IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER

Plaintiff,

v.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,

Defendant.

Case No. 17-cv-0163 RC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION AND CROSS-MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

This case concerns EPIC's request to obtain, pursuant to the Freedom of Information Act ("FOIA"), a report detailing Russian interference in the 2016 U.S. presidential election. Unlike many FOIA cases, this case is about a single record, but the significance of that record to the American public cannot be overstated. The report sought by EPIC was created by the Defendant Office of the Director of National Intelligence ("ODNI"). Unlike most intelligence community assessments, many of the conclusions and details of the report have been publicly acknowledged by members of the Intelligence Community who prepared the report. In fact, the Defendant ODNI produced an unclassified version of the report to facilitate public debate. However, the full extent of Russian interference with the presidential election remains unknown to the public. And lacking knowledge of the extent of the interference, including the attacks on state voter systems that have been acknowledged but not yet detailed, the public is also unable to determine whether Defendant ODNI and other federal agencies have taken appropriate measures to safeguard future elections. Given the enormity of the public interest in disclosure of the extent of Russian interference, the ODNI's failure to release any segregable material cannot be countenanced. The agency must either release non-exempt materials in the report or the Court should undertake *in camera* inspection to determine whether in fact Defendant's declaration supports complete withholding without further processing. Although EPIC has brought many FOIA matters before this Court, this is one of the few instances where it respectfully asks the Court to consider the public interest in the disclosure pursuant to *in camera* review.

On January 6, 2017, the ODNI released to the public a short document summarizing the U.S. Intelligence Community assessment of the Russian interference in the 2016 U.S. elections ("Public Assessment"). Office of the Dir. of Nat'l Intelligence, *Assessing Russian Activities and Intentions in Recent US Elections* (2017), Ex. 1. In the Public Assessment, ODNI made clear that

Russia carried out a multi-pronged attack during the 2016 election cycle to "undermine public faith in the US democratic process." *Id*. at ii. Yet the Public Assessment was only a summary version of "'a comprehensive intelligence report' assessing Russian activities and intentions in recent U.S. elections" ("Complete Assessment"). Office of the Dir. of Nat'l Intelligence, *ODNI Statement on Declassified Intelligence Community Assessment of Russian Activities and Intentions in Recent U.S. Elections*, IC on the Record (Jan. 6, 2017), Ex. 2.

Plaintiff Electronic Privacy Information Center ("EPIC") challenges the ODNI's withholding of the Complete Assessment in full based on Exemptions 1 and 3, contends that the ODNI has "officially acknowledged" portions of the Complete Assessment, and challenges the ODNI's failure release reasonably segregable portions of the report. The ODNI has not satisfied its statutory obligation to disclose records responsive to EPIC's request. Regarding Exemption 1, the ODNI has proffered only a few conclusory paragraphs that lack the detail necessary to establish that the record is properly classified. These same conclusory paragraphs from the ODNI similarly fail to establish that the Complete Assessment falls within the National Security Act Section 102(A)(i) and is therefore subject to Exemption 3. Moreover, the agency's claims to Exemptions 1 and 3 have been waived by the ODNI's "official acknowledgment" of portions of the Complete Assessment. Finally, as to segregability, the ODNI's position is implausible because the agency concedes that the Public Report included unclassified portions of the Complete Assessment, but simultaneously argues that these unclassified portions cannot be segregated and released. Because the Government has improperly withheld non-exempt material in the record, the Court should grant EPIC's Motion for Summary Judgment.

BACKGROUND

I. Russia carried out an unprecedented influence campaign to interfere in the 2016 U.S. presidential election.

During the 2016 U.S. presidential election, the Russian Government carried out an unprecedented campaign to "undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency." Ex. 1 at ii. The ODNI and the Department of Homeland Security first publicly acknowledged Russia's illegal hacking of "e-mails from US persons and institutions, including from US political organizations" in October 2016 and concluded that the "thefts and disclosures [were] intended to interfere with the US election process." Press Release, U.S. Dep't of Homeland Sec., Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security (Oct. 6, 2016), Ex. 3. Prior to the first ODNI acknowledgement of Russia's role, President Obama indicated that an intrusion into the Democratic National Committee systems could likely be attributed to the Russians. *Nightly News with Lester Holt: President Obama on Russian DNC Hack Involvement: 'Anything's Possible'* (NBC television broadcast Jul. 25, 2016).[1]

The Russian interference campaign involved both "covert intelligence operations" and "overt efforts by Russian Government agencies, state funded media, third-party intermediaries, and paid social media users or 'trolls.'" Ex. 1 at ii. The ODNI has acknowledged that Russian efforts included "cyber operations; intrusions into US state and local election boards; and overt propaganda" that was both "informed and enabled" by Russian intelligence." Ex. 1 at 2. This included direct collection "against targets associated with the 2016 US presidential election,

[1] http://www.nbcnews.com/nightly-news/video/president-obama-on-russian-dnc-hack-involvement-anything-s-possible-732675139636.

including targets associated with both major US political parties" such as "US primary campaigns, think tanks, and lobbying groups." Ex. 1 at 2.

The ODNI has acknowledged specifically that "the General Staff Main Intelligence Directorate (GRU)" began operations "by March 2016" that "resulted in the compromise of the personal e-mail accounts of Democratic Party officials and political figures" and that "by May, the GRU had exfiltrated large volumes of data from the DNC." Ex. 1 at 2. The ODNI was also able to trace these Russian intelligence operations back to "July 2015, [when] Russian intelligence gained access to Democratic National Committee (DNC) networks and maintained that access until at least June 2016." Ex. 1 at 2. Even more specifically, the ODNI concluded that "the GRU used the Guccifer 2.0 persona, DCLeaks.com, and WikiLeaks to release US victim data obtained in cyber operations publicly and in exclusives to media outlets." Ex. 1 at 2–3. The ODNI also acknowledged that "Russia collected on some Republican-affiliated targets but did not conduct a comparable disclosure campaign." Ex. 1 at 3.

