

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

GREG MUTTITT)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:10-cv-00202 (BAH)
)	
UNITED STATES CENTRAL)	
COMMAND, <u>et al.</u>)	
)	
)	
)	
Defendants.)	
)	

**REPLY IN SUPPORT OF DEFENDANT’S PARTIAL MOTION FOR SUMMARY
JUDGMENT**

In this Freedom of Information Act (“FOIA”) challenge, Plaintiff Gregory Muttitt challenges the Department of State’s (“State’s” or “the Department’s”) search for and withholding of information pertaining to the development of Iraq’s oil industry and the United States’ diplomatic relationship with Iraq more generally. State conducted a comprehensive search and produced to Plaintiff 47 documents in response to his five FOIA requests, each of which were submitted between July and November 2009. In light of State’s production and accompanying Vaughn index, none of Plaintiff’s remaining claims under the FOIA has merit.

In response to Defendant’s argument that Plaintiff’s fee waiver and expedited processing claims are moot, Plaintiff acknowledges that State has already moved Plaintiff to the front of the processing queue and admits that State did not charge Plaintiff any fees for searching for and producing non-exempt responsive documents. Rather than concede mootness, however, Plaintiff attempts to convince the Court that his Amended Complaint includes an implied challenge to State’s allegedly unlawful pattern and practice of denying requests for fee waivers and expedited

processing. Plaintiff's assertions are belied by the wording and structure of his Amended Complaint, and he has alleged no facts to support his newfound policy or practice claims. Regardless, and as discussed further below, Plaintiff lacks standing to pursue any policy or practice claims in this litigation. Plaintiff's attempt to again supplement his pleadings — this time in opposition to Defendant's motion for summary judgment — should not be countenanced.

Plaintiff's arguments with respect to the adequacy of State's search and the propriety of its withholdings are similarly unavailing. Plaintiff selectively quotes from one of State's records disposition schedules to support his suspicion that State did not search all appropriate "records systems" for Meghan O'Sullivan's e-mails. But an examination of State's e-mail retention policy reveals that Dr. O'Sullivan's record e-mail messages should have been printed and filed with related records. As Ms. Grafeld attests, State searched its electronic files as well as Embassy Baghdad's active and retired records for any e-mails authored by Dr. O'Sullivan. The steps State took to locate the information sought by Plaintiff, as documented in the Grafeld Declaration, met Defendant's obligation under the FOIA.

Finally, in response to State's detailed Vaughn index, which spans over 150 pages and contains 207 paragraphs of information on the Department's withholdings, Plaintiff urges the Court to "follow the more practical lead of the Ninth Circuit" and overturn State's (b)(1) classification determinations. Similarly, Plaintiff ignores the factual context Ms. Grafeld provides for each of State's (b)(5) withholdings, and asks the Court to order the release of that information because State did not include certain details or terms of art in its descriptions. For the reasons discussed in detail below, Plaintiff's arguments lack merit and the Court should grant summary judgment in Defendant's favor.

ARGUMENT

I. PLAINTIFF’S CLAIMS REGARDING STATE’S DENIALS OF HIS REQUESTS FOR PUBLIC INTEREST FEE WAIVERS AND EXPEDITED PROCESSING ARE MOOT.

A. Plaintiff Has Failed to Allege a “Pattern and Practice” claim with Regard to State’s Denial of His Requests for Public Interest Fee Waivers.

Although State initially denied Plaintiff’s requests for public interest fee waivers, it did not charge Plaintiff any fees for processing his five FOIA requests. See Grafeld Decl. ¶¶ 15, 27, 35, 46, 55. As State argued in its motion for summary judgment, the agency’s decision to release documents to Mr. Muttitt without seeking payment from him moots any argument that the agency’s denial of a fee waiver “was substantively incorrect.” Schoemann v. FBI, 573 F. Supp. 2d 119, 136 (D.D.C. 2008) (quoting Hall v. CIA, 437 F.3d 94, 99 (D.C. Cir. 2006)). Because Plaintiff has already “obtained everything that [he] could recover by a judgment of this court in [his] favor,” a declaration as to the propriety of State’s fee waiver denials would constitute an advisory opinion which “federal courts may not provide.” Better Gov’t Ass’n v. Dep’t of State, 780 F.2d 86, 91 (D.C. Cir. 1986).

Recognizing his fee waiver claim is moot, Plaintiff maintains that he filed his Amended Complaint intending to challenge State’s allegedly unlawful pattern and practice of denying public interest fee waivers to deserving applicants. See Pl.’s Opp. to Def.’s Mot. Summ. J. at 5-6 (Aug. 2, 2011). Plaintiff concedes, “[o]n the one hand . . . that he did not add a specific count challenging the propriety of State’s pattern or practice of using impermissible standards . . . when evaluating . . . his requests for public interest fee waivers.” Id. at 7. Nevertheless, Plaintiff maintains that his Prayer for Relief contemplated “a broader application of the Court’s review that would affect Plaintiff’s future requests as well.” Id.; see also Pl.’s Am. Compl., Prayer for Relief (asking the Court to “[d]eclare and find that . . . DOS improperly denied Muttitt public

interest fee waivers” in five discrete instances). Plaintiff’s suggestion that the Court should have inferred from his Prayer for Relief that “evidence would be offered in [his opposition brief] of an impermissible pattern or practice,” Pl.’s Opp. at 7, lacks persuasion.

Specifically, Plaintiff alleges no facts in his Amended Complaint to support the theory that State repeatedly and unlawfully denies requests for public interest fee waivers. Rather, Plaintiff attaches to his opposition brief a copy of an internal State fee waiver worksheet, and argues that the document reflects State’s use of impermissible standards to deny fee waiver requests. See Ex. B to Pl.’s Opp. State’s fee waiver worksheet reflects the judgment of an individual FOIA analyst, however, and not an agency-wide policy or practice. Nor does the document indicate State’s use of impermissible standards to evaluate fee waiver requests. See id. Indeed, Plaintiff admits that he lacks any factual evidence to support his policy or practice claims: “Without further information regarding the provenance of the Fee Waiver Worksheet and whether it represents a pattern or practice of using impermissible fee waiver standards or a pattern or practice of affirming appeals without substantive review, Plaintiff cannot effectively challenge the underlying pattern or practice.” Ex. A to Pl.’s Opp. ¶ 9.

Relying on Exhibits A and B to support his policy or practice claims, Plaintiff is again attempting to supplement the allegations in his Amended Complaint through opposition to Defendant’s legal arguments. See Def.’s Reply in Supp. of Mot. to Dismiss at 7 (Docket No. 20) (June 22, 2010) (opposing Plaintiff’s attempt to allege new, additional facts in support of a pattern or practice claim in opposition to Defendant’s motion to dismiss).¹ It is well established

¹ Plaintiff amended his Complaint to allege, under both the FOIA and Administrative Procedure Act (“APA”), that State maintains an unlawful policy of refusing to provide estimated dates of completion to FOIA requesters. See Pl.’s Am. Compl. (May 3, 2010) (Docket No. 10). In response to Defendant’s motion to dismiss those claims under Fed. R. Civ. P. 12(b)(6), Plaintiff requested discovery into the agencies’ alleged practices in order to prove their existence. Pl.’s Opp. to Def.’s Mot. to Dismiss at 11 (June 17, 2010) (Docket No. 19).

that “a plaintiff cannot add or amend claims through an opposition to a motion for summary judgment.” CREW v. Cheney, 593 F. Supp. 2d 194, 217 (D.D.C. 2009) (citing DSMC, Inc. v. Convera Corp., 479 F. Supp. 2d 68, 84 (D.D.C. 2007) (rejecting plaintiff’s attempts to broaden claims and thereby amend its complaint in opposition to defendant’s motion for summary judgment)); see also Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1107 (7th Cir. 1984) (“[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.”). Plaintiff had the opportunity to plead a pattern or practice claim in both his initial and First Amended Complaints. Having failed to do so, he should not be permitted to amend his Complaint nearly 14 months later through opposition to Defendant’s motion for summary judgment. Converting Mr. Muttitt’s discrete fee waiver claims into an “unlawful pattern or practice” allegation would permit Plaintiff to circumvent the requirements of Article III and would encourage Plaintiff’s pattern of supplementing his Complaint through briefing months, if not years, after he initially filed suit.

B. Plaintiff’s Challenge to State’s Denials of Expedited Processing Is Moot and Plaintiff Has Failed to Allege State Maintains a Pattern or Practice of Unlawfully Denying Requests for Expedited Processing.

