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**THOMAS G BRUTON
CLERK, U.S DISTRICT COURT**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACQUELINE STEVENS, PRO SE,)	
)	
Plaintiff)	
)	
v.)	No. 17 C 2494
)	
UNITED STATES DEPARTMENT OF)	Judge Lee
STATE,)	
)	
Defendant)	

MEMORANDUM OF LAW IN OPPOSITION TO THE STATE DEPARTMENT'S
MOTION FOR SUMMARY JUDGMENT

I. Standard for Motion of Summary Judgment

1. For reasons of law and facts explained below, Plaintiff, Jacqueline Stevens, respectfully opposes the State Department's ("State" or "Defendant") motion for summary judgment. There are material disputes about Defendant's representations about the actual search conducted as well as its adequacy. The movant bears the burden of proving the absence of any material disputes about the facts and State has not met this burden. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326. ("In the course of its opinion, the *Adickes* Court said that 'both the commentary on and the background of the 1963 amendment conclusively show that it was not intended to modify the burden of the moving party . . . to show initially the absence of a genuine issue concerning any material fact.' [Citation omitted.] We think that this statement is accurate in a literal sense, since we fully agree with the *Adickes* Court that the 1963 amendment to Rule 56(e) was not designed to modify the burden of making the showing generally required by Rule 56(c).")

2. The evidence and justified analysis of Plaintiff, the nonmoving party, should be construed in her favor: "Unlike the review of other agency action that must be upheld if supported by substantial evidence and not arbitrary or capricious, the FOIA expressly places the burden 'on the agency to sustain its action' and directs the district courts to 'determine the matter de novo.'" *U.S. Dep't of Justice v. Reporters Com. for the Freedom of the Press*, 489 U.S. 749, 755 (1989) (quoting 5 U.S.C. § 552(a)(4)(B)).

II. Defendant Failed to Show an Adequate Search

3. Statements in the SOMF are false and also evidence of inadequate search that was

not conducted in good faith. First, the Defendant in the SOMF (Doc. 35) misrepresents the Plaintiff's provision of keywords as an agreement to "narrowing" the search. Second, statements in the SOMF and affidavit of Eric Stein fail to aver searches in all locations reasonably likely to have responsive records. Third, the record reveals evidence that searches were not conducted in places that were reasonably likely to have responsive records, including but not limited to the records of Ambassadors and their offices. Fourth, the record contains evidence that the search was not conducted in good faith. Fifth, the moving party fails to prove that its redactions are consistent with the requirements of the Freedom of Information Act ("FOIA") (5 U.S.C. § 552).

4. For any one of these materially significant reasons, supported by evidence in the Exhibits A-D to this Motion in Opposition to Summary Judgments, the Motion for Summary Judgment fails to meet the burden of proof required by Rule 56(e). *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). ("The evidence in the records of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.")

Analysis

5. (A.) Defendant Misstates Purpose of Keyword Search Agreement.

Eric Stein in his Affidavit states:

After the Complaint in this matter was filed, the Department informed Plaintiff in August of 2017 that the Department's search for documents responsive to Request F-2015-03180 had located a large number of potentially responsive documents. The parties agreed that the Department could further narrow the results of these searches and reduce the number of documents that it must process in response to Plaintiff's request by applying certain keywords to the initial search results. Stein Affidavit, SOMF, Doc. 35, Affidavit, p. 19; ¶6; quoted at SOMF Doc. 35, p. 6, ¶18.

6. Plaintiff has never communicated directly with Eric Stein about a keyword search. In a phone conversation Assistant U.S. Attorney Alexander Hartzler representing the Defendant indicated that State had discovered a large number of documents that might be responsive and requested keywords to assist in the search. Plaintiff in an e-mail provided keywords as breadcrumbs to assist in more efficiently locating responsive documents, and specifically refused to reduce the number of documents that might be processed or produced. Exhibit A.

7. In the e-mail of August 18, 2017 that included the requested keywords, Plaintiff responded to Hartzler's statement on the telephone referencing possibly 10,000 pages of responsive documents:

If you could also request the number of documents/year I would appreciate it. *I have a current release that is actually larger than this for the ICE contracts and I am not waiving my right to the entire release but providing these terms for purposes of prioritization*, in addition to the most recent 750 pages. Email from Plaintiff to Alexander Hartzler, August, 18, 2017, Doc. 41-2, Exhibit A, emphasis added.

8. The declaration by Stein that "...parties agreed that the Department could further narrow the results of these searches and reduce the number of documents that it must process..." is a material factual assertion that is demonstrably false. The keywords were provided to assist in procuring all responsive records and for no other purpose.

9. Moreover, Plaintiff also requested the use of wildcards in these searches:

"*sensor**"

Please note that *denotes wildcard for these terms and suffices, such as "sensors." In addition please search for the following as well. Email from Plaintiff to Alexander Hartzler, August, 18, 2017, Doc. 41-2, Exhibit A.

10. Attorney Hartzler indicated that he was not sure if State could accommodate this request. Exhibit B. The list of keywords indicates that no wildcards were used. Stein Affidavit, SOMF, Doc. 35, Affidavit (¶6, note 1, p. 3), p. 19.

11. (B.) Defendant Fails to Aver Searched all Files Reasonably Likely to have Responsive Materials. (1.) The SOMF does not avow until summary paragraph ¶82 that it targeted even all locations reasonably likely to have responsive documents, much less all files. Agencies are not obligated to know a priori all locations that may have responsive documents; they may in good faith not know this and a court may provide summary judgment in the favor of an agency for a search conducted based on a possibly incorrect belief that the agency had identified *all* offices likely to have responsive documented. But until the final summary section, Stein does not aver even that all locations likely to have responsive files were searched. Instead, Stein states: "After reviewing Plaintiff's requests and consulting with several offices and bureaus within the Department, IPS determined that the following offices or records systems were reasonably likely to have documents responsive to Plaintiff's request:" Stein Affidavit, Doc 35, p. 22, ¶19.

