UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5078
(C.A. No. 14-1217)

ELECTRONIC PRIVACY
INFORMATION CENTER, Appellant,

v.

U.S. CUSTOMS & BORDER PROTECTION, Appellee.

APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE

Appellee United States Customs and Border Protection, a component of the Department of Homeland Security ("Customs"), respectfully moves for summary affirmance of the March 24, 2017 Memorandum Opinion and Order, and February 17, 2016 Memorandum Opinion and Order, together granting summary judgment in favor of Customs, and granting in part and otherwise denying Appellant Electronic Privacy Information Center ("EPIC")'s cross-motion for partial summary judgment.[1]

EPIC presents two issues for appeal in this case brought under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The first issue is the application of Exemption 7(E) to certain material EPIC requested, and the second issue is whether Customs reasonably segregated and released all non-exempt information. *See*

[1] Copies of the Memoranda Opinions and Orders are attached.

Appellant's Statement of Issues (Ref. No. 1675787, filed May 18, 2017)). As to both issues, summary disposition is appropriate because the "merits of this appeal are so clear as to make summary affirmance proper," *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980) (*per curiam*); and "no benefit will be gained from further briefing and argument of the issues presented." *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-98 (D.C. Cir. 1987) (*per curiam*).

SUMMARY OF THE EVIDENCE AND PROCEDURAL HISTORY

In April, 2014, EPIC requested records relating to the Analytical Framework for Intelligence ("AFI") system, which Customs uses in connection with its law enforcement activities. *See* R.18-2 (FOIA request); R.18-1 (Burroughs Declaration, ¶¶ 5-6).[2] Of particular relevance to the issues in this appeal, EPIC specifically requested:

1. All AFI training modules, request forms, and similar final guidance documents that are used in, or will be used in, the operation of the program;

2. Any records, memos, opinions, communications, or other documents that discuss potential or actual sources of information not currently held in DHS databases, or potential or actual uses of information not currently held in DHS databases;

3. Any records, contracts, or other communications with commercial data aggregators regarding the AFI program; [and]

[2] Citations to "R." followed by a number are to the corresponding entry in the district court's electronic docket.

4. The Privacy Compliance Report initiated in August of 2013. R.18-2. Customs did not respond to the request prior to the filing of the lawsuit in July, 2014. *See* R.18-1 (Burroughs Decl. ¶ 7). Customs located 358 pages containing responsive pages, of which it released 89 in full and 267 in part, and withheld two pages. *Id*. ¶ 8.[3] Customs asserted Exemptions 3, 4, 6, 7(C), and 7(E) (*id*. ¶¶ 15-35), and EPIC ultimately challenged only the application of Exemption 7(E) at summary judgment. *See* R.28 at 3.

The records associated with the creation and operation of the Analytical Framework for Intelligence ("AFI") system were compiled as part of Customs' law enforcement purposes, and EPIC did not contend otherwise. R.18-1 (Burroughs Decl. ¶ 30); *see* R.42 at 5. Customs applied Exemption 7(E) to "screen shots of the AFI system and specific information regarding how to navigate and use AFI as well as to descriptions of law enforcement techniques and procedures regarding the use of the AFI system, AFI's capabilities, and CBP's processing of international travelers." *See* R.18-1 (Burroughs Decl. ¶ 32). Customs explained that disclosure of the redacted information could risk circumvention of the law by enabling unauthorized access to the AFI system itself, jeopardizing manipulation or even loss of data in the system, as well as revealing the techniques and procedures used

[3] Customs initially withheld the Privacy Compliance Report in full but subsequently released it. *See* R.18 (Def.'s Statement of Material Facts, ¶ 5).

to screen international travelers at U.S. borders. *See id*. ¶¶ 33-35.

On February 17, 2016, the District Court found Customs' declaration overly categorical and insufficiently detailed, both respect to the type of information withheld and the law enforcement techniques and procedures at risk. *See* R.28 at 7-9. Accordingly, the District Court denied summary judgment to Customs, and granted EPIC's cross-motion for summary judgment by requiring Customs to supplement the record. *See id*. at 9-11.

Customs subsequently provided EPIC with a supplemental declaration and *Vaughn* index (R.30, Joint Status Report), and then renewed its motion for summary judgment (R.32). In its supplemental declaration (R.32-1) and *Vaughn* index (R.32-2), Customs described the records and information withheld in greater detail, and provided additional information about the particular law enforcement techniques and procedures it could reasonably foresee being compromised if the disclosures were made. *Id*. On March 24, 2017, the District Court noted that the supplemental materials "provide a lengthy description of each of the types of records withheld from disclosure and the risk of harm should the information withheld from these records be disclosed." R.41 (Mem. Op. at 7); *see id*. at 8-10. Accordingly, after addressing each of EPIC's specific arguments and finding affirmatively that the *Vaughn* index and supplemental declaration demonstrated that all reasonably segregable non-exempt information had been released (*id*. at 10-

11), the District Court upheld Customs' application of Exemption 7(E) and granted summary judgment in the agency's favor.

This appeal followed.

ARGUMENT

Exemption 7(E) allows redaction of information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). This Court has described the bar as "relatively low . . . for the agency to justify withholding" information under Exemption 7(E). *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011). "To clear that relatively low bar, an agency must demonstrate only that release of a document might increase the risk 'that a law will be violated or that past violators will escape legal consequences.'" *Public Employees for Envtl. Responsibility v. U.S. Section, Int'l Boundary & Water Comm'n*, 740 F.3d 195, 205 (D.C. Cir. 2014) (quoting *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1193 (D.C. Cir. 2009)). As explained below, Customs' supplemental declaration and *Vaughn* index easily clear that bar in this case. Additionally, EPIC's speculation that additional, meaningful non-exempt material could be teased out of the records and released is insufficient to create a genuine issue of material fact.

First, Customs satisfied the threshold requirement of Exemption 7 by describing how the AFI system is part of the agency's law enforcement mission such that records EPIC sought concerning AFI's creation, design, and operation are clearly compiled for law enforcement purposes. *See* R.32-1 (Supp. Burroughs Decl. ¶¶ 8-9; 6 U.S.C. § 211; *Public Employees*, 740 F.3d at 202; *Jefferson v. Dep't of Justice,* 284 F.3d 172, 176-77 (D.C. Cir. 2002). The AFI system itself is a law enforcement technique.

