

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
AMERICAN IMMIGRATION)	
LAWYERS ASS'N,)	
)	
Plaintiff)	
)	Civil Action No. 16-2470 (TNM)
v.)	(ECF)
)	
DEP'T OF HOMELAND SEC., <i>et al.</i>)	
)	
Defendants.)	
_____)	

**MEMORANDUM OF POINTS AND AUTHORITEIS IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56(c) and LCvR 7(h), the Department of Homeland Security, *et al.* (“Defendants” or “CBP”), by and through the undersigned counsel, respectfully submit Memorandum of Points and Authorities in Support of Defendants’ Motion for Summary Judgment and in response to the Complaint filed by American Immigration Lawyers Association (“Plaintiff” or “AILA”) in this action under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (“FOIA”).

INTRODUCTION AND SUMMARY

Plaintiff filed this action seeking records pertaining to the phasing out of CBP’s Inspector’s Field Manual (“IFM”) and the implementation and phasing in of the Officer’s Reference Tool (“ORT”). The parties’ dispute focused around Chapters 11 and 12 of the ORT of the ORT, which are the only contents of the ORT that exist. CBP eventually produced almost

400 documents from both Chapter 11 and CBP's Policy Online Document Search (PODS).¹ After conferring and working cooperatively, the parties were able to eliminate the adequacy of CBP's search as an issue for briefing and narrow the number of disputed records to about seventy five documents. Some of these documents were withheld in full under FOIA Exemption 7(E) and most of the records were partially redacted under FOIA Exemptions 6, 7(C), and 7(E) also. CBP is entitled to summary judgment because it correctly relied on FOIA Exemptions 6 and 7(C) to redact the personally identifiable information of its employees' to protect their privacy. Likewise, CBP is entitled to summary judgment on its Exemption 7(E) withholdings because they are to law enforcement records addressing CBP's internal systems, procedures for assessing passengers' entry and other relevant guidelines, techniques and procedures that if released would reasonably be expected to risk circumvention of the law.

BACKGROUND

The ORT replaced the IFM as the primary reference tool utilized by CBP officers during the inspection and admission process. ECF No. 2 at 2-3, ¶5 ("Pl's Compl."). Both the defunct IFM and the ORT "address[] inadmissibility issues, standards for admission, and acceptable evidence . . . [i]t also detail[s] the inspection process, including deferred inspection. *Id.* at 4, ¶¶ 12-13. On July 10, 2013, AILA submitted a FOIA request to CBP "for records related to CBP's discontinuation of the use of the [IFM] and the implementation of the [ORT] in its place, and for a copy of the finalized and implemented portions of the ORT." *Id.* at 3, ¶ 6; *see also* Pl's Compl., Exhibit A. After CBP responded to Plaintiff's request, *see* Pl's Compl. at 3, ¶ 7, the

¹ PODS is a CBP database that serves as a policy management tool to provide CBP personnel with convenient copies of policy documents.

parties tried to resolve the issues without success, leading to Plaintiff filing this action. *Id.* at 3-5, ¶¶ 7-14. In its complaint, Plaintiff alleges that it did not receive a response from CBP, that it had exhausted its administrative remedies, that Defendant had failed to conduct an adequate search for records and that it had unlawfully withheld records. *See* Pl’s Compl., Counts 1 and 2.²

As indicated earlier, CBP had discontinued the use of the IFM in April 2013, prior to Plaintiff submitting its FOIA request and the ORT, “a comprehensive ‘how to’ manual detailing official CBP policies and procedures for CBP’s admissibility mission[,]” was and still is being developed and consisted of Chapters 11 and 12 only. *See* ECF No. 16, Exhibit A, Declaration of James Ryan Hutton at ¶¶ 5-8 (“Hutton Decl.”). “Chapter 11 [] is an index that provides a list of various policies, memoranda, guides, manuals, musters and other related documents” and “Chapter 12 [] is an index that lists the laws, regulations, and government systems that govern the admissibility of passengers at our ports of entry.” *Id.*³ In March and April 2017, Defendant responded with responsive records, including the aforementioned indices. *Id.*, Exhibit B, First Declaration of Patrick Howard at ¶ 7.