As detailed in Defendant’s motion for summary judgment, the expedited processing provisions of the FOIA do not dictate a specific, compressed schedule for the processing of expedited requests. Once an agency grants a request for expedited processing, it must “process, as soon as practicable” the request for records. See 5 U.S.C. § 552(a)(6)(E)(iii). Expedited processing is not synonymous with immediate processing; requests granted expedited treatment are simply placed ahead of other requests in the processing queue. See, e.g., ACLU v. DOJ, 321 F. Supp. 2d 24, 38 (D.D.C. 2004) (reversing agency’s denial of expedited processing and ordering the agency to “process plaintiff’s request . . . as soon as practicable.”) (internal citations

omitted). Here, State has completed searching for and releasing non-exempt information in response to Mr. Muttitt's five FOIA requests. In doing so, State moved each of Plaintiff's requests to the front of its processing queue — the only benefit afforded to a requester who is granted expedited processing. Thus, it is unclear what, if any, additional relief Plaintiff seeks by pressing his expedited processing claims at this stage of the litigation. Better Gov't Ass'n, 780 F.2d at 91 (declining plaintiff's request for declaratory relief because plaintiff had received the documents requested and "obtained everything that [he] could recover by a judgment of this court in [his] favor.") (internal quotations omitted).²

Recognizing his expedited processing claims are moot, Plaintiff attempts to extrapolate them into a broader policy or practice allegation. See Pl.'s Opp. at 10. Again, Plaintiff waited until his opposition to Defendant's motion for summary judgment to contend, without any factual support, that "the bad faith demonstrated by the Fee Waiver Worksheet . . . calls into doubt [State's] other initial determinations, such as expedited processing." Pl.'s Opp. at 11. According to Plaintiff, his Prayer for Relief "envisioned [and] require[d] review of the . . . pattern or practice" underlying State's expedited processing determinations. Id. at 10. For the reasons discussed supra Part.I.A., this statement lacks merit.

Rather than alleging any facts in support of this newfound allegation, Plaintiff has asked this Court, now on three occasions, for Rule 56(d) discovery to further explore his policy or

² For this reason, Plaintiff's argument that his expedited processing claims survive State's mootness challenge because the agency has not yet provided a "complete" response to his FOIA requests, see Pl.'s Opp. at 13-14, is inapposite. Plaintiff has cited no caselaw holding the cited language may defeat a mootness claim of the type at issue here. Moreover, even if Plaintiff's interpretation held merit — which it does not — he is still entitled to no additional relief under FOIA's expedited processing provision. State moved Mr. Muttitt's requests to the front of its processing queue in order to complete production of responsive, non-exempt material pursuant to the parties' joint schedule. If the Court orders State to produce to Mr. Muttitt additional material, the agency would do so as soon as practicable. Therefore, granting Plaintiff expedited processing would afford Mr. Muttitt no further relief.

practice theories. See Pl.’s Opp. at 11 (requesting limited discovery regarding State’s specific reasons for its expedited processing denials and “the nature and extent of the underlying pattern or practice that led to them.”); Ex. A to Pl.’s Opp. ¶¶ 8-11 (requesting discovery regarding State’s denials of fee waiver requests and expedited processing); Pl.’s Opp. to Def.’s Mot. to Dismiss (June 17, 2010) (Docket No.19) (requesting discovery regarding State’s alleged practice of denying requests for estimated completion dates). Discovery is generally inappropriate in FOIA cases, however, absent allegations of bad faith on the part of the agency. Judicial Watch, Inc. v. DOJ, 185 F. Supp. 2d 54, 65 (D.D.C. 2002); see also Wheeler v. CIA, 271 F.Supp.2d 132, 139 (D.D.C. 2003); Judicial Watch, Inc. v. Exp.-Imp. Bank, 108 F. Supp. 2d 19, 25 (D.D.C. 2000) (quoting Ctr. for Nat’l Sec. Studies v. Office of Indep. Counsel, No. 91-1691, slip op. at 3 (D.D.C. Mar. 2, 1993)). There is no evidence to support a finding of bad faith in this case, given State’s decision not to charge Plaintiff any fees, as well as the agency’s diligent compliance with the parties’ rolling production schedule. Plaintiff’s request for discovery into the reasons behind State’s fee waiver and expedited processing denials would amount to “little more than a fishing expedition,” and should be denied. Feinman v. FBI, 269 F.R.D. 44, 51 n.5 (D.D.C. 2010) (rejecting plaintiff’s suggestion that “minimal discovery would easily” enable him to support his assertions of numerosity).

C. Plaintiff Lacks Standing to Raise “Pattern and Practice Claims.”

Even if the Court finds that Plaintiff has sufficiently pled pattern and practice claims, Plaintiff would lack standing to seek prospective relief. According to the Supreme Court, a plaintiff seeking injunctive relief must show “he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct, and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical.” City of Los

Angeles v. Lyons, 461 U.S. 95, 102 (1983) (internal quotations omitted).³ Plaintiff cannot rely on allegations of past harm— here, that State unlawfully denied his requests for fee waivers and expedited processing— to demonstrate a “real and immediate threat of repeated injury.” Chang v. United States, 738 F. Supp. 2d 83, 88 (D.D.C. 2010 (citing Lyons, 461 U.S. at 102)).

Moreover, when challenging an alleged policy or practice, “more than a nebulous assertion of the existence of a ‘policy’ is required to establish standing. The plaintiffs must not only demonstrate its existence but also that they are likely to be subjected to the policy again.” Haase v. Sessions, 835 F.2d 902, 911 (D.C. Cir. 1987).

Nowhere in his opposition brief does Plaintiff indicate he will continue to be harmed by State’s alleged policy or practice of improperly denying requests for fee waivers or expedited processing. Rather, Plaintiff asserts that the agency’s denials of his three requests for expedited processing and one request for a public interest fee waiver were unlawful. Courts in this District have rejected similar attempts to base standing to seek prospective relief on past harm.⁴ In CREW v. Dep’t of Homeland Security, 527 F. Supp. 2d 101 (D.D.C. 2007), for example, plaintiff challenged the denial of its FOIA request for certain White House visitor logs and raised an APA challenge to the Department of Homeland Security’s policy governing the retention of those records. Id. at 102. The court concluded that CREW lacked standing to seek prospective injunctive or declaratory relief because it had alleged only that some records had been deleted pursuant to the challenged policy, which, in the Court’s view, amounted to no more than past harm. Id. at 105-06.

³ Although the plaintiff in Lyons sought only injunctive relief, the D.C. Circuit has held that the Supreme Court’s decision in Lyons applies equally to claims for declaratory relief. Haase v. Sessions, 835 F. 2d 902, 911 (D.C. Cir. 1987).

⁴ Indeed, Plaintiff has suffered no harm at all with respect to the denial of public interest fee waivers, given that State did not charge him any fees.

In addition, any allegation that Plaintiff is a frequent FOIA requester and will “continue to use the FOIA to gain access to agency records” in the future is insufficient to establish standing. *Id.* at 106 (finding CREW’s alleged injury was too speculative and remote to establish standing because “nothing in the record before the Court suggests how frequent[ly] these [FOIA] requests are made . . . and whether (or when) CREW expects to file future FOIA requests”). Therefore, the possibility that Plaintiff might someday file another FOIA request is insufficient to establish an injury-in-fact under Article III. *Id.* at 107; see also *Quick v. Dep’t of Comm.*, 775 F.2d 174 (D.D.C. 2011) (rejecting the plaintiff’s attempt to establish standing to pursue a pattern and practice claim by alleging he planned to submit FOIA requests to defendant agencies in the future).

Because Plaintiff cannot meet his burden of establishing that he has standing to seek prospective relief, his policy and practice claims fail for lack of subject matter jurisdiction.

II. STATE CONDUCTED A REASONABLE SEARCH FOR DOCUMENTS.

Plaintiff maintains that State’s search for e-mails authored by Meghan O’Sullivan was inadequate because State failed to search certain unspecified “record systems” likely to contain responsive documents. See Pl.’s Opp. at 15 (conceding that “Plaintiff does not allege that State’s search of the records system it *did* search w[as] inadequate.”) (emphasis in original). Offering his own interpretation of State’s record disposition schedule, and without considering State’s e-mail retention policy or the disposition schedule applicable to personnel stationed at U.S. Embassies abroad (as Dr. O’Sullivan was), Plaintiff disputes Ms. Grafeld’s statement that “[t]here are no other Department components o[f] active or retired records systems . . . reasonably likely to contain electronic versions or paper versions of e-mails authored by Meghan O’Sullivan between June 1, 2007 and October 1, 2007.” *Id.* at 17 (quoting Grafeld Decl. ¶ 62).