Second, the Supplemental Burroughs Declaration and accompanying *Vaughn* index provide sufficiently detailed explanations of the records to allow this Court to evaluate why Exemption 7(E) applies. *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 146 (D.C. Cir. 2006). For each type of information withheld, Customs provided reasonably specific details as to the types of techniques and procedures that would pose a risk of circumvention of the law and that surpass the "conclusory and generalized allegations of exemptions." *Morley v. CIA*, 508 F.3d 1108, 1114-15 (D.C. Cir. 2007) (quoting *Founding Church of Scientology of Wash., D.C., Inc. v. Nat'l Sec. Agency*, 610 F.2d 824, 830 (D.C. Cir. 1979)). This includes information about using the AFI system, including accessing and navigating within it as well as changing its contents, the disclosure of which could reasonably risk unauthorized access being gained to the AFI system and compromising its

effectiveness. *See* R.32-2 (*Vaughn* Index at 1, 3-5); *Nat'l Treasury Employee's Union v. Customs Serv.*, 802 F.2d 525, 530 (D.C. Cir. 1986).

Customs also protected information about how agents are trained to use the system and actually use it in the course of their duties. *See* R.32-2 (*Vaughn* Index at 1-3). This kind of material falls comfortably within Exemption 7(E). *See Sack v. U.S. Dep't of Defense*, 823 F.3d 686, 694 (D.C. Cir. 2016) (Department of Defense properly withheld reports on whether an agency's polygraph procedures were effective under Exemption 7(E)). Customs also withheld statements of work and supply orders from contracts associated with the AFI system. *See* R.32-2 (*Vaughn* Index at 7-8); R.32-1 (Supp. Burroughs Decl. ¶¶ 15-16). Disclosure of such information and the sources of data for the AFI system present a chance of circumvention of the law by revealing information not only about which LexisNexis™ products Customs personnel use but also the search terms employed. *Id*. This explanation is sufficient to shield the documents from disclosure under Exemption 7(E). *See Morley*, 508 F.3d at 1129.

Third and finally, FOIA requires that agencies provide any reasonably segregable portion of a record to the requester after removal of exempt portions, unless the non-exempt portions are inextricably intertwined with the exempt portions. *See* 5 U.S.C. § 552(b); *see also Johnson v. Exec. Office for U.S.*

Attorneys, 310 F.3d 771, 776 (D.C. Cir. 2002). Here, the Burroughs declaration explained:

> All information withheld is exempt from disclosure pursuant to a FOIA exemption or is not reasonably segregable because it is so intertwined with protected material that segregation is not possible or its release would have revealed the underlying protected material. I have reviewed the documents determined to be responsive, line-by-line, to identify information exempt from disclosure or for which a discretionary waiver of exemption could apply, and I am satisfied that all reasonably segregable portions of the relevant records have been released to the Plaintiff in this matter. In my determination, any further release of the exempted materials could reasonably lead to the identification of the individuals or other items that are properly protected by the exemptions asserted.

R.18-1 (Burroughs Decl. ¶ 36). Although EPIC argued below that this language merely restated the legal requirement, it does more by showing that Customs conducted a line-by-line review, and "[a]gencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material," *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007). EPIC failed to proffer any evidence to undermine that presumption.

Further, the line-by-line review by agency's declarant, who has been the Director of the Customs' FOIA Division for the last four years and before that was the Director of Disclosure Policy and FOIA Program Development for the Department of Homeland Security (R.18-1 ¶ 1), in combination with the information provided on the *Vaughn* index (R.32-2) is the type of evidence this Court has held satisfies the segregability requirement in the statute. *Johnson*, 310

F.3d at 776. Accordingly, the District Court's segregability finding should be affirmed. *See* R.42 (Mem. Op. at 11); *Armstrong v. Exec. Office of the President*, 97 F.3d 575, 578-79 (D.C. Cir. 1996); *see generally Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999) ("Although, as a rule, statements made by the party opposing a motion for summary judgment must be accepted as true for the purpose of ruling on that motion, some statements are so conclusory as to come within an exception to that rule.").

CONCLUSION

WHEREFORE, U.S. Customs and Border Protection respectfully requests that the Court summarily affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
(Fed. R. App. P. 27(d)(2)(A))

The text of the foregoing Appellee's Motion for Summary Affirmance was prepared using Times New Roman, 14-point font and contains 1,850 words, as counted by counsel's word processor (Microsoft Word 2016).

/s/ *Jane M. Lyons*
JANE M. LYONS
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2017, the foregoing Appellee's Motion for Summary Affirmance has been served via the Court's ECF system.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER, Plaintiff, v. CUSTOMS AND BORDER PROTECTION, Defendant.	)	Civil Action No. 14–1217 (RBW)

MEMORANDUM OPINION

The plaintiff, Electronic Privacy Information Center, submitted a request to the defendant, Customs and Border Protection, a component of the Department of Homeland Security ("DHS"), under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (2012), seeking documents relating to the defendant's Analytical Framework for Intelligence ("AFI") system. Complaint ("Compl.") ¶ 2. The defendant has produced, in whole or in part, some documents in response to the FOIA request, and withheld certain other records pursuant to Exemption 7(E) of the FOIA, 5 U.S.C. § 552(b)(7)(E). See Joint Status Report at 2, ECF No. 13 (Feb. 27, 2015). The Court previously denied the defendant's initial motion for summary judgment, but granted in part and denied in part the plaintiff's motion, and in so doing, ordered the government to provide a more detailed Vaughn index supporting its reliance on Exemption 7(E). See Elec. Privacy Info. Ctr. v. Customs & Border Prot., 160 F. Supp. 3d 354, 360–61 (D.D.C. 2016) (Walton, J). The parties' renewed cross-motions for summary judgment are currently pending before the Court. See Defendant's Consolidated Reply and Opposition to

Plaintiff's Cross-Motion for Summary Judgment ("Def.'s Mot.")[1]; Plaintiff's Combined Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment ("Pl.'s Mot."). Upon careful consideration of the parties' submissions,[2] the Court concludes that it must deny the plaintiff's motion and grant the defendant's motion.

