

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 14-1589 (EGS)
)	
DEPARTMENT OF DEFENSE, et al.,)	
)	
Defendants.)	

**PLAINTIFFS' COUNTER-STATEMENT OF MATERIAL
FACTS AS TO WHICH THERE IS A GENUINE ISSUE**

COME NOW Plaintiffs, by counsel, under Local Civil Rule 7(h), and pursuant to the Court's Standing Order, and respectfully submit their response to Defendants' Statement of Material Facts.

Defendants' Undisputed Material Facts	Plaintiffs' Response
1. The only issues that remain to be litigated in this FOIA action are those set forth in the parties' March 2, 2018 Joint Motion to Amend Briefing Schedule. <i>See</i> ECF No. 65 at 3-6.	Admit
Material Facts Not in Dispute as to Defendant DOD	
2. DIA received two letters from Plaintiffs dated April 7, 2014, and May 28, 2014. Herrington Decl. ¶ 8.	Admit
3. The May 28, 2014 request sought records of "OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya." Herrington Decl. ¶6; Herrington Decl., Ex. 4.	Admit
4. In March 31, 2014, the Navy, Marine Corps, and European Command	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
<p>(“EUROCOM”) received requests for “orders to, NAVSTA Rota personnel to get ready to deploy, and if applicable, to deploy,” “orders [to an airborne special operations unit in Croatia] to deploy to NAS Sigonella,” and “orders to, NAS Sigonella personnel to get ready to deploy, and if applicable, to deploy.”</p> <p>Herrington Decl. ¶ 6; Herrington Exs. 1, 2, 3.</p>	
<p>5. In October 1, 2014, AFRICOM received a letter request for “records of all communications generated in March of 2011, regarding Gaddafi’s expressed interest in a truce and possible abdication and exile out of Libya.”</p> <p>Herrington Decl. ¶ 6; Herrington Ex. 5.</p>	Admit
<p>6. DIA is not the unit responsible for issuing OPREP-3 PINNACLE 3 reports.</p> <p>Herrington Decl. ¶ 8.</p>	Admit
<p>7. DIA conducted a search for records responsive to Plaintiffs’ request for OPREP-3 PINNACLE reports. Herrington Decl. ¶ 9.</p>	Admit
<p>8. DIA conducted two searches of its Record Message Traffic (“RMT”) database.</p> <p>Herrington Decl. ¶ 9.</p>	Admit
<p>9. DIA personnel searched the RMT using Boolean logic and key words such as “msgid,” “oprep,” “pinnacle,” and “Benghazi.” Herrington Decl. ¶ 9.</p>	Admit
<p>10. HHS searched all files reasonably likely to contain materials responsive to American Oversight’s FOIA request. Bell Decl. ¶ 18.</p>	
<p>11. DIA’s search covered a three-year range of January 1, 2012, to May 13, 2015.</p> <p>Herrington Decl. ¶ 9.</p>	Admit
<p>12. EUCOM conducted a search for records responsive to Plaintiffs’ request for records reflecting “personnel to get ready to deploy, and if applicable, to deploy” in response to the September 2012 Benghazi attack.</p> <p>Herrington Decl. ¶ 10.</p>	Admit
<p>13. In order to locate records responsive to Plaintiffs’ request for records reflecting “personnel to get ready to deploy, and if</p>	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
applicable, to deploy" in response to the September 11, 2012 attack in Benghazi, EUCOM directed the J2-Directorate of Intelligence, the J33-EUCOM Plans and Operations Center, Operations Division, and the J5/8 Directorate of Strategy to conduct searches because these three directorates were likely to have records responsive to the request for initial orders and communications. <i>See</i> Herrington Decl. ¶ 10.	
14. Personnel in the three EUCOM directorates conducted searches of their paper and electronic media, including searches conducted of safes, which store classified materials, E-mail accounts, and network share drives. <i>See</i> Herrington Decl. ¶11.	Admit
15. Personnel in the three EUCOM directorates tasked with conducting a search of electronic media used search terms such as "Libya," "Benghazi," "FAST," "Marine Force Reconnaissance Team," "Marine Corps Fleet Antiterrorism Security Team," "Naval Station Rota," "NAVSTA Rota," NASSIG," and "NAS Sigonella." Herrington Decl. ¶ 11.	Admit
16. In order to locate records responsive to Plaintiffs' request for records reflecting "personnel to get ready to deploy, and if applicable, to deploy" in response to the September 11, 2012 attack in Benghazi, the Navy directed U.S. Naval Forces Europe-Africa/U.S. 6th Fleet ("CNE-CNA-C6F") to conduct a search because CNE-CNA-C6F is the Navy command with geographic responsibility for Libya and there was likely to have records responsive to the request for initial orders and communications. Herrington Decl. ¶ 12.	Admit
17. CNE-CNA-C6F directed N21, N33, N35, and Combined Task Force ("CTF") 65, CTF 67, and CTF 68 to conduct a search for records responsive to Plaintiffs' request for initial orders and records because these particular offices' duties and tasking responsibilities could potentially yield records	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
responsive to Plaintiffs' request. Herrington Decl. ¶ 12.	
18. N21, N33, N35, CTF 65, CTF 67, and CTF 68 searched both electronic databases and paper files, including secured safes, at all levels of classification. Herrington Decl. ¶ 13.	Admit
19. CNE-CNA-C6F, a command with high security awareness, maintains most of its records, including those of its offices, electronically on shared drives on systems appropriate to the classification of information. Herrington Decl. ¶ 13.	Admit
20. In order to locate records responsive to Plaintiffs' request for records reflecting "personnel to get ready to deploy, and if applicable, to deploy" in response to the September 11, 2012 attack in Benghazi, the Marine Corps directed Marine Corps Forces Europe/Africa ("MARFOREUR/AF") is the Marine Corps component within the command of both the EUCOM and AFRICOM Combatant Commands and has geographic responsibility for the region that includes Libya and therefore was likely to have records responsive to the request for initial orders and communications. Herrington Decl. ¶¶ 13, 14.	Admit
21. MARFOREUR/AF personnel searched their combined share drives and shared portal on both unclassified and unclassified systems. Herrington Decl. ¶ 14.	Admit
22. MARFOREUR/AF personnel also identified and interviewed key personnel who were present at the command in 2012 and tasked those individuals with searching their archived emails and paper files for responsive records. Herrington Decl. ¶ 15.	Admit