CBP then moved for summary judgment, *see* ECF No. 16, which the Court denied. *See* ECF No. 30 at 4-5 (“The Government is obligated to review and disclose responsive records to include the underlying policies or documents that make up the ORT – unless the records fall into

² Recently, the parties conferred in an attempt to narrow the scope of this litigation. As a result, the parties were able to reduce the number of disputed documents and eliminating the issue of the adequacy of CBP’s search.

³ This numbering “was based on an expected overall framework of the ORT.” Hutton Decl., ¶ 6.

one of FOIA's statutory exemptions or there is another legally recognized objection to this disclosure." Given the Court's ruling, the parties conferred, leading to the production of 363 of the 371 records that make up Chapter 11. See ECF No. 43, Third Declaration of Patrick Howard at ¶¶ 14 ("3d Hardy Decl."); see also, Exhibit A, Fourth Declaration of Patrick Howard at ¶ 7 ("4th Howard Decl."). In addition, three records were withheld in full and another five records were referred to the agencies that originated them for direct response to Plaintiff. 3d Howard Decl. at ¶¶ 21-23. Due to the massive nature of records hyperlinked to Chapter 12, see *id.* at ¶¶ 25-30,⁴ the parties conferred and Plaintiff focused its attention on the PODS database.

Thus, based on the parties' discussions, the number of records deemed responsive to Plaintiff's admissibility focus was narrowed and CBP partially released 30 documents that were from the PODS database in Chapter 12 and withheld three documents in full. 4th Howard Decl. at ¶ 8. After Defendant released almost 400 documents, the parties adopted a plan to narrow the number of disputed records with Plaintiff agreeing not to challenge all of the withholdings, resulting in a reduction of the disputed records to approximately seventy five documents. *Id.* at ¶¶ 10-11. In other words, after the parties had reduced the number of disputed records to approximately 143 documents, CBP unredacted seventy two records and, of those, Plaintiff indicated it would challenge only four documents. Defendant is unable to reasonably unredact any additional records.

⁴ Just one database of Chapter 12 "contains information on every single traveler who has ever entered the United States and presented himself or herself for inspection at a port of entry. This not only includes aliens who seek admission into the United States, but also U.S. citizens who have ever traveled abroad. Requesting that CBP provide content behind the links to Chapter 12, *i.e.*, contents of 17 U.S. government databases, is unreasonable to the point of absurdity and unduly burdensome to the point of impossibility. As such, CBP provided the list of hyperlinks alone." 3d Howard Decl. at ¶ 30.

CBP withheld information in part and in full pursuant to FOIA Exemption (b)(6), (b)(7)(C), and (b)(7)(E). Generally, CBP withheld “personally identifiable information such as names, phone numbers, email addresses, and work addresses of CBP employees whose names have been provided as points of contact for the directives and policies” pursuant to FOIA Exemptions 6 and 7(C). 4th Howard Decl. at ¶ 15. However, CBP “did not [] apply Exemptions (b)(6) and (b)(7)(C) as a categorical matter to all such information” as it “released names of senior officials whose identities are widely known among the public” except for the “handwritten signatures of senior officials at CBP, whose names were not otherwise redacted.” *Id.* For example, regarding Chapter 11, Defendant redacted “the signatures, names and/or Identifying Information of [its] Personnel because disclosure of that information in connection with alleged criminal activity and/or investigations would unwarrantably invade their privacy interests.” *Id.*, Attachment B at 48. In the PODS production, under FOIA Exemptions (b)(6) and (b)(7)(C) only, CBP withheld “the signatures, names and/or identifying information of [its] Personnel” for the same reasons in portions of the Trade NAFTA (TN) Computer Systems Analysts (CSA) document. 4th Howard Decl., Attachment B at 17.

Similarly, under FOIA Exemption 7(E), CBP redacted information dealing with “codes and functionalities,” “training materials,” “group listserves,” “methods of processing passengers at ports of entry,” and “information related targeting.” 4th Howard Decl. at ¶¶ 21(i) - 21(v). For example, CBP “applied [FOIA] Exemption (b)(7)(E) to information regarding admissibility of Trade NAFTA computer systems analysts [because [d]isclosure of such information would advise potential violators of CBP’s law enforcement techniques and procedures, [and] thereby enabling them to circumvent the law, avoid detection, and evade apprehension . . . regarding

ongoing investigations.” 4th Howard Decl., Attachment B at 17.