I. BACKGROUND

The Court previously set forth the relevant background of this case, see 160 F. Supp. 3d at 356–57, which is unnecessary to revisit for the purpose of resolving the motions now pending resolution. Following the Court's resolution of the parties' first round of summary judgment motions, the defendant submitted a revised declaration and Vaughn index, see Supp. Burroughs Decl. ¶ 4 ("The purpose of this declaration and the attached Vaughn [i]ndex is to provide additional information as to why certain information was withheld from public disclosure pursuant to [Exemption 7(E)] in response to this Court's order from February 17, 2016 . . . ."), pursuant to which the defendant continues to withhold 269 pages of documents in whole or in part. Pl.'s Mem. at 13. The parties' renewed cross-motions concern four categories of information related to the AFI system that have been withheld by the defendant pursuant to Exemption 7(E): (1) screen shots of the system, Pl.'s Supp. Facts ¶ 1; (2) training materials for the system, id. ¶ 3; (3) "statements of work and purchase orders related to" the system, id. ¶ 5; and (4) sources of data for the AFI system, id. ¶ 7.

[1] Although the defendant did not style this document as a motion, the Court construes it as a renewed motion for summary judgment by virtue of its incorporation of the defendant's original summary judgment motion. See Def.'s Mot. at 2.

[2] In addition to the documents already identified, the Court considered the following submissions in rendering its decision: (1) the initial Declaration of Sabrina Burroughs ("Initial Burroughs Decl."); (2) the Supplemental Declaration of Sabrina Borroughs ("Supp. Borroughs Decl."); (2) the Notice of Filing Vaughn Index ("Index"); (3) the Memorandum of Law in Support of Plaintiff's Opposition and Cross-Motion for Summary Judgment ("Pl.'s Mem."); (4) the Defendant's Reply in Support of Motion for Summary Judgment and Opposition to Plaintiff's Cross-Motion for Summary Judgment ("Def.'s Reply"); and (5) the Plaintiff's Reply in Support of the Cross-Motion for Summary Judgment ("Pl.'s Reply").

II. STANDARD OF REVIEW

The Court must grant a motion for summary judgment "if the movant shows 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). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party. See Holcomb v. Powell, 433 F.3d 889, 895 (D.C. Cir. 2006) (citing Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 150 (2000)). The Court must therefore draw "all justifiable inferences" in the non-moving party's favor and accept the non-moving party's evidence as true. Anderson v. Liberty Lobby, 477 U.S. 242, 255 (1986). The non-moving party, however, cannot rely on "mere allegations or denials." Burke v. Gould, 286 F.3d 513, 517 (D.C. Cir. 2002) (quoting Anderson, 477 U.S. at 248). Thus, "[c]onclusory allegations unsupported by factual data will not create a triable issue of fact." Pub. Citizen Health Research Grp. v. Food & Drug Admin., 185 F.3d 898, 908 (D.C. Cir. 1999) (alteration in original) (quoting Exxon Corp. v Fed. Trade Comm'n, 663 F.2d 120, 126–27 (D.C. Cir. 1980)). If the Court concludes that "the nonmoving party has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," then the moving party is entitled to summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Moreover, "in ruling on cross-motions for summary judgment, the [C]ourt shall grant summary judgment only if one of the moving parties is entitled to judgment as a matter of law upon material facts that are not genuinely disputed." Shays v. Fed. Election Comm'n, 424 F. Supp. 2d 100, 109 (D.D.C. 2006) (citation omitted).

"FOIA cases are typically resolved on . . . motion[s] for summary judgment." Ortiz v. U.S. Dep't of Justice, 67 F. Supp. 3d 109, 116 (D.D.C. 2014); see also Defs. of Wildlife v. U.S. Border Patrol, 623 F. Supp. 2d 83, 87 (D.D.C. 2009). "[The] FOIA requires federal agencies to disclose, upon request, broad classes of agency records unless the records are covered by the

statute's exemptions." Students Against Genocide v. Dep't of State, 257 F.3d 828, 833 (D.C. Cir. 2001) (citation omitted). In a FOIA action, the defendant agency has "[the] burden of demonstrating that the withheld documents [requested by the FOIA requester] are exempt from disclosure." Boyd v. U.S. Dep't of Justice, 475 F.3d 381, 385 (D.C. Cir. 2007) (citation omitted). The Court will grant summary judgment to the government in a FOIA case only if the agency can prove "that it has fully discharged its obligations under the FOIA, after the underlying facts and the inferences to be drawn from them are construed in the light most favorable to the FOIA requester." Friends of Blackwater v. U.S. Dep't of Interior, 391 F. Supp. 2d 115, 119 (D.D.C. 2005) (quoting Greenberg v. U.S. Dep't of Treasury, 10 F. Supp. 2d 3, 11 (D.D.C. 1998)). To satisfy its burden and prove that it has fully discharged its FOIA obligations, a defendant agency typically submits a Vaughn index, which provides "a relatively detailed justification" for each withheld document, "specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of [the] withheld document to which they apply." King v. Dep't of Justice, 830 F.2d 210, 219 (D.C. Cir. 1987) (quoting Mead Data Cent. v. U.S. Dep't of Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)); see also Vaughn v. Rosen, 484 F.2d 820, 826–27 (D.C. Cir. 1973) (setting forth requirements for the agency's description of documents withheld to allow a court to assess the agency's claims). Thus, in a lawsuit brought to compel the production of documents under the FOIA, "an agency is entitled to summary judgment if no material facts are in dispute and if it demonstrates 'that each document that falls within the class requested either has been produced . . . or is wholly[, or partially,] exempt [from disclosure].'" Students Against Genocide, 257 F.3d at 833 (quoting Goland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978)).

III. ANALYSIS

A. The Applicability of Exemption 7(E)

Pursuant to Exemption 7(E), an agency may withhold:

> [R]ecords or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law . . . .

5 U.S.C. § 552(b)(7)(E) (emphasis added). The plaintiff does not challenge whether the records withheld by the defendant were "compiled for law enforcement purposes," a threshold requirement for the applicability of Exemption 7(E), see Pl.'s Mem. at 5 (arguing only that the defendant's motion should be denied for reasons pertaining to the specific language of subparagraph (E) of Exemption 7), and the Court will thus turn to the question of whether the records would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions.[3]

Explaining the reasons for its reliance on Exemption 7(E), the defendant states that the AFI system's "capabilities and tools provide . . . the ability to detect trends, patterns, and emerging threats," which "are critical tools used by [Customs and Border Protection] officers to efficiently and effectively carry out [the defendant's] mission to prevent terrorists, their weapons,

