

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<hr/>)	
CITIZENS FOR RESPONSIBILITY))	
AND ETHICS IN WASHINGTON,))	
))	
Plaintiff,))	Civil Action No. 08-1046 (JDB)
))	
v.))	
))	
U.S. DEPARTMENT OF))	
HOMELAND SECURITY,))	
))	
Defendant.))	
<hr/>)	

**DEFENDANT’S REPLY AND OPPOSITION TO
PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT IN PART**

Defendant, by and through undersigned counsel, respectfully submits its reply to Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment in Part (“Pl’s Opp’n Br.”) (Docket Entry 25) and its opposition to Plaintiff’s Cross-Motion for Summary Judgment in Part (“Pl’s Cross Mot.”) (Docket Entry 26), in this case brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended. Plaintiff does not challenge the adequacy of the agency’s search or its assertion of FOIA Exemptions 6 and 7(E) in its opposition or cross motion. See Pl’s Opp’n Br. 4 n.2. As set forth below, and in our moving papers, Defendant did not improperly withhold any responsive records under FOIA Exemption 5, the only exemption which Plaintiff contests. Accordingly, the Court should grant Defendant’s motion for summary judgment in part.

BACKGROUND

I. Plaintiff's FOIA Request

On or about March 17, 2008, Plaintiff, Citizens for Responsibility and Ethics in Washington (“CREW”), sent a letter to the FOIA Director, CBP, requesting, in part, the following records under FOIA:

any and all records dating from January 20, 2001 to the present reflecting communications concerning Ray L. Hunt, Hunt Consolidated, Inc., or any properties known to be owned by Ray L. Hunt and/or Hunt Consolidated, Inc., and the construction of fencing along the border between the U.S. and Mexico.

See Def's Statement of Material Facts as to Which There Is No Genuine Dispute (“SFNGD”) (Docket Entry 23-2), ¶ 1;¹ Declaration of Mark Hanson (“Hanson Decl.”), Director of the FOIA Division, Office of International Trade, CBP, DHS (attached to Defendant's Motion for Summary Judgment in Part) (Docket Entry 23-3), ¶ 4. By agreement of the parties on July 15, 2008, the first part of Plaintiff's FOIA request was clarified to seek the following records from U.S. Customs and Border Protection (“CBP”), a component of United States Department of Homeland Security (“DHS”):

Any and all records, regardless of format, dating from January 20, 2001 to the present reflecting communications concerning Ray L. Hunt, Hunt Consolidated, Inc., or any properties known to be owned by Ray L. Hunt and/or Hunt Consolidated, Inc., and the construction of fencing along the border between the U.S. and Mexico, including, but not limited to, input sought or received from Mr. Hunt and/or Hunt Consolidated on border fence construction.

See SFNGD, ¶ 2.

¹ In Plaintiff's Response to Defendant's Statement of Material Facts Not in Dispute, and Plaintiff's Statement of Material Facts Not in Dispute (Docket Entry 25-3), Plaintiff does not dispute SFNGD, ¶¶ 1-4, and does not dispute the factual statements contained in SFNGD, ¶¶ 6-8. As to the latter statements, Plaintiff disputes that Defendant has properly produced all information properly exempt from disclosure under FOIA.

This request followed a newspaper article about Mr. Hunt published in the Texas Observer on February 18, 2008. See Compl., ¶ 6. Plaintiff attached a copy of the 8-page article as Ex. A (Docket Entry 25-2) to its Cross-Motion for Summary Judgment in Part. The Texas Observer article (at p. 2 of 8) alleges that, “Along the border, preliminary plans for fencing seem to target landowners of modest means and cities and public institutions such as the University of Texas at Brownsville[.]” The article (at pp. 3-4 of 8) discusses, among other things, a complaint by one Texas resident that “there are no plans to build a wall” through the River Bend Resort and golf course, which is not owned by Mr. Hunt and is located 69 miles south of Mr. Hunt’s property.² The article’s discussion of Mr. Hunt comprises less than one-half page of the text of the article. A Hunt spokesman is quoted in the article (at p. 4 of 8) as stating that, “[N]o one from the company has been directly involved in siting the fence. ‘We, like other citizens in the [Rio Grande] Valley, have waited for the federal government to designate the location of the wall.’”

II. Defendant’s Response

Two offices of CBP produced documents responsive to the first part of Plaintiff’s bifurcated request – the Office of Border Patrol (“OBP”) and the Office of the Secure Border Initiative (“SBI”) within the Office of the Commissioner. See SFNGD, ¶¶ 5-6; Hanson Decl., ¶¶ 7-8. Responsive documents were redacted pursuant to FOIA Exemptions 5, 6, and 7(E), 5 U.S.C. §§ 552 (b)(5), (b)(6), and (b)(7)(E). See SFNGD, ¶ 7; Hanson Decl., ¶ 9. Redactions made on all responsive documents are detailed in an index identifying information responsive to Plaintiff’s FOIA

² The article also discusses the involvement of the Texas Border Coalition (“TBC”) in questioning the decisions relating to placement of the fence. The article describes the TBC (at p. 5 of 8) as “a group of border mayors and business leaders who repeatedly traveled to Washington for the past 18 months to try to get federal officials to listen to them.”

request, but exempt from disclosure under the FOIA, in accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). See SFNGD, ¶ 8; Hanson Decl., ¶ 10 & Def's Vaughn index (attached to Hanson Declaration) (Docket Entry 23-3).³

A search was conducted at Border Patrol Headquarters in Washington, DC, as well as Border Patrol offices located in the Rio Grande Valley sector where properties owned by Ray L. Hunt are located, and produced 12 responsive documents.⁴ See SFNGD, ¶ 6; Hanson Decl., ¶ 8. A second responsive search was directed by the SBI Communications Director, who instructed personnel to provide all relevant documentation responsive to Plaintiff's FOIA request, and produced 20 responsive documents.⁵ See SFNGD, ¶ 5; Hanson Decl., ¶ 7.

CBP was unable to locate any records relating to Mr. Hunt that were created prior to the publication of the Texas Observer article on February 18, 2008. Rather, all of the responsive documents related to efforts by OBP and SBI to respond to inquiries about the allegations contained

³ Copies of the redacted documents disclosed to Plaintiff are attached to the Hanson Declaration & the accompanying Vaughn index (Docket Entry 23-3) as follows: "Documents 1-10" as part of Docket Entry 23-3; "Documents 11-19" as Docket Entry 23-4; "Documents "20-28" as Docket Entry 23-5; and unnumbered "Documents "29-32" as Docket Entry 23-6. References below to "Documents" are to these redacted documents. CBP attaches an amended Vaughn index, which corrects an error relating to the description of Document 27 in the original index, which was attached to the Hanson Declaration (Docket Entry 23-3). See n.10, infra.

