

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COLOR OF CHANGE and CENTER FOR
CONSTITUTIONAL RIGHTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY and FEDERAL
BUREAU OF INVESTIGATION,

Defendants.

16 Civ. 8215 (WHP)

DECLARATION OF ARTHUR R. SEPETA

I, Arthur R. Sepeta, do hereby state and declare as follows:

1. I am the Chief of the Privacy and Intelligence Oversight Branch (“PIOB”), Office of Intelligence and Analysis (“I&A”), U.S. Department of Homeland Security (“DHS”). I&A is a component of DHS, as well as an element of the U.S. Intelligence Community. In my official capacity, I have direct oversight of Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a (“Privacy Act”), policies, procedures, and litigation involving DHS I&A records. I have been employed by DHS I&A in this capacity since May 2010.

2. My responsibilities include acting as a liaison with other DHS components and offices to respond to requests and litigation filed under both the FOIA and the Privacy Act; reviewing requests for access to I&A records; reviewing correspondence related to such requests; and evaluating FOIA searches and responses to decide whether determinations to release or withhold records are made in accordance with the FOIA, the Privacy Act, and DHS regulations located at 6 C.F.R. §§ 5.1 *et seq.*

3. As the Chief of the PIOB, I have the authority to release or withhold records, and the authority to articulate the position of I&A in actions brought under the FOIA and the Privacy Act.

4. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

5. DHS is an executive department of the federal government within the meaning of title 5 of the United States Code. Its primary statutory missions under the Homeland Security Act of 2002 are as follows:

- (A) Prevent terrorist attacks within the United States;
- (B) Reduce the vulnerability of the United States to terrorism;
- (C) Minimize the damage, and assist in the recovery, from terrorist attacks that do occur in the United States;
- (D) Carry out all functions of entities transferred to DHS, including by acting as a focal point regarding natural and manmade crises and emergency planning;
- (E) Ensure that the functions of the agencies and subdivisions within DHS that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;
- (F) Ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland;
- (G) Ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities and programs aimed at securing the homeland; and
- (H) Monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

6 U.S.C. § 111(b)(1).

6. I&A is a component of DHS operating at the headquarters-level of the Department. Pursuant to statute, the office is headed by an Under Secretary for Intelligence and Analysis, who doubles as the Chief Intelligence Officer for DHS. *Id.* § 121(b)(1)-(2).

7. I&A has broad intelligence- and information-gathering and sharing responsibilities under the Homeland Security Act of 2002, Executive Order No. 12,333, as amended, and Executive Order No. 13,388. These responsibilities obligate I&A to gather and share intelligence information in support of DHS's broader counterterrorism, homeland security, and component-specific missions; in support of the broader national intelligence mission of the Intelligence Community; and as part of the federal information-sharing environment.

8. The National Security Act of 1947, 61 Stat. 495 (1947) (codified as amended in scattered sections of 50 U.S.C.), defines the term "Intelligence Community" as including, among others, I&A. *See* 50 U.S.C. § 3003(4)(K) (listing I&A as one of seventeen elements of the Intelligence Community); *see also* Exec. Order No. 12,333 § 3.5(h)(14). As such, I&A falls within the purview of Executive Order 12,333, which sets forth general guidance regarding the collection, retention, and dissemination of intelligence and other information.

9. I&A conducted a reasonable search and carefully reviewed all of the documents that contained information responsive to Plaintiffs' FOIA request to determine what information, if any, could be released to Plaintiffs. After careful review, I&A determined that an I&A document, produced in eight draft versions, must be redacted in full, and that a related email must be redacted in part. The purpose of this *Vaughn* declaration is to explain and justify, to the extent possible on the public record, each of the FOIA exemptions that I&A has claimed with respect to these records.

THE FOIA REQUEST AND SUBSEQUENT PROCEEDINGS

10. On or about July 5, 2016, Plaintiffs submitted a FOIA request to DHS for a list of records related to certain protests. A true and correct copy of the Plaintiffs' request is attached as Exhibit A.

11. By letter dated July 18, 2016, the DHS Privacy Office acknowledged receipt of Plaintiffs' FOIA request. The DHS Privacy Office gave this request the tracking number 2016-HQFO-00490.

12. On July 12, 2016, the request was referred by the DHS Privacy Office to I&A to process and respond directly to Plaintiffs. I&A gave the request the tracking number 2016-IAFO-00220. A true and correct copy of the referral email is attached as Exhibit B.

