IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS UNITED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 18-1862-RDM
	)	
UNITED STATES DEPARTMENT OF STATE,	)	
	)	
Defendant.	)	

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR,
IN THE ALTERNATIVE, FOR *IN CAMERA* REVIEW**

Plaintiff, Citizens United, through its undersigned counsel, hereby moves this Court, pursuant to Rules 7(b) and 56(a), Federal Rules of Civil Procedure, and Local Rule 7(h), for entry of an order granting summary judgment to plaintiff on its claims herein, and (i) enjoining the defendant from continuing to withhold the redacted portions of the documents identified by defendant as being responsive to plaintiff's June 22, 2018 Freedom of Information Act ("FOIA") request, and (ii) requiring defendant to produce and deliver promptly to plaintiff complete copies of the responsive documents.

For reason therefor, plaintiff submits that, aside from differing characterizations of the subject documents identified by plaintiff as document numbers 3, 4, 6, 7, and 9, there are no disputed material facts regarding those documents, and that, as a matter of law, the responsive records are not subject to the exemptions as claimed by defendant and are subject to production under FOIA.

In addition to this motion, plaintiff is submitting its Memorandum of Points and Authorities in Support of this Motion, Exhibit A (Declaration of Jeremiah L. Morgan, one of

plaintiff's attorneys herein), Exhibit B (Declaration of David N. Bossie, president of Citizens United), Exhibit C (House Permanent Select Committee on Intelligence, Majority Staff Memorandum (Feb. 2, 2018)), Exhibit D (the records produced in this case in whole or with redactions), together with a Statement of Material Facts as to Which No Genuine Exists, and proposed forms of order.

In the alternative, plaintiff moves for an order requiring defendant to furnish to the Court for *in camera* review unredacted versions of the five partially or fully withheld documents. For reason therefor, plaintiff avers that there are issues in this case concerning the exemptions claimed by defendant for the contents of the documents withheld by defendant, and *in camera* review of those documents by this Court would be an efficient and fair way to resolve those issues. A second proposed form of Order for *in camera* review is also submitted.

WHEREFORE, plaintiff prays that its motion be granted and that this Court order the defendant to comply forthwith with FOIA by (i) enjoining the defendant from continuing to withhold any portion of the documents which defendant has identified as responsive to plaintiff's June 22, 2018 FOIA request, and (ii) requiring defendant promptly to produce and deliver to plaintiff complete copies of those documents. Alternatively, plaintiff requests that this Court enter an Order requiring defendant to furnish to the Court for *in camera* review the documents that have been withheld in whole or in part.

Respectfully submitted,

/s/

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Dated: June 7, 2019

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Defendant.	)	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR *IN CAMERA* REVIEW

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INTRODUCTION

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Plaintiff Citizens United ("CU"), a nonprofit, tax-exempt organization, seeks injunctive relief against defendant, the U.S. Department of State ("State Department"), to obtain certain records responsive to a FOIA request submitted on June 22, 2018, concerning a briefing conducted at the State Department by Christopher Steele on October 11, 2016.

The State Department did not produce any documents responsive to CU's FOIA request until after commencement of this litigation. Since then, the government made three separate disclosures of certain responsive documents. The State Department has completed its disclosures and has refused to disclose one document in its entirety and has withheld portions of four documents. Plaintiff challenges the exemptions relied upon by defendant.

PARTIES AND JURISDICTION

Citizens United is a nonprofit educational organization incorporated under the laws of Virginia, and is tax-exempt under section 501(c)(4) of the Internal Revenue Code of 1986 as a social welfare organization. CU is engaged in a variety of research and public education activities, seeking to advance conservative ideas and positions on issues, including national defense, the free enterprise system, belief in God, and the family as the basic unit of society. In support of those activities, CU produces and distributes information, including producing documentary films on matters of public importance. CU regularly requests public records from federal agencies so that it can disseminate its findings to the public. Complaint ¶ 3.

The State Department is a department in the Executive Branch of the United States Government and is an agency within the meaning of 5 U.S.C. § 552(f), established by statute and charged with responsibility for, *inter alia*, assisting in the conduct of relations between the

United States and foreign governments, including negotiations, agreements, and treaties. *See* Complaint ¶ 4. The State Department has possession of and control over the records, memoranda, reports, documents, publications, and similar papers and files sought by plaintiff in this action and is responsible for fulfilling CU's FOIA request at issue herein. *Id.*

This Court has both subject matter jurisdiction over this action and personal jurisdiction over defendant pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. *See* Complaint ¶ 1.

STATEMENT OF FACTS

This is a FOIA case for State Department records that bear on an abuse of power which could overshadow the Watergate scandal. As noted historian Victor Davis Hanson has framed it, "There are many elements to what in time likely will become recognized as the greatest scandal in American political history, marking the first occasion in which U.S. government bureaucrats sought to overturn an election and remove a sitting U.S. president." V. Hanson, "Autopsy of a Dead Coup," *American Greatness* (Feb. 17, 2019).

During the 2016 general election, a law firm working for both the Democratic National Committee and Hillary Clinton's presidential campaign hired an outside research firm, Fusion GPS, to conduct opposition research on Clinton's opponent, Donald Trump. Fusion GPS then paid a British research firm, Orbis Business Intelligence, founded by former British MI6 agent Christopher Steele, to create a set of memoranda on Trump known as the "Steele dossier." Steele then peddled this information to the media and various U.S. government officials and was "keen to see this information come to light prior to November 8" — the date of the 2016 presidential election. Bossie ¶19. Generally, opposition research is a normal function of

political campaigns. However, the abuse of power in this case involves how senior government officials used that Steele dossier.

The FOIA request filed by Citizens United now before this Court has already led to the release of records by the State Department that have revealed profoundly embarrassing information about the operation of the FBI and the Department of Justice ("DOJ") in the period prior to the presidential election on November 8, 2016. Although even more information still is being withheld, the records already released about the Steele Briefing at the State Department on October 11, 2016 demonstrate conclusively not only that the famous "Steele dossier" was both politically motivated and unreliable, but it appears that the FBI knew it to be so. This information that came into the hands of high-level State Department officials was transmitted to high-level officials at the FBI prior to the Department of Justice's first application to the FISA Court for a warrant to surveil members of the Trump presidential campaign, based in large part on representations of the reliability of that same Steele dossier.

It is bad enough when the government's vast surveillance powers are used against an ordinary citizen. But when those powers are directed against those participating in a federal election — here, a presidential campaign — it constitutes a threat to the republic itself.

