see*

also Department of the Air Force v. Rose, 425 U.S. 352, 360-61 (1976) (discussing the history and purpose of FOIA and the structure of FOIA exemptions). In light of FOIA's goal of promoting a general philosophy of full agency disclosure, the exemptions are to be construed narrowly. *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989). "[T]he strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents." *United States Dep't of State v. Ray*, 502 U.S. 164, 173 (1991).

In FOIA litigation, as in all litigation, summary judgment is appropriate only when the pleadings and declarations demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed.R.Civ.P. 56(c). In FOIA cases, agency decisions to "withhold or disclose information under FOIA are reviewed *de novo*." *Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp.2d 252, 256 (D.D.C. 2004). In reviewing a motion for summary judgment under FOIA, the court must view the facts in the light most favorable to the requester. *Weisberg v. United States Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984).

For an agency to prevail on a claim of exemption, it must "prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." *Goland v. Central Intelligence Agency*, 607 F.2d 339, 352 (D.C. Cir. 1978). "Reliance on 'agency affidavits is warranted if the affidavits describe the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.'" *Sciba v. Board of Governors*, 2005 U.S. Dist. LEXIS 45686, *4 (D.D.C. Nov. 5, 2005) (*quoting*

Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981)). The court may require an *in camera* inspection of the withheld documents to "insure that agencies do not misuse the FOIA exemptions to conceal non-exempt information." *Carter v. U.S. Dep't of Commerce*, 830 F.2d 388, 393 (D.C. Cir. 1987) (*quoting Allen v. Central Intelligence Agency*, 636 F.2d 1287, 1298 (D.C. Cir. 1980)).

Finally, an agency must demonstrate that, even where particular exemptions properly apply, all non-exempt information has been segregated and disclosed. *Sussman v. U.S. Marshals Service*, 494 F.3d 1106, 1116 (D.C. Cir. 2007); *Shurberg Broadcasting of Hartford v. Federal Communications Commission*, 617 F. Supp. 825, 828 (D.D.C. 1985). A segregability determination is absolutely essential to any FOIA decision. *See Summers v. Dep't of Justice*, 140 F.3d 1077, 1081 (D.C. Cir. 1998).

B. Defendant Improperly Withheld Information Pursuant to Exemption 4.

FOIA Exemption 4 permits the withholding of "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." 5 U.S.C. § 552(b)(4). In order to determine whether information was privileged or confidential, courts look to whether its production was compulsory or whether it was provided to the government voluntarily. If the provision of the information was compulsory, "it will not be considered confidential unless the submitter can show that disclosure will (1) 'impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.'" *Defenders of Wildlife v. U.S. Dep't of the Interior*, 314 F. Supp.2d 1, 7-8 (D.D.C. 2004) (*citing Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("*National Parks*")). If the information was provided to the government voluntarily, it is considered confidential "if it is 'of a kind that would customarily

not be released to the public by the person from whom it was obtained.'" *Defenders of Wildlife,* 314 F. Supp.2d at 7-8 (quoting *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992) (*en banc*)).

Defendant purports to withhold portions of the following five documents in part pursuant to Exemption 4: Documents Bates stamped 000815-817 and 000819-820. *See* Defendant's Supplemental *Vaughn* Index, attached as Exhibit A to the Second Declaration of Joseph J. Samarias ("Second Samarias Dec.").

In support of this argument, Defendant merely makes the general assertion that OneUnited would likely suffer substantial competitive harm if the withheld information were disclosed. *See* Second Samarias Dec. at ¶¶13-16; Because Defendant's competitive harm claim suffers from a complete lack of specificity, it must fail.

To prevail on such a claim, the Defendant must "provide specific evidence substantiating an assertion that release of a record would cause substantial competitive harm to the person from whom the information was obtained." *Bloomberg v. Board of Governors of the Federal Reserve System*, 649 F. Supp.2d 262, 279 (S.D.NY 2009) (citing *Public Citizen Health Research Group v. Food and Drug Admin*, 704 F.2d 1280, 1291 (D.C. Cir. 1983)); *see also Gulf & Western Industries v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979). "Conclusory and generalized allegations of substantial competitive harm, of course, are unacceptable and cannot support an agency's decision to withhold requested documents." *Id.* The agency must provide evidence that if the requested information is disclosed, competitive harm would be "imminent." *Bloomberg*, 649 F. Supp.2d at 279 (*citing Iglesias v. Central Intelligence Agency*, 525 F. Supp. 547, 559 (D.D.C. 1981)). The specific evidence must show that the competitive harm will result from the affirmative use of the information *by competitors* of the person or entity from whom the

information was obtained, not merely injuries to that person or entity's competitive position in the marketplace or "embarrassing publicity attendant upon public revelations." *Id.* (*citing Public Citizen Health Research Group*, 704 F.2d at 1291 n.30).

