

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MICHAEL QUICK,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 09-2064 (CKK)
)	
UNITED STATES DEPARTMENT OF)	
COMMERCE, NATIONAL INSTITUTE OF)	
STANDARDS AND TECHNOLOGY,)	
)	
Defendant.)	
_____)	

MOTION FOR SUMMARY JUDGMENT

Plaintiff, Mr. Michael Quick, brings this action against Defendant United States Department of Commerce (the “Department”), National Institute of Standards and Technology (“Defendant” or “NIST”), pursuant to the Freedom of Information Act (“FOIA”). Defendant hereby moves for summary judgment pursuant to Federal Rule of Civil Procedure (“Rule”) 56 because there exists no genuine issue of material fact which would prevent a judgment as a matter of law in Defendant’s favor.

In support of this Motion, Defendant respectfully refers the Court to the accompanying Memorandum of Points and Authorities, Statement of Undisputed Facts, Declaration of Catherine Fletcher and attached exhibits.

* * *

Dated: April 16, 2010
Washington, DC

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar # 447889
United States Attorney

/s/

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

/s/

BRIAN P. HUDAK
Assistant United States Attorney
555 4th Street, NW
Washington, DC 20530
(202) 514-7143

Attorneys for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
MICHAEL QUICK,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 09-2064 (CKK)
)	
UNITED STATES DEPARTMENT OF)	
COMMERCE, NATIONAL INSTITUTE OF)	
STANDARDS AND TECHNOLOGY,)	
)	
Defendant.)	
<hr/>)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Defendant United States Department of Commerce (the “Department”), National Institute of Standards and Technology (“Defendant” or “NIST”), by and through its undersigned counsel, respectfully submits this memorandum of points and authorities in support of its motion for summary judgment pursuant to Federal Rule of Civil Procedure (“Rule”) 56(b).

PRELIMINARY STATEMENT

Plaintiff brings this action under the Freedom of Information Act (“FOIA”) seeking the production of certain data files that NIST used in the architectural and engineering modeling of the collapse of World Trade Center 7 (“WTC 7”) on September 11, 2001, in conjunction with its investigation into the same. Although this case presents an atypical FOIA request largely seeking data files consisting of strings of numerical data that are not viewable except by using specialized engineering software and whose significance is only understandable to those with highly specialized technical knowledge, at bottom, this case concerns a straightforward application of FOIA Exemption 3.

As noted below, NIST has withheld certain groups of responsive data files pursuant to an express Finding by the Director of NIST that their release may jeopardize public safety -- namely, provide to anyone with the requisite expertise a roadmap of how to most efficiently and effectively collapse skyscrapers similar to WTC 7. The Director made his Finding pursuant to a specific provision of the National Construction Safety Team Act (the "NCSTA") -- the act that authorizes NIST to conduct investigations into building collapses -- which expressly provides that materials may be withheld from release if the Director of NIST finds that "the disclosure of that information might jeopardize public safety." 15 U.S.C. § 7306(d). As set forth below, this provision is clearly an Exemption 3(B) withholding statute; and, thus, NIST's withholdings in this matter are proper as a matter of law.

BACKGROUND

I. PLAINTIFF MADE A FOIA REQUEST TO NIST, WHICH HE SUBSEQUENTLY CLARIFIED.

Plaintiff -- Mr. Michael Quick -- made a FOIA request to NIST by email dated November 13, 2008 (the "FOIA Request"), seeking "a complete 'Certified' legitimate copy of the Computer Models Used by NIST to come to the conclusions' (sic) it reached in the Investigation of the events of September 11, 2001." *See* Declaration of Catherine S. Fletcher attached hereto as Exhibit A ("Fletcher Decl.") at ¶ 3, Ex. 1 (FOIA Request). Through a series of communications with NIST, Plaintiff subsequently clarified his request as seeking the "raw data" of models regarding the collapse of WTC 7 found at a particular NIST website: http://www.nist.gov/public_affairs/releases/wtc_videos/wtc_videos.html. *See* Fletcher Decl. at ¶ 6, Ex. 2 (attachments A to I).