12. This statement means that numerous other offices and bureaus also may have been determined to be reasonably likely to have documents responsive to Plaintiff's request, such as the offices of the Ambassadors to the countries indicated in Plaintiff's request but not not tasked with searches.

13. (2.) Similarly, in representing the nature of searches within offices, Defendant only avers that that officers "searched certain locations." Doc. 35, SOMF, e.g., ¶¶ 10, 11, 12, 13, 14. Stein's affidavit also does not aver that its searches were targeting all locations within offices likely to produce responsive documents, but merely lists locations searched and keywords used.

For instance, the searches for F-2015-03181 also stipulates only to "a search" or searches in "certain locations" within records systems, not those most likely to have responsive information. ¶¶22, 23, 24, 25, 26, 27,28, 29, 30, 31, 32, 33, 34. Stein in his Summary makes a far broader claim, i.e., that "the Department conducted a thorough search of all Department locations that were reasonably likely to contain records responsive to Plaintiff's FOIA Request," but there are no such specific claims preceding this that "all Department locations" were searched on which he might base this conclusory statement and for this reason the Defendant does not meet its burden of proof necessary for its Motion for Summary Judgment.

14. Courts have found Declarations failing to aver all files likely to contain responsive materials as insufficient to bear the Government's burden of proof in a motion for summary judgment. *Maydak v. U.S. Dep't of Justice*, 362 F. Supp. 2d 316 (D.D.C. 2005) ("no one avers, and the record does not otherwise permit the inference that all files likely to contain responsive records were searched." *Id.* at 326.) In this case, aware of the standard obligating an agency to search all locations reasonably likely to have responsive documents, it appears as though Stein tacked on this statement, but only in a "Summary" that does not in fact summarize his previous specific assertions that do not claim all locations reasonably likely to have responsive documents were searched. And even in his Summary statement avers only that "all locations" were searched, but not all all files within them likely to contain responsive materials. (Doc. 35, SOMF, ¶42, citing Stein Declaration, ¶82.)

15. C. Searches not Conducted in Places and with Keywords Reasonably Likely to Locate Responsive Records (1.) Stein's Affidavit indicates that the search of the Doha Embassy failed to search the e-mail or records of the U.S. Ambassador to Qatar or the office of the U.S. Ambassador to Qatar, even after Plaintiff shared with Defendant's attorney an e-mail from

Dennis Everette, the CEO of NU's Qatar campus and requested related materials associated with the referenced meeting:

3) As I mentioned on previous occasions, it is obvious from internal references that there are additional responsive documents that have not been produced; I have shared these specific concerns with you since last spring and yet do not see the documents referenced, e.g., contracts, disbursements, and email associated with the EAD operation at NU-Q. Last month's release included an email from the NU Dean thanking the Ambassador for meeting with the Chair of NU's Board of Trustees and Provost and sharing information useful for NU's contract negotiations with Qatar, but none of the information about the meeting itself was shared with me, including its arrangements, memoranda, email, etc. Do you have any information about these missing items? Email from Plaintiff to Hartzler, February 5, 2017, Doc 41-2, p. 7. (Exhibit D)

16. The email referenced above is addressed to Ambassador Dana and states in part: I had hoped to thank you personally for the important role you played in the extension of our contract with the Qatar Foundation which occurred last week. The meeting you had some months back with our Board Chairman and Provost was critical in providing the necessary information that helped make all this happen. Well beyond that, your support for us here and our other American schools is important and sustaining. We will soon complete our 8 year mark here and have been assured of a contract that takes us to the year 2028, signalling not only support for us and what we've done, but to our peer schools here as well. Good news for all--and for us, a new lease of life. My thanks to you for all you did to help make this happen.

Warm regards,

Everette E. Dennis

Dean and CEO

Northwestern University in Qatar

Exhibit C, F-2015-0318, C06341567, release 12/05/2017

17. This email to which Plaintiff drew Defendant's attention indicates that there are deep and sustaining ties between university campuses in Doha and the U.S. Ambassador. Anyone with expertise on the Doha Embassy would have known that the U.S. Ambassador's office would be reasonably likely to have responsive documents, not to mention that Plaintiff's request was for "All State HQ and consular Qatar materials in all system records and elsewhere..." Stevens FOIA request 2015-03180, Doc 35, Stein Declaration, Exhibit 2 Doc 35, p. 72. This evidence of additional materials in system records indicated in the initial request and not searched further highlights the problem with the vague nature of the avowals in the SOMF.

18. Moreover, insofar as Defendant's attention was drawn by Plaintiff to a likely source for responsive documents on several occasions (Exhibit D), the failure to produce them indicates the search was not conducted in good faith, a point about which further evidence is produced below.

19. (2.) The keyword searches are insufficient evidence of a good faith search. Evidence that they were conducted in a fashion that was arbitrary and inconsistent is that the offices varied widely in the search terms they used. Moreover, there are several examples whereby Plaintiff based on references in documents located drew Defendant's attention to responsive documents held by the same office that were not produced. In some instances that resulted in additional documents being produced. Exhibit D. This is evidence that State's keyword searches did not lead to the production of all responsive documents despite the additional documents also

including the keywords used in the search as now revealed in the Stein Affidavit.

20. Furthermore, in a recent order, Judge Christopher R. Cooper held that the government may not use keyword searches as a substitute for a thorough search for responsive documents:

[DHS] canvassed its electronic records for direct hits, looking only for records that contained the verbatim language GAP [Government Accountability Project] used in its request ... After the searches yielded zero responsive documents, GAP complained that DHS unreasonably omitted additional search terms that quite likely would have generated a more robust return. Because FOIA requests do not operate like a game of Battleship ... the Court agrees and will order the agency to conduct its search anew. a recent order in *Government Accountability Project v. Department of Homeland Security*, No. 1:17-cv-2518 (CRC), October 12, 2018.