The release of records by the State Department has undermined further the legitimacy of the Steele dossier, and has had an explosive effect with Congress, the media, and the American people. Those records exposed the falsity of statements by government officials, falsity in representations in the FISA initial and renewal applications, and falsity in much of the media's reporting about the basis for the investigation into the Trump Campaign, the Trump Transition, and the Trump Administration. No doubt the records released by the State

Department in response to CU's request will play prominently in investigations into multiple frauds that may have been perpetrated upon the Foreign Intelligence Surveillance Court.

As prominent investigative reporter John Solomon reported, when the State Department records were released to Citizens United:

> If ever there were an admission that taints the FBI's secret warrant to surveil Donald Trump's campaign, it sat buried for more than 2 1/2 years in the files of a high-ranking State Department official. [J. Solomon, "Steele's stunning pre-FISA confession: Informant needed to air Trump dirt before election," *The Hill* (May 7, 2019).]

Equally prominent investigative reporter Sarah A. Carter reported:

> The dossier served as the backbone of the Trump ousting operation and was the bulk of evidence for the FBI to gain a FISA on short-lived Trump campaign volunteer Carter Page.... According to a memo obtained by Citizens United, Steele confessed in a meeting with [DAS] Kavalec that his dossier was in fact political and he was planning on releasing before the November presidential elections. [S. Carter, "Docs Reveal FBI Allowed British Spy's False Intel to Guide Bureau's Operation against Trump," *SaraCarter.com* (May 9, 2019).]

As this memorandum is being finalized, new developments about what the FBI and the DOJ knew, and when they knew it, are breaking virtually every day. It is being reported that U.S. Attorney John Durham has been designated by Attorney General William Barr to investigate the origins of the Trump-Russia investigation, including the use of the FISA process. *See* D. Chaitin, "Christopher Steele will talk to John Durham and prove FBI lied to Congress, Joe DiGenova says," *Washington Examiner* (June 5, 2019). *See also* D. Bongino, "Five Crucial Questions for Christopher Steele," FoxNews (June 6, 2019).

If the documents that were already disclosed have proven to be as profoundly important as they were reported to be, the question is raised about what additional records might show. The suspicion is also raised that these withheld records may contain even bigger bombshells

that could expose even greater levels of duplicity and corruption within our government. Although the number of records in dispute is small — seven partially redacted pages and one other record of unknown length — the government has claimed some or all of these records to be exempt from disclosure on no fewer than 73 separate bases. These are the records that Citizens United seeks to have released.

CHRONOLOGY

1. FISA Application. On October 21, 2016, the FBI and the DOJ submitted a FISA application to the FISC, requesting a surveillance order for Trump campaign volunteer Carter Page. Bossie Declaration ¶ 25. Page was a subject of some portions of the Steele dossier. Bossie Declaration ¶ 24. The FISA application relied heavily on the Steele dossier, as shown by a memorandum dated January 18, 2018 by the staff of the House Permanent Select Committee on Intelligence ("HPSCI"), which stated "[FBI] Deputy Director [Andrew] McCabe testified before the Committee in December 2017 that no surveillance warrant would have been sought from the FISC without the Steele dossier information." Exhibit C, HPSCI Memo (Jan. 18, 2018) at C3.

2. Disclosure of Steele Briefing. In testimony before the Senate Intelligence Committee on June 20, 2018, Assistant Secretary of State Victoria Nuland revealed that she had seen excerpts from the Steele dossier in July 2016, and an October 2016 briefing by Christopher Steele occurred at the State Department.

3. CU's June 22, 2018 FOIA Request. On June 22, 2018, CU submitted an online FOIA request to the State Department seeking the disclosure of all records in the possession or control of the State Department, dated or created between September 1, 2016 and November

30, 2016, concerning or relating to a briefing given by former British MI6 agent Christopher Steele at the State Department in October 2016, shortly before the November 2016 general presidential election. Bossie Declaration ¶ 14. Although acknowledging receipt of CU's FOIA request, the State Department never responded substantively to CU's FOIA request prior to the filing of this suit. *See* Complaint ¶¶ 6-11 and Complaint Exhibits A-C. Morgan Declaration ¶ 3.

4. CU's Suit Filed. Because the State Department never responded substantively to CU's FOIA request, CU was forced to file this lawsuit to obtain the requested records on August 8, 2018. Morgan Declaration ¶ 3. The Complaint requested that the State Department be required to provide a substantive response to the FOIA request, including any responsive documents required to be produced under FOIA. The State Department admitted that it had not yet even begun to produce any records in response to CU's FOIA request. Defendant's Answer ¶ 11.

5. Litigation-Related Release of Documents. Following the partial government shutdown that took place from December 25, 2018 to January 25, 2019, the State Department made three productions in this case. Morgan Declaration ¶¶ 3-7,

- **February 19, 2019** — two records, both released in full. (Record Nos. 1-2.)
- **April 30, 2019** — four records, one released in full, three released in part. (Record Nos. 3-6). One other record was identified as being responsive, but was withheld in full. (Record No. 7.)

- **May 6, 2019** — two records, one released in full, one released in part. Also, additional information was released in one record previously produced on April 30, 2019. (Record Nos. 8, 9, and 4 Supplemental.)

The disclosed records are set out as produced in Exhibit D, and are described below.

RECORDS

Since there was no Vaughn index in this case, plaintiff has numbered the records in the order in which they were disclosed for ease of reference.

Record No. 1 (two pages) (Exhibit D, D2-D3). This record consists of email exchanges between State Department Deputy Assistant Secretary ("DAS") Kathleen Kavalec and DAS Jonathan Winer that occurred between October 12 and October 14, 2016, immediately following the Steele Briefing on October 11, 2016. These emails discuss an unidentified "friend" whom DAS Winer may have brought to the Steele Briefing, and an unidentified "article" or "on line piece" apparently related to the Steele Briefing which DAS Winer provided to DAS Kavalec. This record was released in full and therefore not contested.

Record No. 2 (two pages) (Exhibit D, D4-D5). This record consists of email exchanges between various government officials that occurred between October 12 and October 14, 2016. Document No. 2 is identical to Document No. 1 except for the top email on the first page of each document. This record was released in full and therefore not contested.

Record No. 3 (three pages) (Exhibit D, D8-D10). This record consists of email exchanges between DAS Kavalec and other government officials.

- The first and second emails were sent shortly before the Steele Briefing. The first email was from DAS Kavalec to a redacted person at the FBI, dated September 29, 2016, and the second email was to DAS Kavalec from a redacted person at the FBI, dated September 30, 2016.
- The third and fourth emails were sent long after the Steele Briefing. The third was from Maria Germano to DAS Kavalec dated February 1, 2017, and the fourth email was from DAS Kavalec to Associate Deputy Attorney General Bruce Ohr dated February 2, 2017.