13. By letter dated September 20, 2016, I&A gave its final response to Plaintiffs' request. That response stated that following a search, I&A was "unable to locate or identify any responsive records." A true and correct copy of I&A's response is attached as Exhibit C.

14. On October 13, 2016, the DHS Privacy Office received Plaintiffs' letter requesting an administrative appeal of this final determination.

15. By letter dated October 20, 2016, the DHS Privacy Office acknowledged receipt of Plaintiffs' administrative appeal. The DHS Privacy Office gave the appeal the tracking number 2017-HQAP-00021.

16. On October 20, 2016, Plaintiffs filed suit in the United States District Court for the Southern District of New York.

17. During the course of this litigation, I&A conducted additional searches of its records and subsequently made six rounds of production in accordance with the agreement of the

parties and guidance of the Court. Through counsel, I&A made productions on March 31, 2017; May 22, 2017; June 19, 2017; October 30, 2017; November 13, 2017; and January 9, 2018.

18. It is my understanding that the Plaintiffs are challenging I&A's withholdings with respect to two records—a document that was released in the form of eight draft versions (the “proposed paper,” or the “proposed intelligence assessment”) and a related email dated March 3, 2017 (the “March 3 email” or the “email”).

19. I&A released three of the draft versions of the proposed paper as part of its third production on June 19, 2017, and released the other five of the draft versions of the proposed paper as part of its sixth production on January 9, 2018.¹ The sixth production also contained a copy of a duplicate version of the proposed paper that had already been produced as part of the third production. Each version of the proposed paper was redacted in full pursuant to FOIA Exemption 5, and additionally redacted in part pursuant to FOIA Exemptions 3 and 6. The Bates numbers assigned to each of the draft versions of the proposed paper are as follows:

- a. First draft: IALI-00002-000485 to -000493
- b. Second draft: IALI-00002-000566 to -000577
- c. Third draft: IALI-00002-000533 to -000540
- d. Fourth draft: IALI-00002-000500 to -000507 (duplicate copy produced at IALI-00002-000541 to -000548)
- e. Fifth draft: IALI-00002-000558 to -000565
- f. Sixth draft: IALI-00002-000549 to -000557

¹ At Plaintiffs' request, and in accordance with the Court's order dated April 21, 2017, in which I&A was directed to “produce its responsive documents,” I&A produced fully-redacted pages of those documents that it determined should be withheld in full, and assigned Bates numbers to those fully-redacted pages for ease of reference and to inform Plaintiffs of the total number of pages constituting each fully-withheld document.

- g. Seventh draft: IALI-00002-000508 to -000516
- h. Eighth draft: IALI-00002-000524 to -000532

20. I&A released the March 3 email in part in its second production on May 22, 2017, and redacted portions of the email pursuant to FOIA Exemptions 5 and 6. The Bates number assigned to the email is IALI-00002-000265.

21. At the same time that it made its sixth production, I&A provided Plaintiffs with a preliminary and draft version of a *Vaughn* index to provide information about the drafts of the proposed intelligence assessment, the March 3 email, and several other records that it had withheld pursuant to FOIA exemptions. This index was produced at Plaintiffs' request for the purpose of facilitating a settlement of the case and was not intended to be I&A's final position on the drafts of the proposed paper and the email. The draft *Vaughn* index indicated that seven drafts of the proposed paper had been withheld. Since providing that draft *Vaughn* index, I&A has determined that it in fact produced eight drafts of the proposed paper rather than seven (when taking into account the fact that one version had a different title). Given the small number of documents still at issue in this litigation, rather than providing an updated and final index, all of the information needed to support I&A's withholdings under FOIA Exemptions 3, 5 and 6 is contained within this *Vaughn* declaration.

THE RECORDS AT ISSUE

22. One of I&A's statutory missions per the Homeland Security Act is to analyze trends in terrorism affecting the United States, including domestic terrorism. Plaintiffs are seeking the full release of drafts of a proposed intelligence assessment that contemplated a survey of violent, terroristic acts that were driven by race-related extremist ideologies of varying stripes in order to assess developing trends in this space. The drafts of the proposed I&A

intelligence assessment, in its various revisions, were never completed, finalized, or published by I&A. Each draft version of the proposed paper is marked “(U//LES)” or UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE. The first draft version was entitled “(U//FOUO) Race-Related Domestic Terrorism Incidents Likely to Continue in 2017” and the subsequent seven versions were entitled “(U//FOUO) Growing Frequency of Race-Related Domestic Terrorist Violence.” “FOUO” stands for “for official use only.” As emails produced to Plaintiffs indicate, I&A personnel circulating and discussing the drafts termed it the “Race Paper” as a shorthand.

