UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JESSE COLEMAN, Plaintiff, v. U.S. DEPARTMENT OF THE INTERIOR, Defendant.	)	Civil Action No. 18-cv-2089 (RC)

PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiff Jesse Coleman moves for summary judgment on his claim under the Freedom of Information Act against defendant U.S. Department of Interior. Attached with this motion are a memorandum in support of the motion and in opposition to defendant's motion for summary judgment, statement of undisputed material facts, response to the agency's statement of undisputed facts, proposed order, declaration of Jesse Coleman with attached exhibit, and declaration of Patrick D. Llewellyn.

Dated: October 14, 2019

Respectfully submitted,

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UNITED STATES DISTRICT COURT
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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

Only one document remains at issue in this Freedom of Information Act (FOIA) lawsuit. Defendant U.S. Department of Interior (Interior) persists in withholding a two-page record concerning the agency's responsibility for travel costs. Because the attorney-client privilege—the only basis on which the agency has justified its withholding—does not apply to this record, the record must be disclosed.

BACKGROUND

Plaintiff Jesse Coleman submitted five FOIA requests to Interior over the span of several months in 2017 and 2018, none of which the agency responded to during the administrative process. *See* Compl. ¶¶ 5–20 (Doc. 1). Although all five requests were address in the complaint in this lawsuit, only one request remains at issue.

On September 29, 2017, Mr. Coleman submitted a FOIA request to Interior for documents regarding the approval of then-Secretary of the Interior Ryan Zinke's non-commercial flights. Specifically, Mr. Coleman requested "[a]ll documents, including written waivers, all communications, including attachments, and all meetings, including calendar entries, and lists of

attendees, regarding the approval of Secretary Zinke's non-commercial flights," including "any and all documentation of pre-approval of charter air travel regarding Secretary Zinke, his staff (including but not limited to Kate MacGregor), Deputy Secretary David Bernhardt, his staff, and Vincent Devito." Coleman Decl. ¶¶ 1, 3, Ex. A. That same day, the agency acknowledged the request and assigned it FOIA Tracking Number SOL-2017-00258. *Id.* ¶ 2. During the administrative process, the agency did not make a determination on the FOIA request. *Id.* ¶ 4.

After Mr. Coleman filed this lawsuit on September 6, 2018, the agency processed all five FOIA requests that were the subject of the lawsuit and began making monthly rolling productions of responsive records. *See, e.g.*, Joint Status Report of Feb. 28, 2019 (Doc. 12).

On May 24, 2019, the agency made a final production of records responsive to this FOIA request. *See* Joint Status Report of June 12, 2019 (Doc. 16). In the final production, the agency withheld in full a two-page document appearing on Executive Office of the President (EOP) letterhead. *See* Purvis Decl. ¶¶ 3–4, Ex. A. (Doc. 20-1). The withheld document was created on July 25, 2017, apparently by the Director of Travel and Events within EOP, and was sent to a Senior Budget Analyst at Interior, who then sent the record back to EOP. *Id.* Ex. A § II. On December 11, 2017, the document was attached to an email sent by Daniel Jorjani, then-Acting Solicitor and Principal Deputy Solicitor at Interior, to Stefan Passantino and John Moran in the White House Counsel's office. *Id.* ¶ 3.

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). "FOIA cases typically and

appropriately are decided on motions for summary judgment." *Reporters Comm. for Freedom of the Press v. FBI*, 369 F. Supp. 3d 212, 218–19 (D.D.C. 2019). 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, the agency has the burden of proving that the withheld information comes within one of FOIA's nine statutory exemptions. 5 U.S.C. § 552(a)(4)(B); *Summers v. DOJ*, 140 F.3d 1077, 1080 (D.C. Cir. 1998). Summary judgment for the agency is appropriate only if the agency's "affidavits describe the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *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) (internal quotation marks and brackets omitted) (quoting *Pub. 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 for responsive

documents 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

I. The withheld record is not covered by the attorney-client privilege.

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 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 privileges incorporated by exemption 5 is the attorney-client privilege. *Abtew v. DHS*, 808 F.3d 895, 898 (D.C. Cir. 2015).