23. MARFOREUR/AF personnel did not locate any records responsive to Plaintiffs' request for initial orders and communications because MARFOREUR/AF did not have an embassy support mission and was not contacted during the 2012 Benghazi attack. Herrington Decl. ¶ 15.	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
24. EUCOM produced a redacted copy of the Execution Order ("EXORD") dated 0700 Zulu (Greenwich meantime) September 12, 2012. Herrington Decl. ¶ 16; Herrington Ex. 6.	Admit
25. The EXORD is the initial written order directing EUCOM to execute an action in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya. Herrington Decl. ¶ 16.	Admit
26. The timeline given to Plaintiffs' counsel shows that the initial orders in response to the September 11, 2012 attack were conveyed verbally. Herrington Decl. ¶¶ 18-20; Herrington Exs. 8, 9.	Deny. Although the timeline purports to show that the initial orders were conveyed verbally, the record is replete with evidence that initial orders were written. <i>See, e.g.</i> , Clarke Decl. Ex. Exhibit 3 at 33, relating that orders given at 8:39 pm, and at 8:53 pm, were typed out precedent to being communicated.
27. In response to Plaintiffs' request for OPREP-3 PINNACLE report(s), AFRICOM released an OPREP-3 report to Plaintiffs. Herrington Decl. ¶¶ 23-24.	Deny. The record to which the DOD refers is not the OPREP-3 report. Rather, it is a record which refers to an OPREP-3.
28. In response to Plaintiffs' request for "records of all communications generated in March of 2011, regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya," AFRICOM directed its J5 Directorate (Strategy, Engagement, and Programs), The Combined Joint Task Force-Horn of Africa Component, Records Management, the J6 Directorate (Command, Control, Communications, and Computer Systems), and the Office of the Commander to search for records responsive to this request because these offices were reasonably likely to have documents responsive to the request. Herrington Decl. ¶ 25.	Admit
29. AFRICOM personnel also directed Colonel Brian Linvill to conduct a search of his electronic and paper files because the request specifically mentioned him by name. Herrington Decl. ¶ 25.	Admit
30. Colonel Linvill and personnel in the four AFRICOM offices conducted electronic	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
searches using broad terms such as "Gaddafi," "Qaddafi," "Dibri," "Kubic," "Ham," and "Linvill," and target their electronic search over the March 2011 time period. Herrington Decl. ¶ 26.	
31. DIA received an April 7, 2014 request for records of (1) maps depicting all assets within fifteen hundred miles of Benghazi, Libya on September 11 and 12, 2012; (2) DOD assets that were pre-positioned off the coast of Tripoli on October 18, 2011; and (3) records in calendar year 2012 of the threat to U.S. personnel because of al-Quaida or Ansar al-Shariah or other belligerent build-up in Benghazi. Williams Decl. ¶ 5.	Admit
32. A May 28, 2014 letter to DIA requestd records pertaining to (1) OPREP-3 PINNACLE report(s) used to provide any DOD division with notification of, or information about, the September 11 and 12, 2012 attacks on the U.S. facilities in Benghazi, Libya; and (2) for the period of July 1, 2012, through September 30, 2012, records of all directives, orders, and other communications regarding the readiness status of United States armed forces on the anniversary of the September 11, 2001 attacks on the World Trade Center, to or from: U.S. European Command; U.S. Central Command; U.S. Africa Command; U.S. Special Operations Command; Office of the Secretary of Defense and the Joint Staff; Naval Air Station Sigonella, Sicily; Spanish naval base Naval Station Rota, Spain; Aviano Air Base, Italy; U.S. Special Operations Forces. Williams Decl. ¶ 6.	Admit
33. In response to Plaintiffs' FOIA requests, DIA initiated a search for responsive records and on June 30, 2016, notified Plaintiffs that it had identified 148 records responsive to Plaintiffs' request and that, of those records, 92 were referred to other government	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
<p>agencies for their review and direct response to Plaintiffs.</p> <p>Williams Decl. ¶ 8.</p>	
<p>34. Of the remaining 56 records that DIA identified as responsive to Plaintiffs' request, DIA notified Plaintiffs that one record was a duplicate of a previously processed record, 25 records were withheld in part and 30 were withheld in full pursuant to the authority of specific FOIA exemptions and Executive Order 13,526. Williams Decl. ¶ 9.</p>	<p>Admit. Irrelevant as uncontested.</p>
<p>35. DIA has withheld in full records identified V-11, V-19, V-45, and V-48 because certain information in these four records remains currently and properly classified at the Top Secret and Secret levels under Executive Order 13526. Williams Decl. ¶ 13.</p>	<p>Admit. Irrelevant as uncontested.</p>
<p>36. V-11 is a finished intelligence report prepared by an analytic component of DIA and contains an in-depth analysis related to the Benghazi consulate attack based on classified sources and methods; V-19 is a finished intelligence product prepared by an analytic component of DIA providing analyses of multiple topics and regions, including an analysis related to the Benghazi attack that is based on classified sources and methods; V-45 and V-48 are Top Secret level intelligence reports that contain specific details about the sources and methods associated with obtaining the reported information.</p> <p>Williams Decl. ¶ 16</p>	<p>Admit. Irrelevant as uncontested.</p>
<p>37. DIA reviewed records V-11, V-19, V-45, and V-48 and determined that the agency could not make any discretionary disclosures by segregating and releasing non-exempt information. Williams Decl. ¶ 25.</p>	<p>Admit. Irrelevant as uncontested.</p>
<p>38. In response to Plaintiffs' request for "maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and</p>	<p>Deny that the records were properly withheld in full pursuant to Executive Order 13526 and Exemption 1 because the information remains currently and properly classified at the Secret</p>

