UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER, Plaintiff, v. UNITED STATES DEPARTMENT OF JUSTICE, Defendant.	)	Case No. 1:13-cv-01961-KBJ

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Plaintiff advances three arguments as to why its renewed motion for summary judgment should be granted. Each of these arguments lacks merit. First, Plaintiff perplexingly argues that because Defendant has released more information than in its initial release—effectively providing additional material responsive Plaintiff's FOIA request—Plaintiff is entitled to summary judgment. The opposite is true: Defendant's willingness to release additional portions of records to Plaintiff demonstrates the agency's good faith and provides additional support for its motion for summary judgment. Second, Plaintiff's contention that Defendant has exhibited "bad faith" is baseless. Although Defendant inadvertently redacted information that had been previously released, the agency corrected the mistake by producing to Plaintiff an updated copy of the relevant record, without the prior inadvertent redaction. Mistakes that are admitted are inherently not made in bad faith. Finally, Plaintiff's contention that the remaining challenged withholdings concern surveillance methods "already known to the public" that could not present a realistic risk of harm is contradicted by declarations of the National Security Agency ("NSA") and Federal Bureau of Investigations ("FBI"), which detail the specific sorts of harms that would flow from the release of the redacted information. Moreover, contrary to Plaintiff's suggestion, there has been no official disclosure of the information Plaintiff is seeking. Because Defendant has adequately justified any FOIA exemptions asserted and has segregated all segregable material, it is entitled to summary judgment.

ARGUMENT

I. THE GOVERNMENT IS ENTITLED TO SUMMARY JUDGMENT.

A. The Reproduced Records Comply with the Court's Order.

Defendant complied with this Court's February 4, 2016 Order by providing unredacted copies of the semiannual reports ("SARs") for *in camera* review, a revised *Vaughn* Index identifying the pages upon which the remaining challenged withholdings appeared, and supplemental declarations from the FBI and NSA justifying those withholdings. *See* Notice of

Lodging of Documents for *In Camera* Review with the Classified Information Security Officer (ECF No. 34); Notice of Filing of Revised *Vaughn* Index and Supplemental Declarations (ECF No. 35). Plaintiff nevertheless argues that Defendant has not complied with the Court's Order. Plaintiff complains that the "reprocessed pages are significantly different from both the prior versions initially produced in March 2014 and the reprocessed versions produced by the DOJ in its combined reply and opposition," Pl.'s Renewed Mot. for Summ. J. at 4 ("Pl.'s Br.") (ECF No. 37-1), noting that the pages contain "many new markings." *Id.* The new markings to which Plaintiff refers, however, are merely intended to assist the Court and Plaintiff in identifying which portions of the reproduced pages contain information that is still at issue in this case. To that end, the markings simply label redacted paragraphs as either "within the remaining challenged withholdings" described in the Court's February 4, 2016 Order, or "outside of the remaining challenged withholdings," and therefore no longer are at issue in this case. Accordingly, the markings simply direct the Court and Plaintiff's attention to the relevant portions of the redacted documents.[1]

Plaintiff next argues that the reprocessed pages are "internally inconsistent and contradicted by the record." Pl.'s Br. at 5. Plaintiff bases this conclusion on the notion that some of the pages were marked as outside of the remaining challenged withholdings "even though they include headings related to the remaining challenged withholdings," and because a paragraph marked as "within the remaining challenges" continues on to a page that was not produced to Plaintiff. *Id.* Despite Plaintiff's speculations to the contrary, and as the Court can

[1] Plaintiff also references one set of additional markings, which constitute paragraph-specific labels in the margins of the reprocessed pages identifying the FOIA exemptions that correspond to the redacted information. These exemptions are additionally identified and justified in the accompanying Fourth Declaration of David Hardy ("Fourth Hardy Decl.") (ECF No. 35-1) and Second Declaration of David Sherman ("Second Sherman Decl.") (ECF No. 35-2).