II. NIST ISSUED CERTAIN NCSTAR REPORTS REGARDING THE COLLAPSES OF THE WTC TOWERS AND WTC 7 PURSUANT TO THE NCSTA.

As noted in the attached Fletcher Declaration (which also serves as NIST's Vaughn index for this case), NIST interpreted Plaintiff's use of the term "Investigation" to be a reference to the NCSTAR Reports regarding WTC 7 generated by NIST pursuant to the NCSTA. *See* Fletcher Decl. at ¶ 3. The NCSTA authorizes NIST to establish teams (*i.e.*, "National Construction Safety Teams") to investigate building failures. *Id.* at ¶ 4. Under this authority, NIST conducted a building and fire safety investigation of the September 11, 2001, World Trade Center fires and building collapses. *Id.*

As a result of its investigation, NIST issued, among other reports, a summary report regarding WTC 7 entitled "NIST NCSTAR 1A: Final Report on the Collapse of World Trade Center Building 7" (the "WTC 7 Report"). *Id.* This WTC 7 Report was supported by one Project report (NIST NCSTAR 1-9 entitled "Structural Fire Response and Probable Collapse Sequence of World Trade Center Building 7") (the "WTC 7 Project Report") and one Technical Topic Report (NIST NCSTAR 1-9A entitled "Global Structural Analysis of the Response of World Trade Center Building 7 to Fires and Debris Impact Damage") (the "WTC 7 Technical Topic Report"). *Id.* A copy of the complete set of WTC 7 Reports -- including the WTC 7 Report, WTC 7 Project Report and WTC7 Technical Topic Report -- can be found at <http://wtc.nist.gov/NCSTAR1/>. *Id.* at ¶ 5.

III. NIST SEARCHED FOR RECORDS RESPONSIVE TO PLAINTIFF'S FOIA REQUEST.

Based upon Plaintiff's above described clarifications and NIST's interpretations of the FOIA Request, NIST conducted a reasonable search for responsive records to locate the requested data files. *See* Fletcher Decl. at ¶ 7. Specifically, NIST consulted with program experts from NIST's Building and Fire Research Laboratory ("BFRL"), the NIST component

responsible for performing the modeling for the WTC 7 Reports and for maintaining the data files associated with such modeling. *Id.* Based upon its consultation with BFRL, NIST searched the offices of the researchers involved in the analysis of the collapse of WTC 7, which are located at NIST's headquarters in Gaithersburg, Maryland. *Id.*

IV. NIST LOCATED THE REQUESTED DATA FILES, WHICH LARGELY CONSIST OF RAW NUMERICAL DATA.

As a result of its search efforts, NIST located the exact files it sought to locate -- namely, the data files associated with the computer modeling analyses underlying the WTC 7 Reports. *See* Fletcher Decl. at ¶¶ 8-15, 28-30. Specifically, NIST located the responsive data files on a hard drive kept in a secure area for the WTC investigation at BFRL. *Id.* at ¶¶ 8, 28. These data files were created by being copied from the actual computers used to conduct the analyses to the hard drive. *Id.* NIST retrieved the data files from the hard drive by attaching it to a Windows-based computer. *Id.*

A. Format of the Responsive Data Files.

Due to the formatting and nature of nearly all of the responsive data files, a person cannot view, open, use or print the files using conventional software programs such as Microsoft Word, Corel Wordperfect, or Adobe Acrobat.¹ *Id.* Instead, a person must use specialized engineering and modeling software, known as (i) ANSYS Mechanical developed by ANSYS, Inc., and (ii) LS-DYNA developed by Livermore Software Technology Corp, to view and utilize the data stored in these files, which largely consists of strings of numerical data. *Id.* at ¶¶ 8-11. That is, “[u]nlike documents involved in typical FOIA requests, where responsive documents consist of

¹ As noted in the Fletcher Declaration, a handful of responsive data files (*i.e.*, less than 50) are Excel spreadsheet files that a person can open using Microsoft Excel. *See* Fletcher Decl. at ¶¶ 71.b.iii, 82.b.ii, 87.b.ii. These files represent less than five hundredths of one percent of responsive information. That is, approximately 99.95% of all responsive data files require specialized engineering and modeling software for a person to view and use their contents.

written information in the form of memoranda, letters and reports that might be contained within electronic files, such as Microsoft Word or Adobe PDF files, most of the electronic data files at issue in this case require specific modeling software that is programmed to accept the data and construct a virtual representation of WTC 7.” *Id.* at ¶ 11. The complexities of the data files and the engineering models constructed from these files are staggering. *See id.* at ¶¶ 12-14.