The attorney-client privilege "applies to a confidential communication between an attorney and client if that communication was made for the purpose of obtaining or providing legal advice to the client." *Jordan v. DOL*, 308 F. Supp. 3d 24, 43 (D.D.C. 2018) (quoting *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 757 (D.C. Cir. 2014)). The "attorney-client privilege must be strictly confined within the narrowest possible limits consistent with the logic of its principle." *Id.* (quoting *In re Lindsey*, 158 F.3d 1263, 1272 (D.C. Cir. 1998)). Importantly, "attachments to privileged communications are not thereby automatically privileged." *FTC v. Boehringer Ingelheim Pharm., Inc.*, 180 F. Supp. 3d 1, 31 (D.D.C. 2016). "Instead, the attachments must independently satisfy the requirements for the application of the attorney-client privilege." *Id.*; *see Bruno v. Equifax Info. Servs., LLC*, No. 2:17-cv-327-WBS-EFB, 2019 WL 633454, at *8 (E.D. Cal. Feb. 14, 2019) (holding that proponent of the privilege must show that "the information in each email attachment

is protected" even if the attachments are "sent in relation to privileged emails"); *Nucap Indus. Inc. v. Robert Bosch LLC*, No. 15 CV 2207, 2017 WL 3624084, at *2 (N.D. Ill. Aug. 23, 2017) ("Even if the email itself is privileged, emails can be withheld independently of their attachments, and vice versa."); *see also Alexander v. FBI*, 186 F.R.D. 102, 111 (D.D.C. 1998) (explaining that the delivery of a "pre-existing document" to an attorney does not bring the pre-existing document within the attorney-client privilege).

Here, Interior focuses on establishing that the attorney-client privilege applies to communications that occurred among Mr. Jorjani, Mr. Passantino, and Mr. Moran—all attorneys—during December 2017 concerning "a legal matter for which a client, former Secretary Zinke, had sought legal assistance and services," and specifically that the privilege applies to a December 11, 2017, email message between Mr. Jorjani, Mr. Passantino, and Mr. Moran. Def. Mem. 6–7; Purvis Decl. ¶¶ 2–4, 6. Mr. Coleman, however, does not challenge the withholding of communications among those attorneys or the withholding of that email message. Instead, he challenges only the withholding of the two-page document that was attached to the December 11, 2017, email message. Interior has not shown that the attorney-client privilege applies to this two-page document, which pre-existed the email.

As the agency's *Vaughn* index establishes, the withheld document was created on July 25, 2017, by the Director of Travel and Events at EOP, who sent the document to a Senior Budget Analyst within Interior; that person then sent the document back to EOP. Purvis Decl., Ex. A § II. Neither the *Vaughn* index, the agency's declarant, nor their respective titles identify the document's author or the original recipient as an attorney. The agency's suggestion in its summary judgment memorandum that the withheld document is a "legal memorand[um] … prepared by

counsel to advise their respective agency clients," Def. Mem. 7 (Doc. 20 at 12), is thus contradicted by its own evidence.[1]

Indeed, Interior concedes that the withheld document is not independently covered by the attorney-client privilege. It asserts that the privilege applies because the memorandum was later attached to an email from an attorney to other attorneys. *See* Purvis Decl. ¶ 4. ("But for the fact that Mr. Jorjani attached the two-page record to his December 11, 2017, email to White House attorneys," the agency "would not be asserting the attorney-client privilege."). The agency claims, however, that because the withheld document "convey[ed] background information" to the White House Counsel's office, "the attachment becomes part and parcel of the legal issue" raised in the December email communications between Mr. Jorjani, Mr. Passantino, and Mr. Moran. *Id.*

The agency's argument is directly contrary to *Boehringer Ingelheim Pharmaceuticals*, 180 F. Supp. 3d 1. There, the court considered whether PowerPoint presentations, charts, and tables summarizing certain facts relevant to litigation and potential settlement of a patent lawsuit were covered by the attorney-client privilege because they had been attached to attorney-client privileged emails. *Id.* at 31. The court explained that, although the email to which a document is attached provides "some context" for assessing whether the attorney-client privilege applies, "attachments to privileged communications are not thereby automatically privileged" and "must independently satisfy the requirements for the attorney-client privilege." *Id.* at 31–32. The court therefore evaluated application of the privilege based on the facts surrounding the *creation* of those attached documents. *Id.* at 32–33; *see also Alexander v. FBI*, 192 F.R.D. 42, 46 n.3 (D.D.C. 2000) (explaining that "a document does not become privileged merely because it is delivered to an attorney" as "the test is whether the document *first* came into existence as part of a communication