[3] The plaintiff argues that the defendant's supplemental declaration and Vaughn index merely restate boilerplate objections and add little to the defendant's original statements and arguments on summary judgment. See Pl.'s Mem. at 5 ("The record before the Court shows that the agency has once again failed to establish that the disputed records are properly withheld under Exemption 7(E)."). The Court disagrees, finding instead that the Supplemental Burroughs Declaration and Vaughn index provide a sufficiently detailed explanation of each category of documents withheld from which the Court can make a reasoned assessment of the applicability of the claimed exemption. See, e.g., Clemente v. FBI, 741 F. Supp. 2d 64, 80 (D.D.C. 2010) ("The Vaughn index and/or accompanying affidavits or declarations must 'provide[] a relatively detailed justification [for any nondisclosure], specifically identif[y] the reasons why a particular exemption is relevant, and correlate[] those claims with the particular part of a withheld document to which they apply.'" (quoting Judicial Watch, Inc. v. FDA, 449 F.3d 141, 146 (D.C. Cir. 2006) (alterations in original))).

and other dangerous items from entering the United States." Supp. Borroughs Decl. ¶ 9. In its opposition, the plaintiff contends that the defendant has failed to show that the AFI-related records at issue in this case are utilized for investigations or prosecutions, Pl.'s Mem. at 6–8, asserting that "[i]nvestigations or prosecutions under 7(E) include only 'acts by law enforcement [occurring] after or during the commission of a crime, not crime-prevention techniques,'" id. at 6 (quoting Elec. Privacy Info. Ctr. v. DHS, 999 F. Supp. 2d 24, 31 (D.D.C. 2013), rev'd on other grounds, 777 F.3d 518 (D.C. Cir. 2015)). But as this Court has observed in another case, nothing in the FOIA's language suggests that Exemption 7(E)'s scope is limited to records compiled in connection with criminal investigations. See Henderson v. Office of the Dir. of Nat'l Intelligence, 151 F. Supp. 3d 170, 176 (D.D.C. 2016) (Walton, J.) ("If congress intended to limit Exemption 7(E)'s application to records compiled for criminal purposes only, it certainly knew how to do so." (citing, as an example, 5 U.S.C. § 552(b)(7)(D), which refers to records "compiled by a criminal law enforcement authority in the course of a criminal investigation")). The Court therefore rejects this argument by the plaintiff as unsupported by the statutory text of the FOIA.

The plaintiff next argues that the defendant has failed to show how disclosure of the withheld documents "could reasonably be expected to risk circumvention of the law." Pl.'s Mem. at 8 (quoting 5 U.S.C. § 552(b)(7)(E)).

> Exemption 7(E) sets a relatively low bar for the agency to justify withholding: "Rather than requiring a highly specific burden of showing how the law will be circumvented, exemption 7(E) only requires that the [agency] demonstrate logically how the release of the requested information might create a risk of circumvention of the law."

Blackwell v. FBI, 646 F.3d 37, 42 (D.C. Cir. 2011) (alteration in original) (quoting Mayer Brown LLP v. Internal Revenue Serv., 562 F.3d 1190, 1193 (D.C. Cir. 2009)). Exemption 7(E)

> looks not just for circumvention of the law, but for a risk of circumvention; not just for an actual or certain risk of circumvention, but for an expected risk; not just for an undeniably or universally expected risk, but for a reasonably expected risk; and not just for certitude of a reasonably expected risk, but for the chance of a reasonably expected risk.

Mayer Brown, 562 F.3d at 1193.

Here, the Court finds for several reasons that the Supplemental Burroughs Declaration and Vaughn index, contrary to the plaintiff's assertions of dubiousness and implausibility, see Pl.'s Mem. at 9, provide a lengthy description of each of the types of records withheld from disclosure and the risk of harm should the information withheld from these records be disclosed. First, regarding the screen shots and training materials withheld by the defendant, the Vaughn index states, inter alia, that records containing screen shots of the AFI system are used "to teach the law enforcement trainee techniques related to [the] AFI, including how to access the AFI system, how to navigate [the] AFI and its different components, and how to input, change, edit, and delete information in the AFI system." Index at 1. These records are described also to include reference cards that "provide[] an overview of key elements and techniques which can be used by law enforcement officers within the AFI application," and "keyboard shortcuts and other techniques designed to assist in navigation of the AFI application." Id. at 3. Also included in the training materials are practical exercises and answers "used to test a law enforcement trainee's proficiency with using the key elements, techniques, and functionalities within the AFI application." Id. at 4. Furthermore, the materials contain "detailed instructions" on "how to request access to the [AFI] system" and "approve access to the AFI application." Id. at 5. The defendant states that the "[d]isclosure of this information could enable unauthorized users to gain access to [or, hack into] the system and alter, add, or delete information altogether, thus destroying the integrity of the system," id. at 9, "reasonably allow a person to recognize

identifiers that law enforcement uses to query [Customs and Border Protection] databases," id. at 4, or "reveal [Customs and Border Protection] targeting and inspection techniques used in the processing of international travelers to identify persons seeking to violate U.S. law or otherwise of concern to law enforcement," Supp. Burroughs Decl. ¶ 13. The defendant further represents that "[c]riminals could use this information to circumvent the law by developing countermeasures aimed at defeating the effectiveness of these search techniques." Id. The Court agrees that the disclosure of records detailing the function, access, navigation, and capabilities of the AFI system, which "enhances [DHS's] ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risk, and aids in the enforcement of customs and immigration laws," id. ¶ 8 (citation omitted), presents a risk that could facilitate circumvention of the law that is logically connected to the content of the withheld documents, see Blackwell, 646 F.3d at 42 ("[E]xemption 7(E) only requires that the [agency] demonstrate logically how the release of the requested information might create a risk of circumvention of the law." (alteration in original)); see also Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice, 160 F. Supp. 3d 226, 243 (D.D.C. 2016) ("[The agency] explained that releasing information about training and the associated equipment procedures 'is tantamount to releasing information about the actual employment of the procedures and techniques themselves.' The Court agrees . . . .").