21. Stein's Declaration averring offices used different keyword searches for the same request dramatizes the problem Judge Cooper's observation highlights. Stein Declaration Doc. ¶¶16-18, 19, 23, 25, 26, 27, 29, 32, 34, 36, 39, 41, 43-7,49-51, 53, 56. How can Stein aver that a reasonable search was done when there are large discrepancies in the number and nature of keywords used among offices allegedly searching for responsive records? An additional problem is not only the keyword searches, but that the "battleships" are not all on the board.

22. D. Defendant Search Record Inconsistent with Good Faith Search. The Defendant's own SOMF reveals that its searches did not comply with the requirements of the Freedom of Information Act (5 U.S.C. § 552). Offices likely to have responsive documents were represented as searched, then not searched, and then post hoc asserted not to have responsive records, even though other evidence indicates that they do.

23. (1.) Defendants' Statement of Material Facts Fails to Assert Adequacy of Searches

In the initial request for documents of February 11, 2015, assigned F-2015-03180 (SOMF ¶8), Plaintiff wrote:

Your agency recently unlawfully ruled a prior and perfectly legal request "invalid." (F-2015-00663) I am therefore breaking the request into components. Failure to produce responsive records absent a specific legal reason under the Freedom of Information Act will prompt litigation. Please note that by resubmitting this request I am not waiving my right to litigate the constructive denial of my prior request within the 60 days allowed under FOIA. Northwestern University has coordinated with officials from the U.S. State Department since the mid-2000s to open a campus in Doha, Qatar. My request is for: All State HQ and consular Qatar materials in all system records and elsewhere referencing Northwestern University's Qatar campus. Material requested includes but is not limited to memorandums, cables or email, notes, reports, correspondence with other agencies, members of Congress (or staff) and private firms or individuals. Please consult in particular the following components: Policy Planning Staff, Bureau of Administration, Bureau of Diplomatic Security, Office of Management Policy, Rightsizing, and Innovation, Office of White House Liaison, Bureau of Intelligence and Research and Office of the Chief of Protocol, as well as all other components that may contain responsive information including J5, or the Policy Division. The time period of my request is from 01/01/2005 to present. (Complaint, Doc. 1, ¶14; Answer, Doc. 12, ¶14 "Admit.").

24. Thereafter State produced several conflicting accounts of its search protocols for this request.

25. (a) "[T]hat the Department had conducted searches of the Bureau of Budget and Planning, the Bureau of Educational and Cultural Affairs, and the Office of the Comptroller and Global Financial Services...." SOMF, Doc 35, ¶16, referencing letter of March 23, 2016 from Defendant to Plaintiff."

26. (b) That the Bureau of Budget and Planning, the Bureau of Educational and Cultural Affairs, and the Office of the Comptroller and Global Financial Services "had not conducted searches..." SOMF, Stein Affidavit, Doc 35, p. 14, ¶33, note 5.

27. (c) That on an unspecified date unnamed individuals in the Bureau of Budget and Planning, the Bureau of Educational and Cultural Affairs, and the Office of the Comptroller and Global Financial Services "confirmed that they were not reasonably likely to maintain records responsive to this request..." .SOMF, Stein Affidavit, Doc 35, p. 13, ¶33.

28. Plaintiff admits that these components may be unlikely to have responsive records but respectfully requests the court to consider the misrepresentation of the search as part of an ongoing pattern of making inaccurate statements that suggest completion of searches when the record does not support that assertion. In light of State producing the vast majority of responsive documents over two years after the statutory the time frame and providing on an ad hoc basis some additional documents identified by Plaintiff only after receiving email from her questioning the productions, this misrepresentation in the cover letter is an additional piece of evidence that undermines the Department's good faith avowals as to the adequacy of the search.

29. (E.) Moving Party Fails to Meet Burden of Proof for Redactions (1.) Documents Withheld in Full Fail Inconsistent with FOIA and Precedents. (a) In support of withholding 20 documents in full the Defendant fails to meet the high burden of proof necessary to overcome the

text obligating the agency to release segregable portions. First, the Defendant admits that four documents that were unclassified were under his authority classified as "SECRET or CONFIDENTIAL" and withheld. Stein Declaration, ¶63. No specific justification is provided nor is there a specific rationale provided for not releasing segregable portions of these specific documents. The explanations are vague and conclusory on legal classifications and fail to provide any detail sufficient to support these assessments for withholding of these documents. Nor does the Vaughn index provide a rationale for the withholding of any documents in their entirety. See e.g., Vaughn Index, Item 26, Doc 35.

30. (b) In support of withholding on document in full the Defense Intelligence Agency (DIA) fails to meet the high burden of proof necessary to overcome the text obligating the agency to release segregable portions. The Declaration of the DIA official simply recites the statute and Executive Order 13,526 and then with no detail asserts the entire document may be withheld. Alisa Y. Williams Declaration (Williams Declaration), Doc 35, pp. 111-118. DIA avers it is not classifying any of the information sought as "Top Secret." Instead, it claims in one portion that the information is "classified at the SECRET or CONFIDENTIAL levels..." Williams Declaration, Doc 35, ¶7, p. 112. But in another section Williams states that the record is "an intelligence report classified at the SECRET level..." Williams Declaration, Doc 35, ¶11, p. 114. In light of the large amount of information that has been over-classified and the vagueness, contradictory, and conclusory claims -- failing to indicate even the page numbers and the approximate portions of the document that are CONFIDENTIAL as opposed to SECRET, the Declaration is too vague to meet the Government's burden of proof. Stipulations as to statutory rationales for withholding documents do not meet the burden of proof for a summary judgment motion. *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 90-91 (D.D.C. 2009).

31. (2.) Unlawful Redactions - Large portions of documents were redacted without either segregating releasable information or proper classification. Exhibit D. For instance, an email about "Aspen Institute MFA Meeting Times" may contain correspondence about a private nonprofit that pays government officials to give talks and allows access to these officials to Aspen Institute guests. The assessment that the information is legally withheld is conclusory and not based on the specificities of the correspondence. Doc. 35, SOMF, Vaughn Index Item 38, p. 65.