conclude by reference to its unredacted copies of the SARs, the information marked as outside of the remaining challenged withholdings is just that: outside the bounds of the Court's February 4, 2016 Order calling for "significant legal interpretations by the FISC, its jurisdiction, or its procedures" regarding the Government's Pen Register and Trap and Trace ("PR/TT") authority. *EPIC v. Dep't of Justice*, 13-CV-1961 (KBJ), 2016 WL 447426, at *4 (D.D.C. Feb. 4, 2016). It is for this reason that "these redacted portions have not been addressed in the supplemental declarations." Pl.'s Br. at 5–6. This information is exempt from release pursuant to FOIA Exemption 1, is outside of the remaining challenged withholdings as identified by the Court, and therefore is not at issue in this lawsuit. Naturally, then, the declarations of Mr. Hardy and Mr. Sherman accompanying the reprocessed pages do not address it. The same is true of the information contained in the paragraph marked as "within the remaining challenged withholdings" that continues on to a page that was not produced; the following page was not produced precisely because it did not contain information that fell within the remaining challenged withholdings. The reprocessed pages produced to Plaintiff contain all of the remaining challenged withholdings, *see* Fourth Hardy Decl. ¶ 4, and Plaintiff's conclusory speculations to the contrary do not entitle it to summary judgment.

B. Defendant Acted in Good Faith by Releasing Additional Information and Correcting an Error.

By releasing information contained within the SARs that it initially redacted upon re-reviewing those records, Defendant has demonstrated that it has acted in good faith. Plaintiff's argument—that the agency's release of information initially redacted is evidence that it acted improperly and "violated the FOIA," Pl.'s Br. at 9—is belied by longstanding precedent in this Circuit. "[U]nder settled law of this circuit, the subsequent disclosure of documents initially withheld does not qualify as evidence of 'bad faith.'" *Gutman v. U.S. Dep't of Justice*, 238 F.

Supp. 2d 284, 291 (D.D.C. 2003) (citation omitted). Were it otherwise, agencies would "effectively [be] penalize[d] . . . for voluntarily declassifying documents" which would "work mischief by creating an incentive against disclosure." *Pub. Citizen v. Dep't of State*, 276 F.3d 634, 645 (D.C. Cir. 2002); *Meeropol v. Meese*, 790 F.2d 942, 953 (D.C. Cir. 1983) ("Were the court to . . . 'punish flexibility,' it would 'provide the motivation for intransigence.'") (citation omitted); *see also id.* ("we 'emphatically reject[ed]' the notion that an agency's disclosure of documents it had previously withheld renders its affidavits suspect") (alteration in original) (citing *Military Audit Project v. Casey*, 656 F.2d 724, 754 (D.C. Cir. 1981)) .

Plaintiff's next complaint, that Defendant "previously released material that it is now purporting to withhold as exempt in the reprocessed pages," likewise does not entitle it to summary judgment. Pl.'s Br. at 10. The single page to which Plaintiff refers contained inadvertent redactions. Upon further review, Defendant voluntarily corrected the error by reprocessing the relevant page without redacting the previously released material and producing it to Plaintiff. *See* Ex. 1 (supplemental release). A voluntarily corrected error, "if anything, speaks to Defendant's *good faith* in responding to Plaintiff's requests." *Budik v. Dep't of Army*, 742 F. Supp. 2d 20, 34 (D.D.C. 2010) (emphasis added). Accordingly, Defendant's correction of this mistake does not call into question Defendant's response to Plaintiff's FOIA request or the Government'sdeclarations, but, in fact, illustrates the agency's good faith. *See Meeropol*, 790 F.2d at 952–53 (agency's responding to problems pointed out by requester, correcting problems, and releasing additional information did not call into question adequacy of search for records, but illustrated agency's good faith). Plaintiff's contrary assertions are unfounded.

C. The Government Properly Withheld Classified Information Pursuant to FOIA Exemption 1.

As Defendant has explained, it properly withheld classified information pursuant to

Exemption 1, which protects from disclosure records that are "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). An agency establishes that it has properly withheld information under Exemption 1 if it demonstrates that it has met the classification requirements of Executive Order 13,526. Section 1.1 of the Executive Order sets forth four requirements for the classification of national security information: (1) an original classification authority classifies the information; (2) the U.S. Government owns, produces, or controls the information; (3) the information is within one of eight protected categories listed in section 1.4 of the Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in a specified level of damage to the national security, and the original classification authority is able to identify or describe the damages. E.O. 13,526 § 1.1(a). Courts accord substantial weight to agency declarations concerning classified information; indeed, "little proof or explanation is required beyond a plausible assertion that information is properly classified." *Morley v. CIA*, 508 F.3d 1108, 1124 (D.C. Cir. 2007).

