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8
 9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE DISTRICT OF ARIZONA**

11 Jorge Alejandro Rojas,

12
 13 Plaintiff,

14 v.

15 Federal Aviation Administration;
 16 Department of Transportation,

17
 18 Defendants.

CV-16-03067-PHX-GMS

**DEFENDANTS’ RESPONSE TO
 PLAINTIFF’S STATUS REPORT,
 AND MOTION FOR LEAVE TO FILE
 MOTION FOR SUMMARY
 JUDGMENT**

19
 20 Defendants Federal Aviation Administration (“FAA”) and Department of
 21 Transportation (“DOT”), hereby file their response to Plaintiff’s Status Report (Doc. 30),
 22 and respectfully request leave from this Court to file a Motion for Summary Judgment
 23 regarding their responses to FOIA Requests 9570 and 4019

24 **I. INTRODUCTION**

25 Plaintiff in his Status Report has provided his view of the status of Defendants’
 26 compliance with this Court’s orders as of the date of the Status Report. Defendants will
 27 respond and update the status of the documents being provided to Plaintiff. Plaintiff also
 28 seeks other relief which Defendants will address.

1 II. FOIA REQUEST 8952

2 A. Redactions

3 In FOIA Request 2015-008952, Plaintiff requested a listing of all Equal
4 Employment Opportunity (“EEO”) cases “submitted since February 2014 to July 2014,”
5 and “submitted from March 2015 to August,” and for “Guidance, policy, emails,
6 documents, chats, etc., in the Civil Rights Office, EEO department/division, concerning
7 the assignment, processing and/or handling of EEO cases related to changes in the hiring
8 program of Air Traffic Control Specialists and the [Collegiate Training Initiative]
9 program.” (Doc. 13-1, p. 7.) Defendants provided to Plaintiff a spreadsheet containing the
10 requested listings. This Court granted summary judgment for Defendants regarding the
11 requested spreadsheet. (Doc. 26, p. 9.) This Court denied summary judgment for
12 Defendants on the remainder of Request 8952. *Id.*

13 Defendants have provided to Plaintiff a number of documents responsive to the
14 remainder of Request 8952. Responsive documents including emails were provided to
15 Plaintiff on October 30, 2015. Redactions were applied to some of the responsive emails
16 pursuant to FOIA Exemption 6 in order to protect the privacy interests of certain
17 individuals including EEO complainants, subjects of the EEO complaints, and certain non-
18 FAA employees. The redactions included subject lines, case numbers, and attachment
19 titles. On or about May 25, 2017, Defendants provided Plaintiff with an updated copy of
20 the emails with all redactions removed except the names of EEO complainants and subjects
21 of the complaints, and the names of certain non-FAA employees. On March 29, 2018,
22 Defendants provided to Plaintiff the emails with the names of all non-FAA employees
23 unredacted. The only remaining redactions are the names of the EEO complainants.
24 (Exh. 1, Declaration of Harnetta R. Williams); Exh. 17, March 29, 2018, letter to Plaintiff.)
25 The redacted names sometimes appear in the subject fields of the emails. *Id.*

26 Plaintiff notes in his Status Report that he does not object to redactions that of
27 information that identifies the EEO complainant, but does object to all other redactions.
28 (Doc. 30, p. 3.) The only other redactions that remain after Defendants’ March 29, 2018,

1 disclosure are the names of complainants. Redaction of the names of the complainants of
2 EEO complaints, which Plaintiff does not object to, is appropriate under Exemption 6. In
3 addition, it is consistent with the Court’s Order, which explicitly addressed the privacy
4 interests of the EEO complainants. (Doc. 26, p. 6.)

5 Exemption 6 of FOIA “allows an agency to withhold ‘personnel and medical files
6 and similar files the disclosure of which would constitute a clearly unwarranted invasion
7 of personal privacy.’ [5 U.S.C. § 552(b)(6).]” *Prudential Locations LLC v. U.S. Dept. of*
8 *Housing and Urban Development*, 739 F.3d 424, 429 (9th Cir. 2013). The primary
9 purpose of the exemption is “to protect individuals from the injury and embarrassment
10 that can result from the unnecessary disclosure of personal information.” *U.S. Dept. of*
11 *State v. Washington Post Co.*, 456 U.S. 595, 599 (1982).