32. Further, Defendant provides only conclusory explanations for the failure to release segregable portions of entire pages identified by Plaintiff in her spreadsheet submitted to Attorney Hartzler on March 6, 2018. Exhibit D

33. D. The process and the substance of documents produced by Defendant violate the FOIA. *Stevens v. United States Dep't of Homeland Sec.*, (N.D. Ill. Nov. 4, 2014), 2014 U.S. Dist. LEXIS 157086. ("Because disclosure is the 'dominant objective' of FOIA, the Court narrowly construes FOIA Exemptions. *Patterson v. Internal Revenue Serv.*, 56 F.3d 832, 835 (7th Cir. 1995); *see also U.S. Dep't of Justice v. Landano*, 508 U.S. 165, 181, 113 S. Ct. 2014, 124 L. Ed 2d 84 (1993).")

34. The failure to produce documents that demonstrably exist and would be easy to procure in the course of the long pendency of status hearings is in violation of 5 U.S.C. 552 (a) (4)(b). *Stevens* at 14, citing *Patterson*, 56 F.3d at 836 ("the government agency has the burden to support its decision to deny the FOIA request.").

35. One consequence of agencies regularly failing to disregard the statutory time frame mandated by the FOIA is that Plaintiffs frequently can notice that documents responsive to their requests are not released. Interestingly, in allowing for administrative review Congress

anticipated that citizens may be able to point to overlooked components or documents and allowed therefore for an administrative appeal of a final response. Plaintiff requests that this court adhere to the FOIA text and Congress's intent and purpose in empowering citizens to further inform agencies about likely places for responsive records by applying the same protocols obligating further search based on responsive records obtained during FOIA litigation that Congress requires during an administrative review under 5 U.S.C. § 552(a)(6)(a)(3)(aa), providing the "right to appeal to the head of the agency" an adverse determination.

36. If an agency can produce whatever documents they please during litigation without information in them being used to hold accountable the agency to search in all locations reasonably likely to have responsive documents, agencies may literally game the system and aver to reasonable searches that are on their face unreasonable because they fail to produce documents that the record shows are under the government's control. Whether it's a game of "Battle Ship" or "Hide-and-Go-Seek," the clear text and purpose of the FOIA are defeated by these withholdings.

CONCLUSION

37. Defendant failed to carry its burden of demonstrating that it conducted an adequate search. The Defendant further failed to carry its burden of demonstrating that the records identified in the Vaughn index are exempt from disclosure. Plaintiff respectfully requests that the Court deny Defendant's motion for summary judgment.

Respectfully submitted,

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jackiestevens@protonmail.com

I. Standard for Motion of Summary Judgment

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4. For any one of these materially significant reasons, supported by evidence in the Exhibits A-D to this Motion in Opposition to Summary Judgments, the Motion for Summary Judgment fails to meet the burden of proof required by Rule 56(e). *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). ("The evidence in the records of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.")

Analysis

5. (A.) Defendant Misstates Purpose of Keyword Search Agreement.

Eric Stein in his Affidavit states:

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6. Plaintiff has never communicated directly with Eric Stein about a keyword search. In a phone conversation Assistant U.S. Attorney Alexander Hartzler representing the Defendant indicated that State had discovered a large number of documents that might be responsive and requested keywords to assist in the search. Plaintiff in an e-mail provided keywords as breadcrumbs to assist in more efficiently locating responsive documents, and specifically refused to reduce the number of documents that might be processed or produced. Exhibit A.

7. In the e-mail of August 18, 2017 that included the requested keywords, Plaintiff responded to Hartzler's statement on the telephone referencing possibly 10,000 pages of responsive documents:

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8. The declaration by Stein that "...parties agreed that the Department could further narrow the results of these searches and reduce the number of documents that it must process..." is a material factual assertion that is demonstrably false. The keywords were provided to assist in procuring all responsive records and for no other purpose.

9. Moreover, Plaintiff also requested the use of wildcards in these searches:

"censor*"

Please note that *denotes wildcard for these terms and suffices, such as "censors." In addition please search for the following as well. Email from Plaintiff to Alexander Hartzler, August, 18, 2017, Doc. 41-2, Exhibit A.

10. Attorney Hartzler indicated that he was not sure if State could accommodate this request. Exhibit B. The list of keywords indicates that no wildcards were used. Stein Affidavit, SOMF, Doc. 35, Affidavit (¶6, note 1, p. 3), p. 19.

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12. This statement means that numerous other offices and bureaus also may have been determined to be reasonably likely to have documents responsive to Plaintiff's request, such as the offices of the Ambassadors to the countries indicated in Plaintiff's request but not not tasked with searches.

13. (2.) Similarly, in representing the nature of searches within offices, Defendant only avers that that officers "searched certain locations." Doc. 35, SOMF, e.g., ¶¶ 10, 11, 12, 13, 14. Stein's affidavit also does not aver that its searches were targeting all locations within offices likely to produce responsive documents, but merely lists locations searched and keywords used.

For instance, the searches for F-2015-03181 also stipulates only to "a search" or searches in "certain locations" within records systems, not those most likely to have responsive information. ¶¶22, 23, 24, 25, 26, 27,28, 29, 30, 31, 32, 33, 34. Stein in his Summary makes a far broader claim, i.e., that "the Department conducted a thorough search of all Department locations that were reasonably likely to contain records responsive to Plaintiff's FOIA Request," but there are no such specific claims preceding this that "all Department locations" were searched on which he might base this conclusory statement and for this reason the Defendant does not meet its burden of proof necessary for its Motion for Summary Judgment.