As a threshold matter, the disposition schedule Plaintiff relies upon states that “[s]enders’ and recipients’ versions of electronic mail messages that meet the definition of Federal records [must be] copied to an electronic recordkeeping system, *paper* or microform for recordkeeping purposes.” *Id.* at 17 (quoting Item A-03-020-14, “Electronic Mail Records.”) (emphasis added). Because this record disposition schedule explicitly provides for the copying of electronic messages to paper for recordkeeping purposes, Dr. O’Sullivan’s e-mails could have been printed and filed in a paper record-keeping system prior to being deleted. Plaintiff’s assumption that Dr. O’Sullivan’s e-mails must have been copied to an electronic recordkeeping system is incorrect.⁵

Indeed, Plaintiff’s argument wholly overlooks the Department’s policy on the preservation of e-mail records. That policy provides:

Until technology allowing archival capabilities for long-term electronic storage and retrieval of [e]-mail messages is available and installed, those messages warranting preservation as records (for periods longer than current E-mail systems routinely maintain them) *must be printed out and filed with related records.*

5 FAM 443.3 (“How to Preserve E-Mail Records”) (attached as 2) (emphasis added).

As detailed in Defendant’s memorandum in support of summary judgment, Dr. O’Sullivan served as Special Assistant to the President and Deputy National Security Advisor for Iraq and Afghanistan. Grafeld Decl. ¶ 59. From June 2007 to August 2007, Dr. O’Sullivan was on temporary duty assignment to the State Department at Embassy Baghdad. *Id.* Pursuant to

⁵ In addition, the records schedule that applies to diplomatic posts abroad, [available at <http://www.state.gov/documents/organization/128496.pdf>](http://www.state.gov/documents/organization/128496.pdf) (attached as Ex. 1), directs Department personnel to retire records to the Records Services Center (“RSC”) at the end of the calendar year during which the employee leaves the agency. *Id.* The records are subsequently transferred to the Washington National Records Center (“WNRC”), and sent to the National Archives when 25 years old. *Id.*

State's e-mail preservation policy, then, Dr. O'Sullivan e-mail records *should have been* printed and filed with related records at Embassy Baghdad.⁶

Once State's FOIA office learned that Dr. O'Sullivan did not have an e-mail account to be searched electronically, FOIA researchers began searching for paper copies of her e-mails that might have been printed and filed. Grafeld Decl. ¶ 60; see also 5 FAM 443.3 (Ex. 2). To that end, State determined that any paper copies of e-mails originating at Embassy Baghdad during the time period of Plaintiff's FOIA request would most likely have been retired. Id. Embassy Baghdad confirmed that paper files from the relevant time period had, indeed, been retired. Id. A FOIA researcher reviewed the retired file manifests from Embassy Baghdad, which serve as an index of the contents of retired paper files, and are used to direct a researcher to particular file folders or documents in retired file boxes. Id. ¶ 61. The researcher first reviewed the file manifests for any references to files pertaining to: the "NSC," "National Security Council," "O'Sullivan," "Meghan O'Sullivan," "Margaret O'Sullivan," "hydrocarbon," "oil," or "gas." Id. The retired file manifests did not indicate the existence of any e-mails authored by Dr. O'Sullivan. Id. Out of an abundance of caution, the researcher then reviewed all of the retired paper records by hand. Id. No e-mails authored by Dr. O'Sullivan were located. Id.

On the basis of State's exhaustive efforts, Ms. Grafeld concluded that State's search was reasonably calculated to locate any e-mails authored by Meghan O'Sullivan that may have been preserved, whether in electronic or paper format. Id. ¶ 62. Plaintiff's speculative claims about the existence of alternative recordkeeping systems cannot overcome the presumption of good faith the Court should afford her testimony. See SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1200

⁶ Plaintiff's demand for additional information regarding State's records disposition schedules and compliance therewith far exceeds the scope of this FOIA action. See Pl.'s Opp. at 17 (suggesting that Plaintiff's counsel seeks information concerning which "record system" any "State employee's e-mails . . . would be copied to before an e-mail account was purged.").

(D.C. Cir. 1991).⁷ By searching all electronic and paper records in those locations most likely to have contained e-mails authored by Dr. O’Sullivan, State used “methods which can be reasonably expected to produce the information requested,” Oglesby v. U.S. Dep’t of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990) (citations omitted), and fulfilled its obligations under the FOIA.

III. STATE PROPERLY WITHHELD OR REDACTED RECORDS UNDER APPLICABLE STATUTORY EXEMPTIONS.

A. State Properly Withheld or Redacted Records Under Exemption (b)(1).

1. State Followed Proper Classification Procedure.

Plaintiff maintains that State “must offer convincing evidence that Documents N13, NE2, NE4, NE10, and N1 were classified CONFIDENTIAL prior to receipt of Plaintiff’s FOIA requests; or that these documents were classified on a document-by-document basis with the personal participation of the agency head, deputy agency head, or senior agency official.” Pl.’s Opp. at 24 (citing Council for a Livable World v. Dep’t of State, No. 96-1807, 1998 U.S. Dist. LEXIS 23643, at *12-13 (D.D.C. Nov. 23, 1998)).

⁷ Plaintiff’s reliance on Ancient Coin Collectors Guild v. Department of State, 641 F.3d 504-05 (D.C. Cir. 2011) is misplaced. In that case, Ms. Grafeld indicated that the appropriate component staff “searched their e-mails as well as the archived e-mails of a former staff member.” See Pl.’s Opp. at 18 (quoting Declaration of Margaret Grafeld at 17). According to the D.C. Circuit, this statement invited further analysis as to whether State was able to search e-mail archives for agency employees *other than* the identified former staff member, and whether those archives had been searched for the requested records. Ancient Coin Collectors Guild, 641 F.3d at 514. Ms. Grafeld’s declaration in this litigation does not imply that any additional databases can or should be searched for e-mails authored by Dr. O’Sullivan. See Grafeld Decl. ¶¶ 56-62. In fact, Ms. Grafeld declares that “[t]here are no other Department components or active or retired records systems that are reasonably likely to contain electronic or paper versions of e-mails authored by Meghan O’Sullivan between June 1, 2007 and October 1, 2007.” Id. ¶ 62.

In addition, the Court in Ancient Coin Collectors Guild inquired as to “whether there [were] backup tapes containing staff member e-mails, and, if so, whether such backup tapes might contain e-mails no longer preserved on staff member computers.” 641 F.3d at 514. Given that the governing State Department policy at issue in this case called for Dr. O’Sullivan to print and file her e-mails, State searched paper files where those records were reasonably likely to have been located. Plaintiff’s concern that Dr. O’Sullivan’s e-mails may have been saved to backup tapes is misplaced. See Pl.’s Opp. at 18 n.13 (acknowledging that Plaintiff’s inquiry as to backup tapes was not raised at the time of his FOIA request).

Section 1.7(d) of Executive Order 13526 specifies that information may not be classified or reclassified after it has been requested either under the FOIA, Privacy Act, or the mandatory review provisions of Executive Order 13526, except with the personal participation or under the direction of the Secretary, Deputy Secretary or Under Secretary for Management (M). Id.; see also E.O. 13526 § 1.7(d). Subsequent to Judge Kennedy’s ruling in Council for a Livable World, however, State published a Notice in the Federal Register granting the Deputy Assistant Secretary for Records Management and Publishing Services (A/RPS), the authority to classify or reclassify information requested under the FOIA. See Dep’t of State, Bureau of Administration: Classification Authority Acting Under the Direction of the Senior Agency Official, 64 Fed. Reg. 7227 (Feb. 12, 1999) (attached as Ex. 3).⁸ Accordingly, Ms. Grafeld, as Deputy Assistant Secretary for Global Information Services, had the authority to classify as “Confidential” Documents N13, NE2, NE4, NE10, and N1.

2. State’s Vaughn Descriptions Demonstrate that the Information it Withheld was Properly Classified as “Foreign Government Information” Obtained in Confidence.

Relying almost exclusively on Ninth Circuit precedent, Plaintiff contends that State failed to demonstrate the foreign government information it withheld under exemption (b)(1) was “obtained in confidence.” Pl.’s Opp. at 25. According to binding D.C. Circuit caselaw, however, State’s Vaughn descriptions are sufficient to justify its classification determinations under §1.4(b) of Executive Order 13526.⁹

⁸ State’s Records Management and Publishing Services component is now referred to as Global Information Services (A/GIS).

⁹ Plaintiff specifically challenges State’s withholding of classified information from documents L2, L3, N4A, N4B, N13, A32, S3C, S3E, S3F, S3G, S3K, NE2, NE4, NE9, NE10, E5, E6, E10, E13, E14, E15, E16, E17, E18, A1, A3, N2, E3, E4, E5, E7, E11, E12, E13, E15, and E16. Plaintiff raises the same objection with respect to each document — namely, that State did not adequately explain that the foreign government information was obtained in confidence. Because

Plaintiff devotes six pages of his opposition brief to arguing that Ms. Grafeld's general discussion of § 1.4(b) is vague and conclusory. See Pl.'s Opp. at 25-31. The assertions with which Plaintiff takes issue, however, appear at the beginning of State's Narrative Vaughn Index, and appropriately frame Ms. Grafeld's document-by-document discussion of specific withholdings.¹⁰ Reviewing an identically-formatted declaration in Students Against Genocide v. Dep't of State, No. CIV96-667(CKK/JMF), 1998 WL 699074 (D.D.C. Aug. 24, 1998), Magistrate Judge Facciola observed:

Following the general exposition of the claimed exemptions, Grafeld listed each document by number, date, number of pages, subject matter of the withheld portions or description of the document, and the exemption claimed. In most cases, there is also a detailed explanation of why the exemption claimed was justified. In the case of Exemption 1 claims, Grafeld included the subsection of Executive Order 12958 providing the basis for classification of the individual document. In addition, attached to the declaration are the 32 documents DOS withheld in part. In my view, this type of *Vaughn* declaration or index is entirely adequate.

Id. at *11 (citing King v. DOJ, 830 F.2d 210, 217 (D.C. Cir. 1987)).