The Russian influence campaign represented a "significant escalation in directness, level of activity, and scope of effort compared to previous operations aimed at US elections." Ex. 1 at ii. However, the ODNI made clear that this was not an isolated incident, and that there is a strong public interest in uncovering and understanding the Russian efforts because "Moscow will apply lessons learned from its campaign aimed at the US presidential election to future influence efforts in the United States and worldwide, including against US allies and their election processes." *Id*.

II. There is a strong public interest in further disclosure about the nature and scope of the Russian interference campaign.

Congressional leaders on both sides of the aisle have repeatedly emphasized the unprecedented nature of the Russian interference, as well as the need for the American public to

understand what happened and how it can be prevented in the future. The Chairman of the Senate Select Committee on Intelligence, Senator Richard Burr (R-NC), has made clear that this is a matter "the American public, indeed all democratic societies, need to understand." *Russian Intelligence Activities, Panel 1: Hearing Before S. Select Comm. on Intelligence*, 115th Cong. (2017) (unofficial hearing transcript at 2), Ex. 4. In an open hearing of the Committee, Chairman Burr emphasized that:

> The public deserves to hear the truth about possible Russian involvement in our elections, how they came to be involved, how we may have failed to prevent that involvement, what actions were taken in response if any, and what we plan to do to insure the integrity of future free elections.

Id. at 3. Similarly, Senator Kamala Harris (D-CA) stated the same day that:

> We must proceed with urgency and we must be transparent . . . . I strongly believe an informed public is one of our best weapons against future attacks.

Id. at 59–60. In a subsequent Committee hearing, Senator Rubio (R-FL) urged that "as much of [the systems data] must be made available to the public as possible," and said to "err on the side of disclosure about our systems so people have full confidence when they go vote." *Russian Interference in 2016 Election, Panel 1: Hearing before the S. Select Comm. on Intelligence*, 115th Cong. (2017) (unofficial hearing transcript at 13), Ex. 5.

On March 20th, Representative Nunes (R-CA), Chair of the House Intelligence Committee, stated during that Committee's first open hearing on the Russian interference that "the indications of Russian measures targeting the U.S. presidential election are deeply troubling," and that:

> I recognize the challenge of discussing sensitive national security issues in public. However . . . it is critical to ensure that the public has access to credible unclassified facts and to clear the air regarding unsubstantiated media reports.

Russian Active Measures Investigation: Hearing Before H. Permanent Select Comm. on Intelligence, 115th Cong. (2017) (unofficial hearing transcript at 2–3), Ex. 6. Ranking Member, Representative Adam Schiff (D-CA), agreed:

> What is striking here is the degree to which the Russians were willing to undertake such an audacious and risky action against the most powerful nation on Earth. That ought to be a warning to us… And if we do not do our very best to understand how the Russians accomplished this unprecedented attack on our democracy and what we need to do to protect ourselves in the future, we will only have ourselves to blame.

Id. at 5. Still, Representative Schiff concluded, "there is a lot we don't know." *Id*.

The Public Assessment left key questions unanswered. For example, while the report notes that "Russian actors" had been "targeting or compromising" democratic institutions including "state or local election boards" since "early 2014," the report provided no further detail on these intrusions or the extent of the damage or future threats involved. *Id*. at 3. The Public Assessment did not identify which systems in the United States were attacked, whether voter records of Americans were obtained. Finally, the Assessment did not detail the ongoing risks to U.S. political parties and other domestic or foreign democratic institutions beyond an expectation that "Moscow will apply lessons learned from its Putin-ordered campaign aimed at the US presidential election to future influence efforts worldwide." *Id*. at iii.

Today, the full extent and nature of the Russian interference is still unknown to the public. Indeed, on June 21, 2017, *nearly eight months after election day*, in an open hearing before the Senate Select Committee on Intelligence, the Department of Homeland Security National Protection and Programs Directorate's Acting Deputy Under Secretary for Cybersecurity and Communications Jeanette Manfra confirmed for the first time that "election-related systems in 21 states… were targeted" by Russian cyber actors during the 2016 election – nearly half of the United States. Ex. 5 at 7. Vice Chair Mark Warner (D-VA) probed Ms. Manfra during the hearing about whether "at this

moment in time, there may be a number of… state, local election officials that don't know their state[s] were targeted in 2016." *Id*. at 8.

Nonetheless, special elections for both House and Senate seats are scheduled for the Winter of 2017. The 2017 French national election already experienced a round of similarly styled cyber-attacks and influence activities. Barney Henderson & Chris Graham, *Russia Blamed as Macron Campaign Blasts 'Massive Hacking Attack' Ahead of French Presidential Election*, Telegraph (May 6, 2017).[2] The German national election will be held on September 24, 2017. The U.S. intelligence community itself recognized the risk to European democracies, and reportedly shared the Complete Assessment to help prevent further Russian interference. Martin Matishak, *U.S. Shares Election-hacking Intel with Europe*, Politico (Feb. 7, 2017).[3]

Since the release of the Public Assessment six and a half months ago, the Intelligence Community has not provided additional documents to the public on the Russian interference in the 2016 election. Yet, as Assistant Director to the FBI's Counterintelligence Division, Bill Priestap, told the Senate Intelligence Committee: the agencies "continue to learn things." Ex. 5 at 12. Members of Congress have cited multiple unanswered inquiries concerning the FBI response to the Russian interference. Letter from Members of the House Judiciary Comm. to James B. Comey, Dir. of the Fed. Bureau of Investigation (Jan. 12, 2017), Ex. 7.

For these reasons, there is a profound and urgent public interest in the release of the Complete Assessment sought by EPIC concerning the Russian interference with the 2016 election. The release of this assessment is necessary for the public to evaluate the Intelligence Community

[2] http://www.telegraph.co.uk/news/2017/05/05/macron-campaign-blasts-massive-hacking-attack-ahead-french-presidential/.
[3] http://www.politico.com/story/2017/02/election-hacking-europe-234710.

response to the Russian interference, assess threats to democratic institutions, and ensure that agencies are taking appropriate measures to protect U.S. electoral institutions against future attack.