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Warm regards,

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17. This email to which Plaintiff drew Defendant's attention indicates that there are deep and sustaining ties between university campuses in Doha and the U.S. Ambassador. Anyone with expertise on the Doha Embassy would have known that the U.S. Ambassador's office would be reasonably likely to have responsive documents, not to mention that Plaintiff's request was for "All State HQ and consular Qatar materials in all system records and elsewhere..." Stevens FOIA request 2015-03180, Doc 35, Stein Declaration, Exhibit 2 Doc 35, p. 72. This evidence of additional materials in system records indicated in the initial request and not searched further highlights the problem with the vague nature of the avowals in the SOMF.

18. Moreover, insofar as Defendant's attention was drawn by Plaintiff to a likely source for responsive documents on several occasions (Exhibit D), the failure to produce them indicates the search was not conducted in good faith, a point about which further evidence is produced below.

19. (2.) The keyword searches are insufficient evidence of a good faith search. Evidence that they were conducted in a fashion that was arbitrary and inconsistent is that the offices varied widely in the search terms they used. Moreover, there are several examples whereby Plaintiff based on references in documents located drew Defendant's attention to responsive documents held by the same office that were not produced. In some instances that resulted in additional documents being produced. Exhibit D. This is evidence that State's keyword searches did not lead to the production of all responsive documents despite the additional documents also

including the keywords used in the search as now revealed in the Stein Affidavit.

20. Furthermore, in a recent order, Judge Christopher R. Cooper held that the government may not use keyword searches as a substitute for a thorough search for responsive documents:

[DHS] canvassed its electronic records for direct hits, looking only for records that contained the verbatim language GAP [Government Accountability Project] used in its request ... After the searches yielded zero responsive documents, GAP complained that DHS unreasonably omitted additional search terms that quite likely would have generated a more robust return. Because FOIA requests do not operate like a game of Battleship ... the Court agrees and will order the agency to conduct its search anew. a recent order in *Government Accountability Project v. Department of Homeland Security*, No. 1:17-cv-2518 (CRC), October 12, 2018.

21. Stein's Declaration averring offices used different keyword searches for the same request dramatizes the problem Judge Cooper's observation highlights. Stein Declaration Doc. ¶¶16-18, 19, 23, 25, 26, 27, 29, 32, 34, 36, 39, 41, 43-7,49-51, 53, 56. How can Stein aver that a reasonable search was done when there are large discrepancies in the number and nature of keywords used among offices allegedly searching for responsive records? An additional problem is not only the keyword searches, but that the "battleships" are not all on the board.

22. D. Defendant Search Record Inconsistent with Good Faith Search. The Defendant's own SOMF reveals that its searches did not comply with the requirements of the Freedom of Information Act (5 U.S.C. § 552). Offices likely to have responsive documents were represented as searched, then not searched, and then post hoc asserted not to have responsive records, even though other evidence indicates that they do.

23. (1.) Defendants' Statement of Material Facts Fails to Assert Adequacy of Searches

In the initial request for documents of February 11, 2015, assigned F-2015-03180 (SOMF ¶8), Plaintiff wrote:

Your agency recently unlawfully ruled a prior and perfectly legal request "invalid." (F-2015-00663) I am therefore breaking the request into components. Failure to produce responsive records absent a specific legal reason under the Freedom of Information Act will prompt litigation. Please note that by resubmitting this request I am not waiving my right to litigate the constructive denial of my prior request within the 60 days allowed under FOIA. Northwestern University has coordinated with officials from the U.S. State Department since the mid-2000s to open a campus in Doha, Qatar. My request is for: All State HQ and consular Qatar materials in all system records and elsewhere referencing Northwestern University's Qatar campus. Material requested includes but is not limited to memorandums, cables or email, notes, reports, correspondence with other agencies, members of Congress (or staff) and private firms or individuals. Please consult in particular the following components: Policy Planning Staff, Bureau of Administration, Bureau of Diplomatic Security, Office of Management Policy, Rightsizing, and Innovation, Office of White House Liaison, Bureau of Intelligence and Research and Office of the Chief of Protocol, as well as all other components that may contain responsive information including J5, or the Policy Division. The time period of my request is from 01/01/2005 to present. (Complaint, Doc. 1, ¶14; Answer, Doc. 12, ¶14 "Admit.").

24. Thereafter State produced several conflicting accounts of its search protocols for this request.

25. (a) "[T]hat the Department had conducted searches of the Bureau of Budget and Planning, the Bureau of Educational and Cultural Affairs, and the Office of the Comptroller and Global Financial Services...." SOMF, Doc 35, ¶16, referencing letter of March 23, 2016 from Defendant to Plaintiff."

26. (b) That the Bureau of Budget and Planning, the Bureau of Educational and Cultural Affairs, and the Office of the Comptroller and Global Financial Services "had not conducted searches..." SOMF, Stein Affidavit, Doc 35, p. 14, ¶33, note 5.

27. (c) That on an unspecified date unnamed individuals in the Bureau of Budget and Planning, the Bureau of Educational and Cultural Affairs, and the Office of the Comptroller and Global Financial Services "confirmed that they were not reasonably likely to maintain records responsive to this request..." .SOMF, Stein Affidavit, Doc 35, p. 13, ¶33.

28. Plaintiff admits that these components may be unlikely to have responsive records but respectfully requests the court to consider the misrepresentation of the search as part of an ongoing pattern of making inaccurate statements that suggest completion of searches when the record does not support that assertion. In light of State producing the vast majority of responsive documents over two years after the statutory the time frame and providing on an ad hoc basis some additional documents identified by Plaintiff only after receiving email from her questioning the productions, this misrepresentation in the cover letter is an additional piece of evidence that undermines the Department's good faith avowals as to the adequacy of the search.

29. (E.) Moving Party Fails to Meet Burden of Proof for Redactions (1.) Documents Withheld in Full Fail Inconsistent with FOIA and Precedents. (a) In support of withholding 20 documents in full the Defendant fails to meet the high burden of proof necessary to overcome the

text obligating the agency to release segregable portions. First, the Defendant admits that four documents that were unclassified were under his authority classified as "SECRET or CONFIDENTIAL" and withheld. Stein Declaration, ¶63. No specific justification is provided nor is there a specific rationale provided for not releasing segregable portions of these specific documents. The explanations are vague and conclusory on legal classifications and fail to provide any detail sufficient to support these assessments for withholding of these documents. Nor does the Vaughn index provide a rationale for the withholding of any documents in their entirety. See e.g., Vaughn Index, Item 26, Doc 35.

