

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

AMERICAN CIVIL LIBERTIES UNION, AMERICAN
CIVIL LIBERTIES UNION FOUNDATION, AMERICAN
CIVIL LIBERTIES UNION OF MONTANA
FOUNDATION, INC.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, DEPARTMENT OF
HOMELAND SECURITY, DEPARTMENT OF THE
INTERIOR, DEPARTMENT OF JUSTICE

Defendants.

Civil Action No. 18-cv-154 (DWM)

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 American Civil Liberties Union’s (ACLU) January 23, 2018 request. The purpose of this declaration is to

provide information concerning FEMA's search for records, exemptions claimed, and FEMA's Vaughn index.

3. By letter dated January 23, 2018, plaintiff requested records related to cooperation between federal and state law enforcement entities regarding anticipated protests of the Keystone XL pipeline. A copy of plaintiff's request is attached as Exhibit A. Specifically, ACLU requested:¹

- a. Legal and policy analyses and recommendations related to law enforcement funding for and staffing around oil pipeline protests. Such recommendations may include, but are not limited to, declarations of a state of emergency by state and local entities in order to marshal additional funds, and requests by state or local entities for federal agencies to provide funding or personnel for counter-protest operations; and
- b. Travel of federal employees to speaking engagements, private and public meetings, panels, and conferences on the subject of preparation for oil pipeline protests and/or cooperation with private corporations in furtherance thereof; and
- c. Meeting agendas, pamphlets, and other distributed matter at speaking engagements, private and public meetings, panels, and conferences where federal employees are present to discuss preparation for oil pipeline protests and/or cooperation with private corporations in furtherance thereof; and
- d. Communications between federal employees and state or local law enforcement entities or employees thereof, and between federal employees and private security

¹ ACLU requested this list of items from all agencies. An additional item requested from the Office of the Secretary of Defense can be found in plaintiff's original FOIA request, attached as Exhibit A.

companies or employees thereof, discussing cooperation in preparation for oil pipeline protests.

4. By letter dated March 23, 2018, FEMA stated it searched its files within Region VIII, and no records were located. A copy of the response letter is attached as Exhibit B.

5. ACLU appealed on June 14, 2018, claiming FEMA failed to conduct an adequate search for records. By letter dated August 31, 2018, FEMA denied the appeal, and explained that in a similar situation regarding the Dakota Access Pipeline protests, FEMA had records because the State of North Dakota requested a formal declaration to receive financial assistance, which was ultimately denied. However, with respect to the Keystone XL Pipeline protests, FEMA hadn't received a similar request for financial assistance. A copy of FEMA's appeal response is attached as Exhibit C.

The Search for Records

6. FEMA's Region VIII performed broad searches for records in response to the initial FOIA request, the appeal, and this lawsuit. The Region searched its e-mail, SharePoint,² Emergency Management Mission Integrated Environment (EMMIE),³ National Emergency Management Information System (NEMIS),⁴ HP Records Manager,⁵ and MapInfo⁶ systems for anything related the Keystone XL pipeline. A document detailing the systems searched and search terms is attached as Exhibit D. The first search was conducted between January 26, 2018, and February 2, 2018. The second search, in response to the appeal, was conducted between July 10,

² SharePoint is a web-based collaborative platform that integrates with Microsoft Office.

³ Emergency Management Mission Integrated Environment is a web-based platform that enables Public Assistance recipients to complete, submit, monitor, and manage Public Assistance applications online.

⁴ National Emergency Management Information System is a database system used to track disaster data for FEMA and grantees.

⁵ HP Records Manager, an electronic document and records management solution, contains floodplain management, insurance and community information.

⁶ MapInfo is a desktop geographic information system (GIS) software product used for mapping and location analysis.

2018, and July 12, 2018. For the first two searches, no records were found because, as explained in the appeal response, FEMA hadn't received a request for financial assistance from the state. A copy of FEMA's appeal response is attached as Exhibit C.

7. While no responsive records were located after the first two searches, Region VIII believed it would begin receiving information from state emergency managers regarding the Keystone XL pipeline over the coming months. Indeed, Region VIII received information for situational awareness from the State of South Dakota regarding the Keystone XL pipeline on July 14, 2018. While the records were ultimately not responsive to plaintiff's request, they were the first records FEMA had regarding the Keystone XL pipeline, and we produced them to the plaintiff with no exemptions claimed.⁷

8. In response to this lawsuit, Region VIII performed a third search between January 30, 2018, and February 5, 2018, which resulted in the February 25th, 2019 production.⁸ The Disclosure Branch invoked Exemptions 5 and 6; however, the pages with the Exemption 5 redactions have been reissued to the plaintiff without any exemptions claimed.⁹ Though most of the records included in the February 25th, 2019 production are not responsive to plaintiff's request, FEMA produced them anyway.

9. The multiple searches show FEMA's diligence, thoroughness, and scruple in responding to the request. The second and third searches weren't legally required under the FOIA, where a typical cut-off date is the date of the first search, and records created after the cut-off date are considered as not responsive to the request. In addition, the searches were reasonably calculated to uncover all relevant documents. Region VIII searched for all records related to the

⁷ USA_FEMA_000001 – USA_FEMA_000082.

⁸ USA_FEMA_000083 – USA_FEMA_000506.

⁹ USA_FEMA_000379 and USA_FEMA_000431.

Keystone XL pipeline protests, which is broader than what plaintiff requested in Paragraph 3 above. Indeed, the pages most relevant to plaintiff's request, USA_FEMA_000379 and USA_FEMA_000431, contain e-mails dated November 11, 2018, two months after plaintiff filed this lawsuit.

10. Attached as Exhibit E is FEMA's Vaughn index. 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. The releases to plaintiff include records that are similar in style, presentation, and content. The e-mails contain pipeline and budgetary discussions, meeting notes, emergency management exercises, and compilations of news links and articles. The Exemption 6 withholdings are of names, e-mail addresses, and phone numbers of state employees and other individuals, so the stated basis in the Vaughn index for withholding these records will necessarily be the same. To ensure similar withholdings are treated consistently, FEMA has tried to provide similar and/or uniform exemption language in the Vaughn index.

11. For the February 25th production, the Disclosure Branch invoked Exemption 6, which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 6 requires a substantial privacy interest to be identified, and then a balancing of the public's right to disclosure against the individual's right to privacy. A substantial privacy interest is anything greater than a de minimis interest. The public's right to disclosure is the right to information that sheds light on how agencies perform their statutory duties. The Disclosure Branch invoked Exemption 6 because the names, e-mail addresses, and phone numbers of state employees and other individuals do not shed additional light on how FEMA conducts its emergency management

functions, while their release would likely subject these individuals to unwanted public scrutiny. Many of the redacted individuals appear to work for state and county governments, and are simply included in e-mails, but do not otherwise engage in the conversations.¹⁰ Some of the state and local government employees' names appear next to their salaries.¹¹ Others' names appear in the documents as work and personal e-mail addresses.¹² There is no FOIA public interest for the names, e-mail addresses, and phone numbers of these state government employees or other individuals, as they do not directly reveal the operations of FEMA. Furthermore, the titles of state government employees were released, which allows plaintiff to understand what the state governments were up to, without violating the privacy of those individuals.

12. FEMA conducted a line-by-line review of all 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 12th day of April 2019.

A handwritten signature in blue ink, appearing to read "Gregory Bridges", written over a horizontal line.

GREGORY BRIDGES

¹⁰ See, for example, USA_FEMA_000102.

¹¹ See, for example, USA_FEMA_000178.

¹² See, for example, USA_FEMA_000102.