⁴ The OBP-originated documents are numbered in the Vaughn index as Documents 1-8 (at pp. 1-3) and unnumbered Documents 29-32 (at p. 11). Documents 2-8 were withheld in full subject to Exemption 7(E), which is not contested. See Vaughn index at 2-3.

⁵ The SBI-originated documents are numbered as Documents 9-28 in the Vaughn index (at pp. 3-10). Document 26, which was redacted in part under uncontested Exemption 6, is the May 22, 2008 letter from Secretary Chertoff to Congressman Thompson regarding border fencing in Texas and attaching a memo from a CBP Commissioner on placement of border fencing. See Vaughn index at 10 & attached document.

in the Texas Observer article.⁶ As to the allegations that Mr. Hunt received preferential treatment in decisions relating to fence placement, the agency determined that, upon review of the matter, the “[p]roposed fence locations in the area of Granjeno [where the Hunt property is located] were determined through operational assessments made by the local Border Patrol Sector based on their extensive field experience.” See Document 26 (Memo from the CBP Commissioner (at p.2 of 3), attached to the May 22, 2008 letter from Secretary Chertoff to Congressman Thompson regarding inquiry about allegations in the Texas Observer article.

DHS asserted Exemption 5 to protect the internal deliberations within CBP on how to respond to the allegations raised in the article. Specifically, DHS withheld information under Exemption 5 contained in Documents 1, 9-25, 27, 28, and unnumbered Document 31. Sixteen of these 21 documents (Documents 10-24, 28) are part of three separate e-mail strings reflecting internal discussions initiated by senior DHS officials with respect to allegations contained in the article and tasking subordinate officials to assist in developing a response to the allegations. See Hanson Decl., ¶¶ 13-14. Specifically, the three e-mail strings were sent by senior CBP officials:

⁶ Two documents listed on the Vaughn index were dated prior to the February 18, 2008 publication of the Texas Observer article. Neither is directly responsive to the allegations about Mr. Hunt. The first document is a 6-page attachment to Document 14, entitled “SBI Tactical Infrastructure Outreach,” dated January 25, 2008, which lists public meetings conducted by SBI officials in various communities during calendar year 2007. See Vaughn index at 5 & attached document. The second document is Document 25, an e-mail string beginning January 22, 2008, relating to fence segment requirements. See id. at 9 & attached document. Document 25 was included because it contains a general discussion of placement of the border fence in the Rio Grande Valley Sector, where the Hunt property is located. The document was redacted in part under Exemption 5 (and uncontested Exemptions 6 and 7(E)) because “the document reflects internal discussions of proposed construction projects of a pre-decisional nature.” See id. The agency asserted Exemption 5 in conjunction with Exemption 7(E).

1. An e-mail string that began with an e-mail sent on April 21, 2008 at 12:54 a.m. “on behalf of CBP Tasking, Office of the Commissioner, U.S. Customs and Border Protection,” and contained a subject line of “SECRETARY TASKER – Hunt Fence.” Documents 13-14, 17, 19-21, 23 were disclosed as part of this e-mail string, which is described in the Vaughn index as “related to tasker regarding response to allegations related to Hunt property.” See Vaughn index at 4-8 & attached documents. This request sought input from subordinate officials on developing the Secretary’s response to a Congressional inquiry relating to the allegations in the Texas Observer article.⁷ The Vaughn index further states that the documents were redacted in part under Exemption 5 (and uncontested Exemption 6) because each “document reflects internal discussions on how to respond to allegations raised in the media.” See Vaughn index at 4-8.

2. An e-mail string that began with an e-mail sent on April 30, 2008 at 10:08 a.m. by Gregory Giddens, who was correctly described in the Texas Observer article (at pp. 5-6 of 8) as the SBI Executive Director, and contained a subject line of “Hunt property.” Documents 10-11 were disclosed as part of this e-mail string, which is described in the Vaughn index “as related to the Texas Observer article and letter to Congressman Thompson on Texas fence.” See Vaughn index at 3 & attached documents. The Vaughn index (at pp. 3-4) further states that the documents were redacted in part under Exemption 5 (as well as uncontested Exemptions 6 and 7(E)) because each “document reflects internal discussions on how to respond to allegations raised in the media.”

⁷ Documents 14 and 23 contain attachments, including a March 5, 2008 letter from Congressman Thompson relating to allegations in the Texas Observer article and the response letter submitted to DHS Secretary Chertoff for signature on March 21, 2008. See Vaughn index at 5, 8 & attached documents. This response appears to have been replaced by the May 22, 2008 letter and attachment, which was redacted under Exemption 6 and disclosed as Document 26. See id. at 10 & attached document. See also n.5, supra.

3. An e-mail string that began with an e-mail sent on June 27, 2008 at 8:00 a.m. by the Office of Public Affairs, U.S. Customs and Border Protection, as a “Tasker [for] River Bend Tamez Sabal Palm.” Documents 12, 15-16, 18, 22, 24, 28 were disclosed as part of this e-mail string, which is described in the Vaughn index as “related to a tasker regarding allegations related to Hunt property,” and were redacted under Exemption 5 (and uncontested Exemption 6). See Vaughn index at 4-6, 8-11 & attached documents. The initial e-mail was copied to Mr. Giddens (Document 24), and relates to ongoing efforts by the agency to respond to inquiries relating to the allegations in the Texas Observer article.⁸ The Vaughn index further states (at pp. 4-6, 8-11) that the documents were redacted in part because each document reflects “internal discussions” or “deliberations” on how to respond to allegations raised in the media.

The remaining five documents that have been redacted under Exemption 5 are Documents 1, 9, 25, 27, and unnumbered Document 31. See Vaughn index at 1, 3, 9-11 & attached documents. Two of the documents, 1 and 31, are OBP-originated documents. See id. at 1, 11. Document 1, which is described in the Vaughn index (at pp. 1) as “talking points regarding Hunt Property, City of Granjeno and Border Fencing in RGV Sector,” was redacted “because information contains deliberations on how to respond to allegations raised in the media.” See also nn.8-9 herein.

