

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

_____)	
LEGAL SERVICES OF EASTERN)	
MISSOURI,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 19-1367 (EGS)
)	
U.S. DEPARTMENT OF HOUSING)	
AND URBAN DEVELOPMENT,)	
)	
Defendant.)	
_____)	

PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiff Legal Services of Eastern Missouri moves for summary judgment on its claim under the Freedom of Information Act against defendant U.S. Department of Housing and Urban Development (HUD). Attached with this motion are a memorandum in support of the motion and in opposition to HUD’s motion for summary judgment, a counter-statement of material facts, proposed order, and the declaration of Lisa J. D’Souza and exhibits annexed thereto.

Dated: September 10, 2019

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF
PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT AND
IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Following the announcement by defendant Department of Housing and Urban Development (HUD) that it would shut down the Wellston Housing Authority (WHA) and demolish or dispose of all the public housing in Wellston, Missouri, plaintiff Legal Services of Eastern Missouri (LSEM) submitted to HUD a request under the Freedom of Information Act (FOIA) for records concerning any planned demolition or disposition of Wellston public housing. HUD produced some documents but withheld many in full or in part, including communications between HUD and local government entities. Immediately prior to filing its motion for summary judgment, HUD made a supplemental production, releasing much of the material previously withheld.

HUD continues to rely on exemption 5 to withhold certain records. Because HUD has failed to demonstrate that exemption 5 is applicable to all or part of five of the withheld documents that LSEM seeks, the Court should grant summary judgment for LSEM, deny HUD's motion for summary judgment, and order HUD to produce the records. Additionally, the Court should order HUD to conduct an additional search to identify and produce the final version of a draft memorandum withheld by the agency.

BACKGROUND

LSEM's FOIA request concerns public housing in Wellston, Missouri, a small municipality next to St. Louis. D'Souza Decl. ¶ 2. Wellston has a population of about 1,800 people, of whom about 530 live in public housing. *Id.* ¶¶ 2–3. Until recently, public housing in Wellston was run by the WHA, which from July 1996 through March 2019 was held in administrative receivership by HUD. *Id.* ¶ 4. Beginning in August 2017, HUD took steps to transition the WHA back to local control and proceeded under that plan until August 2018. *Id.* ¶¶ 5–6.

In August 2018, HUD announced that transfer of the WHA back to local control was not feasible and that dissolution of the WHA was the most viable option. *Id.* ¶¶ 7–8, Ex. A. Although at that time HUD stated that it would review other options, HUD stated in September and October 2018 that it would shut down the WHA, demolish or otherwise dispose of all the public housing units, and relocate tenants by issuing housing choice vouchers. *Id.* ¶¶ 9–11, Ex. B.

On November 2, 2018, LSEM submitted to HUD a FOIA request seeking records related to HUD’s proposal to demolish public housing in Wellston. *Id.* ¶ 17; HUD Ex. A (Doc. 13-3 at 2–3).

Subsequently, HUD moved rapidly towards demolition. In November 2018, HUD approved the transfer of the WHA properties to the Housing Authority of St. Louis County (HASLC). D’Souza Decl. ¶ 12. That process was completed on March 8, 2019, when HASLC recorded the deeds to those properties, effectively terminating the WHA. *Id.* ¶ 13. Shortly thereafter, on March 15, 2019, HASLC posted public notice of its amended annual plan, which altered the prior plan by disclosing that HASLC now owned the 201 units of public housing that were formerly part of the WHA and that HASLC intended to pursue a demolition or disposition of these 201 units. *Id.* ¶ 14. On April 30, 2019, the HASLC Board of Commissioners approved the amended plan, despite many comments in opposition from public housing tenants and local community organizations. *Id.* ¶ 15. On June 14, 2019, HUD approved HASLC’s amended plan, allowing HASLC to submit an application for demolition and/or disposition of the Wellston public housing to HUD. *Id.* ¶ 16.