B. The Responsive Case Folders.

On the above noted hard drive, the responsive data files were maintained in separate case folders corresponding to different modeling analyses that BFRL conducted in the preparation of the WTC 7 Reports. *See Fletcher Decl.* at ¶ 28. In total, ten (10) of the case folders contained information responsive to Plaintiff’s FOIA Request as clarified, namely those entitled:

- i. Case B Impact (LS-DYNA);
- ii. Case B No Impact (LS-DYNA);
- iii. Classic Progressive Collapse (LS-DYNA);
- iv. Preliminary Analyses 1 (LS-DYNA);
- v. Preliminary Analyses 2 (LS-DYNA);
- vi. WTC7 Case A (ANSYS);
- vii. WTC7 Case B (ANSYS);
- viii. WTC7 Case C (ANSYS);
- ix. Preliminary Analyses (ANSYS); and
- x. Testing Analyses (ANSYS).

Id. at ¶ 29. As noted in the Fletcher Declaration, these case folders either correspond with specific analyses described in the WTC 7 Reports or were preliminary analyses used to

formulate, develop, test and finalize the analyses incorporated into the Reports. *See id.* at ¶¶ 13-88.

V. THE DIRECTOR OF NIST ISSUED A FINDING REGARDING THE SENSITIVITY OF CERTAIN ANSYS AND LS-DYNA DATA FILES.

On July 9, 2009, the Director of NIST issued a “Finding Regarding Public Safety Information” (the “Finding”), pursuant to Section 7(d) of the NCSTA, 15 U.S.C. § 7306(d). *See Fletcher Decl.* at ¶¶ 17-18, Ex. 4 (Finding). Section 7 of the NCSTA generally provides that FOIA is applicable to investigations conducted pursuant to the NCSTA by stating that “[e]xcept as otherwise provided in this section, a copy of a record, information, or investigation submitted or received by a [National Construction Safety Team] shall be made available to the public on request and at reasonable cost.” 15 U.S.C. § 7306(a). Section 7(d) of the NCSTA provides that “[a National Construction Safety Team] and [NIST] shall not publicly release any information it receives in the course of an investigation under this chapter if the Director finds that the disclosure of that information might jeopardize public safety.” 15 U.S.C. § 7306(d).

In the Finding, the Director cited Section 7(d) and concluded that the disclosure of certain information received by NIST in connection with its investigation into the collapse of WTC 7 on September 11, 2001, “might jeopardize public safety.” *See Fletcher Decl.* at ¶¶ 17-18, Ex. 4 (Finding). Specifically, the Director directed that “NIST shall not release” the following categories of information:

1. All input and results files of the ANSYS 16-story collapse initiation model with detailed connection models that were used to analyze the structural response to thermal loads, break element source code, ANSYS script files for the break elements, custom executable ANSYS file, and all Excel spreadsheets and other supporting calculations used to develop floor connection failure modes and capacities. [and]
2. All input files with connection material properties and all results files of the LS-DYNA 47-story global collapse model that were used to simulate sequential structural failures leading to collapse, and all Excel

spreadsheets and other supporting calculations used to develop floor connection failure modes and capabilities.

Id. at Ex. 4 (Finding).

VI. NIST REVIEWED THE RESPONSIVE DATA FILES AND RESPONDED TO PLAINTIFF'S FOIA REQUEST.

In light of the Director's Finding, NIST reviewed the responsive data files to separate out those data files falling within the categories of excluded information set forth in the Finding. *See* Fletcher Decl. at ¶¶ 16, 19-23. In so doing, NIST's FOIA office discussed the data files and the Finding with Dr. William Grosshandler, the Deputy Director of BFRL. *Id.* at ¶ 19. Dr. Grosshandler explained, in layman's terms, which files were being withheld, the differences between the withheld files and the released files, and the public safety concerns with releasing the withheld files, which Ms. Fletcher has described in detail in her attached declaration. *Id.* at ¶¶ 19-23. For example, Dr. Grosshandler explained that "if released to a person with the necessary expertise, the withheld information would provide instruction to groups and individuals that wish to learn how to simulate buildings collapses and, ultimately, how to most effectively devise schemes to destroy large buildings." *Id.* at ¶ 22.