Defendant's submissions fail to satisfy this exacting standard. Its supplemental *Vaughn* Index merely states the boilerplate phrase that "public release it likely to cause OneUnited substantial competitive harm." Supplemental *Vaughn* Index at 1-2. Likewise, the Second Samarias Declaration simply claims that release of the information "could cause substantial competitive harm" to OneUnited. Second Samarias Dec. at ¶13. These descriptions of alleged harm never progress beyond mere conjecture. *Id* at ¶*14*; Supplemental *Vaughn* Index at 1-2. *See also* Def. Supp, Mot. at 7. They fail to demonstrate that the alleged harm or injury will happen, much less that it will happen imminently. *Bloomberg,* 649 F. Supp.2d at 279. As in *Bloomberg*, the Defendant's evidence is insufficient to satisfy its burden of proof. *Id.*

C. Defendant Improperly Withheld Information Pursuant to Exemption 5.

Exemption 5 of FOIA allows an agency to withhold records or information that is "interagency or intra-agency memorandums or letters which would not be available by law to a party other an agency in litigation with the agency." 5 U.S.C. § 552 (b)(5). Courts have recognized three types of Exemption 5 withholdings: the deliberative process privilege, the attorney-client privilege, and the attorney work product doctrine. *See Coastal States Gas Corp., v. Department of Energy,* 617 F.2d 854, 862 (D.C. Cir. 1980). Defendant purportedly invokes the deliberative process privilege. Def's Supp. Mot. at 3-5.

1. Defendant Improperly Withheld Information Pursuant to the Deliberative Process Privilege.

Portions of documents Bates stamped 000816, and 000819-821 are purportedly withheld pursuant to the deliberative process privilege. *See* Def. Supp. Mot. at 3-5; Second Samarias Dec. at ¶¶8-11.

In order to withhold information pursuant to the deliberative process privilege, an agency must demonstrate that the information 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). Further, the information must be "predecisional and it must be deliberative" and "not shield documents that simply state or explain a decision the government has already made or 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." *Id.* (citations omitted).

The deliberative process privilege exists to prevent injury to agency decision making. *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975). However, such harm cannot merely be presumed. *Mead Data Central, Inc., v. Department of the Air Force*, 566 F.2d 242, 258 (D.C. Cir 1977). Rather, the agency must show by specific and detailed proof that disclosure would defeat, rather than further, the purposes of the FOIA. *Id. See also Judicial Watch v. U.S. Postal Service*, 297 F. Supp. 2d 252, 259 (D.D.C. 2004).

Finally, the deliberative process privilege is a "qualified privilege and can be overcome by a sufficient showing of need." *In Re Sealed Case,* 121 F.3d at 737.

Plaintiff first notes that as with several documents in Defendant's first motion for summary judgment[2], Document 000821 is withheld almost in its entirety. The document simply states "Conclusion and Recommendation" at the top of the page, and the rest of the page is

[2] *See* Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Docket No. 17, at 12.

blacked out. Defendant's supplemental brief and *Vaughn* Index reveal virtually nothing about this document. Defendant states only that it discusses background and supervisory information obtained about OneUnited Def. Supp. Mot. at 4; Second Samarias Dec. at ¶¶8-9. Plaintiff respectfully submits that this brief explanation does not point to any specific decisionmaking process or policy that would be harmed if the information were released. Nor does Defendant adequately explain why none of the information in this document is segregable.

Regarding Document 000816, only a few words are redacted pursuant to Exemption (b)(5). This information appears to be factual and appears to refer to a final decision made by another agency. Since the information does not appear to be predecisional or deliberative, much less the predecisional or deliberative materials of Defendant, it must be released.

Documents 000819 and 000820 are described simply as a "Memorandum." *See* Supplemental *Vaughn* Index at 1. The headings in the document are "Brief Summary and Description of OneUnited Bank" on Document 000819 and "Additional Background and Supervisory Information Provided by the FDIC" on Document 000820. The contents of both pages appear to consist primarily of *factual* information, some of which is released and some of which is inexplicably withheld. As a general matter, an agency has a duty to disclose any reasonably segregable, responsive, factual information. *Mead Data Central, Inc.,* 566 F.2d at 260. While courts have recognized the possibility that the disclosure of certain factual information can "expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions," courts have construed this exception narrowly. *Quarles v. Dep't of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990). At issue in *Quarles* were certain cost estimates that the Court found were not really facts at all, but instead information "derive[d] from a complex set of

judgments – projecting needs, studying prior endeavors and assessing possible suppliers." *Id.* At 392-93. "They partake of just that elasticity that has persuaded courts to provide shelter for opinions generally." *Id.; see also Petroleum Information Corp. v. U.S. Dep't of the Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992) ("To fall within the deliberative process privilege, materials must bear on the formulation or exercise of agency policy-oriented judgment") (emphasis original).

Here, in contrast, Defendant has once again failed to demonstrate that disclosure of the factual information at issue -- a description of and background information about OneUnited -- will reveal any deliberations or judgment calls by DOT officials in deciding to provide TARP funds to OneUnited. Therefore, the withheld information must be released.