The Grafeld Declaration then provides factual context for each document from which information has been withheld, allowing both Plaintiff and the Court to infer that disclosing such information would reveal confidential details obtained during sensitive bilateral negotiations, and would harm the national security. See E.O. 13526, Section 1.1(d). For example, Ms. Grafeld explains that the information withheld from Document L2 contains an informal exchange between Embassy and Department officials on details of the negotiations of the technical service

State's opening memorandum and Narrative Vaughn Index provides a document-by-document analysis of Defendant's (b)(1) withholdings, Defendant will categorically address Plaintiff's arguments in this Reply.

¹⁰ Ms. Grafeld explains that as a general matter, State withheld under § 1.4(b) "information obtained in confidence from foreign government officials." See Grafeld Decl. ¶ 69. "Disclosure of foreign government information provided in confidence, either voluntarily by the Department or by order of a court, would cause foreign officials to believe that U.S. officials are not able or not willing to observe the confidentiality expected in such interchanges." Id.

contracts. Grafeld Decl. ¶ 75. The information includes details received from a foreign government official as well as diplomatic officials' commentary on that information. Id. Similarly, material withheld from Document NE9 contains information received from a senior Iraqi official on the Iraqi government's consideration of the de-Ba'athification, revenue-sharing and hydrocarbon laws. Id. ¶ 127. Disclosing information about the inner workings of the Iraqi government, which was provided to Embassy officials with the expectation of confidentiality, would damage U.S. relations with Iraq as well as State's ability to garner such information in the future. See id. Revealing the source of this information would also compromise that individual's reputation and would discourage his and other officials' candid discussion with U.S. diplomats. Id. Based on the factual context in the remainder of the declaration, which indicates that the enactment of this legislation was a matter of debate within the Iraqi and United States governments, Ms. Grafeld's statement that "disclosure of the contents of the e-mail would damage our relations with the Government of Iraq" should be afforded "substantial weight." See, e.g., Larson v. Dep't of State, 565 F.3d 857, 864 (D.C. Cir. 2009); Morley v. CIA, 508 F.3d 1108, 1124 (D.C. Cir. 2007) ("the text of Exemption 1 itself suggests that little proof or explanation is required beyond a plausible assertion that information is properly classified.").

Courts have repeatedly recognized that the "Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects [sic] might occur as a result of public disclosures of a particular classified record.' " Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981) (quoting S. Rep. No. 93-1200, 93d Cong., 2d Sess. 12 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6290). For that reason, the D.C. Circuit has upheld classification justifications of the exact type challenged by Plaintiff here. For instance, in Krikorian v. Department of State, 984 F.2d 461, 465 (D.C. Cir. 1993), the Court

affirmed State's withholding of "a telegram reporting a conversation between an assistant secretary of state and a high-ranking foreign diplomat regarding Armenian terrorism," because its release "would, in the Department's judgment, *jeopardize reciprocal confidentiality* and damage national security." (internal quotation omitted) (emphasis added). The Court of Appeals specifically noted the district court's finding that, "were the Department required to be more specific, it would be forced to breach its promises of confidentiality." *Id.* (internal quotation omitted). Similarly, the D.C. Circuit deemed adequate State's explanation for withholding "*candid comments* regarding relations with host governments, and comparisons of the treatment received by the United States with that afforded to the missions of third countries." Goldberg v. Dep't of State, 818 F.2d 71, 76 (D.C. Cir. 1987) (internal citations omitted) (emphasis added); see also, e.g., Fitzgibbon v. U.S. Secret Serv., 747 F. Supp. 51, 55 (D.D.C. 1990) (deeming adequate FBI's description of information withheld because it "was given to the United States by a foreign government with the expectation that its source and substance would remain confidential."). In Fitzgibbon, the FBI made a "similar and wholly plausible assertion that disclosure of the identity of the foreign government . . . would effectively discourage other foreign governments from providing information to the United States." *Id.* According to the court, "it belabors the obvious to assert that many intelligence sources need or at least want anonymity, and that any intelligence agency unable to guarantee it will quickly discover that its well of information has dried up." *Id.* at 55-56.¹¹

¹¹ It is inimical to the policies underlying § 1.4(b) to suggest that State must release information obtained from the former Prime Minister simply because he is no longer in office. See Pl.'s Opp. at 33 n.22. To do so "could adversely affect the persons involved, inhibit the willingness of . . . foreign government officials to discuss frankly with the U.S. Government officials matters affecting our national interests, and damage relations with [Iraq]." Judicial Watch v. DOJ, 306 F. Supp. 2d 58, 66 (D.D.C. 2004). Plaintiff's contention that the agency should release information disclosed by high-ranking Iraqi officials during a meeting with the U.S. Ambassador because

In short, State's Narrative Vaughn Index describes "the subject of each document, the approximate source of the information contained therein, and the harm likely to result from disclosure." *Id.* at 55. Ms. Grafeld details "the withheld information and the justification for withholding with reasonable specificity," and provides "a logical connection between the information and the claimed exemption." *Abbotts v. NRC*, 766 F.2d 604, 607 (D.C. Cir. 1985) (quoting *Salisbury v. United States*, 690 F.2d 966, 970 (D.C. Cir. 1982)). Plaintiff's challenges to State's exemption (b)(1) justifications run counter to D.C. Circuit precedent and must fail.

3. Plaintiff's Challenges to State's Withholdings Under E.O. 13526, §1.4(d) Lack Merit.

Plaintiff offers no specific arguments in support of his challenge to State's invocation of Executive Order 13526 § 1.4(d), and maintains that State's foreign policy justifications for each exemption are too vague to permit effective opposition thereto. *See* Pl.'s Opp. at 35.¹² As detailed in Defendant's opening memorandum, the information classified under § 1.4(d) concerns the development of U.S. foreign policy towards Iraq during its post-war reconstruction. Ms. Grafeld explains that as a general matter, State withheld under § 1.4(d) information concerning the United States' role in formulating Iraq's proposed hydrocarbons law and developing Iraq's oil and gas sector, as well as the political and economic state of Iraq during a time of relative instability. *See* Grafeld Decl. ¶ 69, *see also, e.g., id.* ¶¶ 97-98; 110-19; 134-37. That this information concerns the "foreign relations or foreign activities of the United States," E.O. 13526 § 1.4(d), cannot be seriously disputed. According to Ms. Grafeld, public disclosure of this information would reveal the United States' negotiation strategy during discussions with more than one foreign official attended that meeting, *see* Pl.'s Opp. at 33 n.23, is unfounded for the same reasons.

¹² Plaintiff challenges State's withholdings under § 1.4(d) in the following 34 documents: L2, L3, N4A, N4B, N13, A32, S3C, S3E, S3F, S3G, S3K, NE2, NE4, NE9, NE10, E5, E6, E10, E13, E14, E15, E16, E17, E18, A3, N1, N2, E3, E5, E7, E11, E12, E15, and E16.

the Iraqi government, risk undermining the United States' relationship with Iraq, and jeopardize its efforts in a critical area of foreign policy. See generally *id.* ¶ 69.¹³

B. State Properly Withheld or Redacted Records Under Exemption (b)(5).

1. State's Vaughn Descriptions Demonstrate that the Information Withheld Under the Deliberative Process Privilege Is Both Predecisional and Deliberative.

Plaintiff's challenge to the withholding of information from ten documents pursuant to the deliberative process privilege ignores the paragraphs of factual context that explain the nature of the deliberations at issue and the legal and policy matter to which they pertained. Ms. Grafeld's descriptions demonstrate that the information was properly withheld because it was "generated before the adoption of an agency policy," and "reflect[s] the give-and-take of the consultative process." Pub. Citizen, Inc. v. Office of Mgmt. & Budget, 598 F.3d 865, 874 (D.C. Cir. 2010) (quoting Judicial Watch, Inc. v. FDA, 449 F.3d 141, 151 (D.C. Cir. 2006)). Most importantly, the descriptions illustrate how disclosure of the specified information, which, in most cases, reflects analysis of certain foreign policy decisions as well as the sensitive

¹³ Plaintiff maintains that additional information from Documents E4 and E13 may be segregated and released, given the level of detail already disclosed by the agency in its Narrative Vaughn Index. See Pl.'s Opp. at 35-36. With respect to Document E4, Plaintiff presumes that information that "relays the information already publicly released, as well as the final agreed upon cover letter," exists in a format that may be distilled and produced to him. See id. at 36. Plaintiff relies on the same assumption to argue the agency is obliged to release from Document E13 details relaying "the fact[s] of the discussion, that the Ambassador asked for the Prime Minister's assistance on de-Ba'athification and passage of a hydrocarbon law, and matters of similarly acknowledged scope." Pl.'s Opp. at 36-37. Agencies are not, however, required to disclose non-exempt portions of documents if those portions are "inextricably intertwined with exempt portions." Trans-Pacific Policing Agreement v. U.S. Customs Serv., 177 F.3d 1022, 1027 (D.C. Cir. 1999) (quotation omitted); see also Mead Data Cent., Inc. v. U.S. Dep't of the Air Force, 566 F.2d 242, 261 n.55 (D.C. Cir.1977) (explaining that "a court may decline to order an agency to commit significant time and resources to the separation of disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content."). Plaintiff's arguments overlook Ms. Grafeld's testimony that "there is no non-exempt information" in either of these documents "that may be segregated and released." Grafeld Decl. ¶¶ 139, 153.