On July 10, 2019, the new St. Louis County Executive sent a letter to HUD stating that he does not support the demolition application and noting a lack of transparency and community input. As the County Executive observed, “too much has been kept in the dark, too little has been

publicly shared, and too few of those most impacted by the plan have been adequately engaged in its development.” Letter from County Executive Sam Page to HUD Field Office Director James Heard, Pl. Notice of Non-Opp’n to Def. Proposed Briefing Schedule Ex. 1 (Doc. 11-1) at 2; *see id.* at 4 (concluding that “HUD’s rush to demolish public housing is the product of a backroom deal,” and noting that “a general lack of transparency seems to permeate HUD’s handling of the Wellston situation”). The County Executive further stated that “the public has a right to know what is going on and that transparency is the only way St. Louis County residents can hold their public servants in federal, state, and local government accountable.” *Id.* at 9. HUD’s plan to demolish the public housing formerly comprising the WHA has been temporarily delayed, but the plan is likely to rematerialize in the next few months. *See* Jeremy Kohler, *HUD Agreed to Hold Off on Wellston Demolition for 120 Days, Sam Page Says*, St. Louis Post-Dispatch (July 16, 2019).¹

LEGAL STANDARD

Summary judgment is appropriate when “there is no dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In deciding a motion for summary judgment, the Court draws all reasonable inferences in the non-movant’s favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). “A FOIA case typically and appropriately is decided on a motion for summary judgment.” *Jarvis v. HUD*, 310 F. Supp. 3d 79, 81 (D.D.C. 2018). The Court reviews the agency’s claimed exemptions *de novo*. 5 U.S.C. § 552(a)(4)(B); *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 755 (1989).

Where the agency withholds responsive records or portions thereof, the agency has the burden of proving the withheld information comes within one of FOIA’s nine statutory

¹ Available at https://www.stltoday.com/news/local/govt-and-politics/hud-agreed-to-hold-off-on-wellston-demolition-for-days/article_4770f706-a3ee-5ad7-81c7-ff9f96d1fb8f.html.

exemptions. *Summers v. DOJ*, 140 F.3d 1077, 1080 (D.C. Cir. 1998); 5 U.S.C. § 552(a)(4)(B). Summary judgment for the agency is appropriate only if the agency’s “affidavits describe the documents and justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically fall[s] within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). The burden on the agency to justify its withholdings “does not shift even when the requester files a cross-motion for summary judgment because ‘the Government ultimately has the onus of proving that the documents are exempt from disclosure,’ while the ‘burden upon the requester is merely to establish the absence of material factual issues before a summary disposition of the case could permissibly occur.’” *Ctr. for Biological Diversity v. EPA*, 279 F. Supp. 3d 121, 137 (D.D.C. 2017) (quoting *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 904–05 (D.C. Cir. 1999)).

Where the adequacy of the search is disputed, the agency must prove it “conducted a search reasonably calculated to uncover all relevant documents.” *Steinberg v. DOJ*, 23 F.3d 548, 551 (D.C. Cir. 1994) (internal quotation marks omitted). Where the undisputed facts establish that the agency conducted an inadequate search, the agency “must conduct a new search that is adequate in scope, manner and location, and [must] produce any additional responsive records.” *Rodriguez v. Dep’t of Def.*, 236 F. Supp. 3d 26, 41 (D.D.C. 2017).

ARGUMENT

With respect to the withheld portions of the five records at issue, HUD has provided no more than boilerplate explanations for its invocation of the deliberative process privilege, falling far short of the necessary detail to carry its burden at summary judgment. Moreover, other information in the records undermines HUD’s claim of privilege as to these withholdings. In

addition, HUD is withholding one record described as a draft memorandum, yet HUD has not produced a final version, indicating that HUD's search for responsive records was inadequate.

I. HUD has not justified its exemption 5 withholdings with respect to five documents.

Under exemption 5, an agency may withhold "inter-agency or intra-agency memorandums or letters that 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). A document, therefore, falls within the scope of exemption 5 only if it "satisf[ies] two conditions: its source must be a Government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001). Among the civil discovery privileges incorporated by exemption is the deliberative process privilege, which protects "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Id.* (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)). The deliberative process privilege applies only to information that is "both 'predecisional' and 'deliberative.'" *Ludlam v. U.S. Peace Corps*, 934 F. Supp. 2d 174, 188 (D.D.C. 2013) (quoting *Public Citizen, Inc. v. OMB*, 598 F.3d 865, 876 (D.C. Cir. 2010)). A predecisional document is one "generated before the agency action was finally adopted." *Id.* (quoting *Public Citizen*, 598 F.3d at 874). A document is deliberative if it "reflects the give-and-take of the consultative process." *Id.* (quoting *Public Citizen*, 598 F.3d at 874).

