

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

ELIZABETH G. OYER,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 25-1555 (CJN)

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

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INTRODUCTION

Plaintiff Elizabeth G. Oyer was appointed Pardon Attorney of the United States, a career position in the Senior Executive Service (SES) at the U.S. Department of Justice, in April 2022. Career SES officials are not at-will employees. Federal statutes and regulations narrow the grounds upon which such employees may be terminated and afford them robust due process protections.

In violation of these protections, Deputy Attorney General Todd Blanche unlawfully terminated Ms. Oyer on March 7, 2025, hours after she refused a request from his office that she recommend that the Attorney General restore federal firearm rights to the actor Mel Gibson,¹ who lost his right to own a firearm after he was convicted of a crime involving domestic violence.² Mr. Gibson was a friend and public supporter of President Trump, who had named him his special envoy to Hollywood.³

Mr. Blanche's subordinates pressured Ms. Oyer to recommend restoration of Mr. Gibson's gun rights due to his personal relationship with the President. Declaration of Elizabeth Oyer (hereinafter "Oyer Decl."), ¶ 9.⁴ Records released to her in response to the Freedom of Information Act requests at issue in this case memorialize Associate Deputy Attorney General Paul Perkins' statement to her that "we have to grant relief to Mel." Oyer Decl., Exh. 3. In Ms.

¹ Devlin Barrett, *Justice Dept. Official Says She Was Fired After Opposing Restoring Mel Gibson's Gun Rights*, N.Y. Times, Mar. 10, 2025, <https://www.nytimes.com/2025/03/10/us/politics/justice-department-mel-gibson.html>.

² See, e.g., Shan Li, *Mel Gibson pleads no contest in domestic abuse*, L.A. Times, Mar. 12, 2011, <https://www.latimes.com/local/la-xpm-2011-mar-12-la-me-mel-gibson-20110312-story.html>.

³ <https://x.com/TrumpDailyPosts/status/1879963668307407262> (Jan. 16, 2025).

⁴ See Billie Schwab Dunn, *Donald Trump Has a Message for Mel Gibson*, <https://www.newsweek.com/donald-trump-message-mel-gibson-1858095> (Jan. 5, 2024).

Oyer’s view, without a background investigation, she could not conclude, as required by law, that Mr. Gibson’s “record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” 18 U.S.C. § 925(c). Oyer Decl. ¶ 8. Ms. Oyer therefore declined to recommend that the Attorney General reinstate Mr. Gibson’s federal firearm rights. *Id.* ¶ 8.

Within hours of sending her final memo on the subject to Mr. Blanche’s staff, Mr. Blanche had a one-page letter hand-delivered to Ms. Oyer terminating her employment, and she was escorted from her office by Department security staff. *Id.* ¶ 11. Ms. Oyer spoke publicly about the circumstances of her removal, prompting Mr. Blanche to assert that Ms. Oyer was “violat[ing] [her] ethical duties” and “making false accusations.”⁵ *Id.* ¶ 12. Mr. Blanche’s staff filed a complaint against her with the D.C. Bar Office of Disciplinary Counsel, which that Office subsequently dismissed. *Id.* ¶ 13.

After her firing, Ms. Oyer was asked to testify about the circumstances of her termination before members of Congress. Three days before her scheduled testimony on April 7, 2025, Ms. Oyer learned that Mr. Blanche’s office had dispatched two armed Special Deputy U.S. Marshals to her family’s home to deliver to Ms. Oyer her a warning letter about her anticipated testimony. *Id.* ¶ 14.⁶

After her termination, and in part in order to demonstrate the falsity of Mr. Blanche’s accusations and the truthfulness of her own statements, Ms. Oyer requested, under the Freedom

⁵ Perry Stein, *Fired Justice Dept. official speaks about her ouster and Mel Gibson*, Wash. Post., Mar. 12, 2025, <https://www.washingtonpost.com/national-security/2025/03/12/pardon-attorney-elizabeth-oyer-fired-speaks-out/>.

⁶ When Ms. Oyer learned of this—late on a Friday night—the Deputies were already in route and her teenage child was home alone. A career Department of Justice employee was able to assist Ms. Oyer by having the Deputies recalled before they arrived at her home. .

of Information Act, 5 U.S.C. § 552 (“FOIA”) and the Privacy Act, 5 U.S.C. § 552a, (1) agency records relating to her communications with the Office of the Deputy Attorney General (ODAG) regarding the Gibson matter, and (2) agency records pertaining to her termination. Those requests were narrow and targeted. After months of delay, the Defendant released relatively little, asserting Exemption 5 (deliberative process) and Exemption 6 (privacy) to conceal many of these records.

These records are of substantial public interest. At issue is not merely the merger of a request for relief by a famous actor and director—and friend of the President—with the government’s frequently controversial exercise of pardon or clemency powers. These records may shed light on the Department of Justice’s (the “Department” or “DOJ”) termination of a senior career lawyer simply because she reasonably believed that restoring gun rights to Mr. Gibson was not warranted based on the information available to her. Ms. Oyer was fired for doing her job faithfully and to the best of her ability, just as countless other career attorneys and employees at DOJ have done. And beyond firing her, the Deputy Attorney General and his team then sought to deter her from sharing the truth with the public, both by falsely accusing her of lying, pressing meritless ethics charges against her, and seeking to intimidate her from testifying and continuing to speak out. Ms. Oyer has not been deterred, and her FOIA requests at issue here represent an important effort to demonstrate the truthfulness of her account and the bullying tactics through which DOJ’s present leadership seeks to intimidate its workforce and violate safeguards built into the system to protect the integrity of government actions.

The Department claims that it has *no* documents pertaining to Ms. Oyer’s termination beyond the three-sentence memorandum handed to her as she was escorted out the door, asserting her removal was based on Article II of the Constitution. Oyer Decl., Exh. 1. It is

implausible that the decision to fire the career head of the Office of Pardon Attorney, particularly in these unusual circumstances, would not be the subject of any other written or electronic communications.

Indeed, as shown in Section I, guided by ODAG itself—the same office that fired, harassed, and threatened Ms. Oyer, accused her of lying, and that was therefore the subject of her FOIA request—the Defendant engaged in a search that appears to have been crafted deliberately *not* to discover relevant documents. It searched the records of only two DOJ officials, omitting another known to be involved in Ms. Oyer’s work on the Gibson matter. Even as to these two officials, the Defendant searched a narrow band of communications platforms, omitting commonly used alternatives. It used search terms unlikely to surface relevant records: it did not use terms found in the raft of applicable civil service statutes and regulations while limiting the search to documents containing search terms unlikely to be found in relevant documents. Indeed, the Defendant’s blinkered search failed even to turn up Mr. Blanche’s one-page memorandum dismissing Ms. Oyer from her position, a document retrieved only by happenstance and missed entirely by Defendant’s “keywords.” Yet, even when the operative document at the heart of Ms. Oyer’s request had not been identified by its insufficient search, the Defendant still left it at that, refusing to conduct a reasonable search with a legally sound search protocol. In countless ways, the Defendant failed to conduct an adequate search, as required by law.

The Department is also refusing to produce the documents memorializing the request presented to Ms. Oyer—which ultimately led to her termination—to recommend restoring Mr. Gibson’s gun rights, as well as Ms. Oyer’s refusal to comply with the request. These, too, are of substantial public interest as they reflect the government’s controversial exercise of DOJ’s broad

powers to benefit the President's allies and supporters. With respect to these records, discussed in Sections II-IV, the Defendant's position is laden with irony. It asserts the deliberative process privilege to conceal some of the records, claiming that their release would cause employees to be less candid in their views and would thus impair the forthright and robust discussion of controversial issues within the Department. In reality, it is the termination of employees like Ms. Oyer who faithfully perform their duties to the best of their abilities, not the disclosure of records, that undermines the willingness of Department employees to engage in these deliberations.

The Defendant's assertion that privacy interests of Mr. Gibson prohibit the disclosure of documents pertaining to his request for restoration of firearm rights is falls flat. The Defendant's assertion of Exemption 6 to protect privacy interests entirely overlooks the fact that Mr. Gibson's background and request for restoration of his gun rights are already public matters. His criminal conviction for domestic violence is memorialized in public court records. The Attorney General's decision to restore his firearm rights, which was made after Ms. Oyer's firing, was published in the Federal Register. Moreover, Mr. Gibson's name is mentioned twenty times in the government's opening brief. There is simply no legitimate basis in privacy interests or otherwise for withholding documents from public scrutiny that memorialize a senior Justice Department official's effort to coerce a civil servant to give her nonpartisan seal of approval to a legally unsupported political favor for a friend of the President, and her refusal to comply.

The Defendant's arguments on deliberative process, segregability and foreseeable harm similarly fail to address the unique features in this case. Instead, it presents generic defenses of its Exemption 5 withholdings as though the connection between Mel Gibson and Ms. Oyer's termination was unknown to the public and requires continued secrecy. It fails to identify any

cognizable harm that would result from disclosing the small set of documents requested by Ms. Oyer.

Ms. Oyer's modest FOIA requests, which promise to shed light on the chilling termination of a career civil servant for refusing a demand by those with political power, represent exactly what the Freedom of Information Act was designed for, and disclosure of the requested documents serve its best and highest purpose. The Defendant's motion for summary judgment should be denied and Ms. Oyer's cross motion should be granted.

THE FOIA REQUESTS AT ISSUE

The First FOIA Request

On March 14, 2025, Ms. Oyer's attorney sent a letter (the "First FOIA Request") to the Office of the Pardon Attorney (OPA) seeking disclosure of the following three categories of documents:

1. Emails between Ms. Oyer and Associate Deputy Attorney General (ADAG) Paul Perkins exchanged between March 3 and March 7, 2025, including attached memos.
2. All emails between Ms. Oyer and ADAG Paul Perkins referencing 'domestic violence' or 'DV.'
3. Emails and Teams messages between Ms. Oyer and Deputy Pardon Attorney Kira Gillespie referencing 'Mel Gibson' (including either 'Gibson' or 'Mel').