Based upon its review, including consultations with Dr. Grosshandler and program experts at BFRL and a detailed review of the data files by a person with the requisite technical expertise, NIST separated those files that fell within the categories described in the Finding from those that fell outside such categories. *Id.* at ¶ 16. NIST then, by cover letter dated January 6, 2010, provided Plaintiff its initial response to the FOIA Request (the "Initial Response"), which included a release of 19,116 data files that NIST concluded were not protected by the Finding. *Id.* at ¶ 24-25, Ex. 5 (Initial Response).

Thereafter, NIST discovered that in copying the non-exempt responsive files for delivery to Plaintiff, it had inadvertently omitted certain files (namely ANSYS input files containing

temperature data from the WTC 7 Case A (ANSYS) case folder) from those that should have been included in NIST's Initial Response. *Id.* at ¶ 26. As Ms. Fletcher describes in her attached Declaration, "[t]his inadvertent omission was caused by a technical error in the system that was used to 'burn' the releasable files to CDs for release." *Id.*² Accordingly, in order to correct NIST's inadvertent copying error, by cover letter dated April 2, 2010, NIST provided Plaintiff a revised response, which included the previously omitted files (the "Revised Response"). *Id.* at ¶ 26, Ex. 6 (Revised Response). In sum, NIST has now released 25,644 data files to Plaintiff and has withheld 68,500 data files. *Id.*

VII. NIST ONLY WITHHELD MATERIALS UNDER EXEMPTION 3 PURSUANT TO THE FINDING.

The 68,500 responsive data files withheld by NIST were all withheld under FOIA exemption (b)(3)(B) ("Exemption 3(B)"), pursuant to Section 7(d) of the NCSTA and the Finding. *See* Fletcher Decl. at ¶ 25, Ex. 6 (Revised Response). NIST has described these withholdings in detail in the Fletcher Declaration. *Id.* at ¶¶ 28-88. Specifically, for each responsive case folder NIST has set forth the following information:

- a description of the analysis to which the data files in the case folder relate;
- the portions of the WTC 7 Reports to which the data files in the case folder relate;
- a description of each category of withheld data files in the case folder;
- the precise number of data files for each category of withheld files; and
- a segregability analysis for the case folder.

² This error also affected the tabulation of the numbers of released, withheld and total responsive data files included with the Initial Response. *See* Fletcher Decl. at ¶ 26, Ex. 6 (Revised Response).

Id. In so doing, NIST has described a gargantuan amount of extremely technical information in an understandable and categorical narrative to provide Plaintiff and the Court as much information regarding its withholdings as is reasonably possible under the circumstances.

ARGUMENT

I. APPLICABLE LEGAL STANDARD FOR SUMMARY JUDGMENT IN A FOIA CASE.

“Summary judgment is appropriate when the pleadings and the evidence demonstrate that ‘there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Kilby-Robb v. Spellings*, 522 F. Supp. 2d 148, 154 (D.D.C. 2007) (Bates, J.), *quoting* Fed. R. Civ. P. 56(c). The party moving for summary judgment bears the initial responsibility of showing an absence of a genuine issue of material facts. *Id.* In deciding whether a genuine issue of material fact exists, the court must “accept all evidence and make all inferences in the non-movant’s favor.” *Id.*, *citing* *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). “A non-moving party, however, must establish more than the mere existence of a scintilla of evidence in support of its position.” *Id.* (citations and internal quotation marks omitted). That is, “[i]f the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.*, *quoting* *Anderson*, 477 U.S. at 249-50.

In particular with regard to FOIA claims, “[t]he Court reviews an agency’s refusal to disclose requested documents *de novo*.” *Accuracy in Media, Inc. v. Nat’l Transp. Safety Bd.*, Civ. A. No. 03-0024 (CKK), 2006 WL 826070, *4 (D.D.C. Mar. 29, 2006) (granting agency summary judgment in a FOIA case) (citing 5 U.S.C. § 552(a)(4)(B)). “Generally, when summary judgment is requested in a FOIA matter, the agency bears the burden of showing that a FOIA exemption applies.” *Id.* Applying this standard, it is clear that the Court should enter summary judgment on Plaintiff’s claim in Defendant’s favor.