To justify withholding, the agency must submit "detailed affidavits or declarations, a *Vaughn* index of the withheld documents, or both," to enable the court "to fulfill its duty of ruling on the applicability of the exemption, and to enable the adversary system to operate by giving the requester as much information as possible, on the basis of which the requester's case may be

presented to the trial court.” *Taylor Energy Co. v. U.S. Dep’t of Interior Bureau of Ocean Energy Mgmt.*, 271 F. Supp. 3d 73, 84 (D.D.C. 2017); *see also Defs. of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 90 (D.D.C. 2009) (“An agency’s claims, in affidavits, declarations or a Vaughn index may not ‘merely recite the statutory standards.’” (quoting *Carter v. U.S. Dep’t of Commerce*, 830 F.2d 388, 392–93 (D.C. Cir. 1987))). “The need to describe each withheld document when Exemption 5 is at issue is particularly acute because the deliberative process privilege is so dependent upon the individual document and the role it plays in the administrative process.” *Pub. Emps. for Envtl. Responsibility v. EPA (PEER)*, 213 F. Supp. 3d 1, 11 (D.D.C. 2016) (internal quotation marks omitted). Thus, “to sustain its burden of showing that records were properly withheld under Exemption 5, an agency must provide in its declaration and Vaughn index precisely tailored explanations for each withheld record at issue.” *Id.* This showing includes establishing the deliberative process involved, the role the documents played in that process, the decisionmaking authority of the documents’ author(s), and “the positions in the chain of command of the parties to the documents.” *Id.* at 11–12; *see New Orleans Workers’ Center for Racial Justice v. ICE (NOWCRJ)*, 373 F. Supp. 3d 16, 50 (D.D.C. 2019); *see also Ludlam*, 934 F. Supp. 2d at 189 (“Although the government need not pinpoint a specific decision or policy in connection with which predecisional material is prepared, the deliberative process must be capable of some definition.”).

Here, HUD argues only that it was “internally deliberating courses of action” and that some unspecified documents “proposed steps to take in determining what to do with the Wellston Housing Authority as it transitioned out of administrative receivership and weighing options and recommendations prior to it being absorbed by the Housing Authority of St. Louis County.” Def. Mem. 10–11 (Doc. 13-4). Although HUD relies on its Vaughn index to “give[] further details on

instances where HUD invoked Exemption 5,” *id.* at 11, the agency’s *Vaughn* index and supporting declaration fall far short of providing the necessary detail to sustain the agency’s burden. In the *Vaughn* index, for nearly all of the entries concerning the deliberative process privilege, HUD does little more than state that the withheld information is predecisional and deliberative. *See* HUD Ex. E (Doc. 13-3 at 21–33). Indeed, the only additional information HUD provides as to the deliberative process involved is to state that the materials “regard” or concern “the future of Wellston Housing Authority,” “future decisions about the Wellston Housing Authority,” or “the transfer of the Wellston Housing Authority.” *Id.* HUD fails to provide “tailored explanations,” *PEER*, 213 F. Supp. 3d 11, of what the deliberative process entailed, what the withheld information addressed with respect to these broad policy issues, or the role the documents played in the deliberative process. Moreover, although the *Vaughn* index provides the names of HUD officials involved, it says nothing about the decisionmaking authority of the individuals or their relative positions in the chain of command with respect to the relevant deliberative process. *Id.* The Streeter declaration dedicates only two brief paragraphs to describing documents withheld under the deliberative process privilege, stating only that one document contained “talking points for an upcoming call” and that other documents—without specification—contained “communications discussing talking points, recommendations, messaging, drafts, opinions, meeting plans, and succession planning for the Wellston Housing Authority.” Streeter Decl. ¶¶ 26–27 (Doc. 13-2).

As explained below, HUD’s failure to provide further information and additional information in the records themselves undermine any invocation of the deliberative process privilege by HUD for the five records at issue.