12 The exemption was “intended to cover detailed Government records on an individual
13 which can be identified as applying to that individual.” *Id.* at 602 (quoting H.R.Rep.No.
14 1497, 89th Congr., 2nd Sess., 11 (1966), U.S.Code Cong. & Admin.News 1966, pp. 2418-
15 2428). The term “similar files” in the exemption has a “broad, rather than a narrow,
16 meaning.” *Id.* at 600. Even records comprising “[p]urely personal details of government
17 employees, such as personal addresses, evaluation reports, and employment applications”
18 fall within Exemption 6. *Lurie v. Dept. of Army*, 970 F.Supp. 19, 35 (D.D.C. 1997)
19 (citations omitted).

20 There are two steps in evaluating whether Exemption 6 applies. The first step “is
21 ensuring that disclosure implicates a personal privacy interest that is nontrivial, or, put
22 differently, more than de minimis. That determination involves assessing both the nature
23 of the privacy interest at stake and the likelihood that disclosure would lead to its
24 invasion.” *Yonemoto v. Department of Veterans Affairs*, 686 F.3d 681, 693 (9th Cir. 2011)
25 (citations, quotation marks and ellipsis omitted).

26 The second step employs a balancing approach, in which “the privacy interests
27 identified in the first step [are placed] on one end of the balance, and the public interest
28 favoring disclosure on the other.” *Id.* However, “the *only* relevant public interest in the

1 FOIA balancing analysis is the extent to which disclosure of the information sought would
2 she[d] light on an agency's performance of its statutory duties or otherwise let citizens
3 know what their government is up to." *Id.* (citation omitted, emphasis and brackets in
4 original).

5 There is no dispute in issue. The only redactions that were applicable were the name
6 of complainants, which the Court found was appropriate and the Plaintiff does not dispute.
7 The redactions of those names pursuant to Exemption 6 are therefore proper.

8 **B. Timeliness**

9 Defendants admit that revised disclosures have continued to be made until March
10 29, 2018.

11 **C. Illegible Records Production**

12 Plaintiff expresses concern about the legibility of documents provided. (Doc. 30,
13 p. 3.) A fully legible hard copy of the responsive emails will be sent to Plaintiff via Fed
14 Ex. This should resolve Plaintiff's concerns.

15 **D. Adequacy of Search**

16 Although the Court did not find the Agency's search was inadequate nor request the
17 Defendants to conduct a supplemental search for this FOIA request, Plaintiff still raises
18 concern about the adequacy of the search. (Doc. 30, p. 3.) He reiterates concerns that the
19 shared I drive was not searched. *See also* Doc. 17, p. 11. Plaintiff has also expressed in
20 the past a concern that chats were not searched as requested. *Id.* However, Defendant has
21 in fact searched the shared drive for documents to this request. (Exh. 2, Declaration of
22 Cheryl Wilkes, ¶ 14.) In addition, the Office of Civil Rights does not use chats to distribute
23 any guidance, policy or instructions related to the assignment, processing or handling of
24 any EEO cases. *Id.* at para. 7. Plaintiff's concerns about the adequacy of the search have
25 thus been addressed, and Defendants have shown the search to be adequate.

26 **III. FOIA REQUEST 9570**

27 Plaintiff's FOIA Request 2015-009570 requests (1) documents, reports, emails, etc.,
28 concerning an inquiry done by the Office of Security and Hazardous Materials Safety

1 (“ASH”) regarding allegations in the media concerning changes in the FAA hiring process,
2 etc. Plaintiff also requested (2) all information related to inquiries regarding cheating
3 allegations against FAA employee Shelton Snow, (3) an “Avery” listing of the
4 “concurrence pathway” of a letter dated August 21, 2015, sent to Congressman Frank
5 LoBiondo by Michael Huerta, then Administrator of the FAA, and (4) documents used in
6 the preparation of the letter. (Doc. 13-2, p. 48.) This Court denied Defendants’ Motion
7 for Summary Judgment with regard to this request. (Doc. 26, p. 9.) Defendants provide
8 the following update on the documents provided to Plaintiff pursuant to Request 9570.

9 **A. Part 1: ASH Investigation**

10 Defendants previously provided a Vaughn Index list of documents responsive to
11 Request 9570 Part 1 (Doc. 23-1, pp. 6-57), attached to Defendants’ May 26, 2017, Reply
12 (Doc. 23), although they were not produced at that time in order to protect the privacy
13 interests of the subject of the investigation and the witnesses. (Doc. 13-2, p. 120.)
14 Defendants have subsequently discovered additional responsive documents and conducted
15 additional searches and reviews. *See* Exh. 3, Declaration of Daniel Maggard; and Exh. 4,
16 Declaration of Bradley K. Olson. The searches were directed at locating documents
17 responsive to both parts 1 and 2 of Request 9570. Exh. 4, ¶7.