Ultimately, OPA's March 19, 2025 response attached 25 pages of records that it concluded were responsive to portion #3 of the First FOIA Request, with some

redactions.⁷ According to the Defendant, Portions #1 and #2 of the First FOIA Request required consultation with the Office of the Deputy Attorney General (“ODAG”) managed by the Department of Justice Office of Information and Privacy (“OIP”). After considerable delay, OIP completed that search and located 38 pages of records, 29 of which it withheld in full and 9 of which it released in part. Declaration of Vanessa Brinkmann (“Brinkmann Decl.”), ¶ 8.

The Second FOIA Request

On March 31, 2025, Ms. Oyer emailed the Department’s Justice Management Division (“JMD”) the “Second FOIA Request.” Pursuant to the Privacy Act and FOIA, Ms. Oyer requested copies of the following three categories of records concerning her employment with OPA from April 2022 to March 2025:

1. Complete eOPF [electronic Official Personnel File]/personnel file.
2. All annual performance evaluations/ratings.
3. All documentation pertaining to the termination of [her] employment.

On April 17, 2025, JMD responded by email, advising that a search had been conducted and that it found records responsive to the first category of Ms. Oyer’s request. It provided a link to those files.

As to the second category of the Second FOIA Request, JMD reported that it had “determined that [OPA] would be the appropriate component to handle this part of [her] request.” Those documents were later provided by OPA via separate email to Ms. Oyer.

As to the third part of the Second FOIA Request, after months of delay, JMD disclosed

⁷ With one small exception, Ms. Oyer does not challenge the withholdings or redactions in this group of 25 pages. See n. 16, *infra*.

the one-page memorandum dated March 7, 2025, from Mr. Blanche to Ms. Oyer that purported to end her employment. That document is attached as Exhibit 1 to Ms. Oyer's Declaration.

LEGAL STANDARD

FOIA “was enacted to facilitate public access to Government documents” to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Just.*, 746 F.3d 1082, 1088 (D.C. Cir. 2014) (quoting *Dep't of State v. Ray*, 502 U.S. 164, 173 (1991)). “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). This compelling statutory purpose requires the court to bear in mind that FOIA creates a “strong presumption in favor of disclosure.” *Ray*, 502 U.S. at 173. The statute therefore has a clear “prodisclosure purpose.” *Nat'l Archives & Rec. Admin. v. Favish*, 541 U.S. 157, 174 (2004). *See also Am. Oversight v. United States HHS*, 101 F.4th 909, 913 (D.C. Cir. 2024) (citations omitted) (recognizing FOIA's "goal of broad disclosure.").

As a result, “the strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents.” *Ray*, 502 U.S. at 173. This presumption animates FOIA and its exemptions must be “narrowly construed.” *ACLU v. U.S. Dep't of Just.*, 655 F.3d 1, 5 (D.C. Cir. 2011) (citations omitted); *see Milner v. Dep't of the Navy*, 562 U.S. 562, 571 (2011) (claims of exemption are to be given a “narrow compass”).

Summary judgment is the typical procedural mechanism for resolving disputes under FOIA. Fed. R. Civ. P. 56(a); *Judicial Watch, Inc. v. U.S. Secret Serv.*, 726 F.3d 208, 215 (D.C. Cir. 2013); *see Ctr. for Biological Diversity v. U.S. Forest Serv.*, Civ. No. 23-cv-00928 (DLF), 2025 U.S. Dist. LEXIS 59288, *9 (D.D.C. Mar. 28, 2025) (“the vast majority of FOIA cases can

be resolved on summary judgment.") (citation omitted). Where exemptions are asserted, the agency must provide affidavits or declarations that are "reasonably detailed," "nonconclusory," and "submitted in good faith." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); see *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 146 (D.C. Cir. 2006). "Summary judgment is warranted on the basis of agency affidavits when the affidavits describe 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." *Citizens for Resp. & Ethics in Wash. v. U.S. DOJ*, 58 F.4th 1255, 1262 (D.C. Cir. 2023) (quoting *Larson v. Dep't of State*, 565 F.3d 857, 862 (D.C. Cir. 2009)).

Even where a FOIA exemption applies, an agency may withhold information only if it also satisfies two additional requirements: segregability and foreseeable harm. Under FOIA's segregability mandate, "[a]ny reasonably segregable portion of a record shall be provided...after deletion of the portions which are exempt." 5 U.S.C. § 552(b); *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977). Agencies must conduct a line-by-line review of each document and an agency "must usually submit a sufficiently detailed *Vaughn* index for each document and an affidavit or declaration stating that it has released all segregable material" to meet this burden. *Bloche v. Dep't of Def.*, 370 F. Supp. 3d 40, 55 (D.D.C. 2019). A "conclusory affidavit" is insufficient. *Stolt-Nielsen Transp. Grp. Ltd. v. United States*, 534 F.3d 728, 734 (D.C. Cir. 2008); *Khatchadourian v. Def. Intelligence Agency*, 453 F. Supp. 3d 54, 82 (D.D.C. 2020).

In addition, the 2016 FOIA Improvement Act imposes a separate, independent obligation on agencies to show "foreseeable harm" from disclosure. 5 U.S.C. § 552(a)(8)(A)(i); *Reps.*

Comm. for Freedom of the Press v. FBI, 3 F.4th 350, 369-70 (D.C. Cir. 2021). An agency must “identify specific harms to the relevant protected interests that it can reasonably foresee would actually ensue from disclosure of the withheld materials,” and must “connect the harms in a meaningful way to the information withheld.” *Id.* Boilerplate or speculative assertions of harm are insufficient. *Judicial Watch, Inc. v. U.S. Dep’t of Just.*, 20 F.4th 49, 55 (D.C. Cir. 2021).

ARGUMENT

I. The Defendant Did Not Perform an Adequate Search for Records Relating to Ms. Oyer’s Termination.

In her Second FOIA Request, Ms. Oyer asked the government for something quite simple: all the documents relating to her termination as Pardon Attorney. Yet months later, after numerous delays, the government provided nothing but a one-page termination notice. That document was found despite, not because of, the Department’s search design. Peering beneath the hood of the government’s search, there is little doubt as to why. The search the Defendant conducted was unreasonable and inadequate.

The Office handling Ms. Oyer’s FOIA request, the Office of Public Information (OIP) solicited the guidance of ODAG, the very office within DOJ that fired her and whose conduct is directly in question, to craft the parameters of their search. Brinkmann Decl. ¶ 43. Deferring entirely to ODAG’s guidance, OIP limited its inquiry to only two custodians, Mr. Blanche and Mr. Bove, *id.*, although another official in that Office, Paul Perkins, engaged with Ms. Oyer in the Gibson matter, a fact which was known within the Office.

Moreover, guided by ODAG, OIP chose to use search terms destined to miss relevant documents, choosing to search only for documents that included words not likely to be included in all relevant communications and failing to look for documents including words likely to find relevant documents. And the Defendant did not include all relevant communications platforms

within its search. Even after the government accidentally found the Mr. Blanche’s termination notice, which had not come up in its search, containing unused and potentially useful search terms, the Defendant unreasonably chose not to modify its search.

The Court should therefore order Defendant to perform a new search that is reasonably designed to find all responsive documents.

A. The Defendant Failed to Find Documents Required By Law to Be Created when Removing Members of the Senior Executive Service from Federal Employment.

Ms. Oyer was a career employee in the SES. Oyer Decl. ¶ 1. From April 2022 until her termination on March 7, 2025, Ms. Oyer served as the Pardon Attorney, the component head of the Justice Department’s Office of the Pardon Attorney. As Pardon Attorney, Ms. Oyer reported to the Deputy Attorney General.⁸ Throughout her tenure at the Justice Department, Ms. Oyer consistently received “outstanding” performance evaluations—the Department’s highest ratings. Oyer Decl., ¶ 2. At the time of her termination, she had completed her one-year probationary term. Oyer Decl. ¶ 1. *See* 5 U.S.C. § 3393(d).

Career SES employees who have finished their probationary term cannot be terminated at will. Instead, an agency may take action against a career employee in the SES only for “misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.” 5 U.S.C. § 7543. They may also be removed for performance-based reasons. 5 C.F.R. § 539.502 (procedures for removal of SES employees for less than fully satisfactory executive performance).

Ms. Oyer was not told which of those bases for termination applied to her, but whenever an agency seeks to terminate a career SES employee on one of these grounds, the employee is

⁸ U.S. DOJ Organizational Chart Map: <https://www.justice.gov/agencies/chart/map>.

given certain procedural rights and protections afforded them in Section 7543(b). The employee must be given “at least 30 days’ advance written notice . . . state the specific reason(s) for the proposed action.” 5 U.S.C. § 7543(b)(1); 5 C.F.R. § 752.604(b)(1). The notice must also “inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice.” 5 C.F.R. § 752.604(b)(1).

The SES employee is given a reasonable time, but not less than seven days, “to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.” 5 U.S.C. § 7543(b)(2); 5 C.F.R. § 752.604(c)(1). Following review by the agency, the employee is entitled to a written decision containing the reasons for the termination. 5 U.S.C. § 7543(b)(4); 5 C.F.R. § 752.604(g). If the employee is subject to adverse action, they may appeal to the Merit Systems Protection Board. 5 U.S.C. § 7543(d).

Section 7543(e) further provides that:

Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee’s request.

See 5 C.F.R. § 752.606. Depending on the reason for the personnel action, a terminated career SES employee must be offered alternative employment within the SES or civil service. *See* 5 C.F.R. § 359.701, *et seq.* Thus, the termination of a career SES employee, like Ms. Oyer, necessarily leaves a paper trail required by federal law and Office of Personnel Management regulations. A proper search for records relating to the termination of SES employment should surface these records. And yet the Defendant’s located none of them.