All of the emails in Record No. 3 were initially classified, although marked as "no discernable classification." All of the subject lines of these emails, and virtually all of the text of these emails, were redacted.

Record No. 4 Original (two pages) (Exhibit D, D11-D12). This record has a hand notation "Kathy Kavalec doc" and contains "Notes from Meeting with Chris Steele and Tatyana Duran of Orbis Security, October 11, 2016." It contains a few facts about the Steele Briefing, but is mostly redacted. The disclosures in this record were later supplemented. *See* Record No. 4 Supplemental, *infra*. Since Record No. 4 Original was later supplemented, the original document disclosed is not contested.

Record No. 5 (one page) (Exhibit D, D13). This record is a November 1, 2016 email from DAS Kavalec to Ana Prieto-Danaher identifying "Chris Steele." This record was released in full and therefore not contested.

Record No. 6 (one page) (Exhibit D, D14). This record is an email dated October 13, 2016, two days after the Steele Briefing, from DAS Kavalec to a redacted individual, passing on "information."

Record No. 7 (withheld in full). This record was described in the transmittal letter of the Stat Department dated April 30, 2019, as follows:

> The document withheld in full was withheld at the request of the Federal Bureau of Investigation (FBI) under FOIA Exemptions 3 and 7(E), 5 U.S.C. §§ 552(b)(3) and (b)(7)(E).

Record No. 4 Supplemental (two pages) (Exhibit D, D17-D18). This record is the same as Record No. 4 Original, with additional information unredacted. This additional information provided additional notes by DAS Kavalec as to the Steele Briefing relating to alleged connections between President Trump and Russia. However, certain information has still been redacted.

Record No. 8 (two pages) (Exhibit D, D19-D20). This record consists of an email exchange between DAS Kavalec and Associate Deputy Attorney General Bruce Ohr on November 21, 2016, transmitting links to certain articles. This email exchange took place almost two weeks after the election, yet Ohr stated, "I really hope we can get something going here." This record was disclosed in full, and therefore not contested.

Record No. 9 (eleven pages) (pages D21-D31). This record consists of the handwritten notes taken by DAS Kavalec during the Steele Briefing on October 11, 2016. The document was classified by the FBI as Secret, with declassification on December 31, 2041.

Accordingly, the redactions being contested are those made to Record No. 3, Record No. 4 Supplemental, Record No. 6, Record No. 7, and Record No. 9.

ARGUMENT

I. DEFENDANT'S FOIA EXEMPTION CLAIMS ARE SUBJECT TO THIS COURT'S *DE NOVO* REVIEW.

Citizens United has moved for summary judgment with respect to the disputed documents. CU contends that those documents are not exempt from disclosure under FOIA as a matter of law. Summary judgment is appropriate in a contested case, including FOIA cases, if "movant shows that there is no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). *See, e.g.*, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Diamond v. Atwood, 43 F.3d 1538, 1540 (D.C. Cir. 1995). Further, it is well-established in this district that "FOIA cases typically and appropriately are decided on motions for summary judgment." Gold Anti-Trust Action Comm., Inc. v. Bd. of Governors of the Fed. Reserve Sys., 762 F. Supp. 2d 123, 130 (D.D.C. 2011) (citation omitted).

When deciding a motion for summary judgment in a FOIA matter, the court reviews the agency's decision *de novo*. Summers v. U.S. Department of Justice, 140 F.3d 1077, 1080 (D.C. Cir. 1998). *See also* 5 U.S.C. § 552(a)(4)(B). In cases of doubt with respect to the sufficiency of the government's document descriptions, summary judgment for the agency is not proper. *See, e.g.*, Truitt v. Dep't of State, 897 F.2d 540, 542 (D.C. Cir. 1990); King v. U.S. Department of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In FOIA cases, it is the government's burden to prove "that it has fully discharged its obligations under the FOIA, after the underlying facts and the inferences to be drawn from them are construed in the light most favorable to the FOIA requester." Gold Anti-Trust

Action Committee at 130-31 (citations omitted). The government's burden of proof "does not shift even when the requester files a cross-motion for summary judgment because 'the Government ultimately has the onus of proving that the documents are exempt from disclosure....'" Hardy v. ATF, 243 F. Supp. 3d 155, 162 (D.D.C. 2017) (brackets omitted) (citations omitted).

II. THE DISPUTED DOCUMENTS WITHHELD BY THE STATE DEPARTMENT SHOULD BE DISCLOSED.

A. Exemption 1 — Intelligence Sources

The defendant cites exemption 1, section 1.4(c) of Executive Order 13526 as authority to withhold the subject line and the text of four emails in Record No. 3. Section 1.4(c) applies to "intelligence activities (including covert action), intelligence sources or methods, or cryptology." As these emails were produced in response to CU's FOIA request regarding the Steele Briefing in October 2016, it would appear logical to conclude that the "intelligence source" in question is Christopher Steele, as his name does not appear anywhere in the unredacted portion. Bossie Declaration ¶ 15. Steele's contacts with the State Department during this time period are well-known, so there is no justification to withhold these emails, which may identify him pursuant to section 1.4(c). Furthermore, the Steele dossier on Donald Trump was reportedly leaked to, and subsequently made public by, "BuzzFeed News" on January 10, 2017, so any circulation or discussion of the Steele dossier could not be considered properly classified information.[1]

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[1] There was no Exemption 5 claim of deliberative process privilege for withholding these emails.

The two oldest emails in this chain were from DAS Kavalec to an individual whose name is withheld, but following the redaction, "FBI" is disclosed. These appear to be emails planning the Steele Briefing that was to occur in less than two weeks. Bossie Declaration ¶ 15. If Bruce Ohr was the person at the FBI, certainly there is no basis to redact that name as he was deeply involved with Christopher Steele throughout this entire period.[2]

The two most recent emails in Record No. 3 were sent months after the Steele Briefing and even after the publication of the Steele dossier and the inauguration of President Trump. Again, since defendant has deemed these emails to be responsive to the FOIA request in this case, the subject matter, even though entirely redacted, must be the Steele Briefing in October 2016. Because the subject matter of these emails is already public, the withheld portions of these emails should be released.

It is clear that the primary subject of the Steele Briefing was Donald Trump — including much information that has been proven to be false, and State Department communications regarding this topic cannot reasonably be considered "intelligence activities," or at least cannot be considered lawful intelligence activities. Bossie Declaration ¶ 8-9.