18 The responsive documents identified pursuant to the searches have been provided
19 to Plaintiff up through March 30, 2018, subject to the redactions and withholdings
20 described below.

21 **B. Part 2: Cheating Allegations**

22 As discussed above, documents responsive to Request 9570 Part 2 have been
23 identified and provided to Plaintiff subject to the redactions and withholdings described
24 below.

25 **C. Part 3: Concurrence Pathway**

26 Defendants’ have conducted an additional search for documents responsive to
27 Request 9570 Part 3. Defendants searched the Correspondence Control Management
28 System maintained by the Executive Secretariat Office (“AOA”). AOA maintains the

1 concurrence pathways for congressional correspondence in the CCMS system. The search
2 identified four pages of responsive records, which have been provided to Plaintiff without
3 redactions. (Exh. 5, Declaration of Andre Williams.)

4
5 **D. Part 4: Documents Used in Preparation of Letter to Congressman
LoBiondo**

6 Request 9570 Part 4 seeks documents used in the preparation of the letter to
7 Congressman LoBiondo sent by Michael Huerta. The Chief of Staff of the FAA's Office
8 of the Administrator at the time the letter was sent conducted a search of his email, "C"
9 drive and "H" (public) drive for responsive documents. He does not keep hard copy
10 records. A three-page memorandum to Michael Huerta was identified and provided to
11 Plaintiff with no redactions. (Exh. 6, Declaration of Christopher Rocheleau.)

12 In addition, eight pages of responsive documents were identified in the search for
13 documents responsive to Parts 1 and 2. (Exh. 4, ¶ 18). Those documents were provided
14 to Plaintiff with redactions.

15 **E. Withholding and Redactions**

16 Defendants applied redactions and withholdings pursuant to FOIA Exemptions 2,
17 5, 6, 7(C) and 7(E) to documents responsive to Parts 1 and 2 of Request 5970. Defendants
18 respectfully request that this Court consider these exemptions. Defendants recognize the
19 general rule that an agency "must assert all exemptions at the same time, in the original
20 district court proceeding." *August v. FBI*, 328 F.3d 697, 699 (D.C. Cir. 2003), quoting
21 *Maydak v. DOJ*, 218 F.3d 760, 764-65 (D.C.Cir. 2000). However, courts have also
22 "avoided adopting a 'rigid "press it at the threshold, or lose it for all times approach" to . .
23 . agencies' FOIA exemptions claims.'" *Id.*, quoting *Senate of Puerto Rico v. DOJ*, 823
24 F.3d 574, 581 (D.C.Cir. 1987).

25 Defendants also recognize this Court's admonition that it would not entertain
26 requests to apply exemptions after the Court's order on Defendants' Motion for Summary
27 Judgment. (Doc. 26.) Nevertheless, Defendants respectfully request that the Court
28 exercise its discretion to allow consideration of the redactions and withholdings based on

1 these exemptions for the following reasons.

2 First, the Defendants are not asserting the exemptions in a blanket manner in order
3 to prevent Plaintiff from obtaining documents. To the contrary, Defendants have
4 conducted thorough searches for responsive documents to all sections of the FOIA request,
5 and have provided thousands of pages of documents, most of them without redactions.
6 Defendants have applied the exemptions in a targeted manner, attempting only to protect
7 important interests recognized by FOIA.

8 Second, Defendants have not and are not attempting to gain any tactical advantage.
9 Defendants have attempted to apply the FOIA exemptions based on their merits, not with
10 any intention to gain a tactical advantage over Plaintiff.

11 Third, Defendants have identified important governmental interests that will be
12 harmed by the release of the redacted or withheld information. As discussed below, the
13 government will experience significant harm if testing information regarding the
14 Biographical Assessment tool is released. The attorney-client privileged material and
15 attorney work-product privileges, embodied in Exemption 5, are important for allowing an
16 agency to obtain the best representation possible with a free-flow of questions and advice.
17 Releasing those exempted documents would inhibit that flow of advice and representation,
18 thereby potentially making it more difficult for an agency to ensure that it is fulfilling its
19 mandate. Also, the law enforcement exemption, 7(C), explicitly protects information
20 gathered for law enforcement purposes the release of which could reasonably be expected
21 to constitute an unwarranted invasion of personal privacy. Exemption 7(E) protects
22 disclosure of investigative techniques and procedures used for law enforcement purposes.
23 Disclosure of such information could undermine the effectiveness of those techniques and
24 procedures. These interests are worth protecting notwithstanding the fact that the specific
25 exemptions have not been previously raised.