III. EPIC seeks disclosure of the ODNI's complete assessment on Russian interference.

Following the election, President Obama ordered the ODNI to conduct an assessment and prepare a report on the "motivation and scope of Russian efforts to influence the 2016 U.S. presidential election." Def.'s Mem. 2, ECF No. 17; Gistaro Decl. ¶ 9. Director Clapper conceded at the outset that it was in the public interest to "share with the public" as much information as possible about the Russian interference campaign. Def.'s Mem. 3. The ODNI published a version of the report on January 6, 2017 (the "Public Assessment"). The ODNI has stated that the Public Assessment "contains the unclassified content of the classified report, including all of the conclusions regarding Russian interference with the U.S. 2016 presidential election." Def.'s Mem. 5. Following release of the Public Assessment, and recognizing that the Public Assessment failed to reveal the extent of the Russian interference, EPIC decided to seek release of the Complete Assessment under the FOIA.

On January 9, 2017, EPIC submitted a FOIA Request via email to the ODNI's Information Management Division ("EPIC FOIA Request"). EPIC sought a specific record in the possession of the ODNI, the "unredacted ODNI 2017 report 'Assessing Russian Activities and Intentions in Recent US Elections,' (Jan. 6, 2017)," which was "referenced in the redacted version and is necessarily in possession of the agency." Am. Compl. ¶ 21, ECF No. 6.

EPIC sought "news media" fee status, 5 U.S.C. § 552(4)(A)(ii)(II), and a waiver of all duplication fees, 5 U.S.C. § 552(a)(4)(A)(iii). Am. Compl. ¶ 22. EPIC also sought expedited processing of the request pursuant to 5 U.S.C. §§ 552(a)(6)(E)(i), (a)(6)(E)(v)(II). Am. Compl. ¶ 23.

On January 23, 2016, EPIC received a letter from ODNI dated January 17, 2017. Am. Compl. ¶ 24. The letter acknowledged receipt of EPIC's FOIA request on January 10, 2017 and assigned reference number ODNI Case DF-2017-00129. Am. Compl. ¶ 24. The ODNI also denied EPIC's request for expedited processing and granted EPIC a fee waiver. Am. Compl. ¶ 24. The ODNI failed to make a determination regarding EPIC's FOIA Request within the twenty-day period prescribed by 5 U.S.C. § 552(a)(6)(A)(i). Am. Compl. ¶ 26.

EPIC filed suit on January 25, 2017, and filed an amended complaint on February 10, 2017. After the ODNI sent EPIC a letter on May 2, 2017, stating that it would be withholding the Complete Assessment in full, asserting FOIA Exemptions (b)(1) and (b)(3), EPIC informed the ODNI of its intent to challenge the agency's withholding.

ARGUMENT

The FOIA was enacted "to facilitate public access to Government documents" and "was designed to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Citizens for Responsibility and Ethics in Washington v. DOJ*, 746 F.3d 1082, 1088 (D.C. Cir. 2014) [hereinafter *CREW*] (quoting *Dep't of State v. Ray*, 502 U.S. 164, 173 (1991)). The purpose of the FOIA is "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *EPIC v. DHS*, 999 F. Supp. 2d 24, 29 (D.D.C. 2013) (quoting *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989)). "In enacting FOIA, Congress struck the balance it thought right—generally favoring disclosure, subject only to a handful of specified exemptions—and did so across the length and breadth of the Federal Government." *Milner v. Dep't of the Navy*, 131 S. Ct. 1259, 1266 (2011). As a result, the FOIA "mandates a strong presumption in favor of disclosure." *CREW v. DOJ*, 854 F.3d 675, 681 (D.C. Cir. 2017); *EPIC v. DOJ*, 511 F. Supp. 2d 56, 64 (D.D.C. 2007) (internal citations omitted).

The FOIA specifies that certain categories of information may be exempt from disclosure, "[b]ut these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *ACLU v. DOJ*, 655 F.3d 1, 5 (D.C. Cir. 2011) (quoting *Nat'l Ass'n of Home Builders v. Norton,* 309 F.3d 26, 32 (D.C. Cir. 2002)). Therefore, FOIA exemptions "must be narrowly construed." *Id*. "The statute's goal is broad disclosure, and the exemptions must be given a narrow compass." *Milner*, 131 S. Ct. at 1261 (internal citations omitted). Furthermore, "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(4)(B); *see also EPIC v. DHS*, 384 F. Supp. 2d 100, 106 (D.D.C. 2005). Where the government has not carried this burden, summary judgment in favor of the Plaintiff is appropriate. *See, e.g.*, *DOJ v. Tax Analysts*, 492 U.S. 136, 142 (1989); *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980).

I. STANDARD OF REVIEW

Summary judgment may be granted 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). "A genuine issue of material fact is one that would change the outcome of the litigation." *EPIC v. DHS*, 999 F. Supp. 2d 24, 28 (D.D.C. 2013) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). FOIA cases are typically decided on motions for summary judgment. *Id*.; *see Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009). A district court reviewing a motion for summary judgment in a FOIA case "conducts a de novo review of the record, and the responding federal agency bears the burden of proving that it has complied with its obligations under the FOIA." *Dugan v. DOJ*, 82 F. Supp. 3d 485, 494 (D.D.C. 2015); *see also* 5 U.S.C. § 552(a)(4)(B); *CREW*, 746 F.3d at 1088 (citing *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 755 (1989)).

The court must "analyze all underlying facts and inferences in the light most favorable to the FOIA requester," and therefore "summary judgment for an agency is only appropriate after the agency proves that it has 'fully discharged its [FOIA] obligations.'" *Dugan*, 82 F. Supp. 3d at 494. In some cases, the agency may carry its burden by submitting affidavits that "describe the documents and justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor evidence of agency bad faith." *Pinson v. DOJ*, ___ F. Supp. 3d ___, 2017 WL 1247773, at *5 (D.D.C. Mar. 29, 2017).