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[2] The HPSCI memo of January 18, 2018 (Exhibit C, C5) notes that "Before and after Steele was terminated as a source, he maintained contact with DOJ via then-Associate Deputy Attorney General Bruce Ohr, a senior DOJ official who worked closely with Deputy Attorneys General Sally Yates and later Rod Rosenstein. Shortly after the election, the FBI began interviewing Ohr, documenting his communications with Steele. For example, in September 2016, Steele admitted to Ohr his feelings against then-candidate Trump when Steele said he 'was desperate that Donald Trump not get elected and was passionate about him not being president.' This clear evidence of Steele's bias was recorded by Ohr at the time and subsequently in official FBI files — but not reflected in any of the Page FISA applications."

Executive Order 13526, Section 1.7(a) warns that "In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization, or agency…." Here, the Steele dossier was used improperly, beginning with the first FISA application against Carter Page, a low-level Trump campaign advisor, when there was sufficient information to question the veracity of the dossier. Furthermore, the FISA application — sworn to under penalty of perjury by FBI Director James Comey — stated that Source #1 (Steele) did not share his information on Trump with anyone other than his "business associate" and the FBI. The mere existence of the Steele Briefing — at a minimum — reveals that representation in the FISA application may constitute a false statement to a federal tribunal. Bossie Declaration ¶ 26. The information still being withheld in this case could demonstrate that the FBI knew even more about the unreliability and political nature of the Steele dossier, which could further call into question the assertions in the FISA application. Indeed, disclosures could conclusively demonstrate that the FBI committed actual fraud upon the FISC. Under the Executive Order's clear provisions, classification of the content of the emails in Record No. 3 may not be used to conceal violations of law or to prevent embarrassment.

In the "Background" portion of Record No. 4 Supplemental, DAS Kavalec's memorandum of her notes from the Steele Briefing, several lines are withheld, claimed to be exempt from FOIA under Section 1.4(c). As with Record No. 4, this paragraph is not properly withheld under Section 1.4(c), as it does not appear to cover such intelligence activities as may be within the State Department's ambit, and the subject matter is already

publicly known. If this memorandum was provided to the FBI before it filed a FISA application which relied on the Steele dossier, then the withheld paragraph could provide additional proof that the FBI misled the FISC.

Finally, Record No. 9, DAS Kavalec's handwritten notes, contain a claimed Section 1.4(c) to withhold information on page 5. Exhibit D, D25. The first page contains the classification notation, and shows that the record was unclassified when requested and only retroactively classified by the FBI on May 6, 2019 — the same date on which it was produced to Citizens United, raising a further question as to whether it was improperly classified.

B. Exemption 1 — Foreign Relations

As to each of the four emails that form Record No. 3, the defendant has claimed exemption 1, Section 1.4(d) of Executive Order No. 13526 to withhold the subject line and the entire body of each of those emails. Section 1.4(d) is designed to protect "foreign relations … including confidential sources."

If foreign relations with any country could be affected by the disclosure of these four emails relating to the Steele Briefing, certainly the most likely country would be the Russian Federation which the "Intelligence Community" and the media repeatedly have claimed interfered in the 2016 elections. Having been the subject of non-stop media coverage for the past two years, however, it is unlikely that there is any information in these four emails than other that which is already in the public domain. Moreover, virtually all of Special Counsel Robert Mueller's report was disclosed to the public, detailing his findings as to these Russian efforts. The Special Counsel's Office obtained grand jury indictments against certain Russian actors involved in the 2016 efforts, and government officials have repeatedly reported to the

public explaining the details of that interference. No persuasive argument could be made that it would hurt foreign relations with Russia to disclose the four emails in this case. On the other hand, should the records being withheld contain information that reduces or minimizes any Russian interference in the 2016 election, release of those documents could possibly affect foreign relations, but in a positive way, as it could lead to better relations, and that could not be the basis for withholding. Instead of the disclosure of this information harming national security, educating the public about foreign attempts at election interference should increase national security.

What is also widely known, as well as made public in the records already released in this case, is that the October 11, 2016 briefing was with Christopher Steele. Record No. 3 clearly involves Steele, as it was responsive to Citizens United's FOIA request, but nowhere in the released portions of those emails does Steele's name appear. It cannot be considered necessary to protect Steele's name as a confidential source now that he has been subject to intense public scrutiny and is well-established as fact.

C. Exemption 3 — No Statute Referenced

The one record which has been withheld in full is designated by plaintiffs as Record No. 7. The State Department's April 30, 2019 transmittal letter explains that the claimed basis for withholding this document was (b)(3) and (b)(7)(E). Defendant has not described this document in any way as to whether it is a letter, a memorandum, an email, a report, etc., or whether it is the withheld attachment to the October 13, 2016 email (Record No. 6). It is not known when the document was created, nor how many pages have been withheld.

All that is known is that this document is being withheld at the request of the FBI. The implication of this statement is that the State Department did not have an independent basis for withholding this record. We know now that senior officials at the FBI had actual notice from their State Department colleagues from the Steele Briefing that the Steele dossier was politically motivated and unreliable, but nevertheless, the Application that was made to the FISA Court to conduct surveillance on Carter Page was certified to by James B. Comey, as Director of the FBI, as being "in accordance with the requirements of the Foreign Intelligence Surveillance Act of 1978" for a warrant on a date in October 2016 that was redacted in the application. Therefore, in asking the State Department to withhold this document, the FBI may well have a motivation to prevent disclosure of additional information which would confirm improper or illegal behavior by persons at the FBI and/or the Department of Justice. For example, it is believed Bruce Ohr remains in a senior position at the Department of Justice. When defendant explains the specific basis for withholding this record, plaintiff can address the issue further.

D. Exemption 3 — Immigration and Nationality Act

The only occasion on which this exemption was claimed was in point 2 on the second page of Record No. 4 Supplemental (Exhibit D, D18). The reference is to the arrival of a Russian Embassy officer at Dulles International Airport. Although the sentence redacted could simply relate to an immigrations matter, its placement in the DAS Kavalec notes from the Steele Briefing is interesting.

The notes reflect that the Steele Briefing informed DAS Kavalec about a network of Russian hackers operating in the United States, run by the Russian Embassy, with payments

made out of the Russian Consulate in Miami. To this statement was added a comment, apparently by DAS Kavalec, that states: "It is important to note that there is no Russian Consulate in Miami." This easily demonstrated false allegation of fact by Christopher Steele (or his colleague Tatyana Duran from Orbis) would be a powerful indication that critical information in the Steele Briefing and the Steele dossier was bogus or at the very least would demand much greater scrutiny than was applied. The deleted sentence from this comment may evidence an even more significant misstatement of fact by Christopher Steele, which irrefutably should have put the State Department, the FBI, and the Department of Justice on notice that the Steele dossier was unreliable before it was used to obtain a warrant from the FISA Court. For this reason, plaintiff will need to await the explanation of this claimed exemption before providing additional argument on this point.