⁸ The June 27, 2008 e-mail string includes two emails, dated July 3, 2008, requesting that the subordinate officials on this task “review the data gathered by OPB” and also “review the attached doc[ument]s for correctness” (Document 24). The officials were asked to “respond with either edits or concurrence. We will then route for Greg [Giddens]’s review.” See id. The attachments included a document entitled “Hunt Development River Bend Tal[k]ing Point _ 4-28-08.doc” (id.). The initial draft of this document predated the April 30, 2008 e-mail string started by Mr. Giddens, and therefore reflects internal confusion as to whether Mr. Hunt also owned the River Bend Golf Course, which was not the case (see Documents 10 and 11). A July 7, 2008 e-mail “note[d] the Hunt Development talking points were revised by [a redacted subordinate official]” (Document 22). Thus, the Hunt Development talking points had not been finalized prior to the initiation of the June 27, 2008 e-mail string.

Unnumbered Document 31, dated February 21, 2008, which is described in the Vaughn index (at p. 11) as an “[i]ssue paper addressing media allegations made in Texas Observer article,” was redacted in part under Exemptions 5 (and uncontested Exemption 6).⁹

Documents 9, 25, and 27 are SBI-originated documents. See Vaughn index at 3, 9-10. Document 9, which was withheld in full, is described in the Vaughn index (at p. 3) as “Draft Talking Points related to Texas Border Coalition Lawsuit,” and was redacted under Exemption 5 (deliberative process) because “the document is a draft that reflects internal discussions and is not in final form.” See also Hanson Decl., ¶ 15. Document 25 is an e-mail string beginning January 22, 2008 relating to fence segment requirements, and was redacted in part under Exemption 5 (and uncontested Exemptions 6 and 7(E)) because “the document reflects internal discussions of proposed construction projects of a pre-decisional nature.” See Vaughn index at 9. Document 27, which was redacted in full under Exemption 5, is a draft media response dated June 17, 2008 pertaining to fence construction questions relating to the River Bend Golf Course and other non-Hunt properties.¹⁰ See

⁹ The redacted portion of unnumbered Document 31 is labeled as “Options” and is followed by a “Recommendation” that “Based on the information briefed, it is recommended that CBP, in conjunction with SBI.net, continue to update the public through period responses to inquiries.” Unnumbered Documents 29 and 30, dated April 8, 2008 and February 21, 2008, respectively, were released in full and are described in the Vaughn index as “Fence Justification Response to Texas Observer [article].” See Vaughn index at 11. Unnumbered Document 32, dated May 19, 2008, was released in full and is described as an “[i]ssue paper addressing media allegations made in Texas Observer article.” Id. This document notes that “OBP Senior Leadership briefed CBP Commissioner on Texas Observer article and on overall circumstances surrounding issue.” See id. & attached document. Thus, CBP developed talking points for internal discussions and issue statements for public briefings.

¹⁰ CBP attaches an amended Vaughn index, which corrects an error relating to the description of Document 27 in the original index, which was attached to the Hanson Declaration (Docket Entry 23-3). Document 27 was originally described as released in part subject to redaction under uncontested Exemption 6. However, the document attached to the original index was redacted in full under Exemption 5. The amended Vaughn index has been revised to

id at 10. See also n.8, supra.

ARGUMENT

Plaintiff challenges CBP's assertion of FOIA Exemption 5, alleging that (1) CBP's declaration and Vaughn index are inadequate (Pl's Opp'n Br. 5-8); (2) CBP fails to meet its burden of showing the records are exempt under deliberative process privilege (and attorney/client privilege as to one record) (id. at 8-12); and (3) CBP fails to comply with FOIA's segregability requirement (id. at 13-14). Plaintiff's arguments are unavailing.

I. CBP's Declaration and Vaughn Index Are Adequate

An agency satisfies the summary judgment requirements in a FOIA case by providing the Court and the plaintiff with affidavits or declarations and other evidence which show that the documents in question were produced or are exempt from disclosure. Hayden v. NSA, 608 F.2d 1381, 1384, 1386 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1980); Church of Scientology v. U.S. Dept. of Army, 611 F.2d 738, 742 (9th Cir. 1980); Trans Union LLC v. FTC, 141 F. Supp. 2d 62, 67 (D.D.C. 2001) (summary judgment in FOIA cases may be awarded solely on the basis of agency affidavits "when the affidavits describe 'the documents and the justifications for non-disclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.'") (quoting Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981)). See also Public Citizen, Inc. v. Dept. of State, 100 F. Supp. 2d 10, 16 (D.D.C. 2000), aff'd in part, rev'd in part, 276 F.3d 634 (D.C. Cir. 2002).

accurately describe the basis for redacting Document 27, and contains no other revisions to the original index.

Typically, the agency's declarations or affidavits are referred to as a Vaughn index, after the case of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). There is no set formula for a Vaughn index. “[I]t is well established that the critical elements of the Vaughn index lie in its function, and not in its form.” Kay v. FCC, 976 F. Supp. 23, 35 (D.D.C. 1997). The purpose of a Vaughn index is “to permit adequate adversary testing of the agency's claimed right to an exemption.” NTEU v. Customs, 802 F.2d 525, 527 (D.C. Cir. 1986) (citing Mead Data Central v. United States Dept. of the Air Force, 566, F.2d 242, 251 (D.C. Cir. 1977), and Vaughn, 484 F.2d at 828). Thus, the index must contain “an adequate description of the records” and “a plain statement of the exemptions relied upon to withhold each record.” NTEU, 802 F.2d at 527 n.9.

In this case, CBP has submitted a declaration and a coded Vaughn index in support of its motion for summary judgment in part. See Hanson Decl. at ¶¶ 1-20 & Ex. A thereto. CBP also filed copies of the redacted documents provided to Plaintiff in response to the first part of its FOIA request. See n.3, supra. Plaintiff challenges the adequacy of CBP declaration and accompanying Vaughn index (Pl's Opp'n Br. 5-8). Specifically, Plaintiff claims that the Hanson declaration is “conclusory” and the declaration and accompanying Vaughn index “do not afford the plaintiff[] ‘a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the withholding.’” See id. at 7-8 (quoting Defenders of Wildlife v. U.S. Dep't of Agric., 311 F.Supp.2d 44 (D.D.C. 2004)).

Plaintiff's claim that CBP's submissions are inadequate for the Court to grant summary judgment fails to consider that the redacted documents themselves demonstrate FOIA Exemption 5 was properly asserted in this case. As discussed above, Exemption 5 was asserted in connection

with 21 of the 32 documents disclosed in response to the first part of Plaintiff's FOIA request (see p.5, supra), and Plaintiff does not challenge the assertion of FOIA Exemptions 6 and 7(E) to redact portions of these documents.¹¹ Furthermore, 16 of these 21 documents (Documents 10-24, 28) are part of three separate e-mail strings reflecting internal discussions initiated by senior DHS officials with respect to allegations contained in the Texas Observer article and tasking subordinate officials to assist in developing a response to the allegations. See Hanson Decl., ¶¶ 13-14. Contrary to Plaintiff's claim that the "vast majority of the contents" of the records have been withheld (see, e.g., Pl's Opp'n Br. 1), a review of the 16 documents shows that a substantial portion of the e-mails were not redacted, and the unredacted portions contained sufficient information to afford Plaintiff a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the withholding.