II. EPIC IS ENTITLED TO SUMMARY JUDGMENT

The FOIA provides that every government agency shall "upon any request which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). But, despite the "prodisclosure purpose" of the statute, *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004), the FOIA provides for nine exemptions. These "nine statutorily exempt categories of documents must be 'narrowly construed.'" *Dugan*, 82 F. Supp. 3d at 494 (citing *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976)).

In a FOIA case, the "agency bears the burden of establishing that an exemption applies." *PETA v. NIH*, 745 F.3d 535 (D.C. Cir. 2014). The agency may "meet this burden by filing affidavits describing the material withheld and the manner in which it falls within the exemption claimed." *King v. DOJ*, 830 F.2d 210, 217 (D.C. Cir. 1987) (citing *Military Audit Project v. Casey*, 656 F.2d at 738; *Lesar v. DOJ*, 636 F.2d at 481; *Hayden v. NSA*, 608 F.2d 1381, 1387 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 937 (1980); *Ray v. Turner*, 587 F.2d at 1195). It is not sufficient for the agency to provide "vague, conclusory affidavits, or those that merely paraphrase the words of a statute." *Church of Scientology of Cal., Inc. v. Turner*, 662 F.2d 784,

787 (D.C. Cir. 1980) (per curiam). When an agency invokes an exemption, "it must submit affidavits that provide 'the kind of detailed, scrupulous description [of the withheld documents] that enables a District Court judge to perform a de novo review.'" *Brown v. FBI*, 873 F. Supp. 2d 388, 401 (D.D.C. 2012) (citing *Church of Scientology*, 662 F.2d at 786) (discussing an agency invocation of Exemption 3).

A. The ODNI has not justified its withholding of unclassified material under Exemptions 1 and 3

In this case, the ODNI argues that the full record is exempt from FOIA under 5 U.S.C. §§ 552(b)(1) and (b)(3). Def's Mem. 9–16. But the agency has not carried its burden under either exemption because the agency relies on the implausible conclusion, proffered in their declaration, that the Complete Assessment is properly classified, and subject to the statutory exemption, in its entirety even though ODNI has conceded that the report contains unclassified material that the agency has officially acknowledged.[4]

1. The ODNI has failed to establish that the full report is properly classified under Executive Order 13,526.

An agency seeking to withhold responsive records under Exemption 1 must establish that the records withheld are "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1); *see Judicial Watch, Inc. v. DOD*, 715 F.3d 937 (D.C. Cir. 2013); *Ctr. for Int'l Envt. Law v. USTR*, 718 F.3d 899, 904 (D.C. Cir. 2013); *ACLU v. DOD*, 628 F.3d 612, 624 (D.C. Cir. 2011). The current operative

[4] EPIC is not arguing that the Complete Assessment does not contain any material that is properly classified or exempt from disclosure under the National Security Act. But, given the amount of unclassified material contained in the Complete Assessment, and the fact that there is only one record at issue in this case, the Court would be well within its discretion to conduct *in camera* review of the withheld material in to "determine whether there is any reasonably segregable information that [the agency] must still produce. *EPIC v. DOJ*, No. 13-cv-1961, 2016 WL 447426, slip op. at 4 (D.D.C. Feb. 4, 2016).

classification order under Exemption 1 is Executive Order 13,526. *Judicial Watch*, 715 F.3d at 941. To show that records were properly withheld under Exemption 1, the agency must satisfy "the Executive Order's substantive and procedural criteria." *Id*. (citing *Lesar v. DOJ*, 636 F.2d 472, 481 (D.C. Cir. 1980)); *see also King v. DOJ*, 830 F.2d 210, 215 (D.C. Cir. 1987) ("An agency may invoke this exemption only if it complies with classification procedures established by the relevant executive order and withholds only such material as conforms to the order's substantive criteria for classification." (citing *Lesar*, 636 F.2d at 483; *Ray v. Turner*, 587 F.2d 1187, 1195 (D.C. Cir. 1978); *Halperin v. Dep't of State*, 585 F.2d 699, 703 (D.C. Cir. 1977))).

Executive Order 13,526 has four key procedural requirements that must be met for any information to be properly classified:

> (1) an original classification authority is classifying the information;
> (2) the information is owned by, produced by or for, or is under the control of the United States Government
> (3) the information falls within one or more of the categories of information listed in § 1.4 of this order; and
> (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

Exec. Order No. 13,526 § 1.1(a).

Information cannot be properly classified "unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security" to the degree necessary based on the classification level in Section 1.2. The information must also "pertain to one or more" of the listed categories in Section 1.4:

> (a) military plans, weapons systems, or operations;
> (b) foreign government information;
> (c) intelligence activities (including covert action), intelligence sources or methods, or cryptology;
> (d) foreign relations or foreign activities of the United States, including confidential sources;

(e) scientific, technological, or economic matters relating to the national security;
(f) United States Government programs for safeguarding nuclear materials or facilities;
(g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or
(h) the development, production, or use of weapons of mass destruction.

Exec. Order No. 13,526 § 1.4.

In the Exemption 1 context, the agency must make a "plausible assertion that information is properly classified." *Morley v. CIA*, 508 F.3d 1108, 1124 (D.C. Cir. 2007). Although courts afford "substantial weight" to the analysis of national security risks outlined in agency affidavits, that "deference is not equivalent to acquiescence; the declaration may justify summary judgment only if it is sufficient 'to afford the FOIA requester a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of a withholding.'" *Campbell v. DOJ*, 164 F.3d 20, 30 (D.C. Cir. 1998) (quoting *King v. DOJ*, 830 F.2d 210, 218 (D.C. Cir. 1987)). An agency declaration can be deemed insufficient to support an Exemption 1 claim if it lacks "detail and specificity," if there is evidence of "bad faith," or if the declaration fails to "account for contrary record evidence." *Id*. at 30.