CBP also redacted under FOIA Exemption 7(E), portions of a document called Electronic System for Travel Authorization (“ESTA”) and Visa Waiver Program (“VWP”), which covers “techniques and internal agency investigative practices [that] would advise potential violators [and] thereby enabling them to circumvent the law, avoid detection, and evade apprehension Moreover, revealing information regarding ongoing investigations would thwart CBP’s current law enforcement efforts.” 4th Hardy Decl., Attachment B at 60; *see also id.* at 131, 132, 196, 256 (for other similar ESTA and VWP redactions under FOIA Exemption 7(E)). CBP withheld portions of documents addressing Paroling Arriving Refugees and Diplomats under FOIA Exemption 7(E) as “both law enforcement techniques and internal agency investigative practices” because release could adversely affect future investigations and operations by advising potential violators of CBP’s law enforcement techniques and procedures and thereby enabling them to circumvent the law, avoid detection, and evade apprehension. *See id.* at 152-53.

CBP also redacted information about its “procedures for denials and revocations of trusted traveler program memberships. . . [the] [d]isclosure of [which] information would advise potential violators of [CBP’s] law enforcement techniques and procedures, thereby enabling them to circumvent the law, avoid detection, and evade apprehension[.]” including in some “ongoing investigations.” 4th Hardy Decl., Attachment B at 241-242.⁵ For the PODS production, CBP “applied [FOIA] Exemption (b)(7)(E) to withhold a document titled SIGMA

⁵ The Form I-94 or “Arrival/Departure Record . . . shows the terms of your admission, including your legal status, length of time you may stay and expected departure date. Upon your admission to the United States at a port of entry, you will be issued a Form I-94.” <https://studyinthestates.dhs.gov/2014/08/what-is-the-form-i-94> (visited November 13, 2019).

Release 41 Enhancements Memo, which details changes to functionalities in CBP systems. “Disclosure of such information could be used to locate, access, and navigate internal law enforcement computer systems and/or databases and risk compromising the integrity of CBP systems. 4th Howard Decl., Attachment B, PODS Index at 16. Defendant also withheld portions of a document called Authorization for Visa Issuance and Admission for Certain Inadmissible Nonimmigrant aliens under FOIA Exemptions 6, 7(C), and 7(E). *Id.*, Attachment B at 15-16. The justification for the FOIA Exemption 7(E) redaction is that the information is “both law enforcement techniques and internal agency investigative practices and could adversely affect future investigations and operations . . . [by] enabling [Applicants] to circumvent the law, avoid detection, and evade apprehension.” *Id.* The 4th Howard Decl. and attachments more fully set forth the bases for CBP’s withholdings and redactions.

STANDARD OF REVIEW

a. General Summary Judgment Standard

Where no genuine dispute exists as to any material fact, summary judgment is required. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). A genuine issue of material fact is one that would change the outcome of the litigation. *Id.* at 247. “The burden on the moving party may be discharged by ‘showing’ -- that is, pointing out to the [Court] -- that there is an absence of evidence to support the non-moving party’s case.” *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1563 (Fed. Cir. 1987). In *Celotex Corp. v. Catrett*, the Supreme Court held that, in responding to a proper motion for summary judgment, the party who bears the burden of proof on an issue at trial must “make a sufficient showing on an essential element of [his] case” to establish a genuine dispute. 477 U.S. 317, 322-23 (1986).

b. Summary Judgment Standard as Applied to FOIA Cases

FOIA cases are appropriately resolved at summary judgment. *See Brayton v. Office of U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011). For purposes of summary judgment, an agency's decision to withhold information from a FOIA requester is subject to *de novo* review by the Courts. *Hayden v. National Security Agency Cent. Sec. Serv.*, 608 F.2d 1381, 1384 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 937 (1980). In a FOIA suit, an agency is entitled to summary judgment once it demonstrates that no material facts are in dispute and, if applicable, that each document that falls within the class requested has been produced, is unidentifiable, or is exempt from disclosure. *Students Against Genocide v. Dept. of State*, 257 F.3d 828, 833 (D.C. Cir. 2001); *Weisberg v. U.S. Dept. of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980).