II. NIST'S SEARCH WAS REASONABLE.

NIST conducted a reasonable search of locations thought to contain the responsive information and found exactly what it was searching for -- *i.e.*, the data files underlying the ANSYS and LS-DYNA modeling for the WTC 7 Reports. Consequently, NIST's search was reasonable.

An agency fulfills its obligations under FOIA if it can demonstrate that its search was "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). "Once the agency has produced a legally sufficient affidavit supporting the adequacy of the search, the burden of demonstrating bad faith shifts to the requester." *Accuracy in Media*, 2006 WL 826070, at *7. "In the absence of contrary evidence, such affidavits or declarations are sufficient to demonstrate an agency's compliance with FOIA." *Perry v. Block*, 684 F.2d 121, 126 (D.C. Cir. 1982). Indeed, although the Agency has the burden of proof on the adequacy of its search, the "affidavits submitted by an agency are 'accorded a presumption of good faith[.]'" *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994). Here, NIST's search was reasonable because it searched the locations that it believed should have responsive information, and as a result of that search, found the data files for which it had searched.

III. NIST HAS ADEQUATELY EXPLAINED ITS WITHHOLDINGS.

The Fletcher Declaration explains the files that were withheld and the bases for withholding those files. Consequently, NIST has adequately explained its withholdings. To satisfy its burden for summary judgment in a FOIA case, "the agency may provide a plaintiff 'with a Vaughn index, which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption's

relevance.” *Accuracy in Media*, 2006 WL 826070, at *4 (citing *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 774 (D.C. Cir. 2002) (finding agency’s withholdings were adequately explained)). However, no precise form is dictated for these affidavits; any form is acceptable which “enables the court to make a reasoned, independent assessment of the claim[s] of exemption.” *Vaughn v. United States*, 936 F.2d 862, 866-67 (6th Cir. 1991).

Indeed, when confronting voluminous responsive records, an agency need not describe in detail each withheld document and may fashion a reasonable approach to explain the withheld documents and the bases for withholding. *See, e.g., Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476, 1489 (D.C. Cir. 1984) (“Given this magnitude of disclosure, the District Court clearly could not have undertaken a review of each of the documents from which the Department, pursuant to FOIA’s exemptions, excised material.”). In such circumstances, Courts have permitted “sampling” and/or categorical approaches for analyzing the agency’s withholdings. *See id.* (sampling); *Keys v. U.S. Dept’ of Justice*, 830 F.2d 337, 349-50 (D.C. Cir. 1987) (approving use of categorical coding system for identifying withholdings); *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 147 (D.C. Cir. 2006) (“We have never required repetitive, detailed explanations for each piece of withheld information -- that is, codes and categories may be sufficiently particularized to carry the agency’s burden of proof. Especially where the agency has disclosed and withheld a large number of documents[.]”) (citing *Keys*, 830 F.2d at 349-50).

Here, the Fletcher Declaration describes the specific categories of data files withheld for each responsive case folder. *See Fletcher Decl.* at ¶¶ 28-88. Further, Ms. Fletcher has explained the bases for withholding each category of files. *Id.* This specific categorical approach is reasonable and clearly sufficient under the circumstances given the atypical format of the responsive files and the large volume of data involved in this case.

IV. NIST'S WITHHOLDINGS ARE PROPER UNDER EXEMPTION 3(B).

NIST properly invoked Exemption 3 to protect from release the totality of withheld documents in this action. Exemption 3 of the FOIA permits agencies to withhold information prohibited from disclosure by another statute if one of two disjunctive requirements is met. An agency may not release information if the underlying statute “(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). For purposes of qualifying as a withholding statute under Exemption 3, the D.C. Circuit has explained that a statute:

must on its face exempt matters from disclosure. We must find a congressional purpose [to] exempt matters from disclosure in the actual words of the statute (or at least in the legislative history of FOIA) -- not in the legislative history of the claimed withholding statute, nor in an agency's interpretation of the statute.