In this regard, *Kronberg v. U.S. Dep’t of Just.*, 875 F. Supp. 861 (D.D.C. 1995), is instructive. In *Kronberg*, plaintiffs requested records relating to grants of testimonial immunity

given them. Statutes, regulations and internal Department policy required written submissions for witnesses to be given immunity, but none were provided. This Court held that the government did not perform an adequate search when it did not locate records required by law to be created. *Id.* at 270-71 (“Given the specificity of the statutes, regulations and Department of Justice and United States Attorneys’ manuals governing the authorization for immunization of witnesses, it is inconceivable that there is not a ‘paper trail’ surrounding the authorization of immunization regarding Plaintiffs.”).⁹

B. The Defendant’s Search Was Unreasonable and Inadequate.

On March 31, 2025, Ms. Oyer submitted a request under both FOIA and the Privacy Act¹⁰ to the Department’s Justice Management Division (JMD), seeking “all documentation pertaining to the termination of my employment.” Brinkmann Decl., ¶ 38, Exh. I. That request was referred to OIP. Brinkmann Decl., ¶ 38, Exh. J. Initially OIP found no responsive records. Nearly six months later, OIP responded to the request, disclosing the termination letter it found by accident and not through its search. Brinkmann Decl., ¶ 39, Exh. L.

That document is titled “Notice of Removal from the Senior Executive Service” and is signed on March 7, 2025, by Deputy Attorney General Todd Blanche. It states, in pertinent part:

This memorandum serves as official notice that you are removed from your Senior Executive Service (SES) position of Pardon Attorney, Office of the Pardon Attorney, and from federal service, effective immediately. Pursuant to Article II of the Constitution and

⁹ If the Defendant did not follow the applicable statutes and regulations in removing Mr. Oyer, then it should say so. As this Court has observed, “[i]t is reasonable in those circumstances to question whether the agency and declarant may be overlooking responsive documents. This concern could easily be alleviated by a simple admission that an agency failed to follow its regulations or an assertion that it did not interpret its regulations to be inconsistent with its lack of documents.” *Nat’l Student Legal Def. Network v. United States Dep’t of Educ.*, 19-cv-0343 (CJN), 2022 U.S. Dist. LEXIS 75910, *17-18 (D.D.C. Apr. 26, 2022),

¹⁰ As the government explains, the reasonable search requirements under the Privacy Act mirror those of FOIA. Def’s Mem. at 15.

the laws of the United States, your employment with the Department of Justice is hereby terminated.

Oyer Decl., Exh. 1.

To prevail on a motion for summary judgment, the burden is on the government to show “beyond material doubt that its search was reasonably calculated to uncover all relevant documents.” *American Oversight v. U.S. Dep’t of Health & Human Servs.*, 101 F.4th 909, 923 (D.C. Cir. 2024) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)) (quotation marks omitted). Of course, the adequacy of an agency’s search “is ‘determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.’” *Kowal v. DOJ*, 107 F.4th 1018, 1027, (D.C. Cir. 2024) (quoting *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011)).

However, the adequacy of the search “turns on ‘a standard of reasonableness and depends...upon the facts of each case.’” *Accuracy in Media v. CIA*, 134 F.4th 1236, 1241 (D.C. Cir. 2025) (quoting *Weisberg v. U.S. Dep’t of Just.*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Agencies must make more than “perfunctory searches” and are required to pursue “obvious leads to discover requested documents.” *Valencia-Lucena*, 180 F.3d at 325. That means that the agency “cannot limit its search” to only one or more places if there are additional sources “that are likely to turn up the information requested.” *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

Thus, in cases of “well defined requests and positive indications of overlooked materials,” summary judgment is inappropriate. *Valencia-Lucena*, 180 F.3d at 326 (citation omitted). Such cases include those featuring “problems with . . . the specific search terms used or the inadequacy of the particular locations searched.” *Heartland All. for Hum. Needs & Hum. Rts. v. ICE*, 406 F. Supp. 3d 90, 117 (D.D.C. 2019). Agencies may not “omit from [a] search

obvious alternative terms without a detailed justification.” *American Oversight*, 101 F.4th at 923 (quoting *Valencia-Lucena*, 180 F.3d at 325).

As stated, Ms. Oyer’s request to JMD for records relating to her termination was referred to OIP. Declaration of Laurence Brewer, ¶ 11; Declaration of Vanessa Brinkmann, ¶ 38. OIP identified Deputy Attorney General Blanche and Associate Deputy Attorney General Bove as the most likely custodians of these records. Brinkmann Decl., ¶ 43. According to Ms. Brinkmann, OIP narrowed the search to only Mr. Blanche’s and Mr. Bove’s email and electronic documents. *Id.* It is unclear what specific email accounts and electronic documents were searched; nor is it clear whether those searches encompassed *all* email accounts and storage locations utilized by Mr. Blanche and Mr. Bove. OIP did not search for hard-copy records or search Mr. Blanche’s or Mr. Bove’s text messages or messaging applications. OIP narrowed the search further by adopting the following search terms: “Oyer”, “Pardon”, “terminat*” AND “SES”, (“fire” OR “firing” OR “fired”) AND “SES”, and (“let” w/5 “go”) AND “SES.” Brinkmann Decl., ¶ 43. OIP limited the search to a date range between January 20 and March 31, 2025. *Id.*

The OIP search suffered from five obvious flaws.

First, while it was entirely appropriate to search Mr. Blanche’s and Mr. Bove’s records, OIP offers no reason for confining the search to those two custodians. The government must describe not only what it searched, but also why it chose not to search elsewhere. *Reporters Comm. for Freedom of the Press v. U.S. DOJ*, Civ. No. 19-2847 (TFH), 2021 U.S. Dist. LEXIS 215639, at *15-16 (D.D.C. Nov. 8, 2021) (the agency’s affidavits do not sufficiently explain why “no other record system was likely to produce responsive documents” quoting *Mobley v. CIA*, 806 F.3d 568, 582 (D.C. Cir. 2015)). The Defendant acknowledges that it turned to ODAG, the subject of Ms. Oyer’s request and the office responsible for her termination, to narrow the search

and followed their guidance unquestioningly. “ODAG identified Deputy Attorney General Todd Blanche and then-Principal Attorney General Emil Bove as the two custodians most likely to maintain records responsive to Plaintiff’s request.” Brinkmann Decl., ¶ 43.

Here, the Defendant overlooks the well-known facts and circumstances of Ms. Oyer’s termination, as well as the connection between Ms. Oyer’s two FOIA requests. In Ms. Oyer’s March 14, 2025, request, also processed by OIP, Ms. Oyer requested records relating to email communication between herself and Paul Perkins, an Associate Deputy Attorney General. That communication regarding Mel Gibson immediately preceded Ms. Oyer’s termination. A reasonable search should have incorporated Mr. Perkins at a minimum, along with the rest of the staff of ODAG, which includes senior officials (such as Mr. Blanche’s Chief of Staff) who worked closely with Mr. Blanche and Mr. Bove to conduct the business of the Department. It also would have included the Office of the Attorney General which, given the Attorney General’s central role in reinstating federal firearm rights as well as her general oversight of the Department, reasonably may have been consulted on Ms. Oyer’s termination. As the D.C. Circuit has long emphasized, an agency “cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby*, 920 F.2d at 68.

Second, the search was unreasonably confined to email and electronic documents. Ms. Brinkmann does not explain which email addresses were reviewed and, if Mr. Blanche and Mr. Bove had multiple e-mail addresses, whether they were *all* searched. Nor does OIP explain why it chose not to search hard-copy records, Microsoft Teams, or messages conveyed by text applications, including Signal or WhatsApp. *Cf. Am. Oversight v. GSA*, 486 F. Supp. 3d 306, 316 (D.D.C. 2020) (government fails to explain why it did not search for records in voicemails and call logs). Given the documented use by Trump Administration officials of non-government

messaging platforms such as Signal to communicate with each other, and the fact that OIP's search turned up no messages at all, OIP should have included these applications in their search.¹¹ Moreover, Microsoft Teams is a widely used means of communication within the Department, including for communications between OPA and ODAG, *see* Mutton Decl. ¶ 7, yet Teams apparently was not searched and Ms. Brinkmann did not explain why.

Third, the search included extraneous terms that are not featured in the relevant termination statutes and that appear calculated to unreasonably limit the discovery of documents. Ms. Oyer was fired on or about March 7, 2025, just seven weeks after the new administration took office. Ms. Brinkmann did not explain why OIP did not simply conduct a search by her name, which is somewhat singular and identifiable, and almost certainly would have been limited to documents pertaining to Ms. Oyer. That would have ensured detecting all documents responsive to Ms. Oyer's request.

Instead, with respect to the personnel action taken, OIP included variations of "termination," "fire" and "let go." Brinkmann Decl., ¶ 43. As explained above, the statutes and regulations do not use those words. They instead use variations of "take action against" an employee, 5 U.S.C. § 7543, "removal," 5 C.F.R. Part 359 or "adverse action." 5 C.F.R. § 752.603. For reasons that are not explained, OIP scrupulously avoided using these statutory and regulatory terms. If OIP was determined to include terms in its search other than Ms. Oyer's name—which, as explained below, they should not have—the only theoretically reasonable additions would be words that derive from the relevant statutes and regulations.

¹¹ Jeffrey Goldberg, *The Trump Administration Accidentally Texted Me Its War Plans*, *The Atlantic*, March 24, 2025, <https://www.theatlantic.com/politics/archive/2025/03/trump-administration-accidentally-texted-me-its-war-plans/682151/>

The statutes and regulations governing the termination of career SES employees also use precise terms to define the grounds upon which such an employee may be terminated: “misconduct,” “neglect of duty,” “malfeasance,” or “failure to accept a directed reassignment or to accompany a position in a transfer of function,” 5 U.S.C. 7543(a); 5 C.F.R. § 359.403(a)(1), or “less than fully successful” executive performance. 5 C.F.R. § 359.501(c)-(d). OIP did not use any of those terms either and it offers no reason for selecting extra-statutory terms for its search instead of the ones actually used in the statutes and regulations. *See Transgender Law Ctr. v. U.S. Immig. and Customs Enf.*, 775 F.Supp.3d 131, 146-49 (D.D.C. 2025) (rejecting government’s failure to include appropriate search terms).