An affidavit that "contains merely a 'categorical description of redacted material coupled with categorical indication of anticipated consequences of disclosure is clearly inadequate.'" *Id*. (quoting *PHE, Inc. v. DOJ*, 983 F.2d 248, 250 (D.C. Cir. 1993)). To establish that the exemption applies, the affidavit "must show, with reasonable specificity, why the documents fall within the exemption. The affidavits will not suffice if the agency's claims are conclusory, merely reciting statutory standards, or if they are too vague or sweeping." *Id.* (citing *Hayden v. NSA*, 608 F.2d 1381, 1387 (D.C. Cir. 1979)).

First, the ODNI declaration does not afford EPIC "a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of a withholding.'"

Campbell v. DOJ, 164 F.3d 20, 30 (D.C. Cir. 1998). The ODNI has also refused to disclose even basic information such as the page numbers or headers of the Complete Assessment, and the agency declaration does not adequately explain how disclosure of these structural details about the document could plausibly fall within one of the four classification categories or otherwise meet the standards for classification under the Executive Order. Gistaro Decl. ¶ 15.

EPIC has no interest in disclosure of any material in the Complete Assessment that properly falls within the categories outlined in the Executive Order 13,526. However, the only evidence that the ODNI provided to support its conclusion that "serious and exceptionally grave damage" could be caused by the disclosure of the information contained in the report are a few conclusory sentences following each stated category of information in the declaration. *See* Gistaro Decl. ¶ 15.

For each of the four types of information, the declaration summarily restates the meaning of the term and offers a few, generalized supporting sentences. Gistaro Decl. ¶ 15. For example, for the first category the declaration, Signals Intelligence Sources, the declaration merely defines the term, states it falls within the Executive Order, and restates this standard for harm in the Executive Order that release "could reasonably be expected to cause serious or exceptionally grave danger to national security." *Id*. Gistaro Decl. ¶ 15(a). As to the second category, Human Intelligence Sources, the declaration is similarly conclusory. It states the value of such sources, states that the IC seeks to ensure sources are not compromised and that compromise impairs recruitment, and that it falls within the Executive Order. Beyond these statements, the affidavit again only closes by asserting: "Release of the classified HUMINT contained in the report to the public or to foreign authorities could reasonably be expected to expose human intelligence sources to serious or exceptionally grave danger and would present equally serious or

exceptionally grave danger to national security." Gistaro Decl. ¶ 15(b). Again, the ODNI offers only highly generalized conclusions about already general categories of information.

This trend continues with the similarly generalized categories three, Intelligence Methods, and four, Intelligence Activities. Gistaro Decl. ¶¶ 15(c-d). For category three "Intelligence Methods," the declaration again describes the meaning of intelligence methods, states that intelligence methods reveal sources and can be used to pinpoint sources and compromise U.S. intelligence efforts, states that the information falls within the Executive Order, and again restates the standard for harm in the Order that release "could reasonably be expected to cause serious or exceptionally grave danger to national security." Gistaro Decl. ¶ 15(c). Finally, for category four "Intelligence Activities," the declaration also simply defines intelligence activities, states broadly that intelligence activities can assist foreign governments and compromise U.S. intelligence efforts, states the information falls within the Executive Order, and again restates the standard for harm in the Order that release "could reasonably be expected to cause serious or exceptionally grave danger to national security." Gistaro Decl. ¶ 15(d).

The D.C. Circuit previously rejected a DOJ Exemption 1 claim based on similarly conclusory evidence presented in *Campbell v. U.S. Department of Justice*. 164 F.3d 20 (D.C. Cir. 1998). Specifically, the court found that the agency declaration in that case was insufficient because it "fails to draw any connection between the documents at issue and the general standards that govern the national security exemption. For example, the declaration states that:

> [a]ll of the intelligence activities or methods detailed in the withheld information are currently utilized by the FBI" and that disclosure of intelligence methods is undesirable. However, the declaration makes no effort to assess how detailed a description of these Hoover-era methods the documents provide, and whether disclosure would be damaging in light of the degree of detail.

Campbell, 164 F.3d at 31. On remand, the district court found that the FBI's revised declaration was still insufficient to support its Exemption 1 claim, holding that the agency must provide

"information as to precisely how national security is threatened" by the release of the specific information contained in the documents. *Campbell v. DOJ*, 193 F. Supp. 2d 29, 38 (D.D.C. 2001). The declaration must ultimately "provide sufficient information to permit [the requester] and the district court to understand the foundation for and necessity of the [agency's] classification decisions." *Campbell v. DOJ*, 231 F. Supp. 2d 1, 11 (D.D.C. 2002). The ODNI declaration is simply not detailed enough to establish that the Complete Assessment is properly classified and exempt under 5 U.S.C. § 552(b)(1) based on the inclusion of the information from the NSA, FBI, and CIA.

Second, the ODNI fully acknowledges that material in the report is fully unclassified and does not fall within these four categories of information, yet the agency is still withholding this information. For instance, ODNI declaration indicates only that the report "*included* sensitive, national security information" falling within the four types of information it asserts are included in the report, and that the "information falling within one or more of these four categories *that was included* in the text of the report was originally classified . . . and . . . retains this classification." Gistaro Decl. ¶ 15 (Emphasis added). There are multiple references to the still "unclassified" information in the report. *See, e.g.*, Gistaro Decl. ¶ 20(b) (making four references to the "unclassified" information or material in the "classified report").

Given the ODNI's concession that the Complete Assessment contains unclassified information, the agency cannot plausibly assert that this information is properly classified and thus exempt in its entirety under 5 U.S.C. § 552(b)(1).

2. The ODNI Improperly Withheld Information Under Exemption 3

The Complete Assessment does not fall within Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1). As with Exemption 1, ODNI's vague,

conclusory declaration fails to establish that the entire Assessment would reveal "intelligence sources and methods."