Defendants' Undisputed Material Facts	Plaintiffs' Response
12 th , 2012, regardless of [<i>sic</i>] whether such maps were created before or after September 11, 2012," the Joint Staff located 12 pages responsive to this request and responded to Plaintiffs on September 19, 2014, explaining that those records were withheld in full pursuant to Executive Order 13526 and Exemption 1 because the information remains currently and properly classified at the Secret level. Malloy Decl. ¶¶ 3-4, 11.	level. Affidavit of Admiral James A. Lyons, Jr., USN, (Ret) ¶ 5.
39. The 12-pages withheld by the Joint Staff "contain the force posture of the Department of Defense for the European Command, Central Command, and Africa Command areas of responsibility," "the force posture of Special Operations forces worldwide during the relevant time frame in September 2012," the "numbers of and location of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya," the "numbers of military personnel located in particular countries during that time," and "the transit time required for each available asset to reach Benghazi." Malloy Decl. ¶ 9.	Admit
40. The Joint Staff reviewed the 12-pages carefully, conducting a page-by-page and line-by-line review and determined that there is no reasonably segregable information contained in the responsive pages. Malloy Decl. ¶ 12.	Deny that that there is no reasonably segregable information contained in the responsive pages. Affidavit of Admiral James A. Lyons, Jr., USN, (Ret) ¶ 5.
Material Facts Not in Dispute as to Defendant CIA	
41. By letters dated February 24, 2014, and October 1, 2014, Plaintiffs sent the CIA two different, yet related, FOIA requests. Shiner Decl. ¶ 7.	Admit
42. The October 1, 2014 FOIA request sought records generated in March of 2011 pertaining to Colonel Muammar Gaddafi's "expressed interest in a truce and possible abdication out of Libya, by or to: (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri; (b) Rear Admiral (Ret.) Chuck Kubric; (c) AFRICOM personnel . . . [and] (d) The CIA." Shiner Decl. ¶ 19	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
43. On November 3, 2014, the CIA acknowledged receipt of the October FOIA request and assigned it a reference number. Shiner Decl. ¶ 20.	Admit
44. In a September 30, 2015 letter, the CIA explained that with respect to Plaintiffs' October 2014 request for records pertaining to Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, the agency "can neither confirm nor deny the existence or nonexistence of records responsive to" the request, citing section 3.6(a) of Executive Order 13526. Shiner Decl. ¶¶ 21-22.	Admit
45. The CIA's September 30, 2015 letter further stated that the fact of the existence or nonexistence of the requested records is currently and properly classified and relates to intelligence sources and methods information that is protected from disclosure by section 6 of the Central Intelligence Act of 1949 and section 102(A)(i)(1) of the National Security Act of 1947. Shiner Decl. ¶ 22.	Admit
46. In response to Plaintiffs' February 2014 FOIA request (items 5 and 6) for "all records of CIA Director David Petraeus' [and Deputy Director Michael Morell's] actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack," the CIA conducted a search of electronic and paper files that covered a 30-hour period, rather than the 24-hour period that Plaintiffs had requested. Shiner Decl. ¶ 28.	Admit
47. Plaintiffs narrowed their request for "all records of CIA Director David Petraeus' [and Deputy Director Michael Morell's] actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack," to include email, memoranda, and notes generated by Director Petraeus and Deputy Director Morell during the requested time period. Shiner Decl. ¶¶ 24, 28.	Admit. Irrelevant as uncontested.