[1] Further, the agency has represented to plaintiff's counsel that none of the signatories to the withheld document are attorneys. Llewellyn Decl. ¶ 3.

to an attorney" (internal brackets omitted)). In that case, the attachments had been created by non-attorneys, but at the direction of counsel "to assist in negotiating the settlement" of the ongoing lawsuit. *Boehringer Ingelheim Pharm.*, 180 F. Supp. 3d at 32–33. Thus, although the attachments did not "reflect express requests for or provision of legal advice," an attorney "ordered the creation of these factual analyses" for the "primary purpose" of enabling the attorney to advise his client "on how to settle the complex, interlocking lawsuits pending at the time." *Id.* at 33. Accordingly, the court that held these attachments, based on their use and purpose at the time of creation, were covered by the attorney-client privilege. *Id.* at 34.

Here, the agency has provided no evidence that the withheld document was created either at the direction of counsel or for the primary purpose of providing or obtaining legal advice. Importantly, the withheld record predates the communication relied upon by the agency to establish the privilege by nearly five months. *Compare* Purvis Decl., Ex. A at § II (withheld record was created on July 25, 2017) *with id.* ¶ 3 (withheld record subsequently attached to December 11, 2017, email). Thus, this case more closely resembles *Alexander v. FBI*, where the attorney received a document from a congressional committee and subsequently sent the document to his client. *See* 186 F.R.D. at 111. As the court explained in that case, there was "no communication in this document between [the client] and his counsel with respect to the document itself. In contrast, communications between [the client] and his counsel pertaining to this document may very well be privileged." *Id.* The same is true here: The withheld document contains no attorney-client communications. Although the email message to which it was attached and subsequent communications with counsel about it may be privileged, the withheld document itself is not privileged.

The attachment of the pre-existing, non-privileged July 25, 2017, document to a privileged communication cannot transform the document into a privileged document. The agency thus has not met its burden of proving that the attorney-client privilege applies. Therefore, the withheld document is not covered by exemption 5 and must be disclosed.

II. The agency conducted an inadequate search by failing to identify the withheld record separate from its attachment to the December 11, 2017, email message.

If the Court concludes that the attorney-client privilege applies to the document in the form of an attachment to the attorney's email message, Mr. Coleman alternatively raises a limited challenged to the adequacy of the agency's search for failure to identify and produce the withheld document separate and apart from its existence as an attachment to that attorney communication.

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.'" *New Orleans Workers' Ctr. for Racial Justice v. ICE*, 373 F. Supp. 3d 16, 48 (D.D.C. 2019) (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.* (internal brackets omitted) (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)); *see also Campbell v. DOJ*, 164 F.3d 20, 28 (D.C. Cir. 1998) ("An agency has discretion to conduct a standard search in response to a general request, but it must revise its assessment of what is 'reasonable' in a particular case to account for leads that emerge during its inquiry.").

Although the parties previously agreed that the adequacy of the agency's search was not at issue in this case, the declaration submitted with the agency's motion for summary judgment provides new information indicating that the search was inadequate. As the declarant states, the agency had previously provided only the *Vaughn* index to Mr. Coleman. *See* Purvis Decl. ¶ 2. That index described the information within the withheld record as "concerning Defendant's responsibility for travel costs associated with an event of the President of the United States," and as speaking to "legal authority, an anticipated ceiling of expenses to be borne by Defendant, the timing of payments to be borne by Defendant, the funding source of payments borne by Defendant, and an individual within the White House who would be in a position to address such matters should the need so arise." Purvis Decl., Ex. A at § II. The index did not indicate that the attachment specifically related to Secretary Zinke's use of non-commercial flights. However, the declarant now explicitly provides that "[i]n keeping with the subject of plaintiff's FOIA request, which sought records regarding the approval of the Secretary of the Interior's non-commercial flights, the two-page attachment (and the communication to which it attached) concerns a non-commercial flight." *Id.* ¶ 2. This new information—that the attachment concerns a non-commercial flight—establishes that the two-page document is independently responsive to Mr. Coleman's FOIA request, separate and apart from the email message to which it was attached. Yet the agency produced it only as a withheld attachment to the December 11, 2017, email message.