26 Fourth, the Defendants have recognized that these exemptions should have been
27 asserted at the time of their response to this FOIA request. As importantly, Defendants
28 have undertaken steps to ensure that the proper FOIA exemptions are raised at the proper

1 time. (Exh. 14, Declaration of Michelle L. Root.)

2 **1. Exemption 2**

3 Exemption 2 of FOIA “exempts from disclosure material that is ‘related solely to
4 the internal personnel rules and practices of an agency.’ [5 U.S.C.] § 552(b)(2).” *Milner v.*
5 *Department of Navy*, 562 U.S. 562, 564 (2011). The word “personnel” “limits the scope of
6 the exemption to information not just ‘for personnel,’ but ‘about personnel’-- in other
7 words, ‘that [which] relates to employee relations or human resources.’ [*Milner*, 562 U.S.
8 578.]” *Sack v. Department of Justice*, 2015 WL 5996328 at *1, -- F.Supp.3d -- (D.D.C.
9 October 14, 2015) (first set of brackets in original). An “agency’s ‘personnel rules and
10 practices’ are its rules and practices dealing with employee relations or human resources.”
11 *Milner*, 562 U.S. at 570. All of the rules and practices “referenced in Exemption 2 share a
12 critical feature: They concern the conditions of employment in federal agencies -- such as
13 hiring and firing, work rules and discipline, compensation and benefits.” *Id.* (footnote
14 omitted). Documents relating to the selection, selection process or placement of employees
15 are included in Exemption 2. *Sack*, 2015 WL 5996328 at *2. The use of Exemption 2 to
16 protect documents “concerning the [FBI’s] selection processes” was thus upheld. *Id.*

17 Defendants redacted or withheld documents under Exemption 2 that are related to
18 Defendants’ use of a Biographical Assessment (“BA”) in its hiring process for Air Traffic
19 Control Specialists. The BA is a critical tool in the multistep process used to identify the
20 most qualified job applicants. (Exh. 7, Declaration of David Hamill.)

21 The information redacted by Defendants includes the questionnaire used in the
22 Biographical Assessment, information related to scoring and weighting of the responses to
23 those questions, programming instructions for the human resources system that handles Air
24 Traffic Controllers applications, and information regarding progression and barriers to
25 progression through the questionnaire.

26 Defendants also withheld 31 pages of documents related to the Biographical
27 Assessment. (Exh. 7.) The 31 pages of documents withheld include a 25-page document
28 describing the Air Traffic Control Specialist Applicant Job-related Questionnaire

1 requirements. This document includes extensive information regarding the purpose of the
2 biographical assessment, test questions, scoring and weighting of test questions.
3 Defendants also withheld in full six pages of emails discussing the development of the
4 scoring and weighting of each question on the biographical assessment. (Hamill dec)

5 The information redacted pursuant to Exemption 2 is information related solely to
6 the internal personnel rules and practices of the FAA – specifically, the internal rules and
7 processes for the hiring of air traffic controllers.

8 The importance of the BA information is enormous. The BA was professionally
9 developed and validated based upon years of extensive research of the Air Traffic Control
10 Specialist (“ATCS”) occupation in accordance with relevant professional standards and
11 legal guidelines for pre-employment selection testing. The BA was validated to predict
12 pass rates at the FAA Academy, and predict certification of an ATCS at his or her first
13 assigned facility. (Exh. 7, ¶ 9.)

14 Disclosure of the Biographical Assessment information and the basis for scoring
15 and weighting given to each question would diminish the validity and the utility of the
16 instrument for the selection of persons into the ATCS occupation. The release of this
17 information would materially and negatively impact the FAA’s interest in the selection of
18 persons most likely to succeed in the occupation and undercut years of research that have
19 been conducted on these items. The development and validation of the Biographical
20 Assessment for the Air Traffic Skills Assessment program also cost several million dollars,
21 and release of this information would constitute a significant waste of expertise and tax
22 dollars if this information were to be made public. Disclosure of the basis for scoring and
23 weighting would enable future test takers to artificially inflate their scores on the
24 instrument thereby giving them an unfair advantage in competing for a job under merit
25 principles. As a result, there is a significant public interest in not releasing the information
26 withheld and redacted pursuant to Exemption 2.