Defendants' Undisputed Material Facts	Plaintiffs' Response
48. Personnel within the CIA's Office of Information Management Services ("IMS") directed searches of electronic mailboxes, both classified and unclassified, of Director Petraeus and Deputy Director Morell covering a 30-hour window of time beginning at the time the attack began. Shiner Decl. ¶¶ 29-30, n.2.	Admit. Irrelevant as uncontested.
49. Personnel within CIA's IMS office searched multiple databases within the Director's area in which other records generated by Director Petraeus and Deputy Director Morell would be found, including databases containing hand-written notes and memoranda intended for either internal or external audiences. Shiner Decl. ¶ 29.	Admit. Irrelevant as uncontested.
50. Personnel within CIA's IMS office instructed the Office of Congressional Affairs to conduct a search of its databases and archival records. Shiner Decl. ¶ 29.	Admit. Irrelevant as uncontested.
51. CIA personnel searched all relevant office databases and archival record systems deemed likely to contain records responsive to Plaintiffs' request for items 5 and 6 of its February 2014 FOIA request, as narrowed. Shiner Decl. ¶ 29.	Admit. Irrelevant as uncontested.
52. CIA personnel searched all of the email sent by Director Petraeus and all of the email sent by Deputy Director Morell between 3:40 pm EST on September 11, 2012, and 9:40 pm EST on September 12, 2012. Shiner Decl. ¶ 30.	Deny. Irrelevant as uncontested.
53. In conducting their search of electronic records and databases, CIA personnel were instructed to use "broad search terms such as relevant titles (e.g., Director), names (e.g., Petraeus), locations (e.g., Benghazi), facilities (e.g., annex), and actions (e.g., attack)." Shiner Decl. ¶ 30.	Admit
54. The search conducted by CIA personnel for records responsive to Plaintiffs' request was reasonably calculated to uncover all documents responsive to the FOIA request, as narrowed. Shiner Decl. ¶ 31.	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
55. CIA personnel conducted a page-by-page and line-by-line review of the Inspector General ("IG") records responsive to item 1 of Plaintiffs' October 2014 FOIA request and released all reasonably segregable, non-exempt information. Shiner Decl. ¶ 32.	Deny. CIA did not release all reasonably segregable, non-exempt information of the IG records. That release is attached to Clarke Decl. Ex. 8.
56. CIA personnel determined that certain information redacted in the IG records is currently and properly classified at the Secret level under Executive Order 13526. Shiner Decl. ¶¶ 34(a), (c).	Admit
57. CIA personnel determined that certain information redacted in the IG records is prohibited from disclosure under section 6 of the Central Intelligence Agency Act of 1949 and section 102(A)(i)(1) of the National Security Act of 1947. Shiner Decl. ¶¶ 41-44.	Admit
58. CIA personnel redacted names of CIA employees in the IG records and withheld that information pursuant to FOIA exemption (b)(6). Shiner Decl. ¶¶ 45-49.	Admit
59. CIA personnel determined the IG records contained information provided by confidential courses that must be withheld pursuant to FOIA exemption (b)(7). Shiner Decl. ¶¶ 50-55.	Admit
Material Facts Not in Dispute as to Defendant State	
60. On February 21, 2014, Plaintiffs submitted a FOIA request to State seeking various records related to activities at the U.S. Special Mission in Benghazi, Libya. Stein Decl. ¶ 4.	Admit
61. State acknowledged receipt of Plaintiffs' FOIA request and assigned it a control number on March 21, 2014. Stein Decl. ¶ 4	Admit
62. Plaintiffs withdrew portions of their FOIA requests by letters dated May 5, 2014, and August 5, 2014. Stein Decl. ¶¶ 5-6.	Admit
63. State made 10 productions of responsive documents to Plaintiffs by letter dated March	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
<p>16, 2015; May 11, 2015; July 6, 2015; August 31, 2015; October 26, 2015; December 4, 2015; December 21, 2015; March 21, 2016; May 5, 2016; and July 8, 2016.</p> <p>Stein Decl. ¶ 7; Stein Exs. 8-17.</p>	
<p>64. On October 20, 2017 and May 7, 2018, State made supplemental productions of records to Plaintiffs.</p> <p>Stein Decl. ¶ 8.</p>	Admit
<p>65. Personnel in State's Office of Information Programs and Services ("IPS") directed a search for records responsive to Plaintiffs' request for "records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack."</p> <p>Stein Decl. ¶¶ 9-11.</p>	Admit. Irrelevant as uncontested.
<p>66. IPS personnel identified the State Archiving System, the Executive Secretariat, and the Department's collection of emails sent and received by Secretary Clinton, which includes both materials provided to State by former Secretary Clinton and by the FBI as offices or records systems that were reasonably likely to have records responsive to Plaintiffs' request for "records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack."</p> <p>Stein Decl. ¶ 11.</p>	Admit. Irrelevant as uncontested.
<p>67. IPS personnel conducted a search of the State Archiving System, a database containing over 40 million records, using the terms "tripoli," to or from "secstate" and ("protest" or "demonstrations" or "attacks"), covering a time frame between September 10, 2012, to September 17, 2012 to search for records responsive to Plaintiffs' request.</p> <p>Stein Decl. ¶ 13.</p>	Admit.
<p>68. Personnel within the Executive Secretariat Staff conducted searches of the Executive</p>	Admit. Irrelevant as uncontested.