30. (b) In support of withholding on document in full the Defense Intelligence Agency (DIA) fails to meet the high burden of proof necessary to overcome the text obligating the agency to release segregable portions. The Declaration of the DIA official simply recites the statute and Executive Order 13,526 and then with no detail asserts the entire document may be withheld. Alisa Y. Williams Declaration (Williams Declaration), Doc 35, pp. 111-118. DIA avers it is not classifying any of the information sought as "Top Secret." Instead, it claims in one portion that the information is "classified at the SECRET or CONFIDENTIAL levels..." Williams Declaration, Doc 35, ¶7, p. 112. But in another section Williams states that the record is "an intelligence report classified at the SECRET level..." Williams Declaration, Doc 35, ¶11, p. 114. In light of the large amount of information that has been over-classified and the vagueness, contradictory, and conclusory claims -- failing to indicate even the page numbers and the approximate portions of the document that are CONFIDENTIAL as opposed to SECRET, the Declaration is too vague to meet the Government's burden of proof. Stipulations as to statutory rationales for withholding documents do not meet the burden of proof for a summary judgment motion. *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 90-91 (D.D.C. 2009).

31. (2.) Unlawful Redactions - Large portions of documents were redacted without either segregating releasable information or proper classification. Exhibit D. For instance, an email about "Aspen Institute MFA Meeting Times" may contain correspondence about a private nonprofit that pays government officials to give talks and allows access to these officials to Aspen Institute guests. The assessment that the information is legally withheld is conclusory and not based on the specificities of the correspondence. Doc. 35, SOMF, Vaughn Index Item 38, p. 65.

32. Further, Defendant provides only conclusory explanations for the failure to release segregable portions of entire pages identified by Plaintiff in her spreadsheet submitted to Attorney Hartzler on March 6, 2018. Exhibit D

33. D. The process and the substance of documents produced by Defendant violate the FOIA. *Stevens v. United States Dep't of Homeland Sec.*, (N.D. Ill. Nov. 4, 2014), 2014 U.S. Dist. LEXIS 157086. ("Because disclosure is the 'dominant objective' of FOIA, the Court narrowly construes FOIA Exemptions. *Patterson v. Internal Revenue Serv.*, 56 F.3d 832, 835 (7th Cir. 1995); *see also U.S. Dep't of Justice v. Landano*, 508 U.S. 165, 181, 113 S. Ct. 2014, 124 L. Ed 2d 84 (1993). ")

34. The failure to produce documents that demonstrably exist and would be easy to procure in the course of the long pendancy of status hearings is in violation of 5 U.S.C. 552 (a) (4)(b). *Stevens* at 14, citing *Patterson*, 56 F.3d at 836 ("the government agency has the burden to support its decision to deny the FOIA request.").

35. One consequence of agencies regularly failing to disregard the statutory time frame mandated by the FOIA is that Plaintiffs frequently can notice that documents responsive to their requests are not released. Interestingly, in allowing for administrative review Congress

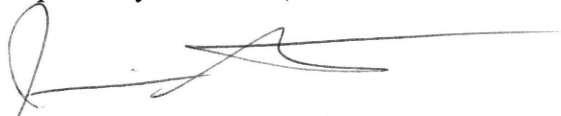
anticipated that citizens may be able to point to overlooked components or documents and allowed therefore for an administrative appeal of a final response. Plaintiff requests that this court adhere to the FOIA text and Congress's intent and purpose in empowering citizens to further inform agencies about likely places for responsive records by applying the same protocols obligating further search based on responsive records obtained during FOIA litigation that Congress requires during an administrative review under 5 U.S.C. § 552(a)(6)(a)(3)(aa), providing the "right to appeal to the head of the agency" an adverse determination.

36. If an agency can produce whatever documents they please during litigation without information in them being used to hold accountable the agency to search in all locations reasonably likely to have responsive documents, agencies may literally game the system and aver to reasonable searches that are on their face unreasonable because they fail to produce documents that the record shows are under the government's control. Whether it's a game of "Battle Ship" or "Hide-and-Go-Seek," the clear text and purpose of the FOIA are defeated by these withholdings.

CONCLUSION

37. Defendant failed to carry its burden of demonstrating that it conducted an adequate search. The Defendant further failed to carry its burden of demonstrating that the records identified in the Vaughn index are exempt from disclosure. Plaintiff respectfully requests that the Court deny Defendant's motion for summary judgment.

Respectfully submitted,



JACQUELINE STEVENS, Pro Se

11/6/2018

610 University Place

Second Floor, Political Science Department

Evanston, Illinois 60208

(847) 467-2093

jackiestevens@protonmail.com

EXHIBIT A

Email from Plaintiff
Re: Search Keywords for 2015-03180

search protocols

Sent:  August 18, 2017 1:54 PM

From: Jackie Stevens jackiestevens@protonmail.com

To: Hartzler, Alex (USAILN) Alex.Hartzler@usdoj.gov

Hi Alex,

Thanks for flagging the size of the release at present.

How about using search terms of:

"offset"

"contract"

"agreement"

"censor"

Please note that *denotes wildcard for these terms and suffices, such as "censors."

In addition please search for the following as well.

"Al Jazeera"

"Request for Proposal"

"intelligence"

Boeing

"natural gas"

"optics"

"RFP"

sales

weapons

train*

Bienen

Dennis

arrest

jail

image

If you could also request the number of documents/year I would appreciate it.

I have a current release that is actually larger than this for the ICE contracts and I am not waiving my right to the entire release but providing these terms for purposes of prioritization, in addition to the most recent 750 pages.

Thanks so much for your help with this.