Specifically, the unredacted portions of the e-mail strings show that one e-mail string began with an e-mail sent on April 21, 2008 at 12:54 a.m. "on behalf of CBP Tasking, Office of the Commissioner, U.S. Customs and Border Protection," and contained a subject line of "SECRETARY TASKER – Hunt Fence." Documents 13-14, 17, 19-21, 23 were disclosed as part of this e-mail string, which is described in the Vaughn index as "related to tasker regarding response to allegations related to Hunt property," and clearly sought input from subordinate officials, whose names were redacted under uncontested Exemption 6, on developing the Secretary's response to a Congressional inquiry relating to the allegations in the Texas Observer article. See Vaughn index at 4-8 & attached documents. The Vaughn index further states that the documents were redacted in part under Exemption 5 because each "document reflects internal discussions on how to respond

¹¹ Plaintiff does not challenge redactions to the remaining eleven documents.

to allegations raised in the media.” See id. at 4-8

A second e-mail string began with an e-mail sent on April 30, 2008 at 10:08 a.m. by Gregory Giddens, SBI Executive Director, and contained a subject line of “Hunt property.” Documents 10-11 were disclosed as part of this e-mail string, which is described in the Vaughn index “as related to the Texas Observer article.” See Vaughn index at 3 & attached documents. The Vaughn index further states that the documents were redacted in part under Exemption 5 (as well as uncontested Exemptions 6 and 7(E)) because each “document reflects internal discussion on how to respond to allegations raised in the media.” See id. at 3-4. Finally, a third e-mail string began with an e-mail sent on June 27, 2008 at 8:00 a.m. by the Office of Public Affairs, U.S. Customs and Border Protection, as a “Tasker [for] River Bend Tamez Sabal Palm.”¹² Documents 12, 15-16, 18, 22, 24, 28 were disclosed as part of this e-mail string, which is described in the Vaughn index as “related to a tasker regarding allegations related to Hunt property,” and were redacted under Exemption 5 (and uncontested Exemption 6). See Vaughn index at 4-6, 8-11 & attached documents. The initial e-mail was copied to Mr. Giddens (Document 24), and relates to ongoing efforts by the agency to respond to inquiries relating to the allegations in the Texas Observer article.

CBP’s “Vaughn submissions” also contained sufficient information to afford Plaintiff a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the redaction of information contained in the remaining five documents (Documents 1, 9, 25, 27 and unnumbered Document 31). Specifically, the language in the Vaughn submissions adequately describes the basis for the assertion of Exemption 5 in each instance. Document 1 is

¹² Notably, the tasker references other properties cited in the Texas Observer article, but does not specifically reference the Hunt property.

described in the Vaughn index (at p.1) as OBP-originated “talking points regarding Hunt Property, City of Granjeno and Border Fending in RGV Sector.” Unnumbered Document 31, dated February 21, 2008, is described in the Vaughn index (at p. 11) as an OBP-originated “[i]ssue paper addressing media allegations made in Texas Observer article.” See n.9, supra. Document 9 is described in the Vaughn index (at p. 3) as an SBI-originated “Draft Talking Points related to Texas Border Coalition Lawsuit.” Document 25 is an SBI-originated e-mail string beginning January 22, 2008 (and therefore pre-dating publication of the Texas Observer article) relating to fence segment requirements. See Vaughn index at 9-10. Document 27, which was redacted in full under Exemption 5, is a draft media response dated June 17, 2008 pertaining to fence construction questions relating to the River Bend Golf Course and other non-Hunt properties. See id. at 10. See also n.10, supra. Indeed, three of the documents (9, 25, and 27), although generally responsive to allegations about favoritism in siting decisions relating to the border fence, do not specifically address allegations about the Hunt property.¹³

II. CPB Properly Invoked FOIA Exemption 5 To Withhold Information Protected From Disclosure

FOIA Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). This exempts documents that would not ordinarily be available to an agency's opponent in civil discovery and incorporates all evidentiary privileges that would be available in discovery. See United States v. Weber Aircraft Corp., 465 U.S. 792, 799 (1984); FTC v. Grolier, Inc., 462 U.S. 19, 26 (1983); Martin v. Office of Special Counsel, Merit Systems Protection Board,

¹³ Document 27's status as a draft is indicated by the notation, “As of June 17, 2008” and “FOR OFFICIAL USE ONLY.”

819 F.2d 1181 (D.C. Cir. 1987). Exemption 5 protects from disclosure documents that "fall within the ambit of a privilege" such that they would not be "routinely or normally" disclosed in civil discovery. Dep't of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8 (2001).

The deliberative process privilege is incorporated into FOIA Exemption 5. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). This privilege protects the "quality of agency decisions." Id. The content or nature of the document is the focus of the inquiry into the privilege as opposed to the manner in which the exemption is raised in a particular situation. See Dow Jones & Co., Inc. v. Dep't of Justice, 917 F.2d 571, 575 (D.C. Cir. 1990). The policy underlying this privilege is to encourage open, frank discussions of policy matters between government employees, consultants and other officials, to protect against premature disclosure of proposed policies before they become final, and to protect against public confusion by disclosing reasons and rationales that were not in fact the ultimate grounds for the agency's action. See, e.g., Russell v. Dep't of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982); Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

In order for a record to be protected by the deliberative process privilege, it must be: (1) an inter-agency or intra-agency document, and (2) pre-decisional and deliberative. See Klamath, 532 U.S. at 8-9. The 21 documents may be withheld under Exemption 5 because they are intra-agency documents that are both predecisional and deliberative. The records are predecisional because they were "generated before the adoption of an agency policy," i.e., a response to an inaccurate allegation about Mr. Hunt, which CBP officially responded to through the "Fence Justification Response" issue statements and a written response to a Congressional inquiry (see n.9, supra). See Coastal States, 617 F.2d at 866. They are deliberative because they "reflect[] the give-and-take of the consultative

process.” See id. Plaintiff incorrectly argues that the records do not meet either of these prongs.