relationship between Iraq and the United States, would discourage frank communication between State officials in the future. Dep't of Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8 (2001) (“The deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news.”).¹⁴

An examination of State’s Vaughn descriptions reveals the specious nature of Plaintiff’s arguments. For example, regarding Document L2, Plaintiff claims State “failed to identify the deliberative process in question . . . the role played by the withheld information, [or] whether the [withheld information] consisted of opinions on legal or policy matters.” Def. Opp. at 39.¹⁵ The Vaughn index explains, however, that the e-mail chain at issue concerned the technical service contracts that would govern the development of Iraqi oil fields — a clear legal and policy matter. See Grafeld Decl ¶ 75. The e-mails included commentary on the ongoing negotiations of the contracts, indicating the language of the contracts had not yet been finalized. Based on this description, “it is apparent that these documents are pre-decisional.” Gov’t Accountability Project v. Dep’t of State, 699 F. Supp. 2d 97, 105 (D.D.C. 2010). Moreover, Plaintiff’s contention that State “failed to identify the deliberative process in question,” Pl.’s Opp. at 39, is not credible, in light of the specific policy matter — the negotiation of the technical service contracts — at issue. Compare Gov’t Accountability Project, 699 F. Supp. 2d at 105 (Vaughn

¹⁴ Plaintiff quotes selectively from ACLU v. Dep’t of Homeland Security, 738 F. Supp. 2d 93, 110-11 for the broad proposition that “whether or not the author [of a deliberative document] will be disclosed is a significant factor” in determining whether the deliberative process privilege applies. See Pl.’s Opp. at 39. In that case, however, the Court was persuaded by the fact that the document in question appeared similar to another memorandum that was selectively redacted to reveal additional factual information. Thus, “a more tailored and selective reliance on Exemption 5 [was] likely appropriate, just as was undertaken with the 55 Memoranda of Record.” Id.

¹⁵ Document L2 was also withheld under exemption (b)(1) because it contains information received in confidence from an Iraqi government official. Grafeld Decl. ¶ 76.

descriptions indicated that agency's deliberations pertained clearly to funding of non-profit organization), with Wilderness Soc'y v. Dep't of Interior, 344 F. Supp. 2d 1, 11-12 (D.D.C. 2004) (agency's use of the term "wilderness issues" was too vague to support invocation of deliberative process privilege, as "wilderness issues" referred to several different agency decisions and policies).

Plaintiff raises similar objections to Defendant's descriptions of N5, disregarding State's assertion that two executive agencies were debating "a specific and contentious aspect of the technical service agreement negotiations." Grafeld Decl. ¶ 90. Apparent from this statement is the fact that agency personnel were sharing recommendations and judgments about the technical service contracts. Id.; see Judicial Watch, Inc. v. Dep't of State, 650 F. Supp. 2d 28, 34 (D.D.C. 2009) (finding sufficiently detailed State's statement that "the withheld information reflects internal strategies and communications among agencies who were participating and assisting in the search for evidence."). Therefore, "disclosure of this information is likely to interfere with the candor necessary for open and frank discussions" in the future. Gov't Accountability Project, 699 F. Supp. 2d at 105 (citing Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980)).

Plaintiff's challenge to Documents N3 and N4 appears to rest on the false assumption that members of the Iraqi government were privy to the pre-decisional deliberations, thereby waiving any privilege that could apply. See Pl.'s Opp. at 40. However, information was withheld only in part from Documents N3 and N4 under exemption (b)(5), and Ms. Grafeld attests that the redacted material contains analytical comments by Embassy officials on the draft document initially submitted by the Iraqi government. Grafeld Decl. ¶ 86. There is no suggestion in Ms. Grafeld's Vaughn description that members of the Iraqi government participated in the redacted

analysis. To force State to disclose frank commentary between diplomatic officials concerning a document submitted to the agency from the Iraqi government would defeat the purpose of the deliberative process privilege. See Coastal States, 617 F.2d at 866 (noting that materials protected by the deliberative process privilege may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer[s] rather than the policy of the agency.”) (quoting Fla. House of Representatives v. Dep’t of Commerce, 961 F.2d 941, 945 (11th Cir. 1992)).

The same rationale applies to Plaintiff’s arguments regarding State’s withholdings from Documents S3E and NE9. These documents contain agency officials’ analysis of Iraqi government policy announcements as well as recommendations for U.S. participation in future oil negotiations. See Grafeld Decl. ¶ 127 (describing an e-mail that contained policy recommendations regarding oil negotiations based upon a report of information received from a senior Iraqi official on the deliberations of the Iraqi government); id. ¶¶ 112-113 (explaining that the telegram, also withheld under exemption (b)(1), contains information and commentary from confidential sources from within the Government of Iraq, and discusses possible options and recommendations for U.S. policy in response.). Because these communications reflect “consideration of various [] options, [they are] quintessentially predecisional and deliberative and [are] protected by the privilege.” ICM Registry, LLC v. Dep’t of Commerce, 538 F. Supp. 2d 130, 137 (D.D.C. 2008).¹⁶

¹⁶ Though Plaintiff faults the agency for failing to identify which options or recommendations were ultimately implemented by the United States government, he has identified no caselaw in this District or the D.C. Circuit requiring an agency to parse which policy recommendations it finally implemented, particularly at an early stage of the decisionmaking process where alternatives are being exchanged informally and have not been finalized. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 n.18 (1975) (noting that the “quality of a particular agency decision will clearly be affected by the communications received by the decisionmaker on the subject of the decision prior to the time the decision is made,” and that it is “difficult to see how

Finally, Documents N13, NE11A and NE11B consist of communications that comment upon the merits of and revisions to draft documents. See Grafeld Decl. ¶¶ 98 (explaining that State withheld under exemption (b)(5) e-mails discussing a draft briefing paper on Iraqi oil contracts and informally exchanging views on the content of and proposed revisions to the draft); see also id. ¶ 130-33 (describing Documents NE11A and NE11B as information papers comparing two versions of the proposed hydrocarbon law). Plaintiff’s statement that State withheld Document N13 simply “because it is a draft,” Pl.’s Opp. at 40, is mistaken. Rather, Document N13 is an e-mail communication in which agency officials informally discussed a draft briefing paper on Iraqi oil contracts and “reflects the discourse of the type that would be discouraged absent the ability to withhold.” Petroleum Info. Corp. v. Dep’t of the Interior, 976 F.2d 1429, 1434 (D.C. Cir. 1992). Documents NE11A and NE11B are information papers exchanged by State personnel comparing revisions to the text of Iraq’s proposed hydrocarbon law. Because the deliberative process privilege protects documents reflecting an “agency’s group thinking in the process of working out its policy and determining what its law shall be,” Jordan v. U.S. Dep’t of Justice, 591 F.2d 753, 775 (D.C. Cir. 1978) (en banc), the protection must extend to communications reflecting changes to proposed legislation, as those revisions likely inform subsequent steps in State’s decisionmaking process. Disclosing policy papers that discuss edits to proposed legislation would “hinder government officials from debating issues internally, deter them from giving candid advice, and lower the overall quality of the government decisionmaking process.” Baker & Hostetler, LLP v. U.S. Dep’t of Commerce, 473 F. 3d 312,

the quality of the decision will be affected by forced disclosure of . . . communications [occurring after the decision is reached], as long as prior communications and the ingredients of the decisionmaking process are not disclosed.”). Furthermore, the FOIA’s segregability requirement should reassure Plaintiff that State has not withheld information reflecting final policies adopted by the agency. As discussed infra Part.III.C, State concluded that no additional segregable information from this document could be released to Plaintiff.

321 (D.C. Cir. 2006); cf. Judicial Watch, Inc. v. Dep't of State, 650 F. Supp. 2d 28, 34 (D.D.C. 2009) (holding that notes on congressional hearing testimony “are often made as part of the agency’s internal decisionmaking process”). In light of the above, State’s Vaughn descriptions are sufficiently detailed to justify its withholding of Documents L2, N3, N4, N5, N13, S3E, NE9, NE11A and NE11B under the deliberative process privilege.¹⁷

2. The Assertion of Exemption (b)(5) With Respect to Document L10 Is Proper Because the Requested Information Is Subject to the Deliberative Process and Attorney-Client Privileges.