Jackie

Jacqueline Stevens

Professor

Northwestern University

(847) 467-2093

----- Original Message -----

Subject: Quick call?

Local Time: August 18, 2017 10:12 AM

UTC Time: August 18, 2017 3:12 PM
From: Alex.Hartzler@usdoj.gov
To: Jackie Stevens <jackiestevens@protonmail.com>

Jackie,

Do you have time for a quick call today? I have a question I want to run by you. Should just take a minute.

I have to leave the office at 1:00 today; if you don't get this by then or aren't free, maybe we can talk Monday or Tuesday? My schedule is pretty open both days.

Thanks,
Alex

Alex Hartzler
Assistant United States Attorney
Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
(312) 886-1390
alex.hartzler@usdoj.gov

EXHIBIT B

**Email from Alexander Hartzler:
Wildcard Search in Question**

RE: search protocols

Received: Tuesday, August 22, 2017 10:31 AM

From: Hartzler, Alex (USAILN) Alex.Hartzler@usdoj.gov

To: Jackie Stevens jackiestevens@protonmail.com

Jackie, just to follow up quickly, State is running these terms to see what turns up. There is some question of whether they can do the wildcard searches. Will follow up again when I know more.

You may have just seen our 9/14 hearing get bumped by the court to 9/20. I might be unavailable on 9/20, in which case maybe we can agree on some alternate dates and I'll call the courtroom deputy to see if we can reschedule. No need to do anything just yet.

From: Hartzler, Alex (USAILN)
Sent: Friday, August 18, 2017 12:58 PM
To: 'Jackie Stevens' <jackiestevens@protonmail.com>
Subject: RE: search protocols

Thanks. Will get back to you early next week.

From: Jackie Stevens [mailto:jackiestevens@protonmail.com]
Sent: Friday, August 18, 2017 12:55 PM
To: Hartzler, Alex (USAILN) <AHartzler@usa.doj.gov>
Subject: search protocols

Hi Alex,

Thanks for flagging the size of the release at present.

How about using search terms of:

"offset"

"contract"

"agreement"

"censor"

Please note that *denotes wildcard for these terms and suffices, such as "censors."

In addition please search for the following as well.

"Al Jazeera"

"Request for Proposal"

"intelligence"

Boeing

"natural gas"

"optics"

"RFP"

sales

weapons

train*

Bienen

Dennis

arrest

jail

image

If you could also request the number of documents/year I would appreciate it.

I have a current release that is actually larger than this for the ICE contracts and I am not waiving my right to the entire release but providing these terms for purposes of prioritization, in addition to the most recent 750 pages.

Thanks so much for your help with this.

Jackie

Jacqueline Stevens

Professor

Northwestern University

(847) 467-2093

----- Original Message -----

Subject: Quick call?

Local Time: August 18, 2017 10:12 AM

UTC Time: August 18, 2017 3:12 PM

From: Alex.Hartzler@usdoj.gov

To: Jackie Stevens <jackiestevens@protonmail.com>

Jackie,

Do you have time for a quick call today? I have a question I want to run by you. Should just take a minute.

I have to leave the office at 1:00 today; if you don't get this by then or aren't free, maybe we can talk Monday or Tuesday? My schedule is pretty open both days.

Thanks,

Alex

Alex Hartzler

Assistant United States Attorney

Northern District of Illinois

219 South Dearborn Street, Fifth Floor

Chicago, Illinois 60604

(312) 886-1390

alex.hartzler@usdoj.gov

EXHIBIT C

**Email from NU CEO/Dean Everette Dennis to U.S. Ambassador in
Qatar, from FOIA No. F-2015-03180**

UNCLASSIFIED U.S. Department of State Case No. F-2015-03180 Doc No. C06341564 Date: 12/05/2017

Dear Ambassador Dana-

I had hoped to see you at U.S. National Day last evening, but was delayed and unable to come. I had hoped to thank you personally for the important role you played in the extension of our contract with the Qatar Foundation which occurred last week. The meeting you had some months back with our Board Chairman and Provost was critical in providing necessary information that helped make all this happen. Well beyond that, your support for us here and our other American schools is important and sustaining.

We will soon complete our 8 year mark here and have been assured of a contract that takes us to the year 2028, signaling not only support for us and what we've done, but to our peer schools here as well. Good news for all—and for us, a new lease of life.

My thanks to you for all you did to help make this happen.

Warm regards,

Ev

Everette E. Dennis
Dean and CEO
Northwestern University in Qatar

T:
M:

www.qatar.northwestern.edu

B6

EXHIBIT D

**Email from Plaintiff
Responsive Documents not Produced**

RE: Stevens v. State - February 5, 2018 - "-80"

Received: February 6, 2018 1:36 PM

From: Hartzler, Alex (USAILN) Alex.Hartzler@usdoj.gov

To: Jackie Stevens jackiestevens@protonmail.com

Hi Jackie,

- 1) Yes.
- 2) Paragraph 2 of the cover letter lists the exemptions.
- 3) I will get back to you on this one—will try to respond by early next week.

-Alex

From: Jackie Stevens [mailto:jackiestevens@protonmail.com]
Sent: Monday, February 05, 2018 3:46 PM
To: Hartzler, Alex (USAILN) <AHartzler@usa.doj.gov>
Subject: Re: Stevens v. State - February 5, 2018 - "-80"

Alex,

Thanks for this. Three questions:

1) In December I believe you informed me that the final production would be at the beginning of February. Is it the position of your client that as of today the State Department has either produced or withheld all documents responsive to my requests for cases -03180, -03185, and -03575?

2) The cover letter from Mr. Stein indicates two documents were withheld in full but provides no explanation for this. Are you aware of the exemption(s) being claimed?

3) As I mentioned on previous occasions, it is obvious from internal references that there are additional responsive documents that have not been produced; I have shared these specific concerns with you since last spring and yet do not see the documents referenced, e.g., contracts, disbursements, and email associated with the EAD operation at NU-Q.