The D.C. Circuit recently cited with approval a raft of district court cases holding that an agency’s discretion to formulate a search “does not permit an agency to omit from their search obvious alternative terms without a detailed justification.” *Am. Oversight v. U.S. HHS*, 101 F.4th 909, 923 (D.C. Cir. 2024) (holding that HHS did not adequately explain why it failed to use search for relevant terms used in its day-to-day operations). *See also Accuracy in Media v. CIA*, 134 F.4th 1236, 1241 (D.C. Cir. 2025) (finding search inadequate when agency omitted “obvious” search terms and when terms used are an “unexplained mismatch for the scope of the FOIA request.”) And yet, that is precisely what the Defendant did here.

Fourth, of particular importance, OIP unnecessarily included “SES” as a *required* search term. In other words, no document would be responsive to the search unless it included the term “SES.” According to Ms. Brinkmann, “the term ‘SES’ was chosen as part of these search strings because Ms. Oyer’s employment with the Department was terminated on the same date as other Senior Executive Service (SES) Department employees.” Brinkmann Decl., ¶ 43. But that explanation makes little sense. The addition of this term would not distinguish Ms. Oyer from

other fired SES employees. And it would obviously exclude responsive records. There is no reason that all pertinent e-mails, text messages or other communications regarding Ms. Oyer's removal would necessarily use the term "SES," and the Defendant has not explained why this would be the case. To direct the search for records pertaining to Ms. Oyer, OIP should have just used "Oyer" and Oyer alone.

Last, the Defendant inexplicably failed to search for records that may have been created after Ms. Oyer's termination, though it seems clear that such records exist. Personnel in ODAG, including Mr. Blanche personally, continued to take actions related to Ms. Oyer's termination in the days and weeks that followed. For example, DOJ security officers were sent to Ms. Oyer's home. Oyer Decl., ¶ 14. Mr. Blanche made a public statement about her termination. *Id.* ¶ 12. Mr. Blanche's staff filed a complaint against Ms. Oyer with the D.C. Bar Office of Disciplinary Counsel (ODC). *Id.* ¶ 13. Mr. Blanche sent a warning letter to Ms. Oyer in advance of her scheduled testimony before Members of Congress on April 7. *Id.* ¶ 14. The Department is also defending Ms. Oyer's termination in a proceeding before the Merit Systems Protection Board. Communications related to these actions would all be potentially responsive to Ms. Oyer's request. But the Defendant's search methodology was not crafted in a manner to surface these kinds of responsive records.

The Defendant's search was further limited by the fact that it set March 31, 2025 (the date of the FOIA request) as a cut-off date for the search. Brinkmann Decl., ¶ 43. That was an error. It is standard in this Circuit for a search cut-off date to be the date that the search begins. *Watkins Law & Advocacy, PLLC v. United States*, 78 F.4th 436, 450 (D.C. Cir. 2023), *McClanahan v. United States DOJ*, 204 F. Supp. 3d 30, 47 (D.D.C. 2016). The Brinkmann Declaration does not tell us when the search commenced, but it was clearly after April 9, 2025,

the date the Department acknowledged Ms. Oyer's request and placed it on the complex track. Brinkmann Decl., Exh. K. As outlined above, it is clear that the Department continued to generate records pertaining to Ms. Oyer's termination in the weeks and months that followed, and the failure to search for these records is a critical and unreasonable omission.

C. Even After Becoming Aware of Its Search's Deficiencies, the Defendant Did Nothing to Remedy Them.

The fact that OIP's searches did not capture any documents—including the memo Mr. Blanche signed terminating Ms. Oyer—is clear and irrefutable evidence of the inadequacy of their search terms and locations. If a search did not turn up a document so obviously relevant, it certainly requires reexamination of the search itself. Brinkmann Decl., ¶ 43. Fortuitously, someone in OIP was independently aware of the one-page memo from Mr. Blanche terminating Ms. Oyer, obtained it from JMD and sent it to Ms. Oyer months later. *Id.* Here, there were not merely “positive indications of overlooked materials.” *Valencia-Lucena*, 180 F.3d at 327 (quotation marks omitted). OIP had proof positive that its search did not identify responsive documents.

At that point, OIP should have considered why its search failed to surface any records and whether the one record it found by happenstance could help in formulating a reasonable search. Instead, OIP did nothing. That was wrong. It could have used that document as a guide. *Aaronson v. DOJ*, Civ. No. 24-cv-03235 (TNM), 2026 U.S. Dist. LEXIS 35594, *17 (D.D.C. Feb. 20, 2026) (noting the “longstanding maxim that an agency must follow up on leads”). The memorandum uses variations of the term “remove” and cites Article II of the Constitution as the basis for Ms. Oyer's removal. But OIP conducted no further searches employing those terms.¹²

¹² Ms. Brinkmann states that OIP asked “knowledgeable officials within the Office of the Deputy Attorney General” about additional records but was told that they were not aware of any.

As this Court has held, “[s]ometimes, an agency must go beyond its initial search.” *Skywriter Commc'ns, Inc. v. United States Dep't of State*, Civ. No. 24-368 (CJN), 2025 U.S. Dist. LEXIS 268365, *5 (D.D.C. Dec. 21, 2025). This was precisely the moment when such action would be required; yet, the Defendant did nothing.

In total, OIP’s search efforts were clearly unreasonable. As the D.C. Circuit explained, “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. Consequently, the court evaluates the reasonableness of an agency’s search based on what the agency knew at its conclusion rather than what the agency speculated at its inception.” *Campbell v. U.S. DOJ*, 164 F.3d 20, 28 (D.C. Cir. 1998). Here, OIP’s search initially failed to find any records when there was every reason to believe that there would be records, as required by law, documenting a consequential removal in an area of intense interest to the President, the Department and the public; the Defendant then failed to follow leads unearthed when a single memo with relevant and previously unused search terms was separately located.

The search conducted by OIP was also unreasonable in that it failed to consider JMD as an additional custodian of responsive records and to conduct a thorough search of personnel records maintained by JMD. Mr. Brewer explains that JMD is the custodian of removal letters. Brewer Decl., ¶ 12. It disclosed the one-page memo to OIP for release to Ms. Oyer. *Id.* Mr. Brewer does not, however, say that JMD would not have other records relating to her

Brinkmann Decl. ¶ 43. These officials’ failure to identify the memorandum terminating Ms. Oyer is not reassuring, and, once OIP found that document, it should have been alerted to the unreasonableness of relying on ODAG to guide its search. Moreover, Ms. Brinkmann does not specify which supposedly “knowledgeable officials” were consulted or what was the purported basis of their knowledge

termination. Given that JMD staff provides human resources and employment law support for ODAG, it seems probable that JMD would be in possession of additional records. At minimum, the Defendant should have identified all JMD staff with knowledge of Ms. Oyer's termination and conducted reasonable searches of the records maintained by those custodians. In addition, the Defendant should have identified the security officers who delivered the one-page termination memo to Ms. Oyer, as well as Deputies deployed to Ms. Oyer's home, and searched their records, as well as the records of any other custodians in the Department's Office of Security and Emergency Planning Staff. Instead, the Defendant did nothing further.

Given the myriad deficiencies outlined above, the Defendant's search, following ODAG's parameters, was plainly inadequate and unreasonable. Therefore, Defendant's motion for summary judgment should be denied with respect to Ms. Oyer's second FOIA request. The Court should grant Ms. Oyer's motion for summary judgment and order the Defendant to perform a new search for records relating to Ms. Oyer's termination.

II. The Government Has Failed to Demonstrate That the Records Related to Mr. Gibson Withheld or Redacted on Grounds of Deliberative Process (Exemption 5) Satisfy that Exemption.

Ms. Oyer also requested documents related to the request to restore Mr. Gibson's firearm rights and her consideration and refusal to do so. Ms. Oyer was a party to or saw every single document she requested. The Defendant's withholding of these records on deliberative process grounds was unlawful for multiple reasons—indeed, they include material created by a third-party for submission to the Justice Department.

According to Teresita Mutton, in March 2025, the OPA assumed the administration of an interim relief program under 18 U.S.C. § 925(c) “which allows the Attorney General to restore federal firearm rights to individuals otherwise prohibited from possessing firearms due to prior

disqualifying convictions and/or other factors.” Declaration of Teresita Mutton, ¶ 5.¹³ Between March 3 and 7, 2025, the Office, headed by Ms. Oyer, and ODAG were engaged in a review of potential recipients of such relief. Brinkmann Decl., ¶ 12 and Exh. H. Ultimately, after Ms. Oyer’s termination, the Attorney General awarded ten people that relief. Granting Relief; Federal Firearms Privileges, 90 Fed. Reg. 17835 (April 29, 2025). One of those people was the actor and director Mel Gibson. *Id.*

Ms. Mutton explains that of the 25 pages reviewed by OPA, 16 were withheld in full on deliberative process grounds. Mutton Decl. ¶ 28.¹⁴ Six of these pages are a draft advisory memorandum from OPA to the Attorney General, with redline edits made by OPA staff. *Id.* Ms. Mutton does not explain whether this memorandum deals with or refers to Mr. Gibson’s petition for relief.

Ms. Brinkmann explains that the search for records responsive to Request No. 1, Items 1 and 2, found 29 pages of records which were withheld in full on deliberative process and privacy grounds. Brinkmann Decl., ¶ 11. Nine pages of e-mails were released in part. *Id.*, ¶ 12. She divides these records into three categories:

1. Emails between officials in OPA and ODAG discussing the content of draft memoranda on potential candidates for relief under § 925(c) (2 pages withheld in part), and attachments to those emails, consisting of the following subcategories:

¹³ The statute provides, “the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” 18 U.S.C. § 925(c).

¹⁴ Ten of those pages are draft letters to each of the ten people whose petitions for relief were to be granted. Ms. Oyer does not seek those letters.