E. Exemption 3 — National Security Act

Under exemption (b)(3), defendant asserts the National Security Act of 1947 as a basis for withholding records on 14 occasions, discussed *infra*.

Record No. 3

- September 29, 2016 email — withholding identity of recipient and entire text. Exhibit D, D8.
- September 30, 2016 email — withholding identity of sender (person at FBI). Exhibit D, D8.
- September 30, 2016 email — withholding name of person classifying email. Exhibit D, D8.
- September 30, 2016 email — withholding entire text of email. Exhibit D, D8-D9.

On four occasions involving Record Nos. 3 and 6, defendant invoked the National Security Act to withhold the names of individuals, who appear to be government employees.

Although it is true that the National Security Act, in 50 U.S.C. § 3121, protects the identities of certain United States undercover intelligence officers, agents, informants, and sources, it would not seem likely that any such persons are involved here.

Record No. 4 Supplemental

- portion of "Background" paragraph. Exhibit D, D17.
- second portion of "Background" paragraph. Exhibit D, D17.
- part of a sentence in Paragraph 1. Exhibit D, D17.

Record 4 was originally provided in a highly redacted form, claiming exemption under the National Security Act. *See* Exhibit D, D11-D12. Upon further review, large sections of that page that were originally claimed to be exempt later were found not to be exempt. *See* Exhibit D, D17-D18. That may be true again upon even further review of these documents.

Record No. 6

- October 13, 2016 email — withholding recipient, subject line, file name of attachment, majority of text of email. Exhibit D, D14.

See discussion under Record No. 3, *supra*.

Record No. 9

- Page 1, two lines on bottom half of page. Exhibit D, D21.
- Page 5, one line at top of page. Exhibit D, D25.

Because of the subject matter of the request and the nature of the records identified as responsive, on no occasion does it appear that the redacted information has any bearing on any additional protections to records that may be provided under the Intelligence Reform and Terrorism Prevention Act of 2004. 50 U.S.C. § 403-1(i).

F. Exemption 3 — National Security Agency

On only one occasion did defendant invoke a (b)(3) National Security Agency ("NSA") exemption — with respect to Record No. 3, to protect an email dated February 2, 2017 (Exhibit D, D8). This exemption was asserted to prevent disclosure of the entire text of an email from DAS Kavalec to Associate Deputy Attorney General Bruce Ohr.[3] The email was not sent from or to the NSA, and does not appear to address NSA surveillance. It would seem highly unlikely that DAS Kavalec would be communicating to a senior official at the FBI confidential information about the National Security Agency in an email about Christopher Steele.

Although no specific statute governing the NSA was identified in the chart of exemptions which accompanied the Department of State's second (Exhibit D, D7) and third (Exhibit D, D16) disclosures, it could be a reference to Section 6 of the National Security Agency Act of 1959, 50 U.S.C. § 3605, but it does not seem likely that disclosure of such an email would require the disclosure of any of the "function[s]" or "activities" of NSA. Further, it is not at all clear how the text of this email could involve "sources and methods" which could be protected under 50 U.S.C. § 3024(i).

If and when the defendant identifies the specific statute being invoked, a more complete response could be provided.

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[3] Although defendant on several occasions asserted exemptions under (b)(3) the National Security Act of 1947, this was the only exemption claimed under (b)(3) for the National Security Agency.

G. Exemptions 6 and 7(C) — Personal Privacy

Exemptions (b)(6) and (b)(7)(C) both allow for withholding certain information that would invade personal privacy. Here, both exemptions are invoked by defendant to justify withholding of the same items of information from the same four emails, and thus here they are addressed together.

Record No. 3

- September 29, 2016 email — recipient, opening salutation. Exhibit D, D8-D9.
- September 30, 2016 email — sender (person at FBI), name of person classifying email, entire text, closing salutation. Exhibit D, D8.
- February 2, 2017 email — entire text. Exhibit D, D8.

The September 29, 2016 email was sent from DAS Kavalec to an unidentified person at the FBI, and the salutation was redacted as well.

The only basis for arguing that the name of a person at the FBI should be withheld would appear that the person was a low-level employee who serves in a routine, ministerial role. However, senior government officials communicating with persons in other departments would ordinarily be working with those at their same level — and this email was sent by a Deputy Assistant Secretary of State, and persons at a comparable level in the FBI would not have such a ministerial role. Moreover, a communication to such a person would not likely also be exempt from disclosure under the National Security Act of 1947, as is also being claimed here. The September 30, 2016 email appears to have been sent in return to the September 29, 2016 email from DAS Kavalec, and the same considerations would apply to it.

The February 2, 2017 email was sent from DAS Kavalec to Associate Deputy Attorney General Bruce Ohr. Here, the identity of the sender and recipient are known, so it presents a

different issue. And, there is no claim of a (b)(6) exemption for the subject line, which was redacted, but only for the text of the email. The subject matter of the email was the Steele Briefing at the State Department, and it is not clear how the subject of that email could involve confidential personnel records.

Record No. 6

- October 13, 2016 email — recipient, subject line, name of attachment, and opening salutation. Exhibit D, D14.

The October 13, 2016 email was sent from DAS Kavalec to an unidentified person, with no agency identified on the face of the document, but which plaintiff has been advised to be the FBI. Morgan Declaration ¶ 6. Everything about this information is withheld except the sentence: "You may already have this information, but wanted to pass it on just in case." Again, the subject matter of the email must be the Steele Briefing. There is no indication why this email would contain private personnel file or medical file information. Again, it is not likely that Kavalec sent this email to a low-level FBI employee, and multiple sources have confirmed that the email was sent to Stephen Laycock, a Special Agent. His name should not be redacted. Bossie Declaration ¶ 23.

The Justice Department's own position on these two privacy exemptions shows that it would be somewhat unusual for them to be invoked in a case such as this. As explained by the Department of Justice's own FOIA Guide:

> While the application of Exemption 7(C), discussed below, is limited to information compiled for law enforcement purposes, Exemption 6 permits the government to withhold all information about individuals in "personnel and medical files and similar file" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." [FOIA Guide, 2004 Edition, Exemption 6.]