A. WHA White Paper

Claiming the deliberative process privilege, HUD has withheld portions of a fourteen-page document titled “Wellston Receivership Repositioning Options White Paper” and identified in its *Vaughn* index as “Wellston HA Memo White Paper.”² *See* D’Souza Decl. Ex. C at 1; HUD Ex. E at 2–3 (Doc. 13-3 at 22–23). Specifically, HUD has withheld the Executive Summary, Repositioning Options Summary, Repositioning Options Narratives, Repositioning Options Financial Considerations, and the Summary from the White Paper. D’Souza Decl. Ex. C at 1, 3–9. As an initial matter, every page of the White Paper is stamped with the words “FINAL” and “COMPLETED,” *see id.* at 1–14, belying any argument that the information contained within it is predecisional. Additionally, the disclosed portions of the White Paper provide entirely factual information on the background, structure, and financials of the WHA, *id.* at 1–2, 10–14, and HUD has not provided any explanation for why the withheld portions of the White Paper are any different. For example, HUD has not explained what role this White Paper played in any deliberative process about the “transfer of the Wellston Housing Authority,” Ex. E at 2–3, making it unclear whether the “Repositioning Options” concern recommendations or deliberations about various options for the WHA or simply present factual information pertinent to the WHA’s status, such as an explanation of other transfers already completed by HUD and the financial implications of those final agency actions. Because of the absence of any detailed information concerning this document, HUD has failed to meet its burden to justify withholding portions of it.

² The White Paper appears to have been attached to a four-page memorandum created by agency counsel that HUD has withheld under the attorney-client privilege. Ex. E at 2 (Doc. 13-3 at 22). LSEM does not challenge HUD’s withholding of the four-page memorandum.

B. WHA Review and Assessment Report

HUD has withheld portions of a fifteen-page document titled “Wellston Housing Authority Review and Assessment Report.” D’Souza Decl. Ex. D at 1; HUD Ex. E at 6–7 (Doc. 13-3 at 26–27). Specifically, HUD has withheld either a portion of a subsection titled “Observation – Board Meeting” or an unidentified subsection of the “Other Observations” section, a “Business Model Comparison” section, and an “Operating Expense Comparison” section. *See* D’Souza Decl. Ex. D at 12–15. Several features of the Report bely HUD’s claim of privilege.

First, the document was apparently co-authored by Velma Navarro, HUD’s “Regional Public Housing Director of the Midwest Network – Regions 7 & 8.” *Id.* at 1. Although HUD offers no explanation of this position, the title itself indicates the Report originated from a relatively high-ranking official with decisionmaking authority. In fact, HUD has only 10 regions, with Ms. Navarro apparently serving as the head of two regions covering 10 total states. *See* HUD, Public Housing Field Office Directory, https://www.hud.gov/program_offices/public_indian_housing/about/focontacts (identifying HUD public housing regions and member states and listing Ms. Navarro as the “Regional Public Housing Director” for several offices). The role of the document’s author is important, because “a document from a subordinate to a superior official is more likely to be predecisional, while a document moving in the opposite direction is more likely to contain instructions to staff explaining the reasons for a decision already made.” *Bloche v. Dep’t of Def.*, 279 F. Supp. 3d 68, 80 (D.D.C. 2017) (internal brackets omitted) (quoting *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980)).

Second, the Report is labeled a “Review and Assessment,” and the introduction describes it as “an assessment of WHA’s capacity to operate without HUD Receivership.” D’Souza Decl. Ex. D at 2. An “assessment” is “the action or an instance of *making a judgment* about something.”

Assessment, Merriam-Webster.com (last visited Aug. 29, 2019), <https://www.merriam-webster.com/dictionary/assessment> (emphasis added). A document that represents the agency's "judgment" about the WHA's ability to exit receivership is not deliberative.

Finally, the disclosed portions of the Report contain factual information about the WHA's background and finances, and "Other Observations" from interviews with "key stakeholders." *See* D'Souza Decl. Ex. D at 2–12. HUD has not provided any explanation why the withheld portions of the Report are any different. For example, HUD has not explained what role, if any, the Report played in deliberation about the "transfer of the Wellston Housing Authority." HUD Ex. E at 6. HUD has failed to indicate, for example, whether the Business Model Comparison and Operating Expense Comparison sections contain recommendations or deliberations about various options for the WHA or simply present factual information pertinent to the WHA's status, such as a comparison of the structures and finances of existing public housing setups. In the absence of any explanation about the role of the Report in deliberative process, HUD has failed to meet its burden to justify withholding portions of it.

