

DHS took a similar position in Ferrigno v. United States Department of Homeland Security, 2011 WL 1345168 (S.D.N.Y. Mar. 29, 2011). There, Judge Sullivan noted that “[b]efore approving the application of a FOIA exemption, [a] district court must make specific findings of segregability regarding . . . documents to be withheld. Ferrigno, 2011 WL 1345168, at *10 (citing Sussman v. U.S. Marshals Serv., 494 F.3d 1106, 1116 (D.C. Cir. 2007)). The court held that although DHS’s declaration lent credence to its assertion that non-exempt and exempt portions of the memorandum at issue were intertwined, “Defendant’s submission of the [documents] for in camera review w[ould] aid the Court in evaluating the segregability of any non-exempt information contained in the documents.” Ferrigno, 2011 WL 1345168, at *10. Therefore, the court ordered DHS to provide the documents for in camera review.

This Court has previously held that “[a]ny in camera inspection guides a court’s evaluation of the Government’s reliance on exemptions from FOIA’s disclosure requirement.” N.Y. Times Co. v. U.S. Dep’t of Justice, 872 F. Supp. 2d 309, 315 (S.D.N.Y. 2012). Additionally, “in camera review is particularly appropriate where, as here, the number of documents is relatively small.” N.Y. Times Co., 872 F. Supp. 2d 309 at 315 (citation and quotation marks omitted); see also Phillips v. Immigration & Customs Enforcement, 385 F. Supp. 2d 296, 301 (S.D.N.Y. 2005) (directing submission for in camera review “[a]s a matter of judicial economy”).

At this time, this Court makes no judgment as to the adequacy of the Sepeta Declaration, and is mindful that its “inspection prerogative is not a substitute for the government’s burden of proof.” Halpern v. FBI, 181 F.3d 279, 295 (2d Cir. 1999). Accordingly, DHS shall provide this Court with the documents underlying the parties’ cross motions for summary judgment for in camera review by June 6, 2018.

Dated: May 23, 2018
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.