Defendants' Undisputed Material Facts	Plaintiffs' Response
<p>Secretariat's electronic records systems—the Secretariat Tracking and Retrieval System (“STARS”), the Secretariat Telegram Processing System (“STePS”), and Top Secret files.</p> <p>Stein Decl. ¶¶ 15-19.</p>	
<p>69. Personnel within the Executive Secretariat Staff conducted an electronic search of STARS and STePs covering the time period September 11, 2012, through September 12, 2012, using the following search terms: “Secretary Hillary Clinton,” or “Benghazi,” or “Libya,” or “Huma Abedin,” or “Cheryl Mills,” or “Secy-app,” or “Memcon.”</p> <p>Stein Decl. ¶ 16.</p>	Admit. Irrelevant as uncontested.
<p>70. Personnel within the Executive Secretariat Staff electronically searched an index of Top Secret files using search terms such as “Secretary Hillary Clinton,” or “Benghazi,” or “Libya,” or “Huma Abedin,” or “Cheryl Mills,” or “Secy-app,” or “Memcon.”</p> <p>Stein Decl. ¶¶ 16-18.</p>	Admit. Irrelevant as uncontested.
<p>71. IPS personnel conducted a search of electronic records retired by the Executive Secretariat Staff, which consist of shared electronic office folders that were available to employees within the Office of the Secretary during former Secretary Clinton's tenure, as well as individual electronic folders of files belonging to Cheryl Mills and Jacob Sullivan.</p> <p>Stein Decl. ¶ 20.</p>	Admit. Irrelevant as uncontested.
<p>72. IPS personnel conducted a search of the retired electronic files using the following combination of search terms: (“Benghazi” or “Libya”) AND “September w/5 2012” AND (“Clinton” or “Secretary”); (“Clinton” or “Secretary”) AND (“9/11/2012” OR “9/12/2012” OR “9/11/12” OR “9/12/12” OR</p>	Admit. Irrelevant as uncontested.