“Under the Federal Rules of Civil Procedure, a motion for summary judgment cannot be ‘conceded’ for want of opposition. The burden is always on the movant to demonstrate why summary judgment is warranted. The nonmoving party’s failure to oppose summary judgment does not shift that burden. The District Court must always determine for itself whether the record and any undisputed material facts justify granting summary judgment.” *Winston & Strawn, LLP v. McLean*, 843 F.3d 503, 505 (D.C. Cir. 2016) (internal quotations omitted).

An agency may defeat the summary judgment requirements in a FOIA case by providing the Court and the Plaintiff with affidavits or declarations and other evidence, which show that the documents in question were produced or are exempt from disclosure. *Hayden v. NSA*, 608 F.2d 1381, 1384, 1386 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 937 (1980); *Church of Scientology v. U.S. Dep’t of Army*, 611 F.2d 738, 742 (9th Cir. 1980); *Trans Union LLC v. FTC*, 141 F.Supp.2d 62, 67 (D. D.C. 2001) (summary judgment in FOIA cases may be resolved solely on the basis of

agency affidavits “when the affidavits describe ‘the documents and the justifications for non-disclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.’”) (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)). See also *Public Citizen, Inc. v. Dep’t of State*, 100 F.Supp.2d 10, 16 (D. D.C. 2000), *aff’d in part, rev’d in part*, 276 F.3d 634 (D.C. Cir. 2002).

ARGUMENT

a. CBP Properly Redacted Information under FOIA Exemptions 6 and 7(C)

CBP lawfully relied on FOIA Exemptions 6 and 7(C) to redact and protect “personally identifiable information such as names, phone numbers, email addresses, and work addresses of CBP employees whose names have been provided as points of contact for the directives and policies released to plaintiffs[]” as well as “to handwritten signatures of senior officials at CBP, whose names were not otherwise redacted.” 4th Howard Decl. at ¶¶15-18.

Although the records that an agency locates in response to a request for records ordinarily must be produced, FOIA authorizes agencies to withhold certain documents and information; namely, those that satisfy the requirements of any of the nine statutory exemptions. See *Milner v. Dep’t of Navy*, 562 U.S. 562, 564 (2011). Exemption 6 shields information about individuals in “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 7(C) protects law enforcement records or information when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). For FOIA Exemption 6 to apply, the information at issue must be maintained in a government file

and “appl[y] to a particular individual.” *Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982). For FOIA Exemption 7’s threshold, “[a] record is considered to have been compiled for law enforcement purposes if it was created or acquired in the course of an investigation related to enforcement of federal laws and nexus between the investigation and one of the agency’s law enforcement duties is based on information sufficient to support at least a colorable claim of its rationality.” *Quinon v. FBI*, 86 F.3d 1222, 1228 (D.C. Cir. 1996).

Once these thresholds are met, FOIA Exemption 6 requires the agency to balance the individual’s right to privacy against the public interest in disclosure, *see Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991), and FOIA Exemption 7(C) embodies heightened privacy protections. *See DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989); *NARA v. Favish*, 541 U.S. 157, 165-66 (2004). “[T]he privacy inquir[ies] of Exemptions 6 and 7(C) are essentially the same,” although Exemption 7(C) sets a lower invasion threshold to justify withholding. *Judicial Watch, Inc. v. DOJ*, 365 F.3d 1108, 1125 (D.C. Cir. 2004); *see also ACLU v. DOJ*, 655 F.3d 1, 6 (D.C. Cir. 2011) (Exemption 7(C) provides similarly, albeit broader, privacy protections and “establishes a lower bar for withholding material.”). Privacy is of particular importance in the FOIA context because disclosure under FOIA is tantamount to disclosure to the public at large. *See Painting & Drywall Work Preservation Fund, Inc. v. HUD*, 936 F.2d 1300, 1302 (D.C. Cir. 1991). Thus, the Supreme Court has adopted a broad construction of the privacy interests protected by Exemptions 6 and 7(C). *See Reporters Comm.*, 489 U.S. at 763.