C. October 29, 2018 Email from Daniel Sherrod

In a chain of emails between HUD employees, HUD has withheld the originating email from Daniel Sherrod dated October 29, 2018. *See* D'Souza Decl. Ex. E; HUD Ex. E at 10 (Doc. 13-3 at 30). The subject of the email is "PHA Dissolution Resolutions," and the subsequent emails make clear that other HUD employees were looking for examples of legislative resolutions that dissolved public housing authorities and were directed to look in the file concerning the transfer of another housing authority. *See* D'Souza Decl. Ex. E. Thus, Mr. Sherrod's initial email appears to be a request that other employees provide him with past examples of resolutions dissolving local housing authorities—a request that cannot be properly described as deliberative. HUD has

provided no explanation of what role, if any, the withheld email played in the deliberative process of the “transfer of the Wellston Housing Authority,” HUD Ex. E at 10, and it does not appear—based on the subsequent emails—that it could do so.

Moreover, the date of the email—October 29, 2018—establishes that it was not predecisional because the decision to “transfer of the Wellston Housing Authority” *had already been made*. See D’Souza Decl. ¶¶ 9–11 (explaining that HUD announced in September 2018 its plan to shut down the WHA and relocate tenants, and told tenants in October 2018 that the WHA properties would be demolished or disposed of), Ex. B.

D. Housing Authority of St. Louis County WHA Transition Plan

HUD has withheld a one-page document titled “Housing Authority of St. Louis County WHA Transition Plan.” See D’Souza Second Decl. Ex. F; HUD Ex. E at 12 (Doc. 13-3 at 32). As an initial matter, HUD’s “Factual Basis for Withholding” provides only that “[t]he withheld material is pre-decisional to the ultimate, final decision on the transfer of the Wellston Housing Authority.” HUD Ex. E at 12. That statement cannot sustain HUD’s burden of showing that exemption 5 applies: It is not precisely tailored to the document or decision; it does not describe the role the document played in the decisionmaking process; and it does not identify the decisionmaking authority of the authors. *See supra* p. 6.

Moreover, the title of the document indicates that it was created by or shared with HASLC. The deliberative process privilege, however, applies only where the document’s “source [is] a Government agency.” *Klamath*, 532 U.S. at 8. And disclosure of a document otherwise covered by the deliberative process privilege waives that privilege. *In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997); *cf. The Navajo Nation v. Peabody Holding Co.*, 255 F.R.D. 37, 45 (D.D.C. 2009) (explaining that “to preserve privilege, a party must ‘jealously guard’ its confidential documents

and treat them “like jewels—if not crown jewels” (internal brackets omitted) (quoting *In re Sealed Case*, 877 F.2d 976, 980 (D.C. Cir. 1989))). Accordingly, if the document was created by or has been shared with HASLC, HUD cannot claim that it falls within the scope of exemption 5.

E. Memorandum from Sheila Jackson to Craig Dobson

HUD has withheld in full a five-page memorandum identified only as “Draft Memo from Sheila Jackson to Craig Dobson re: Request to Process Transfer of Wellston Housing Authority (MO138) Property to Housing Authority of St. Louis County (MO004).” *See* HUD Ex. E at 12 (Doc. 13-3 at 32). “The fact that documents are drafts and contain edits does not, alone, qualify them for protection under the deliberative process privilege.” *NOWCRJ*, 373 F. Supp. 3d at 52 (internal brackets omitted) (quoting *Heartland All. for Human Needs & Rights v. DHS*, 291 F. Supp. 3d 69, 80 (D.D.C. 2018)). Even for draft documents, the Court must still determine “whether the document is deliberative in nature,” *id.* (quoting *Arthur Andersen & Co. v. IRS*, 679 F.2d 254, 257–58 (D.C. Cir. 1982)), and “whether the documents are ‘part of an articulated decisionmaking process,’” *id.* at 52–53 (quoting *Heartland All.*, 291 F. Supp. 3d at 80). HUD has failed to make that showing as to this memorandum. HUD’s statement that the memorandum concerns “pre-decisional deliberations prior to the ultimate, final decision on the transfer of the Wellston Housing Authority,” HUD Ex. E at 12, falls far short of the precisely tailored explanation required to sustain the agency’s burden. Moreover, the title of the document—“request to process transfer”—suggests that the decision to transfer had already been made.