The plaintiff also challenges the withholding of "statements of work" and supply orders related to the AFI system. Pl.'s Mem. at 13. The defendant states that each statement of work "identifies database-specific information identifying LexisNexis [p]roducts, the release of which would disclose the type of searches conducted, and the law enforcement techniques and methods by which data is searched, organized[,] and reported." Index at 7. Further, the defendant

represents that the statement of work "also includes descriptions of security services and critical infrastructure, the release of which could reasonably allow a person to recognize technologies and infrastructure critical to safeguarding law enforcement information." Id. The defendant also states that the statements of work "include[] descriptions of security services, critical infrastructure, and encryption standards" used to protect law enforcement information. Supp. Burroughs Decl. ¶ 15. Similarly, the supply orders contain information about LexisNexis products used by the defendant, "which would disclose law enforcement techniques and methods by which data is searched, organized[,] and reported [by Customs and Border Protection]," and furthermore, "when read as a whole with the rest of the supply order, . . . could reasonably allow a person to recognize identifiers that law enforcement uses to query LexisNexis databases [via the AFI]." Index at 7. The Court agrees that disclosure details regarding products or services utilized by the defendant to search, organize, or report information in the AFI system presents a risk of circumvention of the law when those records could reasonably be used by potential bad actors to thwart the defendant's law enforcement efforts. See, e.g., Soghoian v. U.S. Dep't of Justice, 885 F. Supp. 2d 62, 75 (D.D.C. 2012) ("Knowing what information is collected, how it is collected, and more importantly, when it is not collected, is information that law enforcement might reasonably expect to lead would-be offenders to evade detection.").

Similarly, the defendant notes that the data sources it has withheld would disclose "the source of several different types of data that are available in [the] AFI," "explain[] how to search [the] AFI for each source," and includes "a description of data found in each source." Index at 8. The defendant further notes that the data source documents also include a survey that summarizes "potential data sources for ingestion into [the] AFI," as well as a document that "gives a detailed description of each data source and how it relates to [the] AFI," and "describes

where, specifically, in the AFI the user would go to access the data source." Id. at 8–9. Based on these descriptions, the Court is satisfied that the disclosure of the sources of data utilized by the AFI system risks circumvention of the law because the data sources "could reasonably allow a person to recognize identifiers that law enforcement use to query" the defendant's information databases and thus circumvent detection. Id. at 9. The Court therefore concludes that the defendant has satisfied its burden of establishing that the disclosure of the four categories of records at issue risks circumvention of the law.

B. Segregability

Under the FOIA, "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552(b); see also Roth v. U.S. Dep't of Justice, 642 F.3d 1161, 1167 (D.C. Cir. 2011) ("[E]ven if [the] agency establishes an exemption, it must nonetheless disclose all reasonably segregable, nonexempt portions of the requested record(s)." (alteration in original) (citation omitted)). Thus, "[i]t has long been the rule in this Circuit that non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions." Wilderness Soc'y v. U.S. Dep't of Interior, 344 F. Supp. 2d 1, 18 (D.D.C. 2004) (Walton, J.) (alteration in original) (quoting Mead Data, 566 F.2d at 260). 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).

> And while "[a]gencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material," . . . "a blanket declaration that all facts are so intertwined to prevent disclosure under the FOIA does not constitute a sufficient explanation of non-segregability[,] . . . rather, for each entry the defendant is required to specify in detail which portions of the document are disclosable and which are allegedly exempt."

Sciacca v. FBI, 23 F. Supp. 3d 17, 28 (D.D.C. 2014) (first quoting Sussman v. U.S. Marshals Serv., 494 F.3d 1106, 1116 (D.C. Cir. 2007), then Wilderness Soc'y, 344 F. Supp. 2d at 19). Indeed, "[b]efore approving the application of a FOIA exemption, the district court must make specific findings of segregability regarding the documents to be withheld." Sussman, 494 F.3d at 1116.

The plaintiff asserts that the defendant's declaration fails to establish that all reasonably segregable information from the records at issue has been provided to the plaintiffs, see Pl.'s Mem. at 11–12, but the Court disagrees. Although the Burroughs Declaration merely recites the segregability standard, see Initial Burroughs Decl. ¶ 36 ("All information withheld is exempt from disclosure pursuant to a FOIA exemption or is not reasonably segregable because it is so intertwined with protected material that segregation is not possible or its release would have revealed the underlying protected material."); see also Supp. Burroughs Decl. ¶ 5 (incorporating the initial Burroughs Declaration by reference), the Vaughn index provides greater insight into the contents and length of each withheld document, see generally Index, and when read in conjunction with the declarations, the Court concludes that the defendant's has provided "a detailed justification," as opposed to "just conclusory statements," showing that it has complied with the segregability requirement. The Court therefore finds that the defendant has met its burden of showing that it has released all reasonably segregable, nonexempt records in response to the plaintiff's FOIA request and that summary judgment must be granted in the defendant's favor.

IV. CONCLUSION

For the reasons stated above, the Court will grant the defendant's motion for summary judgment and deny the plaintiff's motion for summary judgment.[4]

SO ORDERED this 24th day of March, 2017.

REGGIE B. WALTON
United States District Judge

[4] The Court will contemporaneously issue an order consistent with this Memorandum Opinion.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER, Plaintiff, v. CUSTOMS AND BORDER PROTECTION, Defendant.	)	Civil Action No. 14–1217 (RBW)

ORDER

In accordance with the Memorandum Opinion issued on this same day, it is hereby

ORDERED that the Defendant's Consolidated Reply and Opposition to Plaintiff's Cross-Motion for Summary Judgment, which the Court construes as the defendant's renewed motion for summary judgment, is **GRANTED**. It is further

ORDERED that the Plaintiff's Combined Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment is **DENIED**. It is further

ORDERED that this case is **DISMISSED**. It is further

ORDERED that this case is **CLOSED**.

SO ORDERED this 24th day of March, 2017.

REGGIE B. WALTON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER, Plaintiff, v. CUSTOMS AND BORDER PROTECTION, Defendant.	)	Civil Action No. 14–1217 (RBW)

MEMORANDUM OPINION

The plaintiff, Electronic Privacy Information Center, submitted a request to the defendant, Customs and Border Protection, a component of the Department of Homeland Security ("DHS"), under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (2012), seeking documents relating to the defendant's Analytical Framework for Intelligence system. Complaint ("Compl.") ¶ 2. The defendant has produced, in whole or in part, some responsive documents in response to the FOIA request, and withheld certain other materials pursuant to Exemption 7(E) of the FOIA, 5 U.S.C. § 552(b)(7)(E). Currently pending before the Court are the Defendant's Motion for Summary Judgment ("Def.'s Mot."), ECF No. 18, and the Plaintiff's Combined Opposition to [the] Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment ("Pl.'s Mot."), ECF No. 20. Upon careful consideration of the parties' submissions, the Court concludes that the defendant's motion must be denied and the plaintiff's motion must be granted in part and denied in part.[1]

[1] In addition to the filings already identified, the Court considered the following submissions in rendering its
(continued . . .)