By contrast, the courts have narrowly construed the public interest in disclosure of information. The “only relevant ‘public interest in disclosure’ to be weighed in this balance is the extent to which disclosure would serve the ‘core purpose of the FOIA,’ which is contribut[ing] significantly to public understanding of the operations or activities of the government.” *Dep’t of Defense v. FLRA*, 510 U.S. 487, 495 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775); *see also Lepelletier v. FDIC*, 164 F.3d 37, 46-47 (D.C. Cir. 1999). (“[T]he only relevant public interest in the FOIA balancing analysis [is] the extent to which disclosure of the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is up to.”). “Information that ‘reveals little or nothing about an agency’s own conduct’ does not further the statutory purpose.” *Beck v. DOJ*, 997 F.2d 1489, 1492 (D.C. Cir. 1993). Plaintiff bears the burden of demonstrating that the release of the withheld information would serve this interest. *See Carter v. Dep’t of Commerce*, 830 F.2d 388, 391-92 & nn.8 & 13 (D.C. Cir. 1987).

In light of the related nature of the inquiries under Exemptions 6 and 7(C), CBP mostly applied the exemptions here jointly and defends them as such. Here, CBP asserted Exemption 7(C) (along with Exemption 6) to protect names and/or identifying information of employees as well as handwritten signatures of senior officials whose names were not otherwise redacted. *See* 4th Howard Decl. at ¶¶ 15-18. The privacy interests of civilian federal employees includes the right to control information related to themselves and to avoid disclosures that “could conceivably subject them to annoyance or harassment in either their official or private lives.” *Lesar v. Dep’t of Justice*, 636 F.2d 472, 487 (D.C. Cir. 1980); *see also Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F.Supp.2d 100, 116 (D. D.C. 2005). This Court has recognized a

substantial privacy interest under Exemption 6 implicated by release of the “name, telephone number, [and] e[mail] address [of] those individuals responsible for the particular, sensitive task of monitoring snapshots of the” CBP’s law enforcement database because it “would subject those individuals to targeted, unauthorized, and potentially malicious inquiries about their work; even harassment.” *Long v. Immigration & Customs Enf’t*, 279 F.Supp.3d 226, 244 (D. D.C. 2017); *see also Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 2006 U.S. Dist. Lexis 94615 at 30 (D. D.C. 2006) (Defendant has properly redacted the names of CBP and DHS employees pursuant to Exemption 6).

“Redaction of the names of federal law enforcement officers, support personnel and other employees under similar circumstances routinely is upheld.” *Concepcion v. FBI*, 606 F.Supp.2d 14, 39 (D. D.C. 2009); *see also Roseberry-Andrews v. Dep’t of Homeland Sec.*, 299 F.Supp.3d 9, 31-32 (D. D.C. 2018) (“Pursuant to Exemption 7(C), DHS withheld the names and personally identifiable information of ICE employees who ‘handle a myriad of tasks relating to the enforcement of federal immigration law.’”); *Lasko v. Dep’t of Justice*, 684 F.Supp.2d 120, 132 (D. D.C. 2010) (identities of DEA Special Agents and laboratory personnel, and state and local law enforcement officers); *Willis v. Dep’t of Justice*, 581 F.Supp.2d 57, 76 (D. D.C. 2008) (identities of federal and local law enforcement personnel properly redacted pursuant to FOIA Exemption 7(C)). Thus, in light of the foregoing, the Court should grant CBP’s motion for summary judgment regarding its reliance on FOIA Exemptions 6 and 7(C) to redact the names and other identifying information of its employees.

b. CBP Properly Redacted Information under FOIA Exemption 7(E)

CBP withheld approximately 20 documents in full and redacted portions of the rest of the documents from the Chapter 11 and PODS production under FOIA Exemption 7(E). Although “CBP is constrained in describing the techniques, procedures, and guidelines . . . to avoid revealing information . . . not generally known to the public[,]” 4th Howard Decl. at ¶ 19, it generally withheld information about the codes and functionalities of its systems, training material, email addresses of group listserves, methods of processing passengers, and how it assesses risks. *See generally id.* at ¶¶ 21(i)-21(v). The theme of these full and partial redactions is that they protect information not generally known to the public that CBP uses to perform its law enforcement functions and disclosure would risk circumvention of the law. *Id.*

Exemption 7(E) protects law enforcement records or information when disclosure “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). CBP is a law enforcement agency for FOIA Exemption (b)(7)(E) purposes. *McRae v. DOJ*, 869 F.Supp.2d 151, 169 (D. D.C. 2012) (holding that CBP “codes, case numbers, and other computer information pertaining to the TECS, NCIC, and databases...are techniques and procedures for law enforcement investigation.”); *Touarsi v. DOJ*, 78 F.Supp.3d 332, 349 (D. D.C. 2015) (same); *Gamboa v. Exec. Office for United States Attys.*, 65 F.Supp.3d 157, 169 (D. D.C. 2014) (same).