- Subcategory 1 - Draft memoranda on potential recipients for relief under § 925(c) authored by OPA (15 pages withheld in full);¹⁵ and
 - Subcategory 2 - Documents provided to OPA as part of a deliberative discussion regarding a potential recipient’s eligibility for relief under §925(c) (14 pages withheld in full).
2. Emails between officials in OPA, FBI, and ODAG discussing the process of evaluating potential candidates for relief under §925(c) (3 pages withheld in part).
 3. Emails between the Department’s Civil Division (CIV) and ODAG (forwarded to OPA) discussing various cases with plaintiffs potentially eligible for relief under §925(c) (4 pages withheld in part).¹⁶ *Id.*

Ms. Brinkman’s description, in the singular, of *a* particular potential recipient’s eligibility for relief indicates that Subcategory 2 refers in whole or in part to Mel Gibson. *See also* Oyer Decl., ¶ 22. Ms. Brinkmann explains that this 14-page group “include[s] records of prior convictions, a letter from the candidate’s counsel recommending the candidate for relief, and information regarding the candidate’s background and reason for requesting relief.” Brinkmann Decl. ¶ 22; *see also id.* ¶ 16 (using the term “selected materials”). Ms. Brinkmann’s description does *not* say that any of these pages reflected the government’s preliminary consideration of a matter requiring resolution. To the contrary, Ms. Brinkmann says that “[t]hese materials were considered as part of the deliberative decisionmaking process in determining whether potential candidates were eligible for relief.” *Id.* ¶ 20. They “informed the drafting of the development of

¹⁵ Presumably, these are the first, third and fourth items in the *Vaughn* Index at p. 46-47.

¹⁶ These appear to be RIP 006-009. If so, Ms. Oyer does not challenge the redactions in these records. That should allow the Court to dispense with the government’s assertion of the attorney work product privilege. Brinkmann Decl., ¶¶ 24-25, 28-29.

the recommendation memorandum.” *Id.*

The Department appears to acknowledge that some of the documents it is continuing to withhold are not interagency communications, and it has provided no reasonable explanation for its failure to produce that subset of documents. In the absence of a page-by-page description of the withheld 14 pages in Subcategory 2, these pages apparently consisted in part of facts and information provided *to* the Department by a third party, Mr. Gibson’s attorney, in support of his request for reinstatement of his federal firearm rights.¹⁷ *See* 90 Fed. Reg. 17835 (stating that “The Attorney General has reviewed all the relevant facts for each individual listed below including the materials that *each* individual submitted seeking either a pardon or relief from federal firearms disabilities...”). One of those individuals listed in this entry in the Federal Register is Mel Gibson. The D.C. Circuit has held that, “even if [a] document is predecisional at the time it is prepared, it can lose that status if it is adopted, formally or informally, as the agency position on an issue or used by the agency in its dealings with the public.” *Coastal States Gas Co. v. U.S. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). “To adopt a deliberative document, it is not enough for an agency to make vague or equivocal statements implying that a position presented in a deliberative document has merit; instead, the agency must make an *express* choice to use a deliberative document as a source of agency guidance.” *Jud. Watch, Inc. v. U.S. Dep’t of Def.*, 847 F.3d 735, 739 (D.C. Cir. 2017) (citations omitted). Here, even if the materials provided by the petitioner are protected by the deliberative process privilege, that protection is lost because the Attorney General expressly relied on them in making her

¹⁷ Ms. Brinkmann’s description of a letter and, perhaps, other materials from Mr. Gibson’s attorney does not square with the government’s brief stating that all materials were “wholly internal to the Department.” Def’s Mem. at 37.

determination. Therefore, these records are not intra- or inter-agency memos and do not reflect any government deliberation. Accordingly, at minimum they should have been segregated from the assertedly deliberative e-mails to which they were attached and released to Ms. Oyer.

A. Records Provided By Mr. Gibson's Attorneys to the DOJ Are Not Intra- or Inter-Agency Memoranda.

Among the materials the Defendant is withholding is a multi-page letter from an attorney representing Mel Gibson, addressed to DOJ leadership, requesting that the Attorney General reinstate Mr. Gibson's federal firearm rights. The letter reviews the legal framework for reinstatement of firearm rights under federal law, and also lays out the reasons Mr. Gibson's attorney believes he is entitled to such relief. The deliberative process privilege does not, however, cover "statements made to and received from third parties [that are] not internal deliberative thoughts of a government employee." *Wheatland*, 2025 U.S. Dist. LEXIS 122027, at *5.

Plainly, a letter and background information provided by Mel Gibson's private counsel is not an inter- or intra-agency communication and the government has not argued otherwise. Exemption 5 permits agencies to 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). The deliberative process privilege applies to "inter-agency or intra-agency memorandums." 5 U.S.C. § 552(b)(5). "Agency" is defined as each authority of the Government of the United States, whether or not it is within or subject to review by another agency." 5 U.S.C. § 551(1). This exemption, like all of FOIA's exemptions, must be interpreted narrowly, *Milner*, 562 U.S. at 565, and consistent with "FOIA's central purpose is to ensure that the Government's activities be opened to the sharp eye of public scrutiny." *Rep. Comm.*, 489 U.S. at 774.

The D.C. Circuit has expanded the concept of “intra-agency” communications to include the “consultant corollary.” Even within that doctrine, any documents from Mr. Gibson’s lawyers do not qualify as intra-agency records. The corollary permits certain outside private entities that provide advice to the federal government to fall within the scope of the those qualifying for “intra-agency” status. “The key is that the consultant must not have a stake in the outcome of the agency's process that would render its advice on the subject anything other than disinterested. The inquiry is whether, like an agency employee, the consultant’s only ‘obligations are to truth and its sense of what good judgment calls for.’” *Am. Oversight v. U.S. HHS*, 101 F.4th 909, 916-17 (D.C. Cir. 2024) (quoting *Dept. of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 11 (2001)).

Obviously, counsel for an individual such as Mel Gibson, who is seeking official relief from the Department, cannot be disinterested; they were advocating on their client’s behalf for a particular outcome—in Mr. Gibson’s case, for relief from federal firearm disabilities that only the Attorney General is statutorily authorized to grant. *Compare Wheatland v. U.S. HHS*, Civ. No. 21-cv-03126 (CJN), 2025 U.S. Dist. LEXIS 122027, at *8-9 (D.D.C. Apr. 28, 2025); (lobbyists are not disinterested), *with New C.L. All. v. Sec. Exch. Comm’n.*, Civ. No. 22-cv-03567 (CJN), 2025 U.S. Dist. LEXIS 169430, at *7-8 (D.D.C. Aug. 29, 2025) (a government contractor was disinterested). Because they have a stake in the outcome of their advocacy, private attorneys, like lobbyists, “cannot reasonably be regarded as the functional equivalent of an agency employee working on the same matter and so is not capable of ‘intra-agency’ communications.” *Am. Oversight*, 101 F.4th at 917 (communications between agencies and Congress are not protected by the deliberative process privilege). Thus, any materials provided by Mel Gibson to the Department in support of his request for reinstatement of federal firearm

rights—whether directly or through his agents or attorneys—cannot be shielded by the deliberative process privilege.

B. The Six-Page OPA Memo and All Documents Provided to OPA Contained Within Subcategory 2 Are Not Deliberative Records.

These additional tranches of documents—OPA’s six-page memo sent to the Attorney General and all the records in Subcategory 2—were also improperly withheld. A record is “deliberative,” and thus potentially subject to the deliberative process privilege, if it was “prepared to help the agency formulate its position.” *U.S. Fish and Wildlife Serv. v. Sierra Club*, 592 U.S. 261, 268 (2021). Deliberative documents are those that “contain the type of back-and-forth exchange of ideas, constructive feedback, and internal debate over how best to promote and to preserve...policy...” *Rep. Comm.*, 3 F.4th at 364.

To demonstrate that a document is deliberative, the government must explain the role it played in administrative decision-making—the “who, what, where, and how” of internal governmental deliberations. *Campaign Legal Ctr. v. U.S. DOJ*, 34 F.4th 14, 23 (D.C. Cir. 2022) (quoting *Judicial Watch, Inc. v. Dep’t of Just.*, 20 F.4th 49, 57 (D.C. Cir. 2021)). To do so, it must demonstrate “the roles of the document drafters and recipients,” the “nature of the withheld content,” and the “stage within the broader deliberative process in which the withheld material operates.” *Judicial Watch*, 20 F.4th at 56.

Here, neither Ms. Mutton (with respect to the six-page memo sent to the Attorney General) nor Ms. Brinkmann (with respect to all the documents contained in Subcategory 2) provided anywhere near that level of necessary detail to support withholding on grounds of deliberative process. The Defendant did not “reveal as much detail as possible” about “the nature of the document, without actually disclosing information that deserves protection.” *Oglesby v. U.S. Dep’t of the Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996). Providing

additional detail—including identifying the senders/authors, recipients, dates, subjects, and types (e.g., email versus memo) of documents at issue—would not have been difficult given the small volume of pages.

Ms. Mutton’s analysis of how the six-page OPA memorandum connects to a deliberative process is brief and conclusory: “The redacted information is also deliberative because it contains the subjective thoughts, impressions, and evaluations of OPA staff, and other Department Officials, as to whether a particular individual merits relief under the § 925(c) Interim Program, and reflect the typical back-and-forth seen in the Department’s decisionmaking process.” Mutton Decl., ¶ 29. This does not pass muster. Unstated are the names of the author(s) and recipient(s), the date of the document, the role it played in the decision-making process, whether it dealt with Mr. Gibson in whole or in part. Lacking are “the "who," i.e., the roles of the document drafters and recipients and their places in the chain of command; the "what," i.e., the nature of the withheld content; the "where," i.e., the stage within the broader deliberative process in which the withheld material operates; and the "how," i.e., the way in which the withheld material facilitated agency deliberation.” *Jud. Watch, Inc.*, 20 F.4th at 56.

Ms. Brinkmann’s description of the 14-page group of documents provided to OPA (in Subcategory 2) makes it reasonably clear that these materials were not prepared by “insiders”—government employees participating in a decision-making process. Brinkmann Decl., ¶ 20 (“these materials include records of prior convictions, a letter from the candidate’s counsel recommending the candidate for relief, and information regarding the candidate’s background and reason for requesting relief”). Her *Vaughn* Index describes these as “[d]ocuments provided to OPA as part of a deliberative discussion.” *Vaughn* Index at 46 (emphasis added). The deliberative process privilege does not cover “statements made to and received from third parties

[that are] not internal deliberative thoughts of a government employee.” *Wheatland*, 2025 U.S. Dist. LEXIS 122027, at *5.