Plaintiff first argues that Defendant's Exemption 1 assertions were improper because "DOJ has made false and contradictory statements regarding the withholding of responsive records and its claimed exemptions . . . [t]his is evidence of bad faith." Pl.'s Br. at 14. However, as explained, it is well settled that Defendant's subsequent release of additional information is not evidence of bad faith, *supra* at 3–4. Plaintiff's reliance on *Carter v. Dep't of Commerce*, 830 F.2d 388, 393 (D.C. Cir. 1987), for the proposition that Defendant's Exemption 1 assertions should be rejected, Pl.'s Br. at 13, is misplaced: in that case, the court merely stated

that where there is evidence of bad faith, *in camera* inspection of the relevant records may be necessary. *Carter*, 830 F.2d at 393. Here there is no evidence of bad faith; indeed, as the *Carter* court instructed, "the mere allegation of bad faith does not undermine the sufficiency of agency submissions . . . [t]here must be *tangible* evidence of bad faith; without it, the court should not question the veracity of agency submissions." *Id.* (emphasis added) (citing *Hayden v. Nat'l Sec. Agency/Cent. Sec. Serv.*, 608 F.2d 1381, 1387 (D.C. Cir. 1979)). Beyond pointing to Defendant's voluntary release of additional information and its inadvertent (and subsequently corrected) withholding of previously released information, Plaintiff has not identified any tangible evidence of bad faith. As previously discussed, "if the release of previously withheld materials were held to constitute evidence of present 'bad faith,' similar evidence would exist in every FOIA case involving additional releases of documents after the filing of the suit." *Meeropol*, 790 F.2d at 952 (citing *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 772 (D.C. Cir. 1981)). Thus, *Carter* provides no support for Plaintiff's position. Further, even if Plaintiff *had* pointed to tangible evidence of bad faith, the prescription provided in *Carter* has already been fulfilled—the relevant records have been provided to the Court for *in camera* review. *See* Notice of Lodging of Documents for *In Camera* Review with the Classified Information Security Officer (ECF No. 34).

The other alleged instances of "contradictory statements" Plaintiff identifies likewise do not overcome Defendant's Exemption 1 assertions. Plaintiff complains that some of the documents it received—from which, of course, any classified information has been redacted pursuant to Exemption 1—bear "some portion markings that are struck through, while others are not," Pl.'s Br. at 14. As Mr. Bradley has explained, any classification markings that have been struck through are the result of the documents being redacted down to the unclassified

level and released to Plaintiff, such that they are no longer classified. 3d Bradley Decl. ¶ 11. That does not suggest, however, that the redacted (and therefore sealed) material on those pages is itself unclassified. Plaintiff 's contention that "DOJ has redacted material . . . even though the portion markings clearly indicate that those paragraphs no longer contain classified material," Pl.'s Br. at 14 is therefore illogical. Further, Plaintiff misunderstands the relevant law. "[T]he failure to mark a document does not render the information in it unclassified." *Wilson v. McConnell*, 501 F. Supp. 2d 545, 555 (S.D.N.Y. 2007), *aff'd sub nom. Wilson v. CIA*, 586 F.3d 171 (2d Cir. 2009); *see also* E.O. 13,526 § 1.6(f) ("Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings"). In any event, officials with original classification authority have reviewed all of the documents withheld under Exemption 1 and have determined that they are properly classified under the Executive Order. Fourth Hardly Decl. ¶ 10; Second Sherman Decl. ¶ 18. The Executive Order thus directs that these records be "considered as classified . . . despite [any] omission of other required markings." E.O. 13,526 § 1.6(f).

Plaintiff's allegation that "DOJ has improperly excluded material that is clearly within the remaining challenged withholdings," Pl.'s Br. at 14, is entirely speculative and inaccurate. Plaintiff's conclusory argument is insufficient to contravene the record evidence, including the testimony of Mr. Sherman and Mr. Hardy, or to defeat Defendant's motion for summary judgment. Such agency declarations are afforded "a presumption of good faith, which cannot be rebutted by purely speculative claims[.]" *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991).[2]

[2] Plaintiff's suggestion that "DOJ had inexplicably revived an argument that the agency

Plaintiff also argues that Defendant's Exemption 1 assertions are unjustified because the release of the remaining challenged withholdings could not reasonably be expected to cause serious or exceptionally grave damage to national security because the use of pen registers has been "discussed widely in opinions, commentaries, and reports." Pl.'s Br. at 12; *see also id.* at 6 ("The use of pen register devices by the governments, companies, and private individuals to monitor telephone and other communications signals has been a matter of public record for more than 40 years."). However, the United States' efforts to release as much information as it can about national security surveillance to serve the public interest while taking into account the obvious need for secrecy in counterterrorism and similar investigations does not mean that the Government cannot protect other, classified information under law. 5 U.S.C. § 552(b)(1). There has been no official acknowledgment that waives Exemption 1, or any other exemption, over information Defendant has withheld in response to Plaintiff's FOIA request.