This exemption generally protects information that would reveal law enforcement techniques and procedures that are not well known to the public as well as non-public details about the use, application, or deployment of well-known techniques and procedures. *See, e.g.*,

Soghoian v. DOJ, 885 F.Supp.2d 62, 75 (D. D.C. 2012) (protecting non-public details about use of electronic surveillance because disclosing what information is collected during surveillance, how it is collected, and when it is not collected could allow criminals to evade detection); *McGehee v. DOJ*, 800 F.Supp.2d 220, 236-37 (D.D.C. 2011) (finding that Exemption 7(E) does not require that techniques be unknown to public where release of non-public details of such techniques would allow them to be circumvented).

There is a Circuit split regarding whether the phrase “if such disclosure could reasonably be expected to risk circumvention of the law” applies only to “guidelines” or also applies to “techniques and procedures.” *Compare Pub. Empl. For Envtl. Responsibility v. Int’l Boundary Water Comm’n (“PEER”)*, 740 F.3d 195, 204 & n.4 (D.C. Cir. 2014) (saying that “it is not clear” that the issue of whether an agency needs to show that disclosure of a technique or procedure could reasonably be expected to risk circumvention of the law “matters much in practice” given the “low bar” for the circumvention requirement) *with Allard K. Lowenstein Int’l Human Rights Project v. DHS*, 626 F.3d 678, 681 (2d Cir. 2010) (finding that the “sentence structure of Exemption (b)(7)(E)” and “basic rules of grammar and punctuation dictate that the qualifying phrase modifies only the . . . ‘guidelines’ clause” and that “[a]ny potential ambiguity in the statute’s plain meaning is removed . . . by the history of the statute’s amendments”). “[T]he text of exemption 7(E) is much broader” than other exemptions that “set a high standard.” *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1192-1194 (D.C. Cir. 2009) (Even if withheld documents “are not ‘how-to’ manuals for law-breakers, the exemption is broader than that.”).

“Rather than requiring a highly specific burden of showing how the law will be circumvented, exemption 7(E) only requires that the [agency] ‘demonstrate[] logically how the

release of [the requested] information might create a risk of circumvention of the law.’’ *See id.* Therefore, Exemption 7(E) “exempts from disclosure information that could increase the risks that a law will be violated or that past violators will escape legal consequences.” *See id.* at 1193. Here, the 4th Howard Decl. meets this relatively low bar of showing a logical relationship between disclosure and risk of circumvention. To mention just a few, some of the records withheld in full under FOIA Exemption 7(E) are Hidden I-94 Class of Admission Code, *see* 4th Howard Decl., Attachment B at 37, Create-Manage Government User Profile Guide, *id.* at 46, Federal Supervisor SEVIS Profile Completion Job Aid, *id.* at 78, Instruction 044-01-001 Implementing Department of Homeland Security Immigration, *id.* at 123, MOU-US Coast Guard and CBP Regarding the Detention of Certain High-Risk Crewmembers, *id.* at 137. There are also documents where portions were redacted in full under FOIA Exemption 7(E). *Id.*

With regard to internal systems and admission codes, for example, CBP redacted “the names of certain databases not known to public, internal system codes, screenshots, functionalities, and information on how to use [its] law enforcement systems . . . [where] [d]isclosure of such information could be used to locate, access, and navigate internal law enforcement computer systems and/or databases, reveal the results of database queries that CBP officers perform and risk compromising the integrity of CBP systems.” 4th Howard Decl. at ¶ 21(i). The release of computer screen transaction codes, computer transaction codes and computer function codes are exempt under 7(E) because it “could reasonably be expected to risk circumvention of the law.” *Strunk v. Dep’t of State*, 905 F.Supp.2d 142, 148 (D. D.C. 2012); *Miller v. Dep’t of Justice*, 872 F.Supp.2d 12, 29 (D. D.C. 2012) (withholding TECS numbers relating to procedures concerning use of law enforcement resources and databases and TECS

case program and access codes on the ground that “disclosing [them] would expose a law enforcement technique, promote circumvention of the law by allowing criminals to conceal their activity, or allow fraudulent access to DEA’s databases.”).