23. The proposed paper’s draft conclusions are based on developing trends associated with particular events that included a broad array of suspected perpetrator and victim groups. The proposed paper did not focus on any one group. The proposed paper also speaks to how violent ideological actors coopt peaceful political activity and mass gatherings that the Department recognizes as constitutionally-protected and essential to national discourse. The proposed paper does not speak to any surveillance operations at all, let alone surveillance of constitutionally-protected or other political demonstrations.

24. For the reasons described below, each draft version of the proposed paper is properly withheld from disclosure in full under Exemption 5. Moreover, each draft version contains some information that is properly exempt from disclosure under Exemptions 3 and 6.

25. The March 3 email is entitled “RE: (U//LES) Race Paper for First Level Review.” This email was sent by an I&A senior analyst to an I&A intern and another I&A analyst who jointly authored the proposed intelligence assessment. This email, which attached a draft copy of the proposed intelligence assessment, is part of I&A’s exchange of ideas while developing the proposed intelligence assessment, and includes the senior analyst’s candid feedback in reviewing

the draft product for the first time. For the reasons described below, the redacted portions of the email are properly exempt from disclosure under Exemptions 5 and 6.

NONDISCLOSURE UNDER THE FOIA

EXEMPTION 5

26. Section 552(b)(5) of the FOIA permits withholding of privileged information, to include information traditionally protected under the deliberative process privilege. The deliberative process privilege protects pre-decisional information relating to the intra- and inter-agency deliberative process. The drafts of the proposed intelligence assessment and the portion of the March 3 email redacted pursuant to Exemption 5 contain information relating to intra-agency pre-decisional deliberations, including preliminary evaluations and recommendations of I&A personnel, and thus are protected from disclosure under that exemption.

27. The withheld information includes eight drafts of a single proposed intelligence assessment that was never finalized or disseminated outside of I&A. The proposed intelligence assessment was drafted by I&A as a member of the Intelligence Community and reflects annotations and comments internal to I&A that are part of I&A's robust tradecraft and oversight review processes. The proposed intelligence assessment further underwent a vigorous review and debate internal to I&A that involved extensive revisions and frank conversation between I&A employees. Ultimately, mid-level supervisors at I&A chose not to proceed towards finalizing the proposed intelligence assessment for methodological and tradecraft purposes. I&A's production system indicates that the product was cancelled and not published.

28. As the information withheld pursuant to this exemption consists of records generated by and shared only internal to DHS, these are "intra-agency" records as that term is used in 5 U.S.C. § 552(b)(5).

29. I&A's preliminary draft *Vaughn* index referred to the proposed intelligence assessment as a "finished intelligence product" not because the assessment itself was completed—it was not. Rather, "finished" is a term of art that evaluates the state of the intelligence itself, not the state of the work product. "Finished" refers to analytic intelligence products and is used in contrast with "raw" intelligence, which is intelligence that has not yet been evaluated or analyzed.

30. The deliberative process privilege is intended to protect the integrity of the decision-making processes of government agencies from public scrutiny in order to enhance the quality of agency decisions. A significant part of the deliberative process within I&A involves the creation of draft intelligence products that are then reviewed, edited, and modified before they become final. Development of these intelligence products, particularly in the field of terrorism, is a core I&A mission, and the products contain I&A's key judgments and assessments that are intended to inform the positions of policymakers and law enforcement operators. When it was proposed as a concept, this intelligence assessment was intended to inform DHS leadership, state and local governments, and the private security sector. The analysis and recommendations in this proposed intelligence assessment were intended to be broadly disseminated to inform policy decisions, threat prioritization, and resource planning and allocation. The paper, if finalized, would also have informed further DHS actions and intelligence collection efforts against violent extremist actors.

31. The withheld drafts of the proposed intelligence assessment were mostly undated, incomplete drafts that included comments, edits, and other notations that were part of I&A's robust intra-agency review. The majority of the drafts of the proposed assessment was prepared by an I&A intern and an I&A analyst, both of whom inherently lacked final decision-making

authority for the agency. The drafts reveal the back-and-forth edits, questions, and thorough comments of the intern, the coordinating analyst, and their team lead, who was also an analyst. The drafts were also later reviewed by another analyst and a mid-level supervisor within the same division and by I&A's standards, oversight, and compliance reviewers.