Defendants' Undisputed Material Facts	Plaintiffs' Response
<p>“September 11, 2012” OR “September 12, 2012”). Stein Decl. ¶ 20.</p>	
<p>73. IPS personnel manually searched unclassified shared drive folders, and specifically searched the following electronic file folders: “Schedule-Final Copy/September 2012,” “Mini Schedules/September 2012,” “Call Grids/September 2012,” “Daily Files/2012/9 September 2012/11 DC,” “Daily Files/2012/9 September 2012/12 DC,” and “Call Log” for schedules and call logs of former Secretary Clinton. From this collection, documents covering the dates September 11 and September 12, 2012 were identified as responsive to this request. Stein Decl. ¶ 21.</p>	Admit. Irrelevant as uncontested.
<p>74. IPS personnel retrieved from an off-site archival records storage space paper calendars that covered the time period between September 11 and September 12, 2012 and were maintained by former Secretary Clinton’s staff during her tenure. This set of calendars was manually searched for documents responsive to Plaintiffs’ request. Stein Decl. ¶ 23.</p>	Admit. Irrelevant as uncontested.
<p>75. IPS personnel conducted a search of the emails sent to and from Secretary Clinton drawn from two sources: materials provided to State by Secretary Clinton in 2014, and materials provided by the FBI in 2016. Stein Decl. ¶ 24.</p>	Admit. Irrelevant as uncontested.
<p>76. IPS personnel conducted a full-text search of both collections of email sent and received by Secretary Clinton using the terms “September 11, 2012,” “September 12, 2012,” “9-11-12,” “9-12-12,” “9-11-2012,” or “9-12-2012.” Stein Decl. ¶ 25.</p>	Admit. Irrelevant as uncontested.
<p>77. State withheld in full three ARB interview summaries (bates labeled C06052236, C0602052339, and C06052240) and 12 surveillance videos (bates labeled</p>	Admit