Instead, Ms. Brinkmann suggests that these materials “informed” later deliberative discussions and later memorandum drafting. Brinkmann Decl. ¶ 20. Whether those memos and e-mails reflecting those discussions are deliberative is an entirely separate question. There is no indication that disclosure of *these* initial materials would reveal anything about a deliberative process that commenced later, and thus should have been produced.

Ms. Brinkmann hints that the “sharing of these materials” and “selection of source material” are themselves deliberative. *Id.* But this “sharing” and “selection” appears to be the work of Mr. Gibson’s attorneys, not government employees. Moreover, as explained in more detail below, apart from the “who,” Ms. Brinkmann tells us nothing about whether and how this group of records was curated from a larger body of records. The record presented offers no basis for finding these records deliberative.

A. Purely Factual Information In All Documents Must Be Segregated and Released.

Even assuming that some portions of the documents at issue are legitimately deliberative, the Defendant does not appear to have made any attempt to segregate portions of the documents that contain non-exempt material. FOIA requires that “any reasonably segregable portion of a record shall be provided to any person requesting such record after the deletion of the portions which are exempt.” 5 U.S.C. § 552(b). The D.C. Circuit has long held that “non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions.” *Mead Data Cent.*, 566 F.2d at 260. While agencies are presumed to have complied with the obligation to disclose reasonably segregable material, they must explain how they have done so with “reasonable specificity.” *Khatchadourian v. Def. Intel. Agency*, 453 F. Supp. 3d 54,

81 (D.D.C. 2020). To do that, “agencies must provide detailed justifications that they properly segregated non-exempt material; mere conclusory statements are not enough.” *Ams. for Fair Treatment v. U.S. Postal Serv.*, Civ. No. 22-cv-01183-RCL, 2025 U.S. Dist. LEXIS 154589, *21 (quoting *Ctr. for Pub. Integrity v. U.S. Dep’t of Com.*, 401 F. Supp. 3d 108, 116 (D.D.C. 2019)). That, in turn, requires a “particularized explanation of non-segregability for *each* document.” *Ctr. for Biological Diversity v. U.S. Env’t Prot. Agency*, 279 F. Supp. 3d 121, 152 (D.D.C. 2017).

Under FOIA, an agency has twin segregation requirements. It must first disclose “[a]ny reasonable segregable portion of a record” that is nonexempt. 5 U.S.C. § 552(b). Then, it must determine whether exempt material can be segregated and released without causing foreseeable harm. *See Rudometkin v. United States*, 140 F.4th 480, 494 (D.C. Cir. 2024); *Leopold v. U.S. DOJ*, 94 F.4th 33, 37 (D.C. Cir. 2024). The Defendant fails on both accounts.¹⁸

Plaintiffs can rebut the government’s presumption by providing a “quantum of evidence” to show that the agency did not disclose reasonably segregable material. *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106 (D.C. Cir. 2007). Ms. Oyer does so here.

Ms. Mutton’s description on segregation with respect to the six-page OPA documents is entirely conclusory: “OPA conducted a line-by-line review of all 25 pages and withheld only that information which would reveal the pre-decisional, deliberative decision-making process of the Department and other executive branch agencies. Accordingly, OPA released all reasonably segregable, non-exempt information.” Mutton Decl., ¶ 32.

Similarly, with respect to the records withheld in full on deliberative process grounds,

¹⁸ A full explanation of the absence of foreseeable harm in the disclosure of these documents can be found in Section IV. The Defendant inappropriately relies on a foreseeable harm argument to support its nondisclosures under both Exemption 5 and 6.

Ms. Brinkmann's one-sentence explanation is far from particularized and detailed, and does not address each document: "[f]or the two sub-categories of documents withheld in full, the nature of the documents prevents segregation inasmuch as the documents themselves, and selected facts therein, embody the deliberative process." Brinkmann Decl., ¶ 30. *See Ams. for Fair Treatment*, 2025 U.S. Dist. LEXIS 154589, *23-24; *Ctr. for Pub. Integrity*, 401 F. Supp. 3d at 118; *Ctr. for Biological Diversity*, 279 F. Supp. 3d at 152 (each rejecting comparably conclusory statements as inadequate to satisfy the segregability requirement).

Moreover, purely factual material falls outside the scope of the deliberative process privilege because its disclosure will reveal nothing about the opinions or deliberations of agency personnel. *EPA v. Mink*, 410 U.S. 73, 91 (1973) (rejecting construction of Exemption 5 that would extend to "factual material otherwise available on discovery merely because it was placed in a memorandum with matters of law, policy, or opinion"); *Reporters Comm.*, 3 F.4th at 365 ("Under the deliberative process privilege, factual information generally must be disclosed[.]") (citation omitted). Ms. Mutton says nothing about the factual content of the six-page OPA memorandum and whether it could be segregated and released. Ms. Brinkmann explains that the 14-page group in Subcategory 2 includes, for example, records of prior convictions and information about the backgrounds of third parties. Brinkmann Decl. ¶ 20. But those are clearly facts and the government has provided no reason why they could not be segregated from any non-exempt material.

Additionally, for Subcategory 1, Ms. Brinkmann explains that that 15-page group of recommendation memos are iterative drafts of memos containing recommendations as to whether the applications for restoration of firearms rights should be granted. Brinkmann Decl., ¶ 19. Those memos contain "specific information regarding potential candidates' criminal history,

pre- and post-conviction conduct, as well as other biographical information.” Mutton Decl., ¶ 5. As Ms. Oyer, who either wrote or reviewed the memos, explains, they contained a factual presentation regarding each applicant and an analysis of whether they met the statutory standards for relief. Oyer Decl. ¶ 21. Given the structure of the memos, segregation of factual material would appear straightforward, and the Defendant should have done so.

Furthermore, it is not enough for the government to say that the facts selected for inclusion in the document are exempt because the choice to include them reflects a deliberative process. This Court has held that the “selection of facts” principle that the government appears to rely upon is an exception to the general rule that “[p]urely factual material usually cannot be withheld under Exemption 5.” *Nat’l Pub. Radio, Inc. v. U.S. Dep’t of Homeland Sec.*, No. 20-cv-2468 RCL, 2022 U.S. Dist. LEXIS 176411, at *17 (D.D.C. Sept. 28, 2022). The D.C. Circuit has held that “a report does not become a part of the deliberative process merely because it contains only those facts which the person making the report thinks material.” *Playboy Enterprises, Inc. v. U.S. Dep’t of Justice*, 677 F.2d 931, 935 (D.C. Cir. 1982). More is needed. The selection of facts must show something about the agency’s deliberative process. *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 513 (D.C. Cir. 2011). That is a “context-specific” inquiry, *see Hardy*, 243 F. Supp. 3d at 168 (internal quotation marks omitted), that requires looking at the “individual document and the role it plays in the administrative process.” *Id.* But Ms. Brinkmann offers no factual context necessary for making this determination.¹⁹

¹⁹ The same is true with respect to the group of e-mails attached to Ms. Brinkmann’s declaration at pages 49-52. They are generally described as reflecting back and forth deliberations about candidates under consideration, Brinkmann Decl., ¶¶ 18-21, but there are several deliberative process redactions made on each page. Ms. Brinkmann’s description is not sufficiently detailed

Indeed, in FOIA cases, “[s]ummary judgment may be granted on the basis of agency affidavits *if* they contain reasonable specificity of detail rather than merely conclusory statements...” *Aguilar v. DEA*, 865 F.3d 730, 734-35 (D.C. Cir. 2017) (emphasis added). Ms. Brinkmann provides just the sort of “conclusory statement” that this court has rejected. *Gatore v. Dep’t of Homeland Sec.*, 327 F. Supp. 3d 76, 88 (D.D.C. 2018). To accept it at face value would trample the well-established rule that factual narratives should be segregated from deliberative documents and released. *See Hardy v. Bureau of Alcohol, Tobacco & Firearms*, 243 F. Supp. 3d 155, 168 (D.D.C. 2017).

For these reasons, the government’s assertion of the deliberative process privilege fails and its motion for summary judgment on this ground should be denied. Plaintiff’s cross-motion should be granted, and the Court should order the Defendant to disclose records withheld on Exemption 5 grounds.

III. The Defendant Has Misapplied Exemption 6 (Privacy) As To Mel Gibson.²⁰

The Defendant’s assertion that the privacy interests of Mel Gibson protect the requested documents from public disclosure is meritless for multiple reasons. The Defendant has withheld *in full* Subcategories 1 and 2 on Exemption 6 grounds. However, all of the pertinent information about Mr. Gibson is already in the public domain, because he put it there (by requesting relief from the Attorney General) and because the Defendant put it there (by publishing the fact that Mr. Gibson was awarded relief). Moreover, Mr. Gibson is a public figure whose background is well-known and readily accessible to the public. Ms. Brinkmann’s Declaration reads as though

to understand the nature of each redacted passage. She does not explain whether any addressed Mr. Gibson in particular, the deliberations over whom are already in the public domain.

²⁰ Ms. Oyer does not object to the redactions in documents responsive to her Request No. 1, item 3, with one exception. On page 17, attached as Oyer Decl., Exh. 6, ADAG Paul Perkins’ name is redacted while it was released widely elsewhere. That redaction should be corrected.

the government sought to protect the intact privacy interests of an unknown applicant for restoration of their gun rights. Never mentioning Mr. Gibson by name or evaluating the privacy interests of a global movie star whose checkered past is public knowledge, let alone the voluminous public record about this issue in particular, Ms. Brinkmann's rote privacy assessment has no bearing to this case.