I. BACKGROUND

The following facts are undisputed unless otherwise noted. The plaintiff submitted its FOIA request to the defendant in April 2014, seeking information primarily relating to the defendant's Analytical Framework for Intelligence ("AFI") system. Def.'s Facts ¶ 1; Pl.'s Facts ¶ 1. According to the defendant, the AFI system "enhances DHS's ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risk; and it aids in the enforcement of customs and immigration laws, and other laws enforced by DHS at the border." Def.'s Facts ¶ 2 (quoting Notice, Analytical Framework for Intelligence (AFI) System, 77 Fed. Reg. 33753, 33753 (June 7, 2012)). But see Pl.'s Facts ¶ 2 (partially disputing matters set forth in Def.'s Facts ¶ 2). In addition, the defendant states that the AFI system "improves the efficiency and effectiveness of [Customs and Border Protection's] research and analysis process by providing a platform for the research, collaboration, approval, and publication of finished intelligence products." Def.'s Facts ¶ 2 (quoting 77 Fed. Reg. at 33753). But see Pl.'s Facts ¶ 2 (partially disputing matters set forth in Def.'s Facts ¶ 2).

The plaintiff's FOIA request sought four categories of information:

1. All AFI training modules, request forms, and similar final guidance documents that are used in, or will be used in, the operation of the program;
2. Any records, memos, opinions, communications, or other documents that discuss potential or actual sources of information not currently held in DHS databases, or potential or actual uses of information not currently held in DHS databases;

(. . . continued)
decision: (1) the Defendant's Statement of Material Facts as to Which There Is No Genuine Dispute ("Def.'s Facts"); (2) the Memorandum of Points and Authorities in Support of [the] Defendant's Motion for Summary Judgment ("Def.'s Mem."); (3) the Declaration of Sabrina Burroughs ("Burroughs Decl."); (4) the Memorandum of Law in Support of [the] Plaintiff's Opposition and Cross-Motion for Summary Judgment ("Pl.'s Mem."); (5) the Plaintiff's Statement of Material Facts Not in Dispute and Response to [the] Defendant's Statement of Facts Not in Dispute ("Pl.'s Facts"); (6) the Defendant's Consolidated Reply and Opposition to [the] Plaintiff's Cross-Motion for Summary Judgment ("Def.'s Reply"); (7) the Defendant's Response to [the] Plaintiff's Statement of Material Facts in Support of Cross-Motion for Summary Judgment ("Def.'s Response to Pl.'s Facts"); and (8) the Plaintiff's Reply in Support of the Cross-Motion for Summary Judgment ("Pl.'s Reply").

3. Any records, contracts, or other communications with commercial data aggregators regarding the AFI program; [and]
4. The Privacy Compliance Report initiated in August of 2013.

Def.'s Mot., Exhibit ("Ex.") B at 2; Pl.'s Mot., Ex. 1 at 1. After the defendant failed to comply with the plaintiff's FOIA request within the statutory deadline, the plaintiff initiated this suit. Def.'s Facts ¶ 3; Pl.'s Facts ¶ 1. Subsequently, the defendant located 358 pages of responsive records of which 89 were released in full, 267 were partially released, and 2 pages were withheld in full. Def.'s Facts ¶ 4; Pl.'s Facts ¶ 1. One of the documents initially withheld in full, the Privacy Compliance Report, is no longer being withheld and has been produced to the plaintiff by the defendant. Def.'s Facts ¶ 5; Pl.'s Facts ¶ 1. The information not produced was withheld by the defendant pursuant to FOIA Exemptions 3, 4, 6, 7(C), and 7(E), 5 U.S.C. § 552(b)(3), (b)(4), (b)(6), (b)(7)(C), (b)(7)(E). Def.'s Facts ¶ 5; Pl.'s Facts ¶ 1. The plaintiff no longer challenges the defendant's withholdings under Exemptions 3, 4, 6, and 7(C), Pl.'s Mem. at 6; Def.'s Reply at 2, but continues to challenge the defendant's withholdings in full or in part information contained in 314 pages under Exemption 7(E), Pl.'s Mem. at 6.

II. STANDARD OF REVIEW

The Court must grant a motion for summary judgment "if the movant shows 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). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party. Holcomb v. Powell, 433 F.3d 889, 895 (D.C. Cir. 2006) (citing Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 150 (2000)). The Court must therefore draw "all justifiable inferences" in the non-moving party's favor and accept the non-moving party's evidence as true. Anderson v. Liberty Lobby, 477 U.S. 242, 255 (1986). The non-moving party, however, cannot rely on "mere allegations or denials." Burke v. Gould, 286 F.3d 513, 517 (D.C. Cir. 2002) (quoting Anderson, 477 U.S. at 248). Thus,

"[c]onclusory allegations unsupported by factual data will not create a triable issue of fact." Pub. Citizen Health Research Grp. v. Food & Drug Admin., 185 F.3d 898, 908 (D.C. Cir. 1999) (quoting Exxon Corp. v Fed. Trade Comm'n, 663 F.2d 120, 126–27 (D.C. Cir. 1980)) (alteration in original). If the Court concludes that "the nonmoving party has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," then the moving party is entitled to summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Moreover, "in ruling on cross-motions for summary judgment, the [C]ourt shall grant summary judgment only if one of the moving parties is entitled to judgment as a matter of law upon material facts that are not genuinely disputed." Shays v. Fed. Election Comm'n, 424 F. Supp. 2d 100, 109 (D.D.C. 2006) (citation omitted).

FOIA cases are typically resolved on motions for summary judgment. Ortiz v. U.S. Dep't of Justice, 67 F. Supp. 3d 109, 116 (D.D.C. 2014); Defenders of Wildlife v. U.S. Border Patrol, 623 F. Supp. 2d 83, 87 (D.D.C. 2009). "[The] FOIA requires federal agencies to disclose, upon request, broad classes of agency records unless the records are covered by the statute's exemptions." Students Against Genocide v. Dep't of State, 257 F.3d 828, 833 (D.C. Cir. 2001) (citation omitted). In a FOIA action, the defendant agency has "[the] burden of demonstrating that the withheld documents [requested by the FOIA requester] are exempt from disclosure." Boyd v. Dep't of Justice, 475 F.3d 381, 385 (D.C. Cir. 2007) (citation omitted). The Court will grant summary judgment to the government in a FOIA case only if the agency can prove "that it has fully discharged its obligations under the FOIA, after the underlying facts and the inferences to be drawn from them are construed in the light most favorable to the FOIA requester." Friends of Blackwater v. Dep't of Interior, 391 F. Supp. 2d 115, 119 (D.D.C. 2005) (quoting Greenberg v. U.S. Dep't of Treasury, 10 F. Supp. 2d 3, 11 (D.D.C. 1998)). To satisfy its burden and prove