Defendants' Undisputed Material Facts	Plaintiffs' Response
<p>C050467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, C05467921), the latter videos on behalf of itself and the FBI.</p> <p>Stein Decl. ¶¶ 25-38; Hardy—Dep't of State Consultation Decl. ¶¶ 4-20.</p>	
<p>78. IPS personnel has determined that two of the ARB interview summaries (bates labeled C06052236 and C0602052339) and the surveillance video footage bates labeled C05467917, contain information that relates directly to intelligence activities, sources, and methods and remains currently and properly labeled as Secret under Executive Order 13526. State also withheld the ARB interview bates labeled C06052236 and the video bates labeled C054679179 on behalf of the CIA.</p> <p>Stein Decl. ¶¶ 30-35.</p>	<p>Deny. Surveillance video footage was shown at the trial of Ahmed Abu Khattala, and NBC News broadcast a segment of that footage. Clarke Decl. ¶¶ 2-3.</p>
<p>79. On behalf of the CIA, State's IPS personnel has determined that the ARB interview bates labeled C06052236 and the surveillance video footage bates labeled C05467917 is also barred from disclosure under Section 6 of the Central Intelligence Agency Act of 1949 and the National Security Act of 1947.</p> <p>Stein Decl. ¶¶ 36-</p>	<p>Deny. Surveillance video footage was shown at the trial of Ahmed Abu Khattala, and NBC News broadcast a segment of that footage. Clarke Decl. ¶¶ 2-3.</p>
<p>80. IPS personnel carefully reviewed the three ARB interview summaries and the 12 surveillance videos created on September 11, 2012, and September 12, 2012 (bates labeled C050467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, C05467921), and determined that there is no segregable, non-exempt information that it may release without disclosing information warranting protection under federal law.</p>	<p>Deny. Surveillance video footage was shown at the trial of Ahmed Abu Khattala, and NBC News broadcast a segment of that footage. Clarke Decl. ¶¶ 2-3.</p>

Defendants' Undisputed Material Facts	Plaintiffs' Response
Stein Decl. ¶¶ 39-63; Hardy—Dep't of State Consultation Decl. ¶¶ 4-20.	
Material Facts Not in Dispute as to Defendant FBI	
81. In response to Plaintiffs' request for the survivors' accounts of the September 11, 2012 attack in Benghazi, Libya, including September 15 or September 16, 2012 FBI 302 Interview Reports, the FBI stated that it can neither confirm nor deny the existence or nonexistence of the requested records. Third Hardy Decl. ¶¶ 5-17.	Admit
82. The FBI has never acknowledged the existence of the alleged FBI 302 interview reports. Third Hardy Decl. ¶ 7.	Deny. "[T]he following is an excerpt from the December 30, 2012, Senate Committee On Homeland Security And Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi:" On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington..." Compl. ECF 31 ¶ 126 (9), quoting FOIA request.
83. The FBI has never made the alleged FBI 302 interview reports or the information contained therein available to the public. Third Hardy Decl. ¶ 7.	Admit
84. There remain pending law enforcement investigations into the September 11, 2012 attack on the diplomatic mission in Benghazi, Libya, the specific details and focus of which are not known. Third Hardy Decl. ¶ 13; Hardy—Dep't of State Consultation Decl. ¶ 6; Stein Decl. ¶ 51.	Admit

DATE: June 25, 2018.

Respectfully submitted,

/ s/

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