This is not a case like *Institute for Justice v. IRS*, 547 F. Supp. 3d 1 (D.D.C. 2021) (Nichols, J.), in which this Court found that the government appropriately withheld the names of unknown people in its files on privacy grounds, but overredacted information about these people which could not actually be used to identify them. Here, we are dealing with Mel Gibson, the subject of one of Ms. Oyer's public FOIA requests, who is mentioned twenty times in the Defendant's own opening brief. Yet the government ignores the elephant in the room.

"Under [the] public-domain doctrine, materials normally immunized from disclosure under FOIA lose their protective cloak once disclosed and preserved in a permanent public record." *Cottone v. Reno*, 193 F.3d 550, 554 (D.C. Cir. 1999). This doctrine follows from the "logic of FOIA" because "where information requested is truly public, then enforcement of an exemption cannot fulfill its purposes." *Id.* (citation omitted) (cleaned up). Records and information disclosed previously to a FOIA requester "is effectively a disclosure to the world at large." *Students Against Genocide v. U.S. Dep't of State*, 257 F.3d 828, 836 (D.C. Cir. 2001). Thus, if the names of people and documents relating to them already have been disclosed under FOIA, the government has waived privacy exemptions with respect to them.

Here, the fact that Mel Gibson sought restoration of his rights to possess a firearm is in the public domain. Most noticeably, the Justice Department publicly announced that it had granted his petition. Granting Relief; Federal Firearms Privileges, 90 Fed. Reg. 17835 (April 29,

2025). On March 19, 2025, the Department released to Ms. Oyer, in part, 25 pages of records. Mutton Decl. ¶ 26. The names “Mel,” “Gibson” or “Mel Gibson” are found on eight of them and his name was disclosed because it had been made public in the Federal Register. *Id.*

Mel Gibson is an extremely famous actor, director and producer of popular motion pictures, who has been active in the film industry for fifty years. It is also well-known that he was convicted of a misdemeanor battery charge in 2011 for hitting his then-girlfriend, a conviction for domestic violence that led to the loss of his right to possess a firearm.²¹ It is publicly reported that the victim of Mr. Gibson’s abuse accused him of “hitting her and their daughter, whom she was holding in her arms, punching her in the mouth and breaking her teeth, and verbally berating her during numerous phone calls.”²² Given Mr. Gibson’s notoriety, his public criminal background and the publication of the government’s restoration of his gun rights, it is not surprising that OIP could not explain why the records mentioning him were entirely withheld on Exemption 6 grounds. Ms. Brinkmann did not even resort to generalities, which, of course, would not have been enough. *Hum. Rights Def. Ctr. v. United States Park Police*, 126 F.4th 708, 715 (D.C. Cir. 2025) (citation omitted) (“showing that a substantial invasion of privacy will occur if particular information is released requires “reasonable specificity of detail rather than merely conclusory statements”).

Ms. Brinkmann says that the withheld material contains information about the candidate’s background and reasons for requesting relief. Brinkmann Decl. ¶ 35.²³ That cuts

²¹ Mel Gibson Pleads Guilty to Misdemeanor Battery, Avoids Jail: Is He Getting Off Easy?, ABC NEWS (Mar. 11, 2011), <https://abcnews.go.com/Entertainment/mel-gibson-jail-free-abuse-case-off-easy/story?id=13107521>.

²² *Id.*

²³ It is not clear whether Mr. Gibson is the subject of any of the text in the 15-page group. And Ms. Brinkmann cannot lump Mr. Gibson with the other applicants for gun rights restoration.

strongly against withholding the information, as it illustrates that “the candidate” (Mr. Gibson) *chose* to make his personal information a matter of public interest by electing voluntarily to seek relief from DOJ. Mr. Gibson was not asked, compelled, or obligated to provide any information to the Department, and when he chose to do so, he had no reasonable expectation that his request would be kept confidential.

Moreover, Mr. Gibson’s background is practically an open book. It is incumbent on the Defendant to demonstrate that disclosure of the material it has redacted on Exemption 6 grounds would constitute a “clearly unwarranted invasion of personal privacy.” It cannot do that by pretending that Mel Gibson is unknown and obscure or by ignoring the fact that he voluntarily placed his background at issue in the hope of receiving a benefit from the government. It must do that by analyzing what personal facts about him reside in the records that are not in the public domain and, if there are any, why releasing them would invade his personal privacy given who he is. *Cf. US Dominion, Inc. v. Byrne*, 600 F. Supp. 3d 24, 30-31 (D.D.C. 2022) (Nichols, J.) (articulating stricter standards for proving defamation of public figures). The government has entirely failed to do that, because it cannot.

Because Mr. Gibson’s privacy interests are *de minimis*, no balancing against the public interest in disclosure is required. *Hum. Rts. Def. Ctr.*, 126 F.4th at 716. If the Court holds

Exemption 6 "does not categorically exempt individuals' identities" but calls for case-by-case evaluation "because the privacy interest at stake may vary depending on the context in which it is asserted." *Hum. Rights Def. Ctr.*, 126 F.4th at 715 (citations omitted). Ms. Oyer is not interested in information relating to the other nine individuals whose gun rights were restored. To the extent that Ms. Brinkmann’s description of the records containing age, marital status and employment information applies to Mr. Gibson, Brinkmann Decl. ¶ 34, it takes five seconds to learn that Mr. Gibson is 70, unmarried and employed as a director and actor. https://en.wikipedia.org/wiki/Mel_Gibson. In another five seconds, one can learn about his past criminal convictions and personal life. *Id.* There seems little about Mr. Gibson’s life that is unknown.

otherwise, the public interests at stake still far outweigh Mr. Gibson’s privacy interests. The decision to restore Mr. Gibson’s federal firearm rights—notwithstanding his prior history of violence—is undoubtedly a matter of public concern. The public has a strong interest in understanding the criteria DOJ is employing for granting this form of discretionary relief, especially given the potential implications for public safety. The public interest in transparency in government—the very interest which FOIA exists to promote—is exceptionally high given the subject matter and strongly outweighs any theoretical privacy interest of the beneficiary of relief.

The public interest in disclosure is heightened further by the fact that the particular beneficiary at issue here is a friend of the President. Mr. Gibson’s personal relationship with President Trump is widely known.²⁴ Mr. Gibson has publicly expressed support for Donald Trump, endorsed him, and stated that he had planned to vote for him in the 2024 election.²⁵ In January 2025, President Trump appointed Mr. Gibson his Special Ambassador to Hollywood.²⁶ OPA released to Ms. Oyer documents memorializing the role that Mr. Gibson’s relationship with Mr. Trump played in assessing his request for relief from the firearm disabilities: as Ms. Oyer

²⁴ Paige Skinner, “Mel Gibson On Trump’s Visit To California: ‘Daddy Arrived And He’s Taking His Belt Off,’” HuffPost, Jan. 26, 2025, https://www.huffpost.com/entry/mel-gibson-trump-daddy-california-visit_n_67964fb5e4b04bc86123895e ; Adrian Horton, Trump names Mel Gibson, Jon Voight and Sylvester Stallone as Hollywood ‘special ambassadors,’ The Guardian, Jan. 16, 2025 <https://www.theguardian.com/film/2025/jan/16/trump-mel-gibson-jon-voight-sylvester-stallone>.

²⁵ J. Kim Murphy, Mel Gibson Says Kamala Harris Has ‘Got the IQ of a Fence Post,’ Voices Support for Donald Trump, Variety, Oct. 24, 2024. <https://variety.com/2024/film/news/mel-gibson-kamala-harris-fence-post-trump-1236190421/>.

²⁶ Jordan Moreau, Trump Names Sylvester Stallone, Mel Gibson and Jon Voight as ‘Special Ambassadors’ to ‘Troubled’ Hollywood: They’ll Bring ‘Lost Business’ Back, Variety, Jan. 16, 2025. <https://variety.com/2025/film/news/trump-sylvester-stallone-mel-gibson-jon-voight-ambassadors-hollywood-1236276088/>.

noted to a colleague, ADAG Paul Perkins stated that the “we have to grant relief to Mel.” Oyer Decl., Exh. 3.

Revealing withheld information that may expose personal patronage for friends of this Administration lies at the core of FOIA’s purpose. The Supreme Court has declared that the “basic purpose of [FOIA]...focuses on the citizens’ right to be informed about ‘what their government is up to’”; information that “sheds light on an agency’s performance of its statutory duties” is in the public interest. *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989); *see also U.S. Dep’t of Def. v. FLRA*, 510 U.S. 487, 495 (1994) (stating that the relevant public interest under FOIA is “the extent to which disclosure [of requested files] would serve the ‘core purpose of the FOIA,’ which is ‘contribut[ing] significantly to public understanding of the operations or activities of the government’”) (alterations in original) (quoting *Reporters Comm.*, 489 U.S. at 775); *see Lardner v. Dep’t of Justice*, Civ. No. 03-0180 (JDB), 2005 U.S. Dist. LEXIS 5465, at *61 (D.D.C. Mar. 31, 2005) (disclosure of unsuccessful pardon applicants is in the public interest because it shed light on the exercise of the pardon power).

It is notable that among the first ten recipients of DOJ’s new Interim Program restoring gun rights was someone famous with a personal connection to the President, whose application was granted over the objection of the attorney in charge of making such recommendations. Given that many thousands of people could seek relief through this Program, there is substantial public interest in understanding the backgrounds of those who were among the first to be awarded relief. That provides insight into how the Attorney General has and will exercise her discretion in administering this program, and whether she will do so consistently with how the President has used his pardon and commutations powers to date. The presentation made by Mr.

Gibson in particular may shed light on what role, if any, the relationship between Mr. Gibson and President Trump played in the evaluation Mr. Gibson's application for restoration of his firearm rights. As a result, the public interest far outweighs the private interests of Mr. Gibson.