This case involves neither personnel files, nor medical files, nor other similar types of files. Moreover, as to Exemption 7(C), it is difficult to see how the information being withheld could be "compiled for law enforcement purposes." If additional information is provided by defendant to explain these claims, plaintiff can respond at that time.

H. Exemptions (b)(7)(D) and (b)(7)(E) — Law Enforcement Confidential Sources and Investigation Techniques

Defendant invokes exemption (b)(7)(D) — which protects law enforcement information whose disclosure would impair confidential sources — on only one occasion. That exemption is asserted for the text of an email from DAS Kavalec to Associate Deputy Attorney General Bruce Ohr dated February 2, 2017. Exhibit D, D8. Five other exemptions were also asserted to protect the text of this email. This email was sent more than three months after the Steele Briefing, and only a short time after the inauguration of President Trump. It is not known what type of confidential source information DAS Kavalec would possess or have communicated that could justify this exemption.

Defendant invokes exemption (b)(7)(E) — which protects law enforcement information whose disclosure would impair investigation techniques — on 15 occasions with respect to five records, commented on *infra*.

Record No. 3 — Email Exchanges

- September 29, 2016 email — to protect the identity of the recipient at the FBI, and the entire text of the email. Exhibit D, D8-D9.
- September 30, 2016 email — to protect the identity of the sender at the FBI, the entire text of the email, and the person classifying the email. Exhibit D, D8.

To be sure, these emails were at least exchanges with persons at the FBI, but in this case it cannot be assumed that there were valid law enforcement reasons to withhold this information.

Record No. 4 Supplemental — Notes of DAS Kavalec from Steele Briefing

- portion of "Background" paragraph. Exhibit D, D17.
- second portion of "Background" paragraph. Exhibit D, D17.
- part of a sentence in Paragraph 1. Exhibit D, D17.

Since the veracity of the information obtained from Christopher Steele at the Steele Briefing has been thoroughly discredited, any notes of what he said at that meeting would not impair any law enforcement investigation techniques.

Record No. 6 — Email Exchange

- October 13, 2016 email from DAS Kavalec, to protect the identity of the recipient, the subject line, file name of attachment, and majority of text. Exhibit D, D14.

Here, unlike certain other emails, it is reported that this email was to Stephen Laycock. Bossie Declaration ¶ 23. As it relates to the Steele Briefing and what the FBI was told eitht days before the first FISA application was sworn to, it should be disclosed.

Record No. 7 — Record Withheld in Full, at the Request of the FBI

No comment can be made on this document at this time, as its date, nature, and subject is completely unknown. Insofar as it is responsive to a request for records regarding Christopher Steele and his briefing, it cannot be claimed that Steele is a confidential source.

Record No. 9 — DAS Kavalec Handwritten Notes

- Page 1, two lines on bottom half of page. Exhibit D, D21.
- Page 5, one line at top of page. Exhibit D, D25.

The context does not make clear what these redacted notes reflect. However, as stated above, since the Steele dossier has been discredited, information obtained from Christopher Steele at the Steele briefing could not be said to involve law enforcement investigation techniques.

III. THE PUBLIC INTEREST OUTWEIGHS THE CLAIMED EXEMPTIONS.

As discussed in Section I, *supra*, the burden of proof is on the defendant to claim an exemption, and the defendant has yet to explain the basis for its claims. Therefore, plaintiff will be better able to address the exemption claims on reply and in its response to defendant's cross-motion for summary judgment. However, at this stage, the defendant's claimed FOIA exemptions seem tenuous. On the other hand, the public interest in disclosure of the responsive records is substantial. Bossie Declaration ¶ 27. *See also* Exhibit C, C1-C2. The withheld records in this case are key to answering the question of what did the FBI and DOJ know, and when did they know it. The legality of the FISA applications seeking surveillance warrants against members of the Trump campaign hinges on this question.

The U.S. Supreme Court has affirmed the principle that "'the mandate of the FOIA calls for broad disclosure of Government records,' and for this reason we have consistently stated that FOIA exemptions are to be narrowly construed." United States DOJ v. Julian, 486 U.S. 1, 8 (1988) (citations omitted). Significant information surrounding the Steele Briefing that took place at the State Department on October 11, 2016 is already public, but there is more to be learned, and as President Obama explained, the FOIA was not intended to protect against potential political embarrassment:

> A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.... The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. [President Obama, Memorandum for the Heads of Executive Departments and Agencies (Jan. 21, 2009).]

If there were rogue individuals at the highest levels of our federal government's institutions, who abused their power to tip the scales in a political campaign, and used powerful tools (such as FISA) against a candidate they opposed, then that would constitute both an individual and an institutional embarrassment. Some of the people who made decisions to rely on the Steele dossier are still in government (*e.g.,* Bruce Ohr). And even where these individuals have left government, institutional loyalty causes people who were not involved to seek to minimize embarrassment, and hence, disclosure. This must not be allowed to occur here.

IV. ALTERNATIVELY, THE DEFENDANT SHOULD PROVIDE UNREDACTED VERSIONS OF THE DOCUMENTS FOR THE COURT TO REVIEW.

In the event that the Court has any reservations about full disclosure of all of the disputed records, plaintiff requests, as a form of alternative relief, that the Court order the records be produced for an *in camera* inspection. The Freedom of Information Act provides that "the court … may examine the contents of such agency records in camera to determine

whether such records or any part thereof shall be withheld under any of the exemptions…." 5 U.S.C. § 552(a)(4)(B).

The one document being withheld in full (identified by plaintiff as Record No. 7) was not withheld by the State Department on its own initiative, but rather "was withheld at the request of the Federal Bureau of Investigation" (Exhibit D, D6) — the same agency whose conduct has come into question as a result of seeking the FISA warrants. It is natural that a government agency would seek to prevent any avoidable embarrassment, especially if that embarrassment could lead to sanctions being imposed on individuals who may have participated in submitting incorrect or misleading *ex parte* applications to the Foreign Intelligence Surveillance Court to obtain a warrant.

There is strong public interest in the disclosure of the documents, as evidenced by the supporting Declaration of David Bossie, and the White House's decision to declassify the HPSCI memorandum. Bossie Declaration ¶27; Exhibit C, C1-C2. The investigation by the FBI and Department of Justice into the Trump Campaign, Trump Transition, and Trump Administration have been a lead, if not the lead, story in the United States for more than two years. Every aspect of this story is significant, especially for the American people to know whether they can trust the FBI and the Department of Justice to follow the law.