Specifically, Plaintiff contends that CBP fails to meet its burden of showing that portions of the 21 records withheld under FOIA Exemption 5 are exempt under deliberative process privilege (and attorney/client privilege as to one record) (Pl’s Opp’n Br. 8-12). Plaintiff claims that, although the agency has identified the “‘process’ involved – ‘deliberations on how to respond to allegations raised in the media,’” it has not identified the “role” the disputed documents “played in that process.” See Pl’s Opp’n Br. 9. Plaintiff, however, concedes that “it is well-established that ‘a document from a subordinate to a superior official is more likely to be predecisional.’” See Pl’s Opp’n Br. 11 n.6 (citing Tax Analysts v. Internal Revenue Serv., 294 F.3d 71, 81 (D.C. Cir. 2002) (quoting Coastal States Gas Corp. v. Dep’t of Energy, 617 F.2d 854, 868 (D.C. Cir. 1980)). Furthermore, Plaintiff recognizes that “the deliberative process privilege is so dependent upon the individual document and the role it plays in the administrative process.” See Pl’s Opp’n Br. 9 (quoting Senate of Puerto Rico ex rel. Judiciary Comm. v. U.S. Dep’t of Justice, 823 F.2d 574, 585 (D.C. Cir. 1987) (citation omitted)).

It is undisputed here that CBP had no records relating to Hunt property prior to the date of the Texas Observer article (i.e., between January 20, 2001 and February 18, 2008). Rather, the only potentially responsive documents comprised internal agency discussions about how to respond to inquiries relating to the allegations in the article and agency responses to the allegations. Because the allegations related to Hunt were unfounded, the agency officials involved in the internal discussions necessarily offered opinions about where responsive information about placement of the border fence in relation to property owned by Mr. Hunt might be found in agency records. Accordingly, a review of CBP’s Vaughn submissions and the three e-mail strings clearly shows that

the documents are predecisional. Each string was initiated by a senior official, and requested that subordinate officials, whose names were redacted under uncontested FOIA Exemption 6, assist in developing a response to inquiries about the allegations in the Texas Observer article, including those relating to Mr. Hunt.

As discussed above, one e-mail string began with an e-mail sent on April 21, 2008 at 12:54 a.m. “on behalf of CBP Tasking, Office of the Commissioner, U.S. Customs and Border Protection,” and contained a subject line of “SECRETARY TASKER – Hunt Fence.” This string clearly sought input from subordinate officials, whose names were redacted under uncontested Exemption 6, on developing the DHS Secretary’s response to a Congressional inquiry relating to the allegations in the Texas Observer article. A second e-mail string began with an e-mail sent on April 30, 2008 at 10:08 a.m. by Gregory Giddens, SBI Executive Director, contained a subject line of “Hunt property,” and initiated an “internal discussion on how to respond to allegations raised in the media.” Finally, a third e-mail string began with an e-mail sent on June 27, 2008 at 8:00 a.m. by the Office of Public Affairs, U.S. Customs and Border Protection, as a “Tasker [for] River Bend Tamez Sabal Palm,” and sought input from subordinate officials, “related to a tasker regarding allegations related to Hunt property.” The initial e-mail was copied to Mr. Giddens, and relates to ongoing efforts by the agency to respond to inquiries relating to the allegations in the Texas Observer article.

The unredacted portions of each e-mail string show an intra-agency discussion consisting of the back-and-forth between various CBP offices as to who will take the lead in responding to the various taskers sent out to gather information about the allegations in the Texas Observer article, including those relating to Mr. Hunt. As part of this process, subordinate officials were tasked with gathering and selecting information they believed may be helpful in determining if Hunt properties

were given preferential treatment. The outcome of these inquiries was a determination that the “[p]roposed fence locations in the area of Granjeno [where the Hunt property is located] were determined through operational assessments made by the local Border Patrol Sector based on their extensive field experience.” See Document 26 (Memo from the CBP Commissioner (at p.2 of 3), attached to the May 22, 2008 letter from Secretary Chertoff to Congressman Thompson regarding inquiry about allegations in the Texas Observer article). Thus, all intra-agency deliberations by CPB dealt with how to respond to the allegations in the article, and are subject to redaction under the deliberative process privilege.

Plaintiff also challenges the assertion of Exemption 5 as to specific documents. Plaintiff argues that, even if the documents were “predecisional” at the time they were prepared, documents identified as “talking points” were likely adopted, formally or informally, as the agency’s position. See Pl’s Opp’n Br. 10 (citing, e.g., Judicial Watch, Inc. v. U.S. Postal Serv., 297 F.Supp.2d 252, 257 (D.D.C. 2004) (“draft talking points” not properly withheld where the agency “identifies nothing more specific about the content of this document, does not specify its place in a particular decisionmaking context, and does not indicate whether, as a draft, these talking points were actually used in a communication with the public.”)).

CBP used the term “talking points” here to refer to material prepared in the context of the “taskers” sent out to develop a response within the agency to the allegations in the media, and these documents are distinguished from the final “Fence Justification Response” issue statements that were disclosed to Plaintiff as the material used to address public inquiries.¹⁴ The “talking points”

¹⁴ Two documents were withheld as talking points. Document 1, which is described in the Vaughn index (at p. 1) as “talking points regarding Hunt Property, City of Granjeno and Border Fending in RGV Sector,” was redacted “because information contains deliberations on

are therefore properly considered “briefing materials” – reports or other documents that summarize issues and advise superiors, either generally or in preparation for an event such as congressional testimony – that are protected from disclosure under FOIA under the deliberative process privilege. See Miccosukee Tribe of Indians of Florida v. U.S., 516 F.3d 1235, 1263-66 (11th Cir. 2008) (upholding the EPA's invocation of Exemption 5 deliberative process privilege to protect "draft documents including memoranda, issue papers, briefing papers, e-mails and other communications, that contained or incorporated comparisons, analyses, and evaluations of legal and policy considerations."); Judicial Watch, Inc. v. U.S. Dep't of Commerce, 337 F.Supp.2d 146, 174 (D.D.C. 2004) (protecting “talking points” and recommendations on how to answer questions); Judicial Watch, Inc. v. U.S. Dep't of Energy, 310 F.Supp.2d 271, 317 (D.D.C. 2004) (protecting briefing materials prepared for the Secretary of the Interior), aff'd in part, rev'd in part on other grounds and remanded, 412 F.3d 125, 133 (D.C. Cir. 2005); Judicial Watch, Inc. v. Dep't of Justice, 306 F.Supp.2d 58, 71-72 (D.D.C. 2004) (protecting e-mail created to prepare FERC chairman for upcoming congressional testimony); Thompson v. Dep't of the Navy, No. 95-347, 1997 WL 527344, at *4 (D.D.C. Aug. 18, 1997) (protecting materials created to brief senior officials who were preparing to respond to media inquiries, on the basis that “disclosure of materials reflecting the

how to respond to allegations raised in the media.” See nn.8-9 herein. Document 9, which was withheld in full, is described in the Vaughn index (at p. 3) as “Draft Talking Points related to Texas Border Coalition Lawsuit,” and was redacted under Exemption 5 because “the document is a draft that reflects internal discussions and is not in final form.” See Hanson Decl., ¶ 15. There is no factual basis in the record that the talking points were adopted, formally or informally, as CBP’s position, or that the talking points constituted anything other than “briefing material.” When analyzing claims under the deliberative process privilege of Exemption 5, courts must first look at the documents' "function and significance in the . . . decisionmaking process." Taxation With Representation Fund v. Internal Revenue Service, 646 F.2d 666, 677 (D.C. Cir. 1981); see also Coastal States, 617 F.2d at 867 (“application of the deliberative process privilege is highly dependent upon the specific documents and administrative process at issue”).

