

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, *et al.*,

*Plaintiffs,*

v.

CENTRAL INTELLIGENCE AGENCY,

*Defendant.*

Civil Action No. 18-2784 (CJN)

**NOTICE OF FILING SUPPLEMENTAL MATERIALS IN  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Court's July 8, 2021, Minute Order, Defendant Central Intelligence Agency respectfully submits the attached Second Supplemental Declaration of Vanna Blaine and revised *Vaughn* index. The Second Supplemental Declaration provides further support for the agency's determination that release of the materials withheld under Exemption 5 would cause harm to interests protected by the FOIA. As discussed in the declaration, given the high profile nature of nominations for the CIA Director position and the significant public attention on such nominations, the agency reasonably foresees harm if agency employees expect that their deliberations about efforts to support future nominations will be publicly disclosed. *See* Second Suppl. Blaine Decl. ¶¶ 6-12; *see also Reporters Comm. for Freedom of the Press v. FBI*, No. 20-5091, 2021 U.S. App. LEXIS 19762, at \*40 (D.C. Cir. July 2, 2021) (sensitivity of agency discussions made the foreseeability of harm manifest).

The Second Supplemental Blaine declaration also explains that the agency has released portions of certain documents previously withheld in full, including portions of documents listed

as entries 21, 22, 34, 35, 86, and 129 on the *Vaughn* index. Second Suppl. Blaine Decl. ¶ 5.

The revised *Vaughn* index contains additional detail regarding the nature of the deliberative processes associated with several of the documents listed on the index. This additional detail further demonstrates the applicability of the deliberative process privilege here and refutes Plaintiffs' argument that Defendant has not provided sufficient detail to invoke the deliberative process privilege, *see NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 167 n.18 (1975) (explaining that "the existence of the [deliberative process] privilege" does not "turn[] on the ability of an agency to identify a specific decision in connection with which a [document] is prepared"). In addition, the Court's *in camera* review provides independent grounds to approve the agency's withholdings. *See Solers, Inc. v. IRS*, 827 F.3d 323, 327 (4th Cir. 2016).

Finally, Defendant takes this opportunity to clarify its position on a question addressed at the Court's July 19, 2021 classified hearing. If the Court determines that a particular document was properly withheld as classified under Exemption 1, the Court need not consider whether the document is also exempt under another asserted exemption. If, however, the Court were to determine that Exemption 1 does not apply to the document in its entirety, then it may have to consider whether other exemptions apply to any portions of the document not subject to Exemption 1.

Respectfully submitted,

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