that it has fully discharged its FOIA obligations, a defendant agency typically submits a Vaughn index, which provides "a relatively detailed justification" for each withheld document, "specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of [the] withheld document to which they apply." King v. Dep't of Justice, 830 F.2d 210, 219 (D.C. Cir. 1987) (quoting Mead Data Cent. v. U.S. Dep't of Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)); see also Vaughn v. Rosen, 484 F.2d 820, 826–27 (D.C. Cir. 1973) (setting forth requirements for agency's description of documents withheld to allow a court to assess the agency's claims). Thus, in a lawsuit brought to compel the production of documents under the FOIA, "an agency is entitled to summary judgment if no material facts are in dispute and if it demonstrates that each document that falls within the class requested either has been produced . . . or is wholly[, or partially,] exempt [from disclosure]." Students Against Genocide, 257 F.3d at 833 (quoting Goland v. Cent. Intelligence Agency, 607 F.2d 339, 352 (D.C. Cir. 1978)).

III. ANALYSIS

The issue for the Court to resolve in this case is whether the defendant improperly withheld documents from the plaintiff pursuant to Exemption 7(E) of the FOIA.[2] "A claim of exemption will be honored when the agency meets its burden of showing that the withheld documents were actually of such a character as to fit one or more of the [FOIA's] exemptions." Nat'l Treasury Emps. Union v. U.S. Customs Serv., 802 F.2d, 525, 527 (D.C. Cir. 1986) (citing Shaw v. Fed. Bureau of Investigation, 749 F.2d 58, 81 (D.C. Cir. 1984)). "Where, as here, an agency has not described each chunk of redacted text individually but instead has grouped it into a descriptive category, the agency satisfies its obligations under the FOIA only if the context of

[2] As was noted previously, the plaintiff has expressly conceded all except for the defendant's claims under Exemption 7(E). See Pl.'s Mem. at 6.

the redacted material suffices to show that the information withheld falls within the relevant category and hence is truly exempt from disclosure." Clemente v. Fed. Bureau of Investigation, 741 F. Supp. 2d. 64, 61 (D.D.C. 2010) (citing King, 830 F.2d at 220, and Schoenman v. Fed. Bureau of Investigation, 604 F. Supp. 2d 174, 197–98 (D.D.C. 2009)).

Exemption 7(E) excludes from disclosure records or information "compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E).[3] "In order for the government to invoke the 'techniques and procedures' prong of Exemption 7(E), it must demonstrate that its withholdings meet three basic requirements. First, the government must show that the documents were in fact 'compiled for law enforcement purposes' and not for some other reason." Am. Immig. Council v. U.S. Dep't of Homeland Sec., 950 F. Supp. 2d 221, 245 (D.D.C. 2013) (citing 5 U.S.C. § 552(b)(7)); see John Doe Agency v. John Doe Corp., 493 U.S. 146, 153 (1989) (discussing the phrase "records or information compiled for law enforcement purposes," and stating that "[b]efore it may invoke this provision, the [g]overnment has the burden of proving the existence of such a compilation for such a purpose."); Showing Animals Respect & Kindness v. U.S. Dep't of Labor, 730 F. Supp. 2d 180, 199 (D.D.C. 2010) ("Information that relates to law enforcement techniques, policies, and procedures is properly withheld under this exemption."). "Second, [the agency] must show that the records contain law-enforcement techniques and procedures that are 'generally unknown to

[3] The District of Columbia Circuit has applied the last clause of Exemption 7(E), i.e., the "risk of circumvention of the law" requirement, to both "techniques and procedures for law enforcement investigations or prosecutions" and "guidelines for law enforcement investigations or prosecutions." Pub. Emps. for Envntl. Responsibility v. U.S. Section, Int'l Boundary & Water Comm'n, 740 F.3d 195, 204 n.4 (D.C. Cir. 2014).

the public.'" Am. Immig. Council, 950 F. Supp. 2d at 245 (quoting Nat'l Whistleblower Ctr. v. Dep't of Health & Human Servs., 849 F. Supp. 2d 13, 36 (D.D.C. 2012)). "Finally, the government must show that disclosure 'could reasonably be expected to risk circumvention of the law.'" Id. (citing 5 U.S.C. § 552(b)(7)(E) and Nat'l Whistleblower, 849 F. Supp. 2d at 36).

The defendant represents through the Declaration of Sabrina Burroughs (hereinafter, the "Burroughs Declaration"), that it applied Exemption 7(E) to deny disclosure of (1) "screen shots of the AFI system"; (2) "specific information regarding how to navigate and use the AFI system"; and (3) "descriptions of law enforcement techniques and procedures regarding the use of the AFI system, its capabilities, and the defendant's processing of international travelers," from 314 pages. Burroughs Decl. ¶ 32; Pl.'s Mem. at 6. Although the plaintiff concedes that "[t]he records at issue in this case likely satisfy Exemption 7's "law enforcement purpose" requirement, it nevertheless asserts that the Burroughs Declaration is insufficient to demonstrate that the materials withheld by the defendant "would reveal techniques and procedures for law enforcement investigations or prosecutions" as required by Exemption 7(E), and to establish that their disclosure risks circumvention of the law. Pl.'s Mem. at 10; see also 5 U.S.C. § 552(b)(7)(E). Upon a careful review of the Burroughs Declaration, the Court concludes that the plaintiff has the more convincing argument.