Document L10 contains discussions of U.S.-Iraq negotiations over the technical service agreements that would govern Iraq’s oil production. Grafeld Decl. ¶¶ 82-83. At the time of the communications reflected in Document L10, the technical service agreements had not yet been finalized. See id. The discussion included in this document, which contains analysis by State officials on the progress of U.S.-Iraq negotiations, was appropriately withheld as deliberative. See Grafeld Decl. ¶ 71 (the deliberative process privilege “protects the candid views and advice of U.S. Government officials in their pre-decisional deliberations respecting policy formulation and administrative direction”). Ms. Grafeld notes that two of the three e-mails in Document L10 contain attorney-client privileged information. That Document L10 contained legal advice from State’s attorneys commingled with the Department’s analysis of ongoing negotiations is supported by Ms. Grafeld’s statement that the e-mails “contain discussion of . . . legal aspects of U.S.-Iraq negotiations.” Id. ¶ 83; see also In re Lindsey, 148 F.3d 1100, 1105 (D.C. Cir. 1998) (quoting Coastal States, 617 F.2d at 863 (holding that the attorney-client privilege applies “when ‘the [g]overnment is dealing with its attorneys as would any private party seeking advice to protect personal interests, and needs the same assurance of confidentiality so it will not be

¹⁷ Plaintiff also challenged Defendant’s withholding of Document L10 under the deliberative process prong of exemption (b)(5). State’s withholding of Document L10 under both the attorney-client and deliberative process privileges is addressed infra Part.III.B.2.

deterred from full and frank communications with its counselors”). Document L10 was justifiably withheld under both the deliberative process and attorney-client privileges.

C. State Has Met the “Reasonably-Segregable” Requirement.

Ms. Grafeld attests that State reviewed documents on a line-by-line basis and released non-exempt material to Mr. Muttitt where appropriate. See Grafeld Decl., Conclusion. Further, at the conclusion of each Vaughn entry, Ms. Grafeld notes that State examined the information withheld from each document for reasonable segregation of non-exempt material, and withheld only exempt information. Id.

State’s segregability analysis passes muster under the standards set forth by courts in this District. In Perry-Torres v. Dep’t of State, 404 F. Supp. 2d 140, 144 (D.D.C. 2005), for example, Judge Leon found State’s justification regarding segregability inadequate, as it appeared only once and at the conclusion of Ms. Grafeld’s declaration. The court advised that “the explanation should state that a line-by-line analysis of each document was conducted and that it was determined that no information can reasonably be segregated.” Id. (citing Johnson v. Exec. Office for U.S. Atty’s, 310 F.3d 771, 776 (D.C. Cir. 2002); Dorsett v. Dep’t of Treasury, 307 F. Supp. 2d 28, 40-41 (D.D.C. 2004); Gutman v. DOJ, 238 F. Supp. 2d 284, 296 (D.D.C. 2003)). In addition, “the explanation must include a specific finding for each document withheld.” Id. (citing Animal Legal Defense Fund, Inc. v. Dep’t of Air Force, 44 F. Supp. 2d 295, 302 (D.D.C. 1999) (“[T]he Defendant shall not offer one finding for *all* documents.”) (emphasis in original)). The Court ordered State to file a renewed motion for summary judgment “accompanied by an affidavit that solely addresses the segregability issue in accordance with the [Court’s] analysis.” Perry-Torres, 404 F. Supp. 2d at 145. Upon review of State’s newly-submitted affidavit in Perry-Torres, which included language identical to that at issue here, the court affirmed that State had

fulfilled its obligations under the FOIA. See Perry-Torres v. Dep't of State, No. CIV A 04-1046 RJJ, 2006 WL 2844357, at *4 (D.D.C. Sept. 29, 2006) (noting that the declaration asserts each document “(1) was subjected to a line-by-line review for the purpose of releasing any non-exempt information, (2) consists of information that was used in the Department’s adjudication of a visa application from the defendant, and (3) contains no information that may be reasonably segregated and released, such as visa applications or other records that were previously in the possession of defendant.”) (internal quotation marks omitted). In light of the persuasive guidelines offered by Judge Leon in Perry-Torres, State has satisfied the FOIA’s segregation requirement.

CONCLUSION

For the foregoing reasons, State’s motion for summary judgment should be granted.

Dated: August 26, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 26, 2011, a copy of the foregoing Reply in Support of Defendant's Partial Motion for Summary Judgment was served upon counsel of record by electronic means through electronic filing:

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U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

Principal Officers

B-01-001-01 Principal Officer's Program Files

Description: Arranged by subject. Consists of correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes, and other material maintained by or for the direct use of principal officers at each post.

Includes files of all Principal Officers and Acting Ambassadors, Charges d'Affaires, Charges d'Affaires ad interim, U.S. Representatives, Consuls General, Consuls, Chiefs of Liaison Office, and Principal Officers of U.S. Interest Sections. This Chapter does not cover Consular agents.

Note: NODIS & EXDIS - Refer to 5 FAH-4, H-314.7-2

Disposition: Permanent: Cut off at the end of incumbents' tenure at post. Retire to RSC at the end of the calendar year after the tenure ends for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 1).

DispAuthNo: N1-84-97-1, item 1

Date Edited: 4/1/1999

B-01-001-02 Chronological Files

Description: Extra copies of correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes, and other material maintained for the direct use of principal officers at each post.

Includes files of all Principal Officers and Acting Ambassadors, Charges d'Affaires, Charges d'Affaires ad interim, U.S. Representatives, Consuls General, Consuls, Chiefs of Liaison Office, and Principal Officers of U.S. Interest Sections. This Chapter does not cover Consular agents.

Disposition: Permanent: Cut off at end of the incumbents' tenure at post. Retire to RSC at the end of the calendar year after the tenure ends for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 2).

DispAuthNo: N1-84-97-1, item 2

Date Edited: 4/1/1999

U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

Deputy Principal Officers

B-01-002-01 Deputy Principal Officer's Program Files

Description: Arranged by subject. Consists of correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes, and other material arranged in chronological order and maintained by or for the direct use of deputy principal officers at each post.

Includes files of all Deputy Principal Officers and Acting Deputy Chiefs of Missions, Assistant Chiefs of Mission, Deputy U.S. Representatives, and Deputy Principal Officers.

Disposition: Permanent: Cut off at the end of incumbents' tenure at post. Retire to RSC at the end of the calendar year after the tenure ends for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 3

Date Edited: 4/1/1999

B-01-002-02 Chronological Files

Description: Extra copies of correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes, and other material arranged in chronological order and maintained for the direct use of deputy principal officers at each post.

Includes files of all Deputy Principal Officers and Acting Deputy Chiefs of Missions, Assistant Chiefs of Mission, Deputy U.S. Representatives, and Deputy Principal Officers.

Disposition: Permanent: Cut off at the end of the incumbents' tenure at post. Retire to RSC at the end of the calendar year after the tenure ends. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 2).

DispAuthNo: N1-84-97-1, item 4

Date Edited: 4/1/1999

U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

Political Section**B-01-003-01a Political Program Files**

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

Note: The disposition instructions apply to all Department of State areas at post associated with the Political or Economic Section. For example: commercial, labor, military, narcotics, science, etc.

a. All material other than telegrams, including correspondence, memorandums, notes, official-informal, reports, speeches, statements, E-mail messages, diplomatic notes, etc.

Disposition: Permanent: Block annually. Retire to RSC when 1 year old for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 5a

Date Edited: 4/1/1999

B-01-003-01b(1) Political Program Files

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

b. Telegrams

(1) Post to post telegrams not transmitted to the Department.

Disposition: Permanent: Block annually. Retire to RSC when 1 year old for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 5b(1)

Date Edited: 4/1/1999

U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

B-01-003-01b(2) **Political Program Files**

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

b. Telegrams

(2) Copies of incoming and outgoing telegrams with the Department, annotated in a manner that adds to a proper understanding of the formulation or execution of Department action.

Disposition: Permanent: Block annually. Retire to RSC when 1 year old for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 5b(2)

Date Edited: 4/1/1999

B-01-003-01b(3) **Political Program Files**

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

b. Telegrams

(3) Copies of incoming and outgoing telegrams with the Department, not annotated.

Disposition: TEMPORARY: Block annually. Destroy when 1 year old or sooner. DO NOT RETIRE. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 5b(3)

Date Edited: 4/1/1999

B-01-003-02a **Biographic Files**

Description: a. Files on a deceased national.

Disposition: TEMPORARY: Destroy when no longer needed.

DispAuthNo: Non-record

Date Edited: 4/1/1999

U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

B-01-003-02b **Biographic Files**

Description: b. A file which has had no information added to it during the past 10 years.

Note: Notify Office of Intelligence Liaison, Biographic Division (INR/B) of intent to destroy inactive files.

Disposition: Destroy 10 years after the date of the most current document after obtaining INR/B's approval.

DispAuthNo: Non-record

Date Edited: 4/1/1999

U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

Economic Section**B-01-004-01a Economic Program Files**

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

Note: The disposition instructions apply to all Department of State areas at post associated with the Political or Economic Section. For example: commercial, labor, military, narcotics, science, etc.

a. All material other than telegrams, including correspondence, memorandums, notes, official-informal, reports, speeches, statements, E-mail messages, diplomatic notes, etc.

Disposition: Permanent: Block annually. Retire to RSC when 1 year old for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 6a

Date Edited: 4/1/1999

B-01-004-01b(1) Economic Program Files

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

b. Telegrams

(1) Post to post telegrams not transmitted to the Department.

Disposition: Permanent: Block annually. Retire to RSC when 1 year old for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 6b(1)

Date Edited: 4/1/1999

U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

B-01-004-01b(2) **Economic Program Files**

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

b. Telegrams

(2) Copies of incoming and outgoing telegrams with the Department, annotated in a manner that adds to a proper understanding of the formulation or execution of Department action.