32. After an oversight office review, draft intelligence assessments are subject to several levels of production review before being finalized. The proposed intelligence assessment only went through part of I&A's editorial review process and was not close to finalization. In the first substantive production review, an I&A reviewer raised methodological concerns after considering tradecraft and other quality standards. These concerns were raised to the proposed intelligence assessment's authors and supervisors. Ultimately, no final product was created, approved, or released because, upon review and consideration by the mid-level supervisors in response to these concerns, I&A chose not to complete, publish, or otherwise adopt this proposed intelligence assessment. I also have no reason to believe any member of I&A's senior leadership or any other intended audience member had the opportunity to consider any version of the draft in their decision-making.

33. The information withheld by I&A contained or related to agency deliberations on whether to produce a final assessment containing evaluative analysis on domestic terrorist involvement in race-related violence, and what the form and content of that assessment should be. The withheld information was therefore pre-decisional because, as stated above, the proposed assessment never evolved into a completed, published, or otherwise adopted statement of I&A policy. The withheld information also contained deliberative internal information shared between I&A personnel addressing drafting, analytical, tradecraft, and writing issues in a proposed intelligence product, to include in-line edits and comments, as well as incremental

revisions that reflect the deliberative process. These drafts are pre-decisional, preliminary versions of what was intended to become a final assessment containing evaluative analysis on domestic terrorist involvement in race-related violence, though it ultimately did not end up amounting to such. The process by which the draft iterations of the proposed assessment evolved itself was deliberative, and therefore revealing the drafts of the proposed assessment would expose the exchange of ideas and suggestions that accompany I&A's decision-making and that reflect I&A's preliminary assessments. In addition, each draft contains editorial comments and edits revealing the back-and-forth between the authors and reviewers.

34. Even to the extent that some of the information withheld under Exemption 5 is factual, the selection of which data—here, namely, which violent extremist events and which details about each of them—to include or remove during the drafting process and how to weigh that data is itself part of the deliberative process. Throughout the assessment drafting and revision process, I&A personnel necessarily reviewed the universe of facts arising on the topic at hand, and then selected those facts and issues that they deemed most appropriate to include. The decisions to weigh certain factual information and include or exclude it in the development of I&A's analysis and evaluation are an important part of the deliberative process. Furthermore, deliberations involving methodology and data selection and quality were central to I&A's internal decision not to finalize this analytical product.

35. The deliberative process privilege is intended to protect the decision-making processes of government agencies from public scrutiny to enhance the quality of agency decisions. The disclosure of the intern and analyst's editorial judgments, *i.e.*, decisions whether to insert or delete material or to change a draft's focus or emphasis, would stifle the analytic thinking and candid exchange of ideas necessary to produce good intelligence analysis and

recommendations for policymakers. Disclosure of the draft product at issue would hamper the efficient day-to-day workings of I&A by discouraging the expression of candid opinions and chilling the free and frank exchange of information in the development of intelligence analysis and evaluations. The release of I&A's preliminary assessments, particularly in a manner exposing the back-and-forth development and evolution of I&A's assessment, would hinder I&A's ability to foster forthright internal discussions that are necessary for efficient and proper recommendations to decision-makers.

36. In addition, disclosure of the proposed intelligence assessment, in any of its draft forms, could prove confusing to the public because it would reveal intelligence rationales and analyses that were ultimately not adopted in a final product. Release may wrongly suggest to the public that these are adopted I&A positions, though the proposed assessment may differ from positions I&A has taken or will take on related subject matters. As mentioned above, this product was cancelled in the drafting stage and did not complete I&A's comprehensive review and coordination process, such that it was never finished or published. Accordingly, release would also confuse and mislead the public as to I&A's framework for analysis and analytic and tradecraft standards, as the product does not necessarily reflect them.

37. Because the development of one draft to another is part of the deliberative process inherent to the exchange and development of the proposed intelligence assessment at issue, there is no reasonably segregable non-exempt information that can be disclosed from the drafts. Further, as described above, all descriptions of factual information in these drafts are non-segregable because they are inextricably intertwined with editorial judgments and intelligence considerations and thus are themselves part of the deliberative process. These documents are protected in full pursuant to Exemption 5.