With respect to the redactions based on matters related to classification, *in camera* review furthers the purposes of the FOIA, in that "the prospect of having to justify its … decisions before a neutral arbiter causes a more thorough and objective presubmission review by the agency than would otherwise be the case." Stein v. Dept. of Justice & FBI, 662 F.2d 1245, 1254 (7th Cir. 1981). Even in cases where the National Security Act of 1947 and

terrorism concerns have been raised in FOIA cases, district courts have conducted *in camera* reviews to look behind the government's claims of exemption. *See, e.g.*, New York Times Co. v. United States DOJ, 872 F. Supp. 2d 309, 317 (S.D.N.Y. 2012). However, here, approximately half of the claimed exemptions (mostly (b)(6), and (b)(7) involving privacy) do not involve national security, and thus do not require the Court to make any decisions in that area.

Lastly, all redactions appear on only seven pages of State Department records — which are set out in Exhibit D at pages D8, D9, D14, D17, D18, D21, and D25. Additionally, there is only one record being withheld in full (identified by plaintiff as Record No. 7), and the defendant has not identified its length. For these reasons, since the number of pages in dispute appears to be modest, and the burden on the Court would not seem to be significant.

CONCLUSION

For the foregoing reasons, plaintiff respectfully requests that its motion for summary judgment be granted, and the withheld records ordered to be disclosed to CU. In the alternative, CU requests the Court to order the defendant to provide the Court with unredacted versions of the withheld documents so that the Court may make its own determination as to whether the defendant properly withheld the responsive documents.

Respectfully submitted,

/s/

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Counsel for Plaintiff
CITIZENS UNITED

Dated: June 7, 2019

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS UNITED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 18-1862-RDM
	)	
UNITED STATES DEPARTMENT OF STATE,	)	
	)	
Defendant.	)	

DECLARATION OF JEREMIAH L. MORGAN

1. My name is Jeremiah L. Morgan. I am counsel for Citizens United ("CU"), the plaintiff in the above-captioned case filed against defendant, the U.S. Department of State, under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

2. This Declaration is submitted pursuant to Rule 56(c)(4), Federal Rules of Civil Procedure, in support of Citizens United's Motion for Summary Judgment and Alternative Motion for *In Camera* Review ("CU Motion").

3. CU's FOIA request that is the subject of this litigation was made on June 22, 2018. CU was not advised of the existence of any documents, or to any objection to the disclosure of any documents, until well after this litigation was commenced on August 8, 2018. The State Department began its production of responsive documents in this litigation on February 19, 2019.

4. On February 25, 2019, counsel for defendant advised that the final production in this case would be on April 30, 2019. In subsequent emails, counsel for defendant repeated

EXHIBIT A

this assertion. In the March 18, 2019 joint status report, defendant notified this Court that it "expects to issue a final release of records to Citizens United on or before April 30, 2019."

5. A second production was made on April 30, 2019, but that production advised that "[t]he review of potentially responsive records is ongoing." Exhibit D, D6.

6. Following the April 30, 2019 production, counsel for plaintiff requested that defendant reconsider the basis for its redaction of the names of the email correspondents in Record No. 3 (emails of September 29, 2016 and September 30, 2016) and Record No. 6 (email of October 13, 2016). By email dated May 2, 2019, counsel for defendant notified counsel for plaintiff that defendant declined to reconsider its redaction of the FBI agent's name. Counsel for plaintiff requested clarification that the reference to FBI agent applied to both records. Counsel for defendant confirmed that both records referred to the FBI, but clarified that he did not know that the FBI employee's title was agent.

7. Defendant made the final production on May 6, 2019.

8. The portions of the documents being withheld may be critical to understanding what the State Department and the FBI knew about the Steele dossier before making the first and subsequent FISA applications for surveillance of Carter Page.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed, this 7th day of June, 2019.

/s/
Jeremiah L. Morgan

EXHIBIT A

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS UNITED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 18-1862-RDM
	)	
UNITED STATES DEPARTMENT OF STATE,	)	
	)	
Defendant.	)	

DECLARATION OF DAVID N. BOSSIE

1. My name is David N. Bossie. I am President of Citizens United, the plaintiff in the above-captioned case.

2. This Declaration is submitted pursuant to Rule 56(c)(4), Federal Rules of Civil Procedure, in support of Citizen United's Motion for Summary Judgment or, in the Alternative, for *In Camera* Review ("CU Motion").

3. Citizens United regularly submits FOIA requests concerning significant issues of national importance.

4. As President of Citizens United, my staff and I have conducted research and have compiled information regarding Christopher Steele's political opposition research activities during the 2016 presidential election and alleged Foreign Intelligence Surveillance Act ("FISA") abuses associated with this activity.

5. On July 19, 2016, Donald J. Trump received the Republican Party's nomination for President of the United States.

EXHIBIT B

6. During 2016, Perkins Coie, a law firm that represented both the Democratic National Committee ("DNC") and the campaign of Democratic candidate Hillary Clinton, hired Fusion GPS, an opposition research firm, to investigate candidate Donald Trump. Fusion GPS, in turn, hired Orbis Business Intelligence, a private British firm, to conduct opposition research on Donald Trump. *See* G. Jarrett, The Russia Hoax (HarperCollins: 2018) ("Hoax") at 125-26.

7. Orbis Business Intelligence was founded by Christopher Steele, a former British intelligence officer, and Steele prepared several memoranda on Donald Trump, which were compiled into what is known as the "Steele dossier." Hoax at 126.

8. The Steele dossier purported to provide evidence of Donald Trump's compromising activities in and involving Russia that had the potential to be used by the Russian Federation to blackmail Donald Trump. Many of the allegations in the dossier itself are so ridiculous on their face they could not be taken seriously. *See* Hoax at 126-27.

9. To my knowledge, none of the salacious allegations in the Steele dossier have been verified. It is now commonly acknowledged that "some of the most sensational claims in the dossier appeared to be false, and others were impossible to prove." S. Shane, "Mueller Report Likely to Renew Scrutiny of Steele Dossier," *New York Times* (Apr. 19, 2019).

10. Steele had been an FBI asset. No later than July 2016, Steele began meeting with various U.S. government officials, including the FBI, about the contents of the Steele dossier. *See* Hoax at 126.

EXHIBIT B

11. In 2016, Kathleen Kavalec, served as Deputy Assistant Secretary ("DAS") of State for the Bureau of European Affairs. She reported to Victoria Nuland, Assistant Secretary of State for European and Eurasian Affairs.

12. In 2016, Jonathan Winer was serving as Deputy Assistant Secretary of State for International Law Enforcement. Winer met Steele in 2009 and stayed in frequent contact with Steele, even after Winer joined the State Department in 2013. *See* J. Winer, "My role in the Trump dossier," *The Washington Post* (Feb. 9, 2018).