National Ass'n of Home Builders v. Norton, 309 F.3d 26, 38 (D.C. Cir. 2002), quoting *Reporters Comm. for Freedom of the Press v. Dep't of Justice*, 816 F.2d 730, 735 (D.C. Cir. 1987), *rev'd on other grounds*, 489 U.S. 749 (1989). In other words, a nondisclosure statute must evidence a congressional determination that certain materials ought to be kept in confidence, to qualify under FOIA Exemption 3. *Irons & Sears v. Dunn*, 606 F.2d 1215, 1220 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1075 (1980). In examining the NCSTA's anti-disclosure provision, the Court essentially applies a traditional plain meaning rule. *Reporters Comm.*, 816 F.2d at 735.

By its own terms Section 7(d) of the NCSTA expressly exempts from disclosure a specific type of information and expressly provides particular criteria for withholding documents, namely when the Director of NIST determines that the release of investigatory information “might jeopardize public safety.” 15 U.S.C. § 7306(d). This provision clearly fulfills the requirements to be considered an Exemption 3(B) statute. See *Mudge Rose Guthrie*

Alexander & Ferdon v. U.S. Int'l Trade Comm'n, 846 F.2d 1527, 1530-31 (D.C. Cir. 1988) (finding § 777 of the Tariff Act qualifies under Exemption 3(B) as a withholding statute, noting that a statute is a withholding statute under 3(B) when it specifies “particular types of matters” where disclosure is inappropriate); *DeLorme Publ'g Co. v. NOAA*, 917 F. Supp. 867 (D. Me. 1996) (finding that Federal Transfer Technology Act was an Exemption 3(B) statute, though it allowed the agency to disclose, in its discretion, certain information).

Indeed, the Exemption 3(B) provision in this case closely parallels that recently addressed in *Ancient Coin Collectors Guild (“ACCG”) v. U.S. Dep't of State*, 673 F. Supp. 2d 1, 5-6 (D.D.C. 2009) (Leon, J.). In *ACCG*, the court held Sections 2605(h) and (i) of the Convention on Cultural Property Implementing Act (“CPIA”) were Exemption 3(B) provisions. *Id.* The court held that those provisions were 3(B) statutes because, though not expressly mentioning “FOIA,” they unambiguously protected from disclosure particular categories of documents. *Id.* For example, Section 2605(h) expressly prohibited the release of information that “the President or his designee” determined “would compromise the Government’s negotiating objectives or bargaining positions on the negotiations of any agreement authorized by this chapter.” *Id.* NCSTA Section 7(d) closely mirrors CPIA Section 2605(h) in that, despite not mentioning FOIA, NCSTA Section 7(d) unambiguously commands that NIST “shall not publicly release any information it receives in the course of an investigation under this chapter if the Director finds that the disclosure of that information might jeopardize public safety.” 15 U.S.C. § 7306(d). Therefore, NIST properly utilized Exemption 3(B) to withhold the above described data files.

IV. ALL REASONABLY SEGREGABLE MATERIAL HAS BEEN RELEASED TO PLAINTIFF

FOIA requires that if a record contains information that is exempt from disclosure, any “reasonably segregable” information must be disclosed after deletion of the exempt information unless the non-exempt portions are “inextricably intertwined with exempt portions.” 5 U.S.C. § 552(b); *Mead Data Central v. U.S. Dep’t of the Air Force*, 566, F.2d 242, 260 (D.C. Cir. 1977). In order to demonstrate that all reasonably segregable material has been released, all that is required is that the government show “with ‘reasonable specificity’” why a document cannot be further segregated. *Armstrong v. Executive Office of the President*, 97 F.3d 575, 578-79 (D.C. Cir. 1996). Moreover, the agency is not required to “commit significant time and resources to the separation of disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content.” *Mead Data*, 566 F.2d at 261, n.55.

The Fletcher Declaration specifically notes for each case folder that no further reasonable segregation of meaningful information in the withheld documents can be made without disclosing information warranting protection under the law. *See* Fletcher Decl. at ¶¶ 28-88. Furthermore, the detailed categorical descriptions of the withheld data files, clearly establish that they fall into the categories of information set forth in the Finding. Consequently, NIST has fulfilled the requirements of reasonable segregability in its release.

* * *

CONCLUSION

For the foregoing reasons, summary judgment in this action is appropriate in Defendant's favor.

Dated: April 16, 2010
Washington, DC

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar #447889
United States Attorney

/s/

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

/s/

BRIAN P. HUDAK
Assistant United States Attorney
555 4th Street, NW
Washington, DC 20530
(202) 514-7143

Attorneys for Defendant