38. Within the March 3 email, Exemption 5 was applied to a portion of the email exchange that consists of five sentences. In those sentences, an I&A analyst provided feedback on a draft of the proposed intelligence assessment, highlighting some of the feedback that was separately provided in edits and comments throughout the attached intelligence assessment draft. The redacted sentences include guidance for reviewing/interpreting the analyst's comments and directions/suggestions for additional data to include and an analytic section to add. As with the redline edits in the drafts discussed above, these suggestions during the nascent development of a proposed intelligence product may prove to be totally irrelevant upon further development of the analytic judgment, and revealing such information may mislead and confuse the public and may discourage candid communication at the beginning stages of I&A's intelligence evaluation and assessment process. I have conducted a line-by-line review of the March 3 email and determined that I&A segregated and released appropriate information, withholding only exempt information in the email.

EXEMPTION 3

39. Section 552(b)(3) of the FOIA provides that the FOIA does not require the release of matters that are specifically exempt from disclosure by statute, provided that such statutes: (A) require that the matters be withheld from the public in such a manner as to leave no discretion on this issue; or (B) establish particular criteria for withholding or refer to particular types of matter to be withheld. Review of the application of Exemption 3 statutes consists solely of determining that the statute relied upon qualifies as an Exemption 3 statute and that the information withheld falls within the scope of the statute. I have reviewed each draft of the proposed intelligence assessment and have determined that each contains information that falls squarely within the scope of both of the relevant withholding statutes.

40. The first applicable statute is Section 102A(i)(1) of the National Security Act of 1947, as amended by the Intelligence Reform and Terrorist Prevention Act of 2004 and codified at 50 U.S.C. § 3024(i), a recognized withholding statute. Section 102A(i)(1) states that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i). As an element of the Intelligence Community, I&A is required to protect intelligence sources and methods. *See* Exec. Order No. 12,333, § 1.6(d), 46 Fed. Reg. 59,941, 59,941 (Dec. 4, 1981), *amended by* E.O. 13,284, 68 Fed. Reg. 4077 (Jan. 23, 2003), E.O. 13,355, 69 Fed. Reg. 53,593 (Aug. 27, 2004), *and* E.O. 13,470, 73 Fed. Reg. 45,328 (July 30, 2008) (“The heads of elements of the Intelligence Community shall: . . . (d) [p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the Director”); Intelligence Community Directive 700 § E.2.a (“Heads of the IC elements shall: a. Protect national intelligence and intelligence sources, methods and activities from authorized disclosure, consistent with federal laws, regulations, Executive Orders and any other applicable policy”).

41. The second applicable statute is 6 U.S.C. § 121(d)(11), a statutory protection in the Homeland Security Act that is unique to I&A. This section directs the Secretary, acting through the Under Secretary for Intelligence and Analysis, to ensure that:

- (A) any material received pursuant to [the Homeland Security Act] is protected from unauthorized disclosure and handled and used only for the performance of official duties; and
- (B) any intelligence information under [the Homeland Security Act] is shared, retained, and disseminated consistent with the authority of the Director of National Intelligence to protect intelligence sources and methods under the National Security Act of 1947 and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

6 U.S.C. § 121(d)(11)(A)-(B). Each subparagraph of this statute qualifies as an Exemption 3 withholding statute.

42. Section 3024(i) and 6 U.S.C. § 121(d)(11) recognize the vulnerability of intelligence activities to countermeasures and the significance of the potential loss of valuable intelligence information to national policymakers and the Intelligence Community absent protections against unauthorized disclosure, regardless of the classification of such information.

43. The information I&A withheld pursuant to Exemption 3 and the above-listed statutes in each draft of the proposed paper falls within the scope of “intelligence sources and methods” and additionally was received pursuant to the Homeland Security Act. The withheld material is intelligence information that I&A acquired, developed, and used consistent with its authorities under the Homeland Security Act, as contemplated by 6 U.S.C. § 121(d)(11), and as a member of the Intelligence Community, as contemplated by 50 U.S.C. § 3024(i).

44. As applied to these drafts of the proposed intelligence assessment, I&A’s decision to withhold the information covered by Exemption 3 was first based on the need to protect the underlying sources of intelligence that I&A relied upon to form its analytical assessments and draft the proposed intelligence product at issue. Second, the withholdings protect information that would reveal the Intelligence Community’s methods, namely, its methods for identifying and countering violent extremists, including how these inform analytical insights. This includes, for example, information that would reveal common indicators displayed by those engaging in or preparing to engage in acts of domestic terrorism, drivers that if revealed may be evaded by violent extremist actors of various ideologies, and the Intelligence Community’s methodology of assessing the risks posed by these violent extremists. The remaining information withheld under

Exemption 3 addresses intelligence production methods, such as methods for intelligence analysis and analyst evaluations of confidence in their assessments.