Exemption 3 permits the withholding of records "specifically exempted from disclosure by statute… if that statute— (A) . . . (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld." § 552(b)(3). Here, the ODNI relies on Section 102A(i)(1) of the National Security Act. The Act states "[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." *Id*. "Exemption 3 differs from other FOIA exemptions in that its applicability depends less on the detailed factual contents of specific documents; the sole issue for decision is the existence of a relevant statute and the inclusion of withheld material within the statute's coverage." *Ass'n of Retired R.R. Workers, Inc. v. U.S. R.R. Retirement Bd.* 830 F.2d 331, 336 (D.C. Cir. 1987) (quoting *Goland v. CIA*, 607 F.2d 339, 350 (D.C. Cir. 1978)). To assess an agency's assertion of Exemption 3, the D.C. Circuit uses a two-part test: (1) whether "the statute in question [is] a statute of exemption as contemplated by exemption 3," and (2) whether "the withheld material satisf[ies] the criteria of the exemption statute." *Fitzgibbon v. CIA,* 911 F.2d 755, 761 (D.C.Cir.1990); *CREW v. DOJ*, 160 F. Supp. 3d 226, 236 (D.D.C. 2016). As in the context of Exemption 1, "conclusory affidavits that merely recite statutory standards, or are overly vague or sweeping will not carry the government's burden." *Larson,* 565 F.3d at 864.

EPIC does not challenge that the Section 102A(i)(1) of the NSA is an Exemption 3 statute. *See Larson v. Dep't of State,* 565 F.3d 857, 865 (D.C.Cir.2009). Rather, EPIC contests that the entire record at issue in this case, the Complete Assessment, falls within the scope of Section 102A(i)(1). In other words, it is implausible for the ODNI to claim that every portion of the Classified Assessment reveals "intelligence sources and methods." As in the Exemption 1

context, the ODNI declaration is simply not detailed enough to establish that the Complete Assessment, in its entirety, would reveal intelligence sources and methods. 5 U.S.C. § 552(b)(3).

The ODNI states that four types of intelligence information, controlled and provided by the CIA, FBI, and NSA, were used in the preparation of the Complete Assessment. Gistaro Decl. ¶ 15. But the declaration is not sufficiently detailed to support the conclusion that the entire Assessment can be withheld under the National Security Act. The declaration provides a summary paragraph in support of withholding each of four, general types of information (in terms as broad as "Signal Intelligence" and "Intelligence Methods") it states is included in the Complete Assessment. Gistaro Decl. ¶ 15. To paraphrase the analysis above, these supporting paragraphs at most define the information, may or may not provide a sentence or two on the general harm that may occur from its release, state it falls within Executive Order 13526, and restates the requisite standard for harm in the Order. Gistaro Decl. ¶ 15.

The ODNI's withholding under Exemption 3 is also "controverted by . . . contrary evidence in the record" - namely, the public disclosures already made in the Public Assessment. *Military Audit Project v. Casey,* 656 F.2d 724, 738 (D.C.Cir.1981). As the ODNI itself states, the Public Assessment "contained the unclassified content of the classified report including all of the conclusions regarding Russian interference with the U.S. 2016 presidential election." Gistaro Decl. ¶ 22. In light of the previous public disclosure of a portion contents of the Complete Assessment in the Public Assessment, ODNI's assertions that disclosing any portion of the would reveal "intelligence sources and methods" is neither "logical" nor "plausible." *Larson,* 565 F.3d at 862. The ODNI has conceded that material in the report is unclassified; that material would not reveal sources and methods, yet the agency is attempting to withhold it under Exemption 3.

3. Even if the ODNI's were correct that portions of the Complete Assessment are potentially subject to Exemptions 1 and 3, the agency cannot withhold portions of the Assessment that have been officially acknowledged.

Even if the ODNI could establish that material in the Complete Assessment is properly subject to Exemptions 1 and 3, the agency cannot withhold material that it has "officially acknowledged" in the Public Assessment, and portions of the report must be released.

"[W]hen information has been "officially acknowledged," its disclosure may be compelled even over an agency's otherwise valid exemption claim." *Afshar,* 702 F.2d 1125, 1133 (D.C. Cir. 1983). There are three criteria for determining whether information has been "officially acknowledged" by an agency:

> First, the information requested must be as specific as the information previously released. Second, the information requested must match the information previously disclosed; . . . Third, . . . the information requested must already have been made public through an official and documented disclosure.

Fitzgibbon v. CIA, 911 F.2d 755, 765 (D.C. Cir. 1990) (citing *Afshar,* 702 F.2d at 1133); *see also Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007).

First, portions of the information in the Complete Assessment are "as specific as the information previously released" and "match[es] the information previously disclosed" in the Public Assessment. *Id*. According to the ODNI declaration, the Public Assessment "contained the unclassified content of the classified report including all of the conclusions regarding Russian interference with the U.S. 2016 presidential election." Gistaro Decl. ¶ 22. According to the ODNI's own terms, there are simply no "substantive differences between the disclosed documents and the information that has been withheld." *ACLU v. DOD*, 628 F.3d 612, 621 (D.C. Cir. 2011). Indeed, the National Intelligence Council ("NIC") "worked on" both reports "simultaneously." Gistaro Decl. ¶ 21. Both versions were prepared by the NIC. Gistaro Decl. ¶ 21.

Second, the information has "already . . . been made public through an official and documented disclosure." *Fitzgibbon v. CIA*, 911 F.2d at 765. There is no dispute that the Public Assessment was officially released by the ODNI to the public on January 6, 2017 by the ODNI. Gistaro Decl. ¶ 22. The same day as this report was released the ODNI issued a public statement that a "declassified version of the report is being released to the public and can be accessed via IC on the Record." Ex. 2. The report is currently still publicly available on the IC on the Record website. Ex. 1.

