

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

ELECTRONIC PRIVACY INFORMATION
CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendant.

Case No. 1:17-cv-2047 JEB

**DEFENDANT’S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO
GENUINE DISPUTE**

Pursuant to Local Rule 7(h), Defendant Department of Homeland Security (“DHS”) respectfully submits the following statement of material facts not in dispute:

1. On March 31, 2017, EPIC filed a FOIA request with the DHS. Compl. ¶ 19.
2. The request sought two categories of records:
 - A. Any document, record, memo, correspondence, or other communications or any portion of any communication of the Department of Homeland Security that refers to or relates to the following:
 1. Research, integration, and analysis activities of the Department relating to interference with the elections for Federal office held in 2016 by at the direction of the Russian Government, as announced in a joint statement with the Office of National Intelligence on October 7, 2016, and December 29, 2016.¹
 2. Dissemination by the Department of Information regarding interference with the elections for Federal office held in 2016 by or at the direction of

¹ The October 7th joint statement is available at <https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national>, and the December 29th joint statement is available at <https://www.dhs.gov/news/2016/12/29/joint-dhs-odni-fbi-statement-russian-malicious-cyber-activity>.

the Russian Government, as announced in a joint statement with the Office of the Director of National Intelligence on October 7, 2016, and December 29, 2016.

3. Research into cyber compromises of emails of the United States persons and institutions by at the direction of the Russian Government to interfere with the elections for Federal office held in 2016.
4. Integration, analysis, and dissemination of the Joint Analysis Report detailing the tools and infrastructure associated with the elections for Federal Office held in 2016 issued by the Secretary of Homeland Security and Director of the Federal Bureau of Investigation on December 29, 2016.

B. Any and all information prepared for/an transmitted to the House of Representative pursuant to House Resolution 235.

Compl. ¶ 20.

3. The request was referred to DHS's National Protection and Program Directorate ("NPPD"), which is now DHS Cybersecurity and Infrastructure Security Agency ("CISA").

Declaration of James Holzer ¶ 5,

4. On October 4, 2017, EPIC filed this action seeking to compel production. Compl., ECF No. 1.

5. The parties conferred regarding the proposed search and proposed processing schedule. ECF No. 8.

6. After CISA completed its processing, the parties conferred in an effort to narrow the scope of issues in dispute. As part of this process, CISA provided EPIC with additional information about the records withheld in full and also conducted a supplemental search. *See* Joint Status Reports, ECF Nos. 12 – 17, 19 -21.

7. After reviewing all of the records produced as well as a draft Vaughn index provided by CISA of documents withheld in full, EPIC requested that CISA reprocess 16 documents (94 pages). *See* Joint Status Report ECF No. 22 ¶ 5.

8. On February 14, 2020, the DHS sent a letter informing EPIC that it had reprocessed the 16 documents identified by EPIC, releasing three pages in full and withholding five pages in part and 80 pages in full pursuant to Exemptions 5, 6 and/or 7(E). CITE
9. In its letter, DHS also explained that one document (NPPD 000956-NPPD 000961) required further consultation with another agency. *Id.*
10. On February 28, 2020, the DHS completed its consultation and released the six page document in full. *Id.* ¶ 6.
11. Based on its review, EPIC stated that the only remaining issues are the Exemptions 5 and 7(E) claims and the segregability as to twelve reprocessed documents not produced in full. *Id.* ¶ 7.²
12. EPIC stated that it agreed not to challenge the withholding of any other documents or the adequacy of the searches conducted by CISA. *Id.*

Respectfully submitted,

ETHAN P. DAVIS
Principal Deputy Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/ Marcia K. Sowles
MARCIA K. SOWLES (DC Bar 36944)
Senior Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20530
Telephone: (202) 524-4960
Fax: (202) 616-8470
E-mail: marcia.sowles@usdoj.gov

² One document – a one page memorandum (NPPD 001702), which was initially withheld in full under Exemptions 5, 7(A) and 7(E) – was after reprocessing produced in substantial part with only very limited redactions under Exemption 6. ECF No. 23 at 2 n.1.

Counsel for Defendant