45. Although no showing of harm is required, disclosure could be expected to lead to the identification of the sources upon which I&A relies for intelligence. To fulfill its national and homeland security missions, I&A collects information overtly and through publicly available sources. Exec. Order No. 12,333, 46 Fed. Reg. 59,941 (Dec. 4, 1981), as amended by E.O. 13,470, 73 Fed. Reg. 45,328 (July 30, 2008), § 1.7(i) (“The heads of . . . the Office of Intelligence and Analysis . . . shall: (1) Collect (overtly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support national and departmental missions”). In doing so, I&A must rely on information from a wide range of sources, including non-human sources, and must evaluate the credibility of those sources. Even where I&A may rely upon open source documents of a publicly-available nature, disclosure of these intelligence sources reveals I&A’s tradecraft, as well as I&A’s assessments of the relative value and credibility of an intelligence source.

46. For the foregoing reasons, I have determined that the drafts of the proposed intelligence assessment contain information that if disclosed would reveal certain intelligence sources and methods. I&A, therefore, relies on Exemption 3 to withhold all such information. I&A has reviewed the drafts of the proposed intelligence assessment and has determined that some non-exempt information in these drafts could be segregated and released in the event that no other exemption applied, but has not released such information because it is covered by Exemption 5 as described above.

EXEMPTION 6

47. Section 552(b)(6) of the FOIA permits redaction of personnel information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

48. The information that I&A withheld under Exemption 6 consists of information that does or could identify I&A personnel.

49. In the March 3 email, I&A withheld I&A personnel names, phone numbers, and email addresses.

50. With respect to the drafts of the proposed intelligence assessment, during the course of review, revision, and editing of the proposed intelligence assessment, I&A personnel reviewers marked the document with their initials alongside the comments they provided. This identifying information, especially in combination with other information that may be or in the future may become publicly available, could compromise the privacy and safety of these intelligence officials. Documents and records that may exist in the public domain, or become available through future disclosures, proper or improper, such as email signatures, correspondence, employment records, or substantive intelligence reporting may include personnel names or initials that could be compared with the personnel initials in the documents at issue in this litigation. Such compromise would constitute an unwarranted violation of personal privacy not connected to legitimate purposes of the FOIA. Further, release of such information does not shed light on how I&A performs its mission, nor is there any public interest in the disclosure of such information. I&A, therefore, relies on Exemption 6 to withhold all such personnel information.

CONCLUSION

51. For the reasons described above, I&A has withheld in full the drafts of the proposed intelligence assessment under FOIA Exemption 5 because they are deliberative and pre-decisional and has redacted a portion of the March 3 email on the same basis. I have determined that release of this information could chill candid discussions within I&A and interfere with the development of intelligence analysis and policy. Release could also create

public confusion by disclosing intelligence rationales and analysis that may were not ultimately adopted in a final product.

52. I&A has also withheld from the drafts information that concerns intelligence sources and methods, on the basis of FOIA Exemption 3, in conjunction with 50 U.S.C. § 3024(i) and 6 U.S.C. § 121(d)(11). The withheld information is directly related to the core functions of I&A as an element of the Intelligence Community and to the activities of I&A in furtherance of its intelligence mission. I have determined that release of the withheld information would reveal I&A's intelligence sources and methods; and would reveal techniques, procedures, and/or guidelines for law enforcement investigations.

53. Finally, I&A has withheld from the drafts and the email information about I&A personnel that would constitute an unwarranted invasion of personal privacy, on the basis of FOIA Exemption 6. The withheld information includes the initials (in the drafts) and the names, phone numbers, and email addresses (in the email) of I&A personnel. I have determined that release of that information could, alone or in combination with other information, reveal the identity of these personnel and compromise their personal privacy and safety.

54. The documents described herein have been carefully reviewed for reasonable segregation of non-exempt information, and I have determined that no additional segregation of meaningful information in the documents withheld in part can be made without disclosing information warranting protection under the law.

I certify, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct.

Executed this 18 day of April 2018 in Washington, D.C.

A handwritten signature in black ink, appearing to read "Arthur R. Sepeta", written over a horizontal line.

Arthur R. Sepeta
Chief
Privacy and Intelligence Oversight Branch
Office of Intelligence and Analysis
U.S. Department of Homeland Security