Further, the standard for official disclosure requires Plaintiff to identify an intentional, public disclosure made by or at the request of a government officer acting in an authorized capacity by the agency in control of the information at issue, that is "as specific as the information previously released." *Fitzgibbon v. CIA*, 911 F.2d 755, 765 (D.C. Cir. 1990). This "stringen[t]" test, *Pub. Citizen v. Dep't of State*, 11 F.3d 198, 202 (D.C. Cir. 1993), is to be applied with "exactitude," *Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007), and represents a "high hurdle," in view of "the Government's vital interest in information relating to national

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conceded in prior cross motions: that aggregate statistics about the number of FISA applications submitted to and granted by the FISC can be properly classified . . . even though those statistics are already publicly available," Pl.'s Br. at 14, is unfounded. The single citation to which Plaintiff refers, attached as Ex. 1 to Plaintiff's Cross Motion for Summary Judgment at 71, does not refer to information responsive to Plaintiff's FOIA request. Rather, the statistics Plaintiff identifies relate to the *Business Records* authority, 50 U.S.C. § 1861, rather than the Pen Register/Trap and Trace authority, 50 U.S.C. § 1846 (the subject of Plaintiff's FOIA request, and this lawsuit).

security," *Pub. Citizen*, 11 F.3d at 203. Plaintiff's generic citations to the U.S. Code and law review articles do not point to any *specific* withheld information that has been officially disclosed, and cannot contravene Mr. Hardy and Mr. Sherman's detailed, sworn testimony that the withheld material in dispute has been properly classified. [3]

Finally, Plaintiff disputes the assertion of Exemption 1 over the Document 68 Westlaw printouts, claiming that their withholding is evidence of bad faith because the printouts are publicly available. Pl.'s Br. at 13. However, as explained by Mr. Hardy, otherwise innocuous information, "when read or viewed within the context of other available documents and information, [would] reveal highly sensitive information to sophisticated adversaries," such as critical details about important investigative methods and techniques used by the FBI in national security investigations." 2d Hardy Decl. ¶ 37; *see also* 3d Hardy Decl. ¶ 41; classified

[3] Plaintiff argues, in passing, that "the possible risks associated with making FISC opinions publicly available" are outweighed by the public interest, because "[t]he [USA FREEDOM ACT] now provides that the Director of National Intelligence, in consultation with the Attorney General, 'make publicly available to the greatest extent practicable' every 'decision, order, or opinion' of the FISC that 'includes a significant construction or interpretation of any provision of law.'" Pl.'s Br. at 7. This legislation provides no justification for opposing Defendant's motion for summary judgment, as it was enacted in June 2015 and applies only to FISC opinions issued after that date. The documents still at issue in this case clearly fall outside of the parameters of the USA FREEDOM Act ("UFA"), and Defendant's determinations regarding which documents were responsive to Plaintiff's FOIA request should not be considered coextensive with those that might fall under the UFA declassification review provisions. In addition, the UFA specifically permits the Director of National Intelligence to redact opinions or waive the declassification review requirement in the interests of national security or to protect classified information, demonstrating Congress's recognition that not all FISC opinions can be fully released to the public. USA FREEDOM Act Section 602(b), (c). Despite the fact the UFA is not applicable to the documents Plaintiff continues to challenge, the Government has, in fact, released "to the greatest extent practicable" the summaries of the significant legal interpretations that fall within the scope of the Court's February 4, 2016 Order, as demonstrated by the Government's willingness to release additional information upon re-review as compared to previous productions. Perplexingly, and as discussed at length above, *supra* at 3-4, Plaintiff holds this fact *against* Defendant.

version of Fourth Hardy Decl. ¶¶ 24–26. The Executive Order governing classification of national security information explicitly recognizes that otherwise unclassified material is properly classified in such contexts: "Compilations of items of information that are individually unclassified may be classified if the complied information reveals an additional association or relationship that: (1) meets the standards for classification under this order, and (2) is not otherwise revealed in the individual items of information." E.O. 13,526 § 1.7(e); *see also, e.g.*, *N.Y. Times Co. v. Dep't of Justice*, 915 F. Supp. 2d 508, 535 (S.D.N.Y. 2013) (finding "no reason why legal analysis cannot be classified pursuant to E.O. 13526 if it pertains to matters that are themselves classified"), *aff'd in part, rev'd in part on other grounds*, 756 F.3d 100 (2d Cir. 2014). Defendant's assertion of Exemption 1 over the Document 68 Westlaw printouts was proper.