process by which the Navy formulates its policy concerning statements to and interactions with the press” could stifle frank communication within the agency), aff’d, No. 97-5292, 1998 WL 202253, at *1 (D.C. Cir. Mar. 11, 1998) (per curiam).

"Briefing materials" and "drafts" are therefore similar to advisory opinions, recommendations, and deliberations, and are likewise generally exempt from disclosure under the deliberative process privilege. Coastal States Gas Corp., 617 F.2d at 866 ("The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency."); DOI v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8 (2001) (quoting NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975)) (The deliberative process privilege covers documents "reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated."); Montrose Chemical Corp. v. Train, 491 F.2d 63 (D.C.Cir.1974) (memorandum summarizing testimony prepared for agency official before that official renders final judgment).

Thus, Plaintiff incorrectly claims that the agency improperly withheld a document as a "draft," but failed to provide a sufficient basis to determine whether the "draft" was predecisional. See Pl's Opp'n Br. 11-12. Document 9, which was withheld in full, is described in the Vaughn index (at p. 3) as "Draft Talking Points related to Texas Border Coalition Lawsuit." Each page of the document was stamped "DRAFT" and "FOR OFFICIAL USE ONLY," and the document was clearly prepared in connection with anticipated questions relating to the Texas Border Coalition Lawsuit (and not questions about Mr. Hunt). See n.2, supra. Accordingly, in addition to being marginally responsive, the draft document was properly withheld under Exemption 5 because it

“reflects internal discussions and is not in final form.” See Hanson Decl., ¶ 15.

Plaintiff also claims that CBP appears to have improperly withheld material under the deliberative process privilege that is “purely factual.” See Pl’s Opp’n Br. 12 (citing, e.g., Judicial Watch, Inc. v. Dep’t of Justice, 365 F.3d 1108, 1113 (D.C. Cir. 2004)). Plaintiff attempts to support this contention by reference to e-mail messages that instruct the recipients to “fact check” and “review . . . for correctness.” See Pl’s Opp’n Br. 12 (referring to Documents 10 and 11, and Documents 15 and 24). Plaintiff’s contention fails largely because CBP did not withhold “factual” information. For example, the request to “fact check” was not redacted from the e-mail string in Documents 10 and 11. The same e-mail string also contains an admission from a subordinate official that “I incorrectly thought Mr. Hunt owned the River Bend Golf Course – he does not.” Thus, CPB did not redact purely factual material from the e-mail strings; rather, it redacted those portions of the responsive records that reflected the process by which CBP “formulates its policy concerning statements to and interactions with the press,” the disclosure of which could stifle frank communication within the agency.¹⁵ See Thompson v. Dep’t of the Navy, No. 95-347, 1997 WL 527344, at *4 (D.D.C. Aug. 18, 1997).

Finally, Plaintiff claims that one record was improperly withheld in part under FOIA Exemption 5 based on an assertion of attorney/client privilege. See Pl’s Opp’n Br. 13. Plaintiff

¹⁵ Similarly, CBP redacted a portion of unnumbered Document 31 which is labeled as “Options” and is followed by a “Recommendation” that “Based on the information briefed, it is recommended that CBP, in conjunction with SBInet, continue to update the public through period responses to inquiries.” See also n.9, supra. To the extent that a passing reference to Mr. Hunt is included in any of the redacted deliberative material, CBP submits that such references are protected because objective facts, as opposed to opinions, may be protected if the method of selecting or presenting would reveal deliberative process or the facts are “inextricably intertwined with exempt portions.” See, e.g., Mead Data Cent., Inc. v. U.S. Dep’t of the Air Force, 566 F.2d 242, 260 (D.C. Cir. 1997).

refers to the redaction of a few words in the body of an e-mail to Mr. Giddens, disclosed as part of Document 28, that are preceded by the words, “Per OCC” or Office of Chief Counsel. Clearly, the redacted portion of the sentence reflected legal advice from counsel obtained at the request of one of the subordinate officials involved in responding to one of the three taskers initiated to respond to the allegations in the Texas Observer article. FOIA Exemption 5 also incorporates the traditional privilege accorded to “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” Mead Data Cent., Inc. v. U.S. Dep’t of the Air Force, 566 F.2d 242, 252 (D.C. Cir. 1997). Unlike the attorney work-product privilege, also protected under Exemption 5, the attorney-client privilege is not limited to the context of litigation. See Elec. Privacy Info. Ctr. v. DHS, 384 F.Supp.2d 100, 114 (D.D.C. 2005) (citing, e.g., Mead Data). Moreover, although it fundamentally applies to facts divulged by a client to his attorney, this privilege also encompasses any opinion given by an attorney to his client based upon, and thus reflecting, those facts. See id. (noting that the privilege protects attorney’s advice based upon facts provided by the client).

III. CBP Properly Complied with FOIA’s Segregability Requirement

Plaintiff also contends that CBP fails to comply with FOIA’s segregability requirement (Pl’s Opp’n Br. 13-14). Specifically, Plaintiff contends that CBP fails to satisfy the FOIA requirement that “any reasonably segregable portion of a record shall be provided . . . after deletion of the portions which are exempt.” See Pl’s Opp’n Br. 13 (citing 5 U.S.C. § 552(b)). Plaintiff claims that the agency improperly withheld “entire documents” without addressing the question of segregability. See Pl’s Opp’n Br. 13-14 (citing, e.g., Billington v. U.S. Dep’t of Justice, 233 F.3d 581, 586 (D.C. Cir. 2000)).