Because the withheld two-page document pre-existed the privileged email message and the agency concedes that it is independently responsive, Interior's failure to identify the document in its search, apart from as an attachment to the email, shows that the search was inadequate. The agency claims that the document is privileged *only* because it is attached to a privileged email

message. *See id.* ¶¶ 2, 4. If the agency is correct, it should be required to search for and produce the document as it exists independent of its attachment to the December 11, 2017, email message.[2]

CONCLUSION

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

Dated: October 14, 2019

Respectfully submitted,

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[2] The agency may have separately identified the document in its search and failed to review and produce it because it was removed as part of the automated de-duplication process that many agencies use to produce responsive records. This possibility further bolsters the importance of ensuring that attachments to privileged emails are independently privileged, so that the de-duplication process does not prevent access to non-privileged material.

UNITED STATES DISTRICT COURT
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PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On September 29, 2017, Mr. Coleman submitted a Freedom of Information Act (FOIA) request to the U.S. Department of the Interior for "[a]ll documents, including written waivers, all communications, including attachments, and all meetings, including calendar entries, and lists of attendees, regarding the approval of Secretary Zinke's non-commercial flights," including "any and all documentation of pre-approval of charter air travel regarding Secretary Zinke, his staff (including but not limited to Kate MacGregor), Deputy Secretary David Bernhardt, his staff, and Vincent Devito." Coleman Decl. ¶ 1, Ex. A.

2. Also on September 29, 2017, the agency acknowledged the request and assigned it FOIA Tracking Number SOL-2017-00258. *Id.* ¶ 2, Ex. A.

3. The agency did not make a determination of the FOIA request prior to the filing of this lawsuit on September 6, 2018. *Id.* ¶ 4.

4. The agency withheld in full a two-page responsive document appearing on letterhead of the Executive Office of the President (EOP). Purvis Decl., Ex. A at § II.

5. This withheld document was created on July 25, 2017. *Id.*

6. This withheld document was created by the Director of Travel and Events in EOP. *Id.*

7. This withheld document was transmitted from EOP to a Senior Budget Analyst within Interior's Office of the Secretary. *Id.*

8. The Senior Budget Analyst then transmitted the document back to EOP. *Id.*

9. On December 11, 2017, the withheld document was attached to an email from Daniel H. Jorjani to Stefan C. Passantino and John H. Moran. Purvis Decl. ¶ 3.

Dated: October 14, 2019

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PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF FACTS TO WHICH THERE IS NO GENUINE DISPUTE

1. Plaintiff submitted a Freedom of Information Act ("FOIA") request to the Office of the Solicitor ("SOL"), U.S. Department of Interior ("DOI"), dated September 29, 2017 that was tracked as SOL-2017-00258. Declaration of Lance Purvis ("Purvis Decl.") ¶ 1.

   PLAINTIFF'S RESPONSE: Undisputed.

2. Plaintiff's FOIA request sought records regarding the approval of the Secretary of the Interior's non-commercial flights. *Id.*

   PLAINTIFF'S RESPONSE: Undisputed.

3. Plaintiff only challenges release of a two-page attachment to an email between an attorney for a cabinet level official, the Secretary of the Interior and attorneys in the Office of the White House Counsel, which is housed within the Executive Office of the White House. *Id.* ¶ 2

   PLAINTIFF'S RESPONSE: Undisputed that Plaintiff challenges the withholding of this document. Plaintiff also makes an alternative, limited challenge to the adequacy of the

agency's search if the Court agrees this document is privileged as an attachment to the December 11, 2017, email message. *See* Pl. Mem. 8–10.

4. These two pages pertain to confidential communications between attorneys within the U.S. Department of the Interior ("DOI") and the Executive Office of the President regarding travel matters for which the then Secretary of DOI, Ryan K. Zinke, had sought legal advice in his official capacity as a cabinet-level official. *Id.* 3.

PLAINTIFF'S RESPONSE: Disputed. While the two-page document was *attached* to a December 11, 2017, communication between attorneys at DOI and the Executive Office of the President (EOP) regarding travel matters for which then-Secretary Zinke had sought legal advice, the two-page document preexisted the communication as it was created on July 25, 2017, by the Director of Travel and Events within EOP and was sent to a Senior Budget Analyst at DOI. Purvis Decl., Ex. A at § II.

5. The two-page record at issue was attached to a December 11, 2017, email appearing at page 11 of a PDF released to Plaintiff in the course of this FOIA litigation. *Id.* The December 11, 2017, email is between Daniel H. Jorjani, at the time the Acting Solicitor & Principal Deputy Solicitor at the Office of the Solicitor, U.S. Department of the Interior, and Stefan C. Passantino and John H. Moran at the White House.