IV. The Defendant Has Not Demonstrated that Disclosure of the Records at Issue Will Cause Foreseeable Harm.

The Defendant argues there would be foreseeable harm caused by disclosure of the records responsive to Ms. Oyer's Gibson-related request, which were withheld under Exemptions 5 and 6. However, the government's rote recitation of cookie-cutter foreseeable harm arguments fails to adequately address the unique circumstances of the present case. In this instance, the individual requesting the documents, Ms. Oyer, was a party to or saw every document she requested; there would be no information within these records that would be new to her. Moreover, any consideration of Mr. Gibson's privacy interests must account for the widely known facts at issue here and Mr. Gibson's public profile. Mr. Gibson's request for the restoration of his firearm rights, Ms. Oyer's refusal to recommend that action, and DOJ nevertheless granting Mr. Gibson's petition, are all thoroughly documented in the public record. Other relevant factors relevant to Ms. Oyer's and DOJ's deliberations, such as Mr. Gibson's criminal history, are also widely known. The Defendant grapples with none of these facts. Properly understood, there would be no relevant foreseeable harm in releasing these documents.

As a result of the FOIA Improvement Act of 2016, the Defendant may not withhold or redact exempt material unless it also "reasonably foresees that disclosure would harm an interest protected by" the FOIA exemption. 5 U.S.C. § 552(a)(8)(A)(i)(I). *See Rep. Comm.*, 3 F.4th at 369 (tracing history of the Improvement Act). Congress amended FOIA out of "concerns that some agencies [were] overusing FOIA exemptions that allow, but do not require, information to be withheld from disclosure." S. Rep. No. 4, 114th Cong., 1st Sess. 2 (2015); *see also* H.R. Rep.

No. 391, 114th Cong., 2d Sess. 9 (2016). Of particular concern was the overuse of the deliberative process privilege. H.R. Rep. NO. 391, at 9-10 (“The deliberative process privilege is the most used privilege and the source of the most concern regarding overuse.”).

To justify withholding on the basis of the deliberative process privilege, the agency must “articulate both the nature of the harm [from release] and the link between the specified harm and specific information contained in the material withheld.” *Reps Comm.*, 3 F.4th at 369 (quoting H.R. Rep. No. 391, at 9). To do this, the agency must concretely explain how disclosure “would”—not “could”—adversely impair internal deliberations. *Machado Amadis v. U.S. Dep’t of State*, 971 F.3d 364, 371 (D.C. Cir. 2020). This requires a “focused and concrete” demonstration. *Reps. Comm.*, 3 F.4th at 370. “Perfunctory statement[s] that disclosure of all the withheld information—regardless of category or substance—would jeopardize the free exchange of information between senior leaders within and outside of the agency will not suffice.” *Rudometkin v. United States*, 140 F.4th 480, 492 (D.C. Cir. 2025) (quoting *Reps. Comm.*, 3 F.4th at 370 (cleaned up) (citations omitted)).

The same foreseeable harm analysis applies in the context of Exemption 6. However, there is a logical “overlap” between whether disclosure will clearly impair a privacy interest and whether disclosure will cause the person in question foreseeable harm. *Hum. Rights Def. Ctr. v. United States Park Police* 126 F.4th 708, 716 (D.C. Cir. 2025). When the government loses the public/private balancing test, the foreseeable harm inquiry is not required.

Even if the Defendant satisfied the foreseeable harm test—which it does not—it must also demonstrate that it attempted to release segregable material that would not cause foreseeable harm to the interests protected by Exemptions 5 or 6. *Rudometkin*, 140 F.4th at 494, *Leopold*, 94 F.4th at 37. When the government fails to show that “exempt information could not be

segregated and disclosed without causing foreseeable harm,” *Rudometkin*, 140 F.4th at 494, its motion for summary judgment must be denied.

Typically, the question of foreseeable harm turns on the nature of previously secret information and potential for damage should it be released. Here, the assessment of foreseeable harm must account for two entirely unique circumstances. First, Ms. Oyer was at the center of the consideration of Mr. Gibson’s petition for restoration of his gun rights; she was a party to the documents requested and has since spoken publicly about that process. Second, Mr. Gibson’s privacy interests must be evaluated in the context of his global fame and the very public facts relevant to his petition.

The government’s argument about foreseeable harm fails because it simply does not account for the fact that the facts and discussions about Mr. Gibson’s petition are already in the open. *Farmworker Justice v. U.S. Dep’t of Agric.*, 19-cv-1946 (DLF), 2021 U.S. Dist. LEXIS 40437, *13 (D.D.C. Mar. 4, 2021) (“Courts in this district frequently reject generalized explanations of harm removed from the specific information at issue.”) (citations omitted). The question is not whether, generally, disclosure of deliberative material foreseeably harms the deliberative process. It is instead whether, given the public context of this particular matter, what foreseeable harm would flow from the release of these materials. The Defendant does not answer that question.

It is public knowledge that Mr. Gibson, through counsel, sought the restoration of gun rights he had lost after pleading guilty publicly to a widely reported domestic violence battery charge. It is public knowledge that Ms. Oyer was asked to recommend that the Attorney General grant Mr. Gibson’s request. Ms. Oyer has publicly shared her concerns about the public safety

implications of granting such relief to individuals such as Mel Gibson, whose backgrounds include criminal domestic violence.

Ms. Oyer's reservations were not fanciful. Less than nine months before the events in question, the Supreme Court, in an 8-1 decision, rejected a Second Amendment challenge to a federal statute, 18 U.S.C. § 922(g)(8), that barred an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he "represents a credible threat to the physical safety of [an] intimate partner. . ." *United States v. Rahimi*, 602 U.S. 680 (2024). Moreover, the applicable statute requires the Attorney General to determine that the applicant for relief would "not be likely to act in a manner dangerous to public safety." 18 U.S.C. § 925(c).

Ms. Oyer explained, publicly, that restoring gun rights to people with histories of domestic violence in general required further study and that considering doing so in Mr. Gibson's particular case warranted a background check and assessment to determine whether he posed a threat to others. Oyer Decl., ¶ 8.

After voicing these concerns, Mr. Perkins said that we "have to grant relief to Mel." Oyer Decl., ¶ 9. When Ms. Oyer refused to affirmatively recommend granting the relief Mr. Gibson sought without further study, she was fired. Mr. Gibson's petition was subsequently granted.²⁷ Ms. Oyer agrees with Ms. Brinkmann that "Departmental decisionmaking is at its best when employees feel unencumbered to make recommendations and to provide advice to decisionmakers without fear . . ." Brinkmann Decl. ¶ 26; *see also id.* ¶ 27. ("This lack of candor

²⁷ Given this, the Defendant's argument that disclosing the assertedly deliberative material would cause "public confusion about actual Department positions," Def's Mem. at 42, is baseless. It is another recycled deliberative process harm point that it typically made but which has no application given the unique circumstances here.

would seriously impair the Department’s ability to foster the forthright, internal discussions necessary for efficient and proper decisionmaking.”). But what would make the next Ms. Oyer cautious about making forthright recommendations is not the disclosure of records regarding Mr. Gibson’s petition, but rather the fact that Ms. Oyer was fired for offering her views.

Further, Ms. Mutton’s and Ms. Brinkmann’s discussion of foreseeable harm to the deliberative process should these records be disclosed reads like those repeated in every run of the mill deliberative process case. That is not good enough. *See Doe v. United States Immigr. & Customs Enf’t*, Civ. No. 24-617(TJK), 2025 U.S. Dist. LEXIS 193409, *8-14 (D.D.C. Sept. 30, 2025) (rejecting equally generic and boilerplate predictions of harm). A “focused and concrete” demonstration, not “perfunctory statements,” is called for. *Reporters Comm.*, 3 F.4th at 370; *Ams. for Fair Treatment*, 2025 U.S. Dist. LEXIS 154589, *13 (rejecting agency failure to provide “a *concrete* explanation of why preventing officials from speaking candidly amongst each other would harm the agency) (emphasis in original). The government has failed to link “specific information” in the records, *id.* at 369, with the harm it predicts. And it cannot do so in the unique circumstances presented in this case.

With respect to Exemption 6, Ms. Brinkmann says that disclosure of information about those who sought relief “would foreseeably harm the privacy interests of the candidates by exposing personal information collected for the purpose of determining their eligibility. The disclosure of this kind of personal information could subject the candidates to unwarranted harassment by revealing intimate details regarding a candidate’s personal lives and reputation.” Brinkmann Decl. ¶ 37. This is same sort of perfunctory and generic recitation of harm that the D.C. Circuit rejected when it required the names of U.S. Park Police who had been sued to be released. *Hum. Rts. Def. Ctr.*, 126 F.4th at 715-16 (threats of harassment of officers were not

“more palpable than mere possibilities”). And, of course, the government fails to grapple with the fact that the “candidate” at issue here is Mel Gibson. Moreover, Mr. Gibson sought this relief voluntarily and not pursuant to any process in which he had an expectation of privacy. To the extent that he experiences any harm from the disclosure of his personal information, it is because *he*—not the government—made that information a subject ripe for public scrutiny.

Nor has the Defendant done what *Leopold* and *Rudometkin* require. While the Defendant claims to have segregated and released non-exempt information, Brinkmann Decl. ¶ 30, it has *not* said that it attempted to segregate and release exempt material that would not pose foreseeable harm. *See* Def’s Mem. at 44-45. Thus, the Defendant’s assertions of Exemptions 5 and 6 must be rejected, the Plaintiff’s cross-motion for summary judgment granted and an order entered requiring disclosure of records relating to Mr. Gibson withheld on Exemption 6 grounds.

CONCLUSION

For the foregoing reasons, Plaintiff’s Cross-Motion for Summary Judgment should be granted, and the Defendant’s Motion for Summary Judgment should be denied.

(signature page to follow)

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Respectfully Submitted,

/s/ Jeffrey S. Gutman

Jeffrey S. Gutman, PLLC, D.C. Bar No. 416954
1712 Hobart St., N.W.
Washington, D.C. 20009
Tel.: (202) 631-5129
jsgutmandc@gmail.com

/s/ David W. Ogden

David W. Ogden, D.C. Bar No. 375951
Joshua G. Kolb²⁸
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Ave., S.E.
Suite 15180
Washington, D.C. 20003
Tel: (202) 594-9958
david@democracydefenders.org
joshua@democracydefenders.org

Attorneys for Plaintiff

²⁸ Mr. Kolb is a member of the bar of this Court. His application as a member of the DC Bar is in progress.