In sum, HUD’s burden was to provide “precisely tailored explanations” to justify its exemption 5 withholdings. *PEER*, 213 F. Supp. 3d at 11. Instead, HUD “provides only vague descriptions of the documents’ content and repeats boilerplate and conclusory statements regarding the content’s predecisional and deliberative nature.” *NOWCRJ*, 373 F. Supp. 3d at 51. The Court

should therefore grant summary judgment to LSEM and order disclosure of the withheld portions of the above five documents.

II. HUD failed to conduct an adequate search for the final version of the Memorandum from Sheila Jackson to Craig Dobson.

As the D.C. Circuit has explained, the “adequacy of an agency’s search is measured by a standard of reasonableness, and is dependent upon the circumstances of the case.” *Davis v. DOJ*, 460 F.3d 92, 103 (D.C. Cir. 2006) (quoting *Schrecker v. DOJ*, 349 F.3d 657, 663 (D.C. Cir. 2003)). In conducting its search, “[a]n agency may not ignore ‘positive indications of overlooked materials.’” *NOWCRJ*, 373 F. Supp. 3d at 48 (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999)). Indeed, “discovery of a document that ‘clearly indicates the existence of other relevant documents’ creates an ‘obligation’ for an agency to conduct a further search for those additional documents.” *Id.* (quoting *Ctr. for Nat’l Sec. Studies v. DOJ*, 215 F. Supp. 2d 94, 110 (D.D.C. 2002), *aff’d in part, rev’d in part & remanded on other grounds*, 331 F.3d 918 (D.C. Cir. 2003)).

Here, as explained above, HUD withheld in full a document identified as a “Draft Memo” between HUD employees, *see supra* Part I.E, but failed to produce the final version of this memorandum. Even the minimal information provided by HUD concerning this document—that it relates to the transfer of the WHA to HALSC, *see* HUD Ex. E at 12 (Doc. 13-3 at 32)—makes clear that the final version would be responsive to LSEM’s FOIA request. Further, it is difficult to conceive of a document that more “clearly indicates the existence of other relevant documents” than the discovery of a draft version of a responsive document without the corresponding final version of the same responsive document. Accordingly, the Court should order HUD to conduct a further search to identify and produce the final version of this memorandum.

CONCLUSION

For the above-stated reasons, the Court should deny HUD's motion for summary judgment and grant LSEM's cross-motion for summary judgment.

Dated: September 10, 2019

Respectfully submitted,

/s/ Patrick D. Llewellyn

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<p>expected less than 100 pages and the cost of copying would not exceed \$25. A true and correct copy of FOIA Request No. 19-FI-R07-00258 is attached as Exhibit A to the Streeter declaration. <i>See</i> Streeter Decl. at ¶ 9.</p>	
<p>4. The subject of the FOIA request, the Wellston Housing Authority, had been in administrative receivership for over twenty years and HUD was in the process of transferring the housing authority back to local control and was considering courses of action at the time of the request. <i>See</i> Streeter Decl. at ¶ 10.</p>	<p>4. Denied that HUD was “considering courses of action at the time of the request.” HUD’s declarant has not provided any details about what “courses of action” HUD was evaluating, <i>see</i> Streeter Decl., and HUD had already announced that the Wellston Housing Authority would be shut down, the Wellston Housing Authority properties would be demolished or disposed of, and the tenants would be relocated using housing choice vouchers, D’Souza Decl. ¶¶ 10–11, Ex. B. Otherwise, admitted.</p>
<p>5. Streeter communicated with plaintiff via email and phone on November 2 and November 5, 2018 to narrow the request as her initial request was more voluminous than anticipated. Together, they determined a keyword search in Outlook and custodians’ computers to locate records was appropriate. <i>See</i> Streeter Decl. at ¶ 12</p>	<p>5. Admitted.</p>
<p>6. On November 14, 2018, that request was clarified to request the following records dated “October 1, 2016 to present¹: 1) Any HUD communications with officials of the “City of Wellston” regarding the “public housing” in Wellston, Missouri or regarding the “Wellston Housing Authority” or “Wellston PHA.” 2) All documents or records related to a possible “demolition” or “disposition” of public housing in “Wellston.”” Streeter indicated to the requester that HUD staff would conduct a search of all email and Word documents in HUD’s system of records with the “keywords” identified within the date range specified. <i>See</i> Exhibit B to Streeter Declaration. <i>See</i> Streeter Decl. at ¶ 13.</p>	<p>6. Admitted.</p>

¹ The email requesting documents was sent to custodians on November 14, 2018.