13. At a hearing of the Senate Select Committee on Intelligence on June 20, 2018, Committee Chairman Richard Burr asked Assistant Secretary of State Nuland: "Based upon our review of the visitor logs at the State Department, Mr. Steele visited the State Department, briefing officials on the dossier in October of 2016." In response, Nuland testified that she "actively chose not to be part of [the October 11, 2016 Steele] briefing." She also testified that she was not aware of the briefing until afterwards. *See* E. Felton, "Victoria Nuland Can't Keep Her Steele Story Straight," *The Weekly Standard* (June 21, 2018).

14. Citizens United's FOIA request to the State Department asked for "all records relating to the October 2016 briefing at the State Department...." In response, the State Department provided certain records, which are provided in Exhibit D. Although the State Department advised this Court in a joint status report on March 18, 2019, and confirmed to counsel for Citizens United multiple times, that the final production would be made by April 30, 2019, the April 30 production indicated that review and production was still ongoing. The final production was made nearly a week later, on May 6, 2019.

EXHIBIT B

15. The records provided by the State Department show that on September 29, 2016, Kavalec emailed an unidentified person at the FBI, and on September 30, 2016, an unidentified person at the FBI responded to Kavalec. *See* Exhibit D at D8-10. The identity of the FBI employee(s) and the substance of the emails were redacted prior to disclosing that document. Since Exhibit D was provided in response to Citizens United's FOIA request described above, I believe that these emails related to a planned briefing by Steele to be held at the State Department.

16. On October 11, 2016, DAS Kavalec met at the State Department with both Steele and Tatyana Duran, who worked with Steele at Orbis. *See* Exhibit D at D17. DAS Winer appears to have introduced Steele to Kavalec. *See id.* at D3 ("Thanks for bringing your friend by yesterday....").

17. DAS Winer wrote that "In September 2016, Steele and I met in Washington and discussed the information now known as the 'dossier....' I prepared a two-page summary and shared it with Nuland, who indicated that, like me, she felt that the secretary of state needed to be made aware of this material." J. Winer, "My role in the Trump dossier," *supra*.

18. DAS Kavalec handwrote several pages of notes during her meeting with Steele. *See* Exhibit D at D21-31. She later incorporated the substance of her handwritten notes and other information into a memorandum. *See id.* at D17-18.

19. DAS Kavalec's memorandum states that Steele had stated at the meeting that, at the recommendation of individuals at Fusion GPS, he was working for "an institution he declined to identify that had been hacked." *Id.* at D17. DAS Kavalec also reported that Steele

EXHIBIT B

was "keen to see this information come to light prior to November 8," which was the date of the 2016 general election. *Id.* Her handwritten notes appear to indicate that Steele had provided information to the *New York Times* and *The Washington Post*. *See id.* at D23, D25. I believe the reference to this "information" to be a reference to the Steele dossier.

20. If the information in the DAS Kavalec notes, memorandum, and email was received by the FBI, it would have put the Bureau on notice as to numerous indications that Steele was politically motivated:

(a) The reference to Steele working for an institution that had been hacked first brings to mind the claims by the DNC that it had been hacked;

(b) the reference to Steele wanting embarrassing information about Donald Trump coming to light before the election shows a desire to alter the outcome of the election;

(c) the fact that Steele had disclosed information to the media could have violated his agreement to do paid work for the FBI; and

(d) the fact that Steele was sharing information with a government agency other than the FBI could have violated his agreement to do paid work for the FBI.

21. After the meeting, on October 12, 2016, DAS Kavalec emailed DAS Winer requesting an unidentified "article" or "online piece" that the two had discussed. *See id.* at D2-4.

22. On October 13, 2016, DAS Kavalec again emailed an unidentified person. *See id.* at D14. The name of the recipient, the subject line, the filename of the attachment, the attachment itself, and much of the body of the email were redacted in defendant's production

EXHIBIT B

of the email. Because the email was provided in this case in response to plaintiff's FOIA request, it is logical that the topic of the email was the October 11, 2016 briefing by Steele.

23. After the Department of State's disclosure of the documents to Citizens United involving DAS Kavalec on April 30, 2019 and May 6, 2019, investigative journalist John Solomon reported that multiple sources have confirmed to him that the October 13, 2016 email from DAS Kavalec was sent to FBI Special Agent Stephen Laycock, who was then Chief of the Eurasian Section in FBI's Counterintelligence Division. *See* J. Solomon, "State Department's red flag on Steele went to a senior FBI man well before FISA warrant," *The Hill* (May 14, 2019). Furthermore, Solomon reports that FBI Special Agent Laycock immediately forwarded the October 13, 2016 email to the FBI team handling the Trump-Russia investigation, which was headed by FBI Special Agent Peter Strzok. *See id.* FBI Special Agent Strzok is on record as opposing the election of Donald Trump. *See* S. Gurman & E. Tucker, "FBI agent removed from Russia probe called Trump an 'idiot,'" Associated Press (Dec. 13, 2017). *See also* DOJ OIG Report, A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election (June 2018) at 398-404 ("In a text message on August 8, 2016, [FBI attorney Lisa] Page stated '[Trump's] not ever going to become president, right? Right?!' Strzok responded, 'No. No he's not. We'll stop it.'").

24. Carter Page is a U.S. citizen and a U.S. Naval Academy graduate and a former intelligence officer in the U.S. Navy, who volunteered as a low-level foreign policy advisor in the Trump campaign. Hoax at 132. Page is mentioned in the Steele dossier.

EXHIBIT B

25. On October 21, 2016 the FBI and the Department of Justice ("DOJ") applied for and was granted authorization under the FISA from the Foreign Intelligence Surveillance Court ("FISC") to conduct electronic surveillance on Page. *See* House Permanent Select Committee on Intelligence Memorandum, "Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation" (Jan. 18, 2018).

26. The October 21, 2016, FISA application was based on information provided by "Source #1," which is now known to be Steele. *See* FISA application at 15-16, 23. Despite DAS Kavalec appearing to have discussed with the FBI her meeting with Steele, the FISA application represented to the FISC that "Source #1 told the FBI that he/she only provided this information to the business associate and the FBI.... The FBI does not believe that Source #1 directly provided this information to the press." *Id.* at 23 n.18.

27. The American people have a compelling right to know what happened with the government surveillance of a Presidential campaign. I have no reason to believe that redacted information from the productions in this case would have any negative effect on national security. I believe that more transparency, rather than less, will help to restore trust in our governmental institutions.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed, this 6 day of June, 2019.

DAVID N. BOSSIE

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