PLAINTIFF'S RESPONSE: Undisputed.

6. Mr. Passantino and Mr. Moran both worked at the White House Counsel's office at the time. *Id.* Mr. Passantino served as Deputy Counsel while Mr. Moran served as the Associate to the President. *Id.* Hence, the December 11, 2017, email to which the two-page

withheld attachment relates was from the lead attorney for the U.S. Department of the Interior to White House attorneys. *Id.*

PLAINTIFF'S RESPONSE: Undisputed that the two-page withheld document "relates" to the December 11, 2017, email message insofar as it was attached to that message. Disputed that the two-page withheld document otherwise "relates" to the December 11, 2017, email message as the two-page withheld document preexisted the communication by nearly five months and was independently created. Purvis Decl., Ex. A at § II. Otherwise, undisputed.

7. Mr. Jorjani attached the two-page record to his December 11, 2017, email to White House attorneys in an effort to resolve a legal matter for which a client, former Secretary Zinke, sought legal assistance and services. The two-page attachment served as a means to convey background information to officials in the White House Counsel's Office in the context of an attorney-client question and is the provision of confidential facts as it relates to that question. The attachment is part and parcel of the legal issue being presented to high level attorneys in an effort to resolve an issue confronting a cabinet-level officer of the United States and to ensure that the Secretary of the Interior proceeded in a legally appropriate fashion. *Id.*

PLAINTIFF'S RESPONSE: Disputed that the two-page attachment was the "provision of confidential facts" in "the context of an attorney-client question." The two-page document preexisted the communication as it was created on July 25, 2017, and was created by the Director of Travel and Events within EOP and sent to a Senior Budget Analyst at DOI. Purvis Decl., Ex. A at § II. Further disputed as a matter of law that the two-page attachment became "part and parcel of the legal issue" for attorney-client

privilege purposes as attachments must be independently privileged apart from their attachment to a privileged communication. Pl. Mem. 4–8. Otherwise, undisputed.

8. As such, the information relates to legal matters for which a client, former Secretary Zinke, sought professional legal assistance and services. *Id.* The Department has held this information confidential and has not waived the attorney-client privilege.

PLAINTIFF'S RESPONSE: Undisputed that the two-page withheld document "relates" to legal matters for which Secretary Zinke sought professional legal assistance and services insofar as the two-page withheld document was attached to an email message that concerned those legal matters and both the email message and the attachment concerned non-commercial flights. Disputed that the two-page withheld document otherwise "relates" to those legal matters as the document preexisted the privileged communication to which it was subsequently attached by nearly five months and was independently created. Purvis Decl., Ex. A at § II. Further disputed as a matter of law that the agency can hold as "confidential" for attorney-client privilege purposes a nonprivileged document that preexisted the privileged communication because a nonprivileged document cannot become privileged by attaching it to a privileged communication. Pl. Mem. 4–8. Otherwise, undisputed.

9. As delineated in the *Vaughn* Index found at Attachment A, the redacted material in the two-page attachment speaks to legal authority, an anticipated ceiling of expenses borne by the agency, the timing of payments to be borne by Defendant, the funding source of payments borne by Defendant, and an individual within the White House who would be in a position to address such matters should the need arise. *Id.*

PLAINTIFF'S RESPONSE: Undisputed.

10. The redacted information provides specific details about a matter for which the then Secretary of the Interior had sought legal advice to ensure his adherence to the law; its public release would reveal specific client-supplied information that informed the attorneys' analysis of how best to advise the Secretary of the Interior about a travel matter. *Id.*

PLAINTIFF'S RESPONSE: Disputed that the two-page withheld document contained details about a matter for which Secretary Zinke had sought legal advice at the time of the document's creation because the document preexisted the privileged communication and was created by the non-lawyer Director of Travel and Events within EOP and sent to a non-lawyer Senior Budget Analyst at DOI. Purvis Decl., Ex. A at § II; Llewellyn Decl. ¶ 3. Disputed as a matter of law that disclosure of the withheld document would reveal any attorney-client privileged information as attachments must be independently privileged apart from being attached to a privileged communication and the withheld document is not independently privileged. Pl. Mem. 4–8. Otherwise, undisputed.

Dated: October 14, 2019

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