

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

ELECTRONIC PRIVACY INFORMATION CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civ. Action No. 1:17-2047 JEB

**PLAINTIFF’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE AND
RESPONSE TO DEFENDANT’S STATEMENT OF FACTS NOT IN DISPUTE**

Pursuant to Local Civil Rule 7(h) of the Rules of the United States District Court for the District of Columbia, Plaintiff Electronic Privacy Information Center (“EPIC”) hereby submits the following statement of material facts as to which EPIC contends there is no genuine issue in connection with its Cross-Motion for Partial Summary Judgment, and EPIC’s response to defendant Department of Homeland Security’s (“DHS”) statement of material facts.¹

1. Defendant stated that on March 31, 2017, EPIC filed a FOIA request with the DHS. Compl. ¶ 19.

Response: Not disputed.

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 Numbers 1–12 refer to the DHS’s statement of material facts not in dispute; numbers 13–17 are EPIC’s statement of material facts not in dispute.

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.
2. Dissemination by the Department of Information regarding interference with the elections for Federal office held in 2016 by or at the direction of 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/and transmitted to the House of Representative pursuant to House Resolution 235.

Compl. ¶ 20.

Response: Not disputed.

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.

Response: Not disputed.

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

Response: Not disputed.

5. The parties conferred regarding the proposed search and proposed processing schedule.

Joint Status Report, ECF No. 8.

Response: Not disputed.

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.

Response: Not disputed.

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.

Response: Not disputed. But the number of documents and pages was specified in ¶ 7 of the January 31, 2020, Joint Status Report (not ¶ 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).

Response: Not disputed. The agency did not provide a citation to the record, but this statement is supported by the February 28, 2020, Joint Status Report, ECF No. 23, at ¶ 5.

9. In its letter, DHS also explained that one document (NPPD 000956-NPPD 000961) required further consultation with another agency. *Id.*

Response: Not disputed.

10. On February 28, 2020, the DHS completed its consultation and released the six page document in full. *Id.* ¶ 6.

Response: Not disputed.

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.

Response: Not disputed. The twelve documents at issue were withheld in full.

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.*

Response: Not disputed.

13. The twelve documents at issue are a subset of records that CISA identified as “non-email/non-draft documents” withheld in full. *See* Joint Status Report ¶ 5, ECF No. 14.

14. The report titled “Election Infrastructure Cyber Risk Characterization” is a final report. NPPD 000926-NPPD 000942.

15. The Election Task Force was not a deliberative body. The task force “was a temporary mechanism and was disbanded when the Under Secretary of NPPD determined that its functions could be operated within NPPD offices.” Holzer Decl. ¶ 20.

16. State and local election officials are not part of the federal government. State and local officials govern and administer the United States’ election processes across the country. *Election Security: Election Security is a Partnership*, Dep’t of Homeland Sec. (June 9, 2020), <https://www.dhs.gov/topic/election-security>.

17. CISA does not investigate or prosecute crimes. CISA’s mission is to “lead the National effort to understand and manage cyber and physical risk to our critical infrastructure.” CISA coordinates with the private and public sectors to “[i]dentify; [a]nalyze; [p]rioritize; and [m]anage the most strategic risks” to the nation’s critical infrastructure. *About CISA*, Cybersecurity & Infrastructure Sec. Agency, <https://www.cisa.gov/about-cisa>.

Respectfully Submitted,

/s/ Alan Butler

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