Disposition: Permanent: Block annually. Retire to RSC when 1 year old for transfer to WNRC. Transfer to the National Archives when 25 years old. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 6b(2) **Date Edited:** 4/1/1999

B-01-004-01b(3) **Economic Program Files**

Description: Arranged by TAGS/Terms. The official file of all correspondence, memorandums, notes, official-informal, reports, speeches, statements, telegrams, E-mail messages, diplomatic notes and other material arranged by subject.

b. Telegrams

(3) Copies of incoming and outgoing telegrams with the Department, not annotated.

Disposition: TEMPORARY: Block annually. Destroy when 1 year old or sooner. DO NOT RETIRE. (Supersedes N1-84-91-3, item 3).

DispAuthNo: N1-84-97-1, item 6b(3) **Date Edited:** 4/1/1999

General

B-01-005-01 **Top Secret Documents**

Description: Arranged by subject or control number. Consist of telegrams, memorandums, and other material maintained in the IPU for the Principal Officers or any of the operating offices of the post. Files are maintained apart from the Subject Files because of security classification and the need to inventory them.

Disposition: Permanent: Cut off at the end of the calendar year or when no longer needed for operational purposes. Retire to RSC when 1 year old. Pouch separately from subject Files because of classification. Transfer to WNRC when 2 years old. Transfer to the National Archives when 30 years old.

DispAuthNo: N1-84-91-3, item 5 **Date Edited:** 4/1/1999

U.S. Department of State Records Schedule

Chapter 01: Historical - Foreign Policy and Relations Records

Ceremonial/Memorial

B-01-006-01 Foreign Service Post Condolence Files

Description: Condolence books opened by Foreign Service Posts; condolence books submitted to Posts by churches, companies, host government, and local governments; condolence letters received from host government officials and ministries; and condolence letters, faxes, e-mail messages, cards, artwork, and other material received from the public on the death of prominent individuals or after catastrophic events.

Disposition: PERMANENT: Transfer condolence books/pages to the Office of the Chief of Protocol, Ceremonials Division within 6 months of event. Non-record materials such as flags, gifts, and other three dimensional objects should be transferred to the U.S. Diplomacy Center.

DispAuthNo: N1-84-03-01

Date Edited: 12/18/2002

5 FAM 440 ELECTRONIC RECORDS, FACSIMILE RECORDS, AND ELECTRONIC MAIL RECORDS

5 FAM 441 ELECTRONIC RECORDS MANAGEMENT

(TL:IM-19; 10-30-95)

These requirements apply to all electronic records systems: microcomputers; minicomputers; and mainframe computers in networks or stand-alone configurations, regardless of storage media.

a. Electronic Data files.

(1) Those employees who are responsible for designing electronic records systems that produce, use, or store data files, shall incorporate disposition instructions for the data into the design plan.

(2) System Administrators must maintain adequate and current technical documentation for electronic records systems that produce, use, or store data files. At a minimum, include:

(a) a narrative description of the system (overview);

(b) a records layout that describes each field, its name, size, starting or relative position;

(c) a description of the form of the data (e.g., alphabetic, zoned decimal, packed decimal or numeric) or a data dictionary. Include the equivalent information and a description of the relationship between data elements in the data bases when associated with a data base management system; and

(d) any other technical information needed to read or process the records.

(3) Electronic data bases that support administrative or housekeeping functions and contain information derived from hard copy records authorized for disposal may be deleted if the hard copy records are maintained in official files.

(4) Data in electronic form that is not preserved in official hard copy files or supports the primary program or mission of an office, even if preserved in official hard copy files, may not be deleted or destroyed except through authorities granted as prescribed in sections h. and i. below.

b. Documents.

(1) Electronic records systems that maintain the official file copies of documents shall provide a capability for the disposition of the documents. This includes the requirements for transferring permanent records to the National Archives, when necessary.

(2) Electronic records systems that maintain the official file copy of documents shall identify each document sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information may include: office of origin, TAGS/Terms, subject line, addressee (if any), signatory, author, date, security classification, and authorized disposition.

(3) Electronic records systems that maintain the official file copy of documents shall provide sufficient security to ensure document integrity.

(4) Documents such as letters, messages, memorandums, reports, handbooks, directives, and manuals recorded on electronic media may be deleted if the hard copy record is maintained in official files.

(5) Documents such as letters, messages, memorandums, reports, handbooks, directives, and manuals recorded and preserved on electronic media as the official file copy shall be deleted in accordance with authorized disposition authorities for the equivalent hard copy. If the authority does not exist, the documents in electronic form may not be deleted or destroyed except through authorities granted as prescribed in sections h. and j. below.

c. Spreadsheets.

(1) Spreadsheets recorded on electronic media may be deleted when no longer needed to update or produce hard copy if the hard copy record is maintained in official files.

(2) Spreadsheets recorded and preserved on electronic media shall be deleted in accordance with authorized disposition authorities for the equivalent hard copy.

d. Electronic records are acceptable as evidence in federal courts. Rule 803 (6), Federal Rules of Evidence, has been interpreted to include computer records. Further under Rule 1006, summary electronic records may be provided to limit the quantity of information considered during judicial proceedings. The courts must believe that records admitted before it are "trustworthy" that is, they must clearly and accurately relate the facts as originally presented or in summary form.

e. Administrators of electronic records systems shall ensure that only authorized personnel have access to electronic records.

f. Administrators of electronic records systems shall provide for the backup and recovery of records.

g. Administrators of electronic records systems shall make certain that storage media meet applicable requirements prescribed in 36 CFR 1234.28. These requirements are also contained in FIRMR Bulletin B-1 and are discussed in the RMH, 5 FAH-4 H-219 .

h. Retention of electronic records.

(1) The information in electronic records systems and related documentation and indexes must be scheduled for disposition no later than one year after the implementation of the system.

(2) Procedures must be established for systematically backing up, copying, reformatting, and providing other necessary maintenance for the retention and usability of electronic records throughout their prescribed life cycles.

i. Destruction of electronic records.

(1) Electronic records may be destroyed only in accordance with a records disposition authority approved by the Archivist of the United States. This authority is obtained through the Records Management Branch (OIS/RA/RD).

(2) This process is exclusive, and records of the United States Government, including electronic records, may not be alienated or destroyed except through this process.

(3) Electronic records scheduled for destruction must be disposed of in a manner that ensures protection of any sensitive, proprietary or national security information. Magnetic recording media are not to be reused if the previously recorded information can be compromised in any way. Refer to 12 FAM for requirements regarding the security of magnetic media.

j. All automated information systems (AIS) or facsimile machines used to process or store electronic records must comply with the security regulations contained in 12 FAM.

5 FAM 442 FACSIMILE RECORDS

(TL:IM-19; 10-30-95)

The use of facsimile (FAX) equipment in appropriate and cost-effective circumstances is encouraged in the Department. Facsimile transmissions have the same potential to be Federal records as any other documentary materials received in Federal offices. The method of transmitting a document does not relieve sending or receiving offices of the responsibility for

adequately and properly documenting official actions and activities and for ensuring the integrity of records. See the RMH, 5 FAH-4 , for more guidance on facsimile records. See 5 FAM 561 for policies on FAX transmissions, including use of secure FAX equipment and using FAX equipment to send correspondence to members of Congress.

5 FAM 442.1 Facsimile Label

(TL:IM-19; 10-30-95)

The Records Management Branch (OIS/RA/RD) has designed a facsimile transmission label (Form DS-1905), to be affixed to facsimile equipment. The label serves as a reminder to users of the responsibility to file record copies of facsimiles and to photocopy record copies of thermal paper facsimiles onto plain paper for filing. The labels are available from OIS/RA/RD.

5 FAM 442.2 FAX Transmittal Forms

(TL:IM-19; 10-30-95)

a. Form DS-1890, Unclassified Facsimile Transmittal Cover Sheet, and Form DS-1890A, Classified Facsimile Transmittal Cover Sheet, are Department forms that are available for use in transmitting documents. Their use is not mandatory. These forms are available on the INFOFORMS disk, which is part of the Department's INFOEXPRESS application. At a minimum, the transmittal form which is used by an office, should contain the following information:

—date of transmittal

—sending and receiving office information (symbol, name, voice & fax telephone numbers)

—subject information, including TAGS/Terms to help properly file the documents

—any comments regarding the transmission

—appropriate security classification, when using a secure fax machine.

b. Transmittal cover sheets containing substantive comments are to be filed with related record material. Those containing informal messages can be destroyed upon receipt or when no longer needed.