Last month's release included an email from the NU Dean thanking the Ambassador for meeting with the Chair of NU's Board of Trustees and Provost and sharing information useful for NU's contract negotiations with Qatar, but none of the information about the meeting itself was shared with me, including its arrangements, memoranda, email, etc.

Do you have any information about these missing items?

Thanks so much for your help with this.

Jackie

Jacqueline Stevens
Professor
Northwestern University
(847) 467-2093

----- Original Message -----

On February 5, 2018 3:02 PM, Hartzler, Alex (USAILN) <Alex.Hartzler@usdoj.gov> wrote:

Jackie,

Attached is the State Department's February 5, 2018 production in response to the request ending in -80.

Alex Hartzler
Assistant United States Attorney
Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
(312) 886-1390
alex.hartzler@usdoj.gov

RE: meeting with Ambassador

Sent:  February 23, 2018 4:40 PM

From: Jackie Stevens jackiestevens@protonmail.com

To: Hartzler, Alex (USAILN) Alex.Hartzler@usdoj.gov

Dear Alex,

Yes, and also background policies and other materials about Qatar and the NU campus on which the Ambassador was relying for the information she was conveying to NU.

I have the reference to the EAD in a much earlier communication with you that I'll look for now. Finally, I want to confirm that you are of course right and will wait for your MSJ along the lines suggested by Judge Lee.

Jackie

Jacqueline Stevens
Professor
Northwestern University
(847) 467-2093

----- Original Message -----

On February 23, 2018 4:28 PM, Hartzler, Alex (USAILN) <Alex.Hartzler@usdoj.gov> wrote:

Thanks. OK, so I see that the email in document number C06341564 describes a meeting between Dana Shell Smith (U.S. Ambassador to Qatar) and NU Qatar's Board Chairman and Provost. Do I have it right that your basic question is, where is the other correspondence relating to that meeting?

And then, I really apologize for any obtuseness, but regarding the EAD issue, can you clarify for me which request you are asking about, and what documents missing? I think this is the one where you are saying there should be underlying contracts, etc.—is that right?

One other question I have is whether you know which (b)(6) redactions you *are* going to challenge. Will be helpful to know as we begin the Vaughn process.

Thanks,
Alex

From: Jackie Stevens [<mailto:jackiestevens@protonmail.com>]

Sent: Thursday, February 22, 2018 4:13 PM

To: Hartzler, Alex (USAILN) <AHartzler@usa.doj.gov>

Subject: RE: meeting with Ambassador

Sorry, it's 03180! and the page is C06341564 (it's page one of part 3 of 4 in the most recent release). Thanks!

Jacqueline Stevens
Professor
Northwestern University
(847) 467-2093

----- Original Message -----

On February 22, 2018 3:20 PM, Hartzler, Alex (USAILN) <Alex.Hartzler@usdoj.gov> wrote:

Thanks. Did you mean to attach the email referenced in the first paragraph? Or you can refer me to the production/page number, if you have it handy.

From: Jackie Stevens [<mailto:jackiestevens@protonmail.com>]
Sent: Thursday, February 22, 2018 3:18 PM
To: Hartzler, Alex (USAILN) <AHartzler@usa.doj.gov>
Subject: meeting with Ambassador

Alex,

Here are my notes on 03181:

The response to 03181 is contradicted by other documents, including the email in this release from the Dean of NU's Qatar campus thanking the Ambassador for providing information to NU's Chair of the Board and NU's Provost that helped them renew their contract with the Qatar Foundation.

That email makes it clear that:

- a) the US does have a policy around establishing U.S. campuses in Qatar and the large number of other communications make it clear that the State Dept. is working with these campuses; and
- b) also, there is a cable from an earlier time frame that specifically connects State Dept. concerns about Al Jazeera with establishing campuses--so there should be policy and other reports about this that have not been produced;
- c) the other documents associated with the planning for that meeting have not been produced, either -- which they should have been either because of the general parameters of the request or because these documents are responsive to my request

In addition, there are contracts and other documents including disbursements referenced for an organization called EAD that was contracted to train Gulf state journalists at Northwestern and these were not produced. I wrote to you about this much earlier but am unable to find the specific reference at present. I'll keep looking and let you know by tomorrow.

Jackie

Jacqueline Stevens

Jackie,

Got the spreadsheet in your other email—thanks.

Do I have it right that you are challenging: **(a)** all documents withheld in full, and **(b)** all redactions that are listed in column H (“Redactions in Question”) on the spreadsheet?

For example, in lines 24 through 29 on the spreadsheet, nothing appears in column H—does that indicate no challenged redactions?

Assuming so, then we will address at summary judgment the documents withheld in full and the redactions mentioned in column H, and we’ll note that you are not challenging any other withholdings. OK?

If I have it wrong just let me know.

Hope to get back to you soon re: reimbursement.

-Alex

From: Jackie Stevens [<mailto:jackiestevens@protonmail.com>]
Sent: Tuesday, March 06, 2018 12:03 PM
To: Hartzler, Alex (USAILN) <AHartzler@usa.doj.gov>
Subject: tracking documents withheld and objections to redactions, and fee question

Alex,
The attached spread sheet indicates my objections to redactions. As we discussed, we are not objecting to personal information withheld under b(5) but to large chunks redacted and entire documents withheld. It is my position that the FOIA law requires the release of segregable information. I am therefore objecting to the withholding of all documents in their entirety, as well as those portions indicated in the attached spread sheet.

Finally, I wanted to follow up to see if your office will object to reimbursing me for payments to student research assistants and other other administrative support for the litigation. If your office will not object to this, then I will continue to represent myself pro se. Otherwise, I will need to turn the case over to an attorney and he will be eligible for payment of his fees and expenses. I of course reserve the right to do this at any time, though obviously the longer I do this pro se, the less money the taxpayers are charged for this.

Jackie
Jacqueline Stevens
Professor
Northwestern University
(847) 467-2093

 **Redaction Challenges for USSD.xlsx** (34.51 KB)