<p>7. On November 14, 2018, identified HUD staff were instructed to conduct a search based upon the following parameters: from October 1, 2016 to the present, conduct a search through your current email, archived email, word processing documents, spreadsheets, and hand written notes for any records that meet the following criteria:</p> <p>a. Any HUD communications with officials of the “City of Wellston” regarding the “public housing” in Wellston, Missouri or regarding the “Wellston Housing Authority” or “Wellston PHA.”</p> <p>b. All documents or records related to a possible “demolition” or “disposition” of public housing in “Wellston”. HUD staff were instructed to conduct a search of their system of records with the keywords identified in quotations within the date range specified. Streeter provided the example, for the first request set, staff would search for “City of Wellston” and “public housing” or “Wellston Housing Authority” or “Wellston PHA”. The second search would use the words “Wellston” and “demolition” or “disposition.” Staff were instructed that Streeter only needed one copy of each record, so duplicated messages in an email chain can be eliminated. Staff were instructed to provide Streeter a PDF copy of any original physical document or an electronic copy of the responsive documents by November 30, 2018. <i>See</i> Streeter Decl. at ¶ 16.</p>	<p>7. Admitted.</p>
<p>8. Using the search procedures described above and the parameters Streeter provided, HUD staff provided responses and responsive records. <i>See</i> Streeter Decl. at ¶ 17.</p>	<p>8. Admitted.</p>
<p>9. By emails dated December 20, 2018 and February 13, 2019, Streeter provided responsive records, with redactions pursuant to FOIA exemption (b)(5), to plaintiff. <i>See</i> Streeter Decl. at ¶ 18.</p>	<p>9. Admitted.</p>
<p>10. By email dated December 20, 2018, HUD released 8 pages of records in full and 9 pages of records in part to plaintiff and</p>	<p>10. Admitted.</p>

<p>indicated that HUD had reviewed the first prong of her inquiry. He noted that there may be additional delays in the processing of the remainder of her request due to the government shutdown. A true and correct copy of the December 20, 2018 email to plaintiff is attached as Exhibit C to the Streeter declaration. <i>See</i> Streeter Decl. at ¶ 19.</p>	
<p>11. By email dated February 13, 2019, HUD released 45 pages of records in full and 133 pages of records in part to plaintiff. A true and correct copy of the February 13, 2019 email to plaintiff is attached as Exhibit D to the Streeter declaration. <i>See</i> Streeter Decl. at ¶ 20.</p>	<p>11. Denied that Plaintiff received 178 pages of records. Plaintiff received 173 pages of records, of which 45 pages were produced without redactions and 128 pages were produced with redactions. D'Souza Decl. ¶ 19. Otherwise, admitted.</p>
<p>12. On March 5, 2019, plaintiff administratively appealed the withholding of certain documents released on December 20, 2018 and February 13, 2019. On April 2, 2019, plaintiff's appeal was granted in part and denied in part. HUD released additional records in D3, Section 1 and 2, a total of 20 additional pages either in full or in part. <i>See</i> Streeter Decl. at ¶ 31.</p>	<p>12. Admitted.</p>
<p>13. On May 13, 2019, plaintiff filed a complaint for declaratory and injunctive relief in this court. <i>See</i> Streeter Decl. at ¶ 33.</p>	<p>13. Admitted.</p>
<p>14. HUD made a discretionary release of additional documents on August 12, 2019. <i>See</i> Streeter Decl. at ¶ 34.</p>	<p>14. Admitted.</p>
<p>15.</p>	<p>15. On September 20, 2018, HUD announced at the Wellston Housing Authority Board of Commissioners Meeting that the Wellston Housing Authority would be shut down and the tenants would be relocated using housing choice vouchers. D'Souza Decl. ¶ 10, Ex. B.</p>
<p>16.</p>	<p>16. In October 2018, HUD told tenants of the Wellston Housing Authority that the Wellston Housing Authority properties would be demolished or disposed of, and that the tenants would be relocated. D'Souza Decl. ¶ 11.</p>

Although Plaintiff denies some of Defendant's factual statements as explained above, Plaintiff does not contend that there are any material facts as to which there is a genuine issue of fact for trial.

Dated: September 10, 2019

Respectfully submitted,

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