The Burroughs Declaration "exhibit[s] . . . inadequacies that courts in [this] . . . Circuit have cautioned against." Am. Immig. Council, 950 F. Supp. 2d at 247. First, the Burroughs Declaration provides a categorical description of the material withheld, without providing any exhibits or page references to allow the Court to assess whether the defendant's claims, in context, are meritorious. See generally Burroughs Decl. ¶¶ 30–35; see also Am. Immig. Council, 950 F. Supp. 2d at 247 ("The Vaughn index groups many of the 7(E) withholdings into a single,

catchall category for which no page numbers are indicated."). Second, the Burroughs Declaration does not describe the underlying law enforcement techniques and procedures the defendant seeks to protect; it merely relies on DHS's general overview of the AFI system as a tool to "enhance[] DHS's ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risk; and [] aid[] in the enforcement of custom and immigration laws, and other laws enforced by DHS at the border." Burroughs Decl. ¶¶ 6, 35 (quoting 77 Fed. Reg. at 33753). The declarant's statements that the withheld materials pertain to the "use," "navigation," and "capabilities" of the AFI system, and the "defendant's processing of internal travelers," are minimally descriptive, and thus do not provide the Court with sufficient detail regarding the law enforcement techniques or procedures the defendant seeks to protect. See id. ¶¶ 32–34; see, e.g., Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice, 746 F.3d 1082, 1102 (D.C. Cir. 2014) (A "near-verbatim recitation of the statutory standard is inadequate. We are not told what procedures are at stake."); Sciacca v. Fed. Bureau of Investigation, 23 F. Supp. 3d 17, 31 (D.D.C. 2014) ("In short, the [agency's] [d]eclaration seems to put the cart before the horse insofar as it elaborately identifies [the d]efendants' asserted exemptions, but neglects to provide an overall picture of the universe of documents at issue as is necessary for the Court to be able to put those exemption justifications in the proper context."); Strunk v. U.S. Dep't of State, 845 F. Supp. 2d 38, 47 (D.D.C. 2012) (the defendant's "submissions offer[ed] too little detail to allow this Court to undertake a meaningful assessment of the redacted material."); Am. Immig. Council, 950 F. Supp. 2d at 246 ("vaguely formulated descriptions will not suffice; . . . the government must provide sufficient facts and context to allow the reviewing court to 'deduce something of the nature of the techniques in question.'" (quoting Clemente, 741 F. Supp. 2d at 88)).

Although this Circuit "ha[s] never required repetitive, detailed explanations for each piece of withheld information," Judicial Watch, Inc. v. Food & Drug Admin., 449 F.3d 141, 147 (D.C. Cir. 2006), the FOIA nevertheless requires an agency to provide "a relatively detailed justification" for the application of FOIA exemptions, Mead Data, 566 F.2d at 251; see, e.g., Skinner v. U.S. Dep't of Justice, 893 F. Supp. 2d 109, 110, 112–13 (D.D.C. 2012) (agency provided adequately detailed description of the withheld screen print of computer system and access codes, the nature of limited access to the computer system, and the risk that disclosure would pose to the security of the database). From the limited information provided in the Burroughs Declaration, the Court is unable to glean any support for its claim that Exemption 7(E) applies to the withheld information. The defendant has therefore failed to establish that it has complied with the FOIA's requirements, and consequently, its motion for summary judgment must be denied.

The Court notes, without deciding, that the Burroughs Declaration may establish the risk of circumvention of law, assuming that the withheld information about the AFI system would indeed disclose law enforcement techniques or procedures for investigations or prosecutions. See 5 U.S.C. § 552(b)(7)(E) (excluding from disclosure "techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law") (emphasis added)). As this Circuit has stated, Exemption 7(E)

> looks not just for circumvention of the law, but for a risk of circumvention; not just for an actual or certain risk of circumvention, but for an expected risk; not just for an undeniably or universally expected risk, but for a reasonably expected risk; and not just for certitude of a reasonably expected risk, but for the chance of a reasonably expected risk.

Mayer Brown LLP v. Internal Revenue Serv., 562 F.3d 1190, 1193 (D.C. Cir. 2009). Thus, "Exemption 7(E) sets a relatively low bar for the agency to justify withholding." Blackwell v. Fed. Bureau of Investigation, 646 F.3d 37, 42 (D.C. Cir. 2011). Here, the Burroughs Declaration states that the withheld information "may enable an individual knowledgeable in computer systems to improperly access the [AFI] system, facilitate navigation or movement through the system, allow manipulation or deletion of data[,] and interfere with proceedings," "would provide a detailed roadmap to individuals looking to manipulate [the AFI system] or to evade detection by law enforcement," and "would reveal [the] targeting and inspection techniques used in the processing of international travelers," which "would enable potential violators to design strategies to circumvent the law enforcement procedures developed by [the defendant]." Burroughs Decl. ¶¶ 33–34. If the defendant can establish, by a sufficiently detailed Vaughn index, declaration, or affidavit, that the withheld materials are indeed techniques, procedures, or guidelines for law enforcement investigations or prosecutions, see 5 U.S.C. § 552(b)(7)(E), the defendant may yet prevail on a renewed motion for summary judgment. See, e.g., Strunk v. U.S Dep't of State, 905 F. Supp. 2d 142, 144, 148–49 (D.D.C. 2012) (granting the agency's renewed motion for summary judgment after the court previously found that the agency's prior declaration failed to adequately establish the applicability of Exemption 7(E) to the records withheld).[4]

CONCLUSION

The defendant having failed to establish, by way of the Burroughs Declaration, that it properly withheld documents under Exemption 7(E) of the FOIA, the Court concludes that the

[4] Because the Court concludes that the defendant has failed to establish the applicability of Exemption 7(E) to the material it withheld from disclosure, the Court does not reach the issue of the segregability of the withheld information at this time.

defendant's Motion for Summary Judgment must be denied without prejudice, and the plaintiff's Cross-Motion for Summary Judgment must be granted in part and denied in part.

SO ORDERED this 17th day of February, 2016. [5]

REGGIE B. WALTON
United States District Judge

[5] The Court will contemporaneously issue an Order consistent with this Memorandum Opinion.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER, Plaintiff, v. CUSTOMS AND BORDER PROTECTION, Defendant.	)	Civil Action No. 14–1217 (RBW)

ORDER

In accordance with the Memorandum Opinion issued this same date, it is hereby

ORDERED that the Defendant's Motion for Summary Judgment, ECF No. 18, is **DENIED WITHOUT PREJUDICE**. It is further

ORDERED that the Plaintiff's Cross-Motion for Summary Judgment, ECF No. 20, is **GRANTED IN PART AND DENIED IN PART**. It is further

ORDERED that the plaintiff's request that the defendant provide a more detailed declaration or affidavit explaining its withholdings under Exemption 7(E) is **GRANTED**. It is further

ORDERED that the plaintiff's alternative request that the defendant immediately produce the withheld information is **DENIED**. It is further

ORDERED that the parties shall file a Joint Status Report on or before March 18, 2016, that addresses how the parties wish to proceed in this case in light of the Court's disposition of the parties' cross-motions for summary judgment.

SO ORDERED this 17th day of February, 2016.

REGGIE B. WALTON
United States District Judge