5 FAM 443 ELECTRONIC MAIL (E-MAIL) RECORDS

5 FAM 443.1 Principles Governing E-Mail Communications

(TL:IM-19; 10-30-95)

a. All Government employees and contractors are required by law to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (Federal Records Act, or "FRA," 44 U.S.C. 3101 et seq). In addition, Federal regulations govern the life cycle of these records: they must be properly stored and preserved, available for retrieval, and subject to appropriate approved disposition schedules.

b. As the Department's information modernization program goes forward, new forms of electronic communications have become increasingly available within the Department and between the Department and overseas posts. One example of the improvements that modernization has brought is the automatic electronic preservation of departmental telegrams. Employees are reminded that under current policy departmental telegrams should be used to convey policy decisions or instructions to or from posts, to commit or request the commitment of resources to or from posts, or for official reporting by posts.

c. Another important modern improvement is the ease of communication now afforded to the Department world-wide through the use of E-mail. Employees are encouraged to use E-mail because it is a cost-efficient communications tool. All employees must be aware that some of the variety of the messages being exchanged on E-mail are important to the Department and must be preserved; such messages are considered Federal records under the law. The following guidance is designed to help employees determine which of their E-mail messages must be preserved as Federal records and which may be deleted without further authorization because they are not Federal record materials.

5 FAM 443.2 Which E-Mail Messages are Records

(TL:IM-19; 10-30-95)

a. E-mail messages are records when they meet the definition of records in the Federal Records Act. The definition states that documentary materials are Federal records when they:

—are made or received by an agency under Federal law or in connection with public business; and

—are preserved or are appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government, or because of the informational value of the data in them.

b. The intention of this guidance is not to require the preservation of every E-mail message. Its purpose is to direct the preservation of those messages that contain information that is necessary to ensure that departmental policies, programs, and activities are adequately documented. E-mail message creators and recipients must decide whether a particular message is appropriate for preservation. In making these decisions, all personnel should exercise the same judgment they use when determining whether to retain and file paper records.

c. Under FRA regulations (36 CFR 1222.38), principal categories of materials, including E-mail, that are to be preserved are:

—records that document the formulation and execution of basic policies and decisions and the taking of necessary actions;

—records that document important meetings;

—records that facilitate action by agency officials and their successors in office;

—records that make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government; and

—records that protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

d. For example, just like paper records, E-mail messages that may constitute Federal records include:

(1) E-mail providing key substantive comments on a draft action memorandum, if the E-mail message adds to a proper understanding of the formulation or execution of Department action;

(2) E-mail providing documentation of significant Department decisions and commitments reached orally (person to person, by telecommunications, or in conference) and not otherwise documented in Department files;

(3) E-mail conveying information of value on important Department activities, e.g. data on significant programs specially compiled by posts in response to a Department solicitation, if the E-mail message adds to a proper understanding of Department operations and responsibilities.

5 FAM 443.3 How to Preserve E-Mail Records

(TL:IM-19; 10-30-95)

For those E-mail messages and attachments that meet the statutory definition of records, it is essential to ensure that the record documentation include the E-mail message, any attachments, and essential transmission data (i.e. who sent the message, the addressees and any other recipients, and when it was sent). In addition, information about the receipt of messages should be retained if users consider it necessary for adequately documenting Department activities. If transmission and necessary receipt data is not printed by the particular E-mail system, the paper copies must be annotated as necessary to include such data. Until technology allowing archival capabilities for long-term electronic storage and retrieval of E-mail messages is available and installed, those messages warranting preservation as records (for periods longer than current E-mail systems routinely maintain them) must be printed out and filed with related records. Instructions for printing and handling of Federal records for most of the Department's existing E-mail systems have been prepared and will be available through bureau Executive Offices

5 FAM 443.4 Records Management Reviews

(TL:IM-19; 10-30-95)

The Department's Records Management Office (OIS/RA/RD) conducts periodic reviews of the records management practices both at headquarters and at overseas posts. These reviews ensure proper records creation, maintenance, and disposition by the Department. These periodic reviews now will include monitoring of the implementation of the Department's E-mail policy.

5 FAM 443.5 Points to Remember About E-Mail

(TL:IM-19; 10-30-95)

—Department E-mail systems are for official use only by authorized personnel.

—The information in the systems is Departmental, not personal. No expectation of privacy or confidentiality applies.

—Before deleting any E-mail message, apply these guidelines to determine whether it meets the legal definition of a records and if so, print it.

—Be certain the printed message kept as a record contains the essential transmission and receipt data; if not, print the data or annotate the printed copy.

—File the printed messages and essential transmission and receipt data with related files of the office.

—Messages that are not records may be deleted when no longer needed.

—Certain E-mail messages that are not Federal records may still be subject to pending requests and demands under the Freedom of Information Act, the Privacy Act, and litigation and court orders, and should be preserved until no longer needed for such purposes.

—Classified information must be sent via classified E-mail channels only, with the proper classification identified on each document.

—When E-mail is retained as a record, the periods of its retention is governed by records retention schedules. Under those schedules, records are kept for defined periods of time pending destruction or transfer to the National Archives.

5 FAM 443.6 Future Technology

(TL:IM-19; 10-30-95)

a. The Department is actively working to develop systems that will enable those E-mail messages that are official records to be preserved electronically.

b. These regulations are in compliance with those set forth by the National Archives and Records Administration.

c. The Department and all posts are requested to bring these regulations to the attention of all Department employees and contractors and to begin its implementation immediately.

5 FAM 444 THROUGH 449 UNASSIGNED

the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Shirlett Brewer at (202) 647-8345 or by fax at (202) 647-0158. All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

FOR FURTHER INFORMATION CONTACT: Timothy C. Finton, Executive Secretary of the Committee, at (202) 647-5385 or <fintontc@ms6820wpoa.us-state.gov>.

Dated: February 1, 1999.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 99-3446 Filed 2-11-99; 8:45 am]

BILLING CODE 4710-45-P

DEPARTMENT OF STATE

[Public Notice 2977]

Bureau of Administration; Classification Authority Acting Under the Direction of the Senior Agency Official

By virtue of the authority vested in me as the Senior Agency Official designated under Section 5.6 of the Executive Order on Classified National Security Information (EO 12958), and as Under Secretary of State for Management, I hereby authorize and direct the Deputy Assistant Secretary for Records and Publishing Services (A/RPS) to be the official to classify information on a document-by-document basis consistent with the circumstances and procedures described in section 1.8(d) of EO 12958. This authority shall be limited to information that meets the standards of the Order for classification and has not previously been disclosed to the public under proper authority. The Deputy Assistant Secretary shall act under the direction of the Under Secretary for Management and shall keep me apprised of actions taken under this authority.

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Bureau of Administration, Department of State (202-647-6620).

Dated: February 2, 1999.

Patrick F. Kennedy,

Under Secretary for Management, Acting.

[FR Doc. 99-3444 Filed 2-11-99; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-1999-5080]

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended; Development of National Performance Measures for Evaluating Mariner Competence

AGENCY: Coast Guard, DOT.

ACTION: Request for participation; request for comments.

SUMMARY: The Coast Guard is seeking volunteers from members of the maritime industry and other interested persons to serve on work groups being formed by the Coast Guard's Merchant Marine Personnel Advisory Committee (MERPAC) to develop national performance measures for evaluating mariner competence. These measures will be used to facilitate implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW). In addition, the Coast Guard seeks comments on the first set of national performance measures developed, which are for basic safety training.

DATES: Requests to participate in a work group must be received by March 1, 1999. Comments regarding the basic safety training performance measures must reach the Docket Management Facility on or before March 15, 1999.

ADDRESSES: Requests to participate in a work group can be submitted in writing to Commandant (G-MSO-1), U.S. Coast Guard, Attn: LCDR George H. Burns III, 2100 Second Street SW, Washington, DC 20593-0001; by telephone 202-267-0550; by fax 202-267-4570; or, by e-mail to gurns@comdt.uscg.mil. You may mail comments regarding the basic safety training performance measures to the Docket Management Facility, [USCG-1999-5080], U.S. Department of Transportation (DOT), room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

The Docket Management Facility maintains the public docket for this notice. Comments and documents as indicated in this preamble will become part of the docket and will be available for inspection and copying at room PL-401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

A copy of the basic safety training performance measures is available in the public docket at the above address or on the Internet at <http://dms.dot.gov>, or you may obtain a copy by contacting the project manager at the number in **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: For questions on formation of the work groups please contact Lieutenant Commander George H. Burns III, Maritime Personnel Qualifications Division (G-MSO-1), telephone 202-267-0550, fax 202-267-4570, or e-mail gburns@comdt.uscg.mil. Questions regarding the basic safety training performance measures should be directed to Mr. John Bobb, Team Leader, Course Approvals, USCG National Maritime Center (NMC-4B), telephone 703-235-8457; fax 703-235-1062; or e-mail jbobb@ballston.uscg.mil. You should continue to address questions concerning the STCW Implementation Focus and Coordination Team to the Team Leader, Captain Robert L. Skewes (G-MSO), telephone 202-267-0212; fax 202-267-4570; or e-mail rskewes@comdt.uscg.mil. Questions concerning STCW requirements and enforcement should continue to be directed to the Coast Guard National Maritime Center at (703) 235-0018. Captain William C. Bennett, e-mail wbennett@Ballston.uscg.mil, retains responsibility for administering the Mariner Licensing and Documentation Program, including STCW implementation. For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Background Information

In 1991, the United States became a party to STCW. The primary intent of STCW is to set minimum international qualifications for masters, officers, and watchkeeping personnel on seagoing merchant ships. STCW does not apply to mariners on inland merchant vessels, but does apply to mariners on domestic voyages if the vessel operates beyond the boundary line.