Contrary to Plaintiff's contention, no reasonably segregable non-exempt portions of the documents were withheld from Plaintiff; rather, the redacted information was exempt from disclosure pursuant to a FOIA exemption or was not reasonably segregable because its release would have revealed the underlying protected material. See SFNGD, No. 9; Hanson Decl., ¶ 10. A review of Mr. Hanson's declaration, the accompanying Vaughn index, and the redacted documents attached to Defendant's Motion for Summary Judgment in Part, reveals that CBP carefully reviewed each document to determine if any information could be segregated and released, that some documents were withheld in part and others in their entirety (with appropriate redactions), and that all reasonably segregable non-exempt material has been released. As discussed above, CBP did not redact a number of references to the Hunt property in the e-mail strings, did not assert Exemption 5 to withhold information from several final "Fence Justification Response" issue statements (as opposed to talking points) or the official response to a congressional inquiring about the Texas Observer article. In addition, many of the allegations relating to the article were unrelated to Mr. Hunt, and CBP's discussions relating to a response to inquiries about the allegations necessarily involved the unrelated allegations. See June 27, 2008 e-mail string relating to "Tasker [for] River Bend Tamez Sabal Palm."

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S CROSS-MOTION
FOR SUMMARY JUDGMENT IN PART**

Plaintiff's Cross-Motion for Summary Judgment in Part ("Pl's Cross Mot.") (Docket Entry 26) is a mirror-image of its opposition brief, and requests that the Court enter summary judgment in part in favor of Plaintiff for the same reasons as Plaintiff opposes Defendant's Motion for Summary Judgment in Part. Accordingly, Defendant opposes Plaintiff's cross-motion for the same

reasons stated above in its reply, and submits that the Court should deny Plaintiff's cross-motion.¹⁶

CONCLUSION

For the foregoing reasons, and those stated in our moving papers, Defendant requests that the Court grant its Motion for Summary Judgment in Part and deny Plaintiff's Cross-Motion for Summary Judgment in Part.

Respectfully submitted,

/s/
JEFFREY A. TAYLOR, D.C. BAR # 498610
United States Attorney

/s/
RUDOLPH CONTRERAS, D.C. BAR # 434122
Assistant United States Attorney

/s/
JOHN G. INTERRANTE
PA Bar # 61373
Assistant United States Attorney
Civil Division
555 4th Street, N.W., Room E-4806
Washington, D.C. 20530
(202) 514-7220
(202) 514-8780 (fax)
John.Interrante@usdoj.gov

Of Counsel:

Simon Fisherow, U.S. Customs and Border Protection
Susan Shama, U.S. Customs and Border Protection

¹⁶ Defendant separately responds to Plaintiff's Statement of Material Facts Not in Dispute.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<hr/>)	
CITIZENS FOR RESPONSIBILITY))	
AND ETHICS IN WASHINGTON,))	
))	
Plaintiff,))	Civil Action No. 08-1046 (JDB)
))	
v.))	
))	
U.S. DEPARTMENT OF))	
HOMELAND SECURITY,))	
))	
Defendant.))	
<hr/>)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S STATEMENT OF
MATERIAL FACTS NOT IN DISPUTE**

Pursuant to LCvR 7(h) and 56.1, Defendant, U.S. Department of Homeland Security (“DHS”), hereby responds to Plaintiff’s Statement of Material Facts Not in Dispute (Docket Entry 25-3).

1. This paragraph is not disputed, except to the extent that it suggests that any of the allegations that wealthy and well-connected landowners have influenced the secure border fence siting process, as reported in the Texas Observer article or otherwise, are true.

Respectfully submitted,

/s/

JEFFREY A. TAYLOR, D.C. BAR # 498610
United States Attorney

/s/

RUDOLPH CONTRERAS, D.C. BAR # 434122
Assistant United States Attorney

/s/

JOHN G. INTERRANTE
PA Bar # 61373
Assistant United States Attorney
Civil Division
555 4th Street, N.W., Room E-4806
Washington, D.C. 20530
(202) 514-7220
(202) 514-8780 (fax)
John.Interrante@usdoj.gov

Of Counsel:

Simon Fisherow, U.S. Customs and Border Protection
Susan Shama, U.S. Customs and Border Protection

VAUGHN INDEX*Citizens for Responsibility and Ethics in Washington v. Department of Homeland Security***Case No. 08-1046****Hunt Documents – Release #1****(including supplemental releases of October 10, 2008 and November 17, 2008)**

Document File Name (as it appears on CD)	Originating Office/Location	Document Description	Number of Pages	Disposition & Exemption(s)
One (Redacted)	Office of Border Patrol (OBP)	Talking points regarding Hunt Property, City of Granjeno and Border Fencing in RGV Sector	1	- Document redacted in full. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because information contains deliberations on how to respond to allegations raised in the media.
Two (Redacted)	Office of Border Patrol (OBP)	Map referencing Hunt property showing known and documented smuggling routes, and locations of Remote Video Surveillance System (RVSS) cameras	2	- Document redacted in full. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions, including known and documented smuggling routes, and locations of Remote Video Surveillance System (RVSS) cameras.
Three (Redacted)	Office of Border Patrol (OBP)	Map referencing Hunt property prepared in response to Texas Observer article	1	- Document redacted in full. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions.
Four (Redacted)	Office of Border Patrol (OBP)	Map referencing Hunt property showing known and documented smuggling routes	1	- Document redacted in full. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains

				to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions, such as known and documented smuggling routes.
Five (Redacted)	Office of Border Patrol (OBP)	Map referencing Hunt property showing apprehension sites and narcotics seizures	1	- Document redacted in full. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions such as illegal alien apprehension sites, smuggling apprehensions, and narcotics seizures.
Six (Redacted)	Office of Border Patrol (OBP)	Map referencing Hunt property showing known and documented smuggling routes	1	- Document redacted in full. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions such as known and documented smuggling routes.
Seven (Redacted)	Office of Border Patrol (OBP)	Map dated April 22, 2008 prepared in response to Texas Observer article showing known and documented smuggling routes	1	- Document redacted in full. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions such as known and documented smuggling routes.
Eight (Redacted)	Office of Border Patrol (OBP)	Document related to Rio Grand Valley (RGV) Pedestrian Fence (PF) 225 Fence Segments (Issues with Hunt Development)	2	- Document redacted in full. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain

				techniques or procedures for law enforcement investigations or prosecutions.
Nine (Redacted)	Secure Border Initiative (SBI)	Draft Talking Points related to Texas Border Coalition Lawsuit	5	- Document redacted in full. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document is a draft that reflects internal discussions and is not in final form.
Ten (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 30, 2008 related to Texas Observer article and letter to Congressman Thompson on Texas fence	6	- Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions.
Eleven (Redacted)	Secure Border Initiative	Email string beginning April 30, 2008 related to Texas Observer article and letter to Congressman Thompson on Texas fence	6	- Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Names of some lower-level CBP