D. Defendant Improperly Withheld Information Under FOIA Exemption 8.

Exemption 8 provides that an agency may withhold information that is "contained in or related to the examination, operating or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. § 552(b)(8). While Exemption 8 was crafted broadly, a broad application of the exemption does not eliminate an agency's obligation to provide "a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 219 (*quoting Mead Data Central, Inc., v. Department of the Air Force*, 566 F.2d 242, 251 (D.C. Cir 1977). In other words, simply making an Exemption 8 assertion is not sufficient.

Defendant invokes Exemption 8 for portions of Documents Bates stamped 000815-817 and 000819-820 Def. Supp. Mot. at 9-10. With respect to each of these documents, Defendant

merely parrots the legal standard regarding Exemption 8, offering up boilerplate language that fails to specifically identify why the exemption should apply. Defendant's *Vaughn* Index only states that the redacted information "relates to communications regarding the condition of OneUnited." *See* Supplemental *Vaughn* Index at 1-2. Nowhere does Defendant identify any report, much less a *specific* report, to which any piece of withheld information allegedly relates.

In short, rather than relating the redacted information from the disputed documents to an actual report, it appears that Defendant is continuing to claim that any financial information it obtains in its supervisory capacity from or about any financial institution necessarily constitutes or relates to a "report" for purposes of Exemption 8. Such a construction of the term "report" is not consistent with the plain meaning of Exemption 8. *See Hammontree v. Nat'l Labor Relations Board,* 894 F.2d 438, 441 (D.C. Cir. 1990) (*citing Chevron U.S.A., Inc. v. Nat'l Resources Defense Council*, 467 U.S. 837, 842-43 (1984)). Defendant's Exemption 8 claims should therefore be rejected.

III. Conclusion.

For all the foregoing reasons, Defendant's Motion for Summary Judgment should be denied and Plaintiff respectfully submits that Defendant should be ordered to turn over the remaining information responsive to Plaintiff's January 23, 2009 FOIA request immediately.

Dated: February 25, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 1:09-CV-1508 (BAH)
	)	
U.S. DEPARTMENT OF THE TREASURY,	)	
	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS A GENUINE ISSUE AND DISPUTE FILED IN OPPOSITION TO DEFENDANT'S SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT

Plaintiff Judicial Watch, Inc. ("Judicial Watch"), by counsel and pursuant to LCvR 56.1, submits the following Statement of Material Facts as to Which There is a Genuine Issue and Dispute:

1. Plaintiff denies that any documents are being properly withheld by Defendant pursuant to 5 U.S.C. §552(b)(4). The documents at issue are not properly being withheld pursuant to Freedom of Information Act ("FOIA") Exemption (b)(4) because, as demonstrated in more detail in Plaintiff's Opposition To Defendant's Supplemental Motion for Summary Judgment, Defendant has failed to carry its burden of showing that release of the requested information would divulge trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

2. Plaintiff denies that any documents are being properly withheld by Defendant pursuant to 5 U.S.C. §552(b)(5). The documents at issue are not properly being withheld pursuant to Freedom of Information Act ("FOIA") Exemption (b)(5) because, as demonstrated in

more detail in Plaintiff's Opposition To Defendant's Supplemental Motion for Summary Judgment, Defendant has failed to carry its burden of showing that release of the requested information would violate the deliberative process privilege.

3. Plaintiff denies that any documents are being properly withheld by Defendant pursuant to 5 U.S.C. §552(b)(8). The documents at issue are not properly being withheld pursuant to Freedom of Information Act ("FOIA") Exemption (b)(8) because, as demonstrated in more detail in Plaintiff's Opposition To Defendant's Supplemental Motion for Summary Judgment, Defendant has failed to carry its burden of showing that the withheld information is contained in or related to the examination, operating or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

As to Defendant's statements, Plaintiff responds as follows:

1. Disputed to the extent that Plaintiff disputed Defendant's statements of fact in Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

2. Undisputed.

3. Disputed to the extent Defendant claims the documents being properly withheld pursuant to FOIA Exemptions 4, 5, and 8.

4. Plaintiff disputes that the documents are protected by the deliberative process privilege.

5. Disputed.

6. Disputed.

7. Disputed to the extent Defendant claims the documents being properly withheld pursuant to FOIA Exemption 4.

8. Disputed.

9. Disputed.

10. Disputed.

11. Disputed to the extent Defendant claims the documents being properly withheld pursuant to FOIA Exemption 8.

12. Disputed.

13. Disputed to the extent Defendant claims all segregable material has been released.

14. Disputed.

Dated: February 25, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.

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IN THE UNITED STATES DISTRICT COURT
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JUDICIAL WATCH, INC., Plaintiff, vs. U.S. DEPARTMENT OF THE TREASURY, Defendant.	)	Civil Action No. 1:09-CV-1508 (BAH)

[PROPOSED] ORDER

Upon consideration of Plaintiff's opposition to Defendant's Supplemental Motion for Summary Judgment, and the entire record herein it is hereby

ORDERED that,

1. Defendant's supplemental motion for summary judgment is denied.

SO ORDERED.

DATE:_____

_____
The Honorable Beryl A. Howell
United States District Judge