D. The Government has Properly Withheld Information Pursuant to the National Security Act and FOIA Exemption 3.

As Defendant explained in its opening motion, the Government properly asserted Exemption 3 pursuant to the National Security Act of 1947. Plaintiff has failed to oppose, and has conceded, Defendant's other Exemption 3 withholdings made pursuant to assertion of the National Security Act of 1959 and 18 U.S.C. § 798. *See* Pl.'s Br. at 15–17. Indeed, Plaintiff does not challenge the NSA's assertion of Exemption 3, instead focusing its opposition exclusively upon the FBI's assertion. *Id.*

Plaintiff contends that Defendant's Exemption 3 assertion is inappropriate because "the NSD is not a member of the Intelligence Community," *id.* at 16. However, here the National Security Division of the Department of Justice is asserting Exemption 3 *on behalf of the FBI. See generally* Fourth Hardy Decl. As explained in Defendant's opening motion, although the text of the National Security Act speaks of the "Director of National Intelligence"—or, prior to

2004, the Director of Central Intelligence, *see* 50 U.S.C. § 3025(c)(1)—the Government has long taken the position that any member of the intelligence community, including the FBI, may assert the National Security Act to protect intelligence sources and methods, and courts have regularly upheld other agencies' assertions of the Act in support of Exemption 3 withholdings. *See, e.g.*, *Larson v. Dep't of State*, 565 F.3d 857, 868–69 (D.C. Cir. 2009) (National Security Agency); *Krikorian v. Dep't of State*, 984 F.2d 461, 465–66 (D.C. Cir. 1993) (Department of State); *Shoenman v. FBI*, 763 F. Supp. 2d 173, 193 n.12 (D.D.C. 2011) (Department of Justice on behalf of FBI), *aff'd*, 841 F. Supp. 2d 69 (D.D.C. 2012). As described in the Fourth Hardy declaration, the remaining challenged withholdings contain intelligence sources and methods which implicate FBI equities, and accordingly the National Security Division is justified in asserting Exemption 3 pursuant to the National Security Act on the FBI's behalf.

E. The Government has Properly Withheld Information Concerning Law Enforcement Techniques and Procedures Pursuant to FOIA Exemption 7(E).

Exemption 7(E) exempts from disclosure information compiled for law enforcement purposes where release of the information "would disclose techniques and procedures for law enforcement investigations or prosecutions," *without* a requirement that the government establish such disclosure would cause harm, or where it 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). Defendant properly asserted Exemption 7(E) over the remaining challenged withholdings, as all of the withheld information meets the threshold requirement that it was "compiled for law enforcement purposes." *See* Fourth Hardy Decl. ¶¶ 4, 18–19.

"In assessing whether records are compiled for law enforcement purposes, . . . the focus is on how and under what circumstances the requested files were compiled, and 'whether the

files sought relate to anything that can fairly be characterized as an enforcement proceeding.'" *Jefferson v. Dep't of Justice*, 284 F.3d 172, 176–77 (D.C. Cir. 2002) (citations omitted). The range of law enforcement purposes failing within the scope of Exemption 7 includes government national security and counterterrorism activities. *See, e.g.*, *Ctr. for Nat'l Sec. Studies v. Dep't of Justice*, 331 F.3d 918, 926 (D.C. Cir. 2003); *Kidder v. FBI*, 517 F. Supp. 2d 17, 27 (D.D.C. 2007).