In sum, the ODNI "officially acknowledged" a portion of the Complete Assessment EPIC seeks in publishing the Public Assessment. This information is "as specific" and "match[es]" the information made public by the ODNI in the Public Assessment on January 6, 2017, an "official and documented disclosure." *Fitzgibbon v. CIA*, 911 F.2d at 765. There could hardly be clearer case of "official disclosure" than this.

B. The ODNI has failed to release reasonably segregable portions of the Complete Assessment

The FOIA "makes clear that the fact that a responsive document fits within an applicable exemption does not automatically entitle the keeper of such material to withhold the *entire* record." *Charles v. Office of the Armed Forces Med. Exam'r*, 979 F. Supp. 2d 35, 42 (D.D.C. 2013). Thus even when an agency has properly invoked a FOIA exemption, it must disclose any "reasonably segregable portion" of the record requested. 5 U.S.C. § 552(b); *see Stolt-Nielsen Transp. Group Ltd v. United States*, 534 F.3d 728, 734 (D.C. Cir. 2008) (quoting *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1116 (D.C. Cir. 2007)); *Oglesby v. United States Dep't of the Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996) ("If a document contains exempt information, the agency must still release 'any reasonably segregable portion' after deletion of the nondisclosable

portions."). "The 'segregability' requirement applies to all documents and all exemptions in the FOIA." *Ctr. for Auto Safety v. EPA*, 731 F.2d 16, 21 (D.C. Cir. 1984).

The burden is on the agency to "provide a detailed justification for its non-segregability." *Johnson v. EOUSA*, 310 F.3d 771, 776 (D.C. Cir. 2002) (internal quotation marks omitted). This includes "a statement of [the government's] reasons," and a "descri[ption of] what proportion of the information in a document is non-exempt and how that material is dispersed throughout the document." *Mead Data Cent., Inc. v. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977). Simply claiming that a segregability review has been conducted is insufficient. *Oglesby*, 79 F.3d at 1180. Courts have an "affirmative duty to consider the segregability issue *sua sponte*." *Trans-Pac. Policing Agreement v. U.S. Customs Serv.*, 177 F.3d 1022, 1028 (D.C. Cir. 1999).

In this case, the ODNI has improperly withheld reasonably segregable non-exempt portions of the Complete Assessment. The ODNI has conceded that the record contains unclassified information, nevertheless has withheld the document in its entirety. *See, e.g.*, Def.'s Mem. 5; Gistaro Decl. ¶ 20(b) (making four references to the "unclassified" information or material in the "classified report").

Although the ODNI now seeks to withhold the Complete Assessment in full, the agency's declaration does not justify such a broad withholding. None of the points made in the ODNI declaration support the conclusion that this information is are properly classified as required by Exemption 1, *see* 5 U.S.C. § 552(b)(1)(B), or that they are exempt from disclosure would reveal "intelligence sources and methods" as required by Exemption 3 and the National Security Act, *see* 5 U.S.C. § 552(b)(3). *See Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011). In fact, it is implausible that this information could be properly exempt under any of these provisions

because, according to the ODNI, the unclassified "content" including "conclusions" are the same in both the Public Assessment and the Complete Assessment. Gistaro Decl. ¶ 22.

The ODNI's primary justification for withholding even this unclassified information is that, because a redacted version of the Complete Assessment could be read along with the Public Assessment:

> Even if the SECRET and TOP SECRET information were to be blocked-out (i.e. redacted), a qualified reviewer could still use the unclassified, non-redacted portions, and the context they provide, to identify the nature and substance of the redacted portions, including, among other things, the relative strengths, availabilities, and maturity of U.S. HUMINT and SIGINT capabilities

Gistaro Decl. ¶ 30. At the outset, the agency's segregability argument warrants skepticism because the agency has taken the unreasonable position that the entire document must be withheld in full, even the page numbers and the total number of pages. It is not "plausible" that this information could offer meaningfully revelations about "relative strengths, availabilities, and maturity" of U.S. intelligence. Gistaro Decl. ¶ 30. Equally implausible is the agency's conclusion that release of a *fully* redacted report to EPIC could cause such harm.

Further, to justify withholding entire documents an agency must demonstrate that the "exempt and nonexempt information are 'inextricably intertwined,' such that the excision of exempt information would impose significant costs on the agency and produce an edited document with little informational value." *Mays v. DEA,* 234 F.3d 1324, 1327 (D.C. Cir.2000) (citations and other internal quotation marks omitted). By contrast, here the ODNI declaration only states generally that classified "information is interwoven with unclassified information throughout" the Complete Assessment. Gistaro Decl. ¶ 31. Nor does the ODNI describe, for instance, 'what proportion of the information in a document is nonexempt and how that material is dispersed throughout the document.'" *Nat'l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101 (D.D.C. 2013) (citations omitted).

The agency declaration is also inconsistent about whether complete withholding of the Complete Assessment under Exemptions 1 and 3 is necessary. Mr. Gistaro states in his declaration that the Public Assessment was prepared because the ODNI believed that "significant amounts of unclassified information" would have to be redacted before a version of the Complete Assessment was released to the public, and that it "*might* even be necessary to redact all of the unclassified information." Gistaro Decl. ¶ 20(b) (emphasis added). Mr. Gistaro later refers to a determination that "a heavily, or even fully, redacted version of the classified report cannot be publicly released," Gistaro Decl. ¶ 30, and indicates that NIC staff may have rejected the "release of the classified report, though heavily, or even fully, redacted." Gistaro Decl. ¶ 31.

By releasing the Public Assessment, the ODNI has already demonstrated that it can segregate material in the Complete Assessment for public release. Given the prior release of summary conclusions in the Public Assessment, the agency would have to provide specific and detailed evidence to show that no segregable portion of the Complete Assessment can be released under the FOIA. The extensive public debate over Russian interference also undercuts the ODNI's conclusion that release of a redacted version of the Complete Assessment would harm national security. It is no secret that the U.S. Intelligence Community is using every tool at its disposal to investigate the interference. The conclusions summarized in the Public Assessment and topics discussed in public Senate and House Intelligence Committee hearings already reveal the maturity of these sources and the high degree of confidence that the agency's have in their conclusions. The Gistaro Declaration does not provide any facts or details to plausibly assert that a redacted version of the Complete Assessment would pose an additional risk.