				<p>employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.</p> <p>- Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions.</p>
Twelve (Redacted)	Secure Border Initiative (SBI)	Email string beginning June 27, 2008 related to tasker regarding response to allegations related to Hunt property	3	<p>- Document released with partial redactions.</p> <p>- Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because reflects internal discussions on how to respond to allegations raised in the media.</p> <p>- Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.</p>
Thirteen (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 21, 2008 related to tasker regarding response to allegations related to Hunt property	2	<p>- Document released with partial redactions.</p> <p>- Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media.</p> <p>- Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6),</p>

				because release would be considered a clearly unwarranted invasion of privacy.
Fourteen (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 21, 2008 related to tasker regarding response to allegations related to Hunt property. Attachments include letter from Congressman Thompson and response from Secretary Chertoff	17	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy. - Signatures of some CBP employees or third parties are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Fifteen (Redacted)	Secure Border Initiative (SBI)	Email string beginning June 27, 2008 related to tasker regarding response to allegations related to Hunt property	4	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because responses constitute deliberations on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Sixteen (Redacted)	Secure Border Initiative (SBI)	Email string beginning June 27, 2008 related to tasker regarding response to allegations related to Hunt	3	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the

		property		<p>deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because responses constitute deliberations on how to respond to allegations raised in the media.</p> <p>- Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.</p>
Seventeen (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 21, 2008 related to tasker regarding response to allegations related to Hunt property	2	<p>- Document released with partial redactions.</p> <p>- Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because responses constitute deliberations on how to respond to allegations raised in the media.</p> <p>- Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.</p>
Eighteen (Redacted)	Secure Border Initiative (SBI)	Email string beginning June 27, 2008 related to tasker regarding response to allegations related to Hunt property	3	<p>- Document released with partial redactions.</p> <p>- Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because responses constitute deliberations on how to respond to allegations raised in the media.</p> <p>- Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6),</p>

				because release would be considered a clearly unwarranted invasion of privacy.
Nineteen (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 21, 2008 related to tasker regarding response to allegations related to Hunt property	3	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because responses constitute deliberations on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Twenty (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 21, 2008 related to tasker regarding response to allegations related to Hunt property	5	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because responses constitute deliberations on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Twenty-one (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 21, 2008 related to tasker regarding response to allegations related to Hunt property	2	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the

				<p>media.</p> <ul style="list-style-type: none"> - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Twenty-two (Redacted)	Secure Border Initiative (SBI)	Email string beginning June 27, 2008 related to tasker regarding response to allegations related to Hunt property. Attachments include Talking Points related to border fence at Hunt Ranch	5	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Twenty-three (Redacted)	Secure Border Initiative (SBI)	Email string beginning April 21, 2008 related to tasker regarding response to allegations related to Hunt property. Attachment: letter from Congressman Thompson to Secretary Chertoff	5	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Twenty-four (Redacted)	Secure Border Initiative (SBI)	Email string beginning June 27, 2008 related to tasker regarding response	12	<ul style="list-style-type: none"> - Document released with partial redactions.

		to allegations related to Hunt property. Attachments include Document Related to Rio Grand Valley (RGV) Pedestrian Fence (PF) 225 Fence Segments (Issues with Hunt Development), minutes from Office of Border Patrol (OBP) meeting, After Action Report (AAR) on Sabal Palm property issues, Tamez property updated briefing, and Tamez property talking points		<ul style="list-style-type: none"> - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy. - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions, such as particular points of vulnerability along the U.S. border with Mexico and details of vanishing points, locations where illegal immigrants can quickly and easily assimilate into the local population.
Twenty-five (Redacted)	Secure Border Initiative (SBI)	Email string beginning January 22, 2008 related to fence segment requirements. Attachment includes detailed synopses of fence sectors, including vulnerabilities and vanishing points	12	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions of proposed construction projects of a pre-decisional nature. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of

				<p>privacy.</p> <ul style="list-style-type: none"> - Information is redacted pursuant to 5 U.S.C. § 552(b)(7)(E), as it pertains to records compiled for law enforcement purposes, the release of which would disclose certain techniques or procedures for law enforcement investigations or prosecutions such as detailed synopses of fence sectors, including vulnerabilities and vanishing points.
Twenty-six (Redacted)	Secure Border Initiative (SBI)	Letter from Secretary Chertoff to Congressman Thompson dated May 22, 2008 regarding border fencing in Texas. Attachment includes memorandum written by Commissioner Basham on placement on border fencing	5	<ul style="list-style-type: none"> - Document released with partial redactions. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy. - Signatures of some CBP employees or third parties are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Twenty-seven (Redacted)	Secure Border Initiative (SBI)	Draft media response dated June 17, 2008 pertaining to fence construction questions relating to the River Bend Golf Course and other non-Hunt properties	2	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document is a draft that reflects internal discussions and is not in final form.
Twenty-eight (Redacted) Supplemental Release #1 (October 10, 2008)	Secure Border Initiative (SBI)	Email string beginning June 27, 2008 related to potential agency responses to media accusations	3	<ul style="list-style-type: none"> - Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Information is redacted pursuant to 5 U.S.C. § 552(b)(5) because it

				contains confidential communications between attorney and client. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Fence Justification Response to Texas Observer _ 2-21-08 (edited on 4-08-08) (Redacted) Supplemental Release #2 (November 17, 2008)	Office of Border Patrol (OBP)	Document discussing lack of outside influence on decisions related to particular section of fencing	1	- Document released in full.
Fence Justification Response to Texas Observer _ 2-21-08 (Redacted) Supplemental Release #2 (November 17, 2008)	Office of Border Patrol (OBP)	Document discussing lack of outside influence on decisions related to particular section of fencing	3	- Document released in full.
Issue Paper _ 2-21-08 Newspaper Article (Redacted) Supplemental Release #2 (November 17, 2008)	Office of Border Patrol (OBP)	Issue paper addressing media allegations made in Texas Observer newspaper article	2	- Document released with partial redactions. - Information that illustrates the deliberative process within CBP is redacted pursuant to 5 U.S.C. § 552(b)(5) because the document reflects internal discussions on how to respond to allegations raised in the media. - Names of some lower-level CBP employees or third parties and their contact information (which contain their names in full) are redacted pursuant to 5 U.S.C. § 552(b)(6), because release would be considered a clearly unwarranted invasion of privacy.
Issue Paper _ 5-19-08 Affluent vs. Non-Affluent (HL) (Redacted) Supplemental Release #2 (November 17, 2008)	Office of Border Patrol (OBP)	Issue paper addressing media allegations made in Texas Observer newspaper article	1	- Document released in full.