Plaintiff argues that the SARs "were compiled for oversight, not law enforcement, purposes." Pl.'s Br. at 17. This argument is wholly unfounded. Indeed, even Plaintiff acknowledges that the SARs were "created by the NSD's Oversight Section," *id.*; in other words, the SARs were created by the Department of Justice—"an agency 'specializ[ing] in law enforcement," such that "its claim of a law enforcement purpose is entitled to deference." *Ctr. for Nat'l Sec. Studies*, 331 F.3d at 926. Because the SARs "were drawn from FBI investigative files," Fourth Hardy Decl. ¶ 19, the information was compiled for a law enforcement purposes, and the fact that the information was subsequently summarized in a report to Congress is of no consequence. The law on this point is crystal clear: "information initially contained in a record made for law enforcement purposes continues to meet the threshold requirements of Exemption 7 where that recorded information is reproduced or summarized in a new document for a non-law-enforcement purpose," *FBI v. Abramson*, 456 U.S. 615, 631–32 (1982); *see also Lesar v. Dep't of Justice*, 636 F.2d 472, 487 (D.C. Cir. 1980) (holding that documents compiled from review of previous FBI surveillance meet threshold); *Assassination Archives & Research Ctr. v. CIA*, 903 F. Supp. 131, 132–33 (D.D.C. 1995) (finding that information from criminal investigations recompiled into administrative file to assist FBI in responding to Senate committee hearings "certainly satisfies" threshold requirement).

Plaintiff next argues that, even if the SARs were compiled for law enforcement purposes, Defendant has not established that disclosure of the remaining challenged withholdings would "risk circumvention of the law." Pl.'s Br. at 18. This argument is inaccurate, *see* Fourth Hardy Decl. ¶¶ 21–23, and is also illogical: as previously explained, Exemption 7(E), by definition protects from disclosure information concerning confidential law enforcement techniques used in national security investigations. Because Defendant has established that the remaining challenged withholdings contain confidential law enforcement techniques, Defendant need not demonstrate that harm would result from disclosure in order to properly invoke Exemption 7(E). *See Keys v. Dep't of Homeland Sec.*, 510 F. Supp. 2d 121, 129 (D.D.C. 2007); *Smith v. ATF*, 977 F. Supp. 496, 501 (D.D.C. 1997). In demonstrating that disclosure of the remaining challenged withholdings would *also* risk circumvention of the law, Defendant provided sworn testimony beyond that which is required to meet the Exemption 7(E) threshold. Fourth Hardy Decl. ¶ 21. Because Defendant has asserted Exemption 7(E) to protect confidential law enforcement techniques utilized in national security investigations, its withholdings were proper. Defendant is entitled to summary judgment with respect to all of its Exemption 7(E) withholdings.[4]

F. Defendant has Released All Non-Exempt, Reasonably Segregable Portions of the Responsive Documents.

As discussed in the declarations of Mr. Hardy and Mr. Sherman, the Government has

[4] Plaintiff also challenges Defendant's assertion of Exemption 7(E) over Document 68. This withholding is primarily justified in the classified portions of the Fourth Hardy Declaration, and Defendant accordingly refers the Court to paragraphs 24–26, which establish that the Exemption 7(E) assertion over Document 68 likewise meets the necessary threshold. As explained in Defendant's opening motion, *in camera, ex parte* review of classified declarations in FOIA cases is common and appropriate where a more detailed public explanation cannot be provided without revealing the very information that is sought to be protected. *See, e.g.*, *Krikorian*, 984 F.2d at 464–65; *Maynard v. CIA*, 986 F.2d 547, 557 (1st Cir. 1993); *Hayden*, 608 F.2d at 1385.

reviewed the withheld material and disclosed all non-exempt information that reasonably could be disclosed. *See* Fourth Hardy Decl. ¶¶ 45–46, Second Sherman Decl. ¶¶ 16–17. Accordingly, Defendant has produced all "reasonably segregable portion[s]" of the responsive records. 5 U.S.C. § 552(b). The declarants' detailed explanations of the Government's redactions are more than sufficient, and Defendant need not explain those redactions in such detail as to reveal the very information it seeks to protect. *See Loving v. U.S. Dep't of Def.*, 496 F. Supp. 2d 101, 110 (D.D.C. 2007) (holding that "government's declaration and supporting material are sufficient to satisfy its burden to show with 'reasonable specificity' why the document cannot be further segregated," where declaration averred that agency had "released to plaintiff all material that could be reasonably segregated") (citing *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002)), *aff'd*, 550 F.3d 32 (D.C. Cir. 2008).

CONCLUSION

For all of the foregoing reasons, the Court should grant Defendant's Motion for Summary Judgment and deny Plaintiff's Cross-Motion for Summary Judgment.

Dated May 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2016, a copy of the foregoing Opposition to Plaintiff's Cross-Motion for Summary Judgment was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Caroline J. Anderson
Caroline J. Anderson