On the other hand, the value to the American public of releasing portions of the Complete Assessment cannot be overstated. A foreign government attempted to influence the outcome of a U.S. presidential election to benefit its desired candidate, to undermine Americans' faith in democracy, and the Intelligence Community expects that this will happen again both in the U.S. and in allied countries. *See* Ex. 1 at 5. Indeed, we have already witnessed emergence of this "new normal" during the French election in 2017. *See* Barney Henderson & Chris Graham, *Russia Blamed as Macron Campaign Blasts 'Massive Hacking Attack' Ahead of French Presidential Election*, Telegraph (May 6, 2017). We also learned on June 21st—six and a half months after election day—in a Senate Intelligence Committee hearing that nearly half the country's state election systems were targeted by Russian actors, significant information asymmetry between the public and its government remains.

The ODNI reformulated information from the Complete Assessment for public release in the form of the Public Assessment. But the FOIA creates a public right to access government records. This underlying record has inherent value; it is meaningful for robust government transparency, as the FOIA itself recognizes. The FOIA requires "each agency, upon any request for records . . . shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). Indeed, under the FOIA a requester *cannot* ask that a new record be created by the agency, but rather limits requests to records already be "maintained" by an agency. 5 U.S.C. § 552(f). And, so, EPIC seeks the underlying record - the Complete Assessment.

An "empty invocation of the segregability standard" is not permitted under the FOIA. *Judicial Watch, Inc. v. DHS*, 841 F. Supp. 2d 142, 161 (D.D.C. 2012). The ODNI declaration is simply insufficient to justify the withholding of the Complete Assessment in full. To the extent this Court finds that some redacted portions of the Complete ODNI Assessment are properly

subject to Exemption 1 or 3, the agency should still be required to release all reasonably segregable material.

III. THE GOVERNMENT'S MOTION SHOULD BE DENIED

The FOIA requires that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). However, an agency may withhold information if it fits within nine narrowly construed exemptions. *See* 5 U.S.C. § 552(b). But the FOIA also requires that the agency release any "reasonably segregable portion" of the records requested. 5 U.S.C. § 552(b). The agency in a FOIA case bears the burden of establishing that at least one exemption applies for each record withheld. *See Vaughn v. Rosen*, 484 F.2d 820, 823 (D.C. Cir. 1973). The agency also bears the burden of proving that it has complied with the segregability requirement. *Johnson v. EOUSA*, 310 F.3d 771, 776 (D.C. Cir. 2002).

An agency seeking to justify its withholding of responsive records under the FOIA must satisfy five overarching requirements in addition to the particular standards of each FOIA exemption claimed.

> The government must "(1) [I]dentify the document, by type and location in the body of documents requested; (2) note that [a particular exemption] is claimed; (3) describe the document withheld or any redacted portion thereof, disclosing as much information as possible without thwarting the exemption's purpose; (4) explain how this material falls within one or more of the categories . . .; and [if the exemption requires a showing of harm] (5) explain how disclosure of the material in question would cause the requisite degree of harm.

Am. Immigration Council v. DHS, 950 F. Supp. 2d 221, 235 (D.D.C. 2013) (quoting *King v. DOJ*, 830 F.2d 210, 224 (D.C. Cir. 1987). To be granted summary judgment, the agency must establish that it has satisfied all the statutory requirements of the FOIA. *Harrison v. Fed. Bureau of Prisons*, 681 F. Supp. 2d 76, 85 (D.D.C. 2010).

In this case, the ODNI has withheld the Complete Assessment in full, refusing to disclose the number of pages in the record, or even a fully redacted document. EPIC challenges the ODNI's withholding. For the reasons discussed above, the ODNI has failed to satisfy its burden to establish that Exemption 1 and 3 justify the withholding of the Complete Assessment. The ODNI has also "officially acknowledged" the portion of the Complete Assessment's content already published in the Public Assessment, and the ODNI has failed to justify its withholding of the Complete Assessment in full without releasing reasonably segregable non-exempt information.

A court may award summary judgment to an agency invoking Exemption 1 only if "(1) the agency affidavits describe the documents withheld and the justifications for nondisclosure in enough detail and with sufficient specificity to demonstrate that material withheld is logically within the domain of the exemption claimed, and (2) the affidavits are neither controverted by contrary record evidence nor impugned by bad faith on the part of the agency." *King*, 830 F.2d at 217. The ODNI declaration in this case does not sufficiently explain why the Complete Assessment logically falls within Exemption 1. Standing alone, the ODNI declaration also cannot can adequately support a derivative classification of the Complete Assessment that was depends on proper classification decisions by three other agencies. To properly invoke Exemption 3 based on the NSA, the withheld material must constitute "sources and methods." ODNI declaration has also failed to establish that the Complete Assessment meets this requirement of Exemption 3, particularly given the previous ODNI release of substantial information contained within the report in the form of the Public Assessment.

Even if the ODNI had valid Exemption 1 or 3 claims, the ODNI has "officially acknowledged" a portion of the Complete Assessment in the Public Assessment. Release of

these portions may be compelled by the Court. Similarly, the agency has failed to establish that it has satisfied the segregability requirement. The ODNI has failed to adequately justify why the Complete Assessment, which contains the same unclassified "content" including "conclusions" as the Public Assessment published by the ODNI of the Assessment, must be withheld in full.

The agency declarations in this case are not sufficient to establish that all responsive, non-exempt records have been disclosed as required under the FOIA.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendant's Motion for Summary Judgment and grant EPIC's Motion for Summary Judgment.

Dated: July 25, 2017

Respectfully submitted,

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