

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

_____)	
ELECTRONIC PRIVACY)	
INFORMATION CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 19-cv-810 (RBW)
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE,)	
)	
Defendant.)	
_____)	
JASON LEOPOLD, BUZZFEED, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 19-cv-957 (RBW)
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et al.)	
)	
Defendants.)	
_____)	

**DEFENDANT’S NOTICE OF SEALED SUBMISSION
OF RESPONSES TO COURT ORDER**

On July 6, 2020, the Court ordered the Department of Justice to file under seal its responses to the Court’s questions concerning certain redactions to the report prepared by Special Counsel Robert S. Mueller, III regarding his investigation into Russian interference in the 2016 United States presidential election (the “Report”). Order, Dkt. 123. On July 13, 2020, the Court granted the Department an additional week to file its responses. Minute Order (July 13, 2020).

Pursuant to those Orders and instructions from chambers, on July 21, 2020, undersigned counsel filed the Department’s responses under seal and provided one electronic copy of the

Department's responses to chambers via email. The Department's responses to the Court's questions consist of two parts: (1) a spreadsheet that the Court provided to undersigned counsel, with Column G completed per the Court's Order ("Exhibit A"); and (2) a sealed third declaration from Vanessa Brinkmann, Senior Counsel of the Department's Office of Information Policy, which provides additional detail for certain responses in Exhibit A. A redacted, public version of Ms. Brinkmann's third declaration is attached to this notice.

In response to the Court's Order, the Department conducted another comprehensive review of the redactions listed in Exhibit A. That work has involved consultations with numerous Department components, including the National Security Division (NSD), the Federal Bureau of Investigation (FBI), and certain U.S. Attorney's Offices, as well as consultations between the Department and the Intelligence Community. In the intervening more than a year since the Department first asserted its FOIA exemptions, a number of circumstances have changed, including the completion of trials and investigations, the provision of discovery in litigation, the evolution of malicious influence actors' tactics and techniques, and the release of information in response to congressional and other requests. For example, as litigation has progressed in certain matters, techniques used during the investigations have become known. Accordingly, in conducting this additional review, the Department determined that certain information in the Report now could be released without harming government interests or pending matters.¹

¹ Although "the question in FOIA cases is typically whether an agency improperly withheld documents at the time that it processed a FOIA request," in the interest of saving resources and promoting efficiency, because the Department determined during its review that there no longer exists a basis for a redaction, the Department indicated as such in its response to the Court's questions, withdrew the redaction, and will reprocess the Report with the redaction lifted at the appropriate time. *ACLU v. Dep't of Justice*, 640 F. App'x 9, 13 (D.C. Cir. 2016) (unpublished); *see also Bonner v. Dep't of State*, 928 F.2d 1148, 1152 (D.C. Cir. 1991) ("To require an agency to adjust or modify its FOIA responses based on post-response occurrences could create an endless cycle of judicially mandated reprocessing."). The Report was originally processed in spring 2019. A basis may no longer exist for a redaction if, for example, material was redacted concerning a prosecution that had been ongoing at the time of the redaction that has now been completed. *See Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice*, 746 F.3d 1082, 1097 (D.C. Cir. 2014) (stating that because a "proceeding must remain pending at the time of our decision," an agency's "reliance on Exemption 7(A) may become outdated when the proceeding at issue comes to a close").

Because of the time and resources needed to reprocessing records, which necessarily impairs the Department's ability to process other records in a timely fashion, the Department plans to re-process the Mueller Report after the Court has issued its ruling on the redactions. In the meantime, the Department respectfully requests leave of the Court to provide to Plaintiffs a version of Exhibit A that only shows the information for which the Department is withdrawing its withholdings. If the Court permits the Department leave to provide this version of Exhibit A to Plaintiffs, the Department will prepare the redacted version of Exhibit A and provide it to Plaintiffs in advance of the Court's *ex parte* hearing scheduled for August 17, 2020.

Dated: July 21, 2020

Respectfully submitted,

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/s/ Courtney D. Enlow

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2020, I electronically transmitted the foregoing to the parties and the clerk of court for the United States District Court for the District of Columbia using the CM/ECF filing system.

/s/ Courtney D. Enlow

_____ COURTNEY D. ENLOW

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