The same goes for documents pertaining to training such as Federal Supervisor SEVIS Profile Completion Job Aid. 4th Howard Decl., Attachment A at 78. “Releasing information about training and the associated equipment procedures ‘is tantamount to releasing information about the actual employment of the procedures and techniques themselves.’” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 160 F.Supp.3d 226, 243 (D. D.C. 2016); *Elec. Privacy Info. Ctr. v. Customs & Border Prot.*, 2017 U.S. Dist. Lexis 42800 **10-11 (D. D.C. 2017) (noting that it was sufficient that there is a logical connection between the disclosure of records detailing the function, access, navigation, and capabilities that aid in the enforcement of customs and immigration laws and the risk that disclosure could facilitate circumvention of the law.). Documents that were withheld under FOIA Exemption 7(E) to protect how passenger risks are assessed and processed were also lawfully withheld to prevent circumvention of the law by giving passengers direction on how to “alter behavior, change associations, or develop countermeasures to thwart the effectiveness of CBP’s efforts.” *Showing Animals Respect & Kindness*, 730 F. Supp. 2d at 199-200 (finding that files revealing “specific details of surveillance techniques, including equipment used and location and timing of use,” was exempt under 7(E) because it “could compromise [the agency’s] ability to conduct future investigations”).

Other documents such as Guidance on Executive Order Protecting the Nation from Foreign Terrorist Entry were partially redacted under FOIA Exemption 7(E) to protect both law

enforcement techniques, procedures, and tactics as well as internal practices because disclosure of such information would advise potential violators by enabling them to circumvent the law, avoid detection, and evade apprehension. 4th Howard Decl., Attachment B at 94-95. This Court has held that this threshold is clearly met when the withheld information was compiled for law enforcement purposes and that the records related to the vendor were clearly compiled to further the law enforcement investigation into a terrorist attack. *AP v. FBI*, 265 F.Supp.3d 82, 98-99 (D. D.C. 2017); *PEER*, 740 F.3d at 205 (Terrorists or criminals could use the information in the emergency action plans to thwart rescue operations following a dam failure or to obstruct attempts to investigate the source of such a failure. Disclosure of the emergency action plans would therefore risk circumvention of the law.”). Therefore, CBP’s withholdings and redactions under FOIA Exemption 7(E) are lawful and summary judgment is warranted.

c. CPB has Complied with FOIA’s Segregability Requirement

Under FOIA, if a record contains information exempt from disclosure, any “reasonably segregable,” non-exempt information must be disclosed after redaction of the exempt information. 5 U.S.C. § 552(b). Non-exempt portions of records need not be disclosed if they are “inextricably intertwined with exempt portions.” *Mead Data*, 566 F.2d at 260. To establish that all reasonably segregable, non-exempt information has been disclosed, an agency need only show “with ‘reasonable specificity’” that the information it has withheld cannot be further segregated. *Armstrong v. Exec. Office of the President*, 97 F.3d 575, 578-79 (D.C. Cir. 1996); *Canning v. DOJ*, 567 F.Supp.2d 104, 110 (D. D.C. 2008). An agency is “entitled to a presumption that [it] complied with the obligation to disclose reasonably segregable material.” *Sussman*, 494 F.3d at 1117.

Here, “all information CBP has withheld is exempt from disclosure pursuant to a FOIA exemption or is not reasonably segregable-whether because it is so intertwined with protected material that segregation is not possible, or its release would have revealed the underlying protected material, or segregation is not required because the withheld material is attorney work product.” 4th Howard Decl. at ¶20. In responding to Plaintiff’s request, “CBP analysts and attorneys reviewed each release of records line-by-line to confirm that any withholdings were proper, examine whether any discretionary waiver of an exemption was warranted, and determine whether any segregable, non-exempt information could further be released. All reasonably segregable portions of the relevant records have been released to AILA.” *Id.*

CONCLUSION

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

November 14, 2019

Respectfully submitted,

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