27 **2. Exemption 5**

28 FOIA Exemption 5 includes “inter-agency or intra-agency memorandums or letters

1 which would not be available by law to a party other than an agency in litigation with the
2 agency.” 5 U.S.C. § 552(b)(5). This exemption covers attorney-client privileged
3 communication, and extends beyond communications in contemplation of litigation. *Rein*
4 *v. U.S. Patent and Trade Office*, 553 F.3d 353, 377 (4th Cir. 2009). The exemption also
5 covers the “decision making processes of government agencies,” *N.L.R.B. v. Sears,*
6 *Roebuck & Co.*, 421 U.S. 132, 150 (1975) (citation omitted), *see Department of Interior v.*
7 *Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8-9 (2001), including communications
8 between agency lawyers and employees regarding ongoing investigations. *Skinner v. U.S.*
9 *Dept. of Justice*, 744 F. Supp. 2d 185, 205-06 (D.D.C. 2010). The exemption also includes
10 attorney work-product and the deliberative process privilege. *Klamath*, 532 U.S. at 8.

11 Defendants have redacted attorney work-product and attorney-client privileged
12 materials pursuant to Exemption 5. The attorney work-product material redacted includes
13 such matters as communications from an attorney with the FAA Office of the Chief
14 Counsel, Employment and Labor Law Division’s (“AGC-100”) describing AGC-100’s
15 past involvement in providing advice during ASH’s investigation; communications from
16 another agency attorney providing instructions for edits to a declaration to be filed in this
17 proceeding, which instructions contain information regarding FAA’s litigation strategy;
18 and an AGC-100 attorney providing a legal interpretation of FOIA regulations. (Exh. 8,
19 Declaration of Lisa A. Holden, ¶ 11.) Attorney-client privileged material redacted includes
20 such matters as an email to AGC-100 seeking legal advice on a draft document; an email
21 containing legal advice from an AGC-100 attorney to a client program office regarding a
22 draft document; and an email from the ASH Deputy relaying the legal advice of an AGC-
23 100 attorney regarding redactions under FOIA. (Exh. 8, ¶ 14.)

24 Offices in the FAA routinely seek and receive legal advice from the Office of Chief
25 Counsel. This advice often involve novel and complex matters such as hiring practices,
26 which are largely exempt from Title V pursuant to 49 U.S.C. § 40122(g). The release of
27 the redacted matters would undermine the core legal advice and analysis that the privileges
28 are meant to protect by revealing confidential communications between attorneys and their

1 clients, and revealing attorneys' assessment of what was deemed significant in determining
2 litigation strategy in his matter. (Exh. 8, ¶¶ 16-18) For these reasons it is appropriate and
3 important that Defendants be allowed to redact this information pursuant to Exemption 5.

4 In addition, the deliberative content of notes of the OIG agent were redacted
5 pursuant to Exemption 5 as part of the deliberative process privilege. (Exh. 9, Declaration
6 of Barbara Hines, ¶ 6.) The deliberative process privilege, incorporated into Exemption 5,
7 "covers documents reflecting advisory opinions, recommendations and deliberations
8 comprising part of a process by which government decisions and policies are formulated."
9 *Klamath*, 532 U.S. at 8 (quotations and citation omitted). The object of the privilege is to
10 enhance the quality of agency decisions by protecting open and frank discussion by those
11 in the government who make such decisions. *Id.* at 9. Release of those notes would inhibit
12 the free flow of information between OIG investigators and other governmental personnel.
13 (Exh. 9, ¶ 6.) Redaction of the agent's note is therefore proper under Exemption 5.

14 3. Exemption 7(C) and 6

15 Certain matters were redacted or withheld pursuant to Exemption 7(C). Exemption
16 7(C) of FOIA provides protection for law enforcement information the disclosure of which
17 "could reasonably be expected to constitute an unwarranted invasion of personal privacy."
18 5 U.S.C. § 552(b)(7)(C). Exemption 7(C) is the law enforcement counterpart to Exemption
19 6. *See Seized Prop. Recovery, Corp. v. U.S. Customs & Border Prot.*, 502 F.Supp.2d 50,
20 56 (D.D.C. 2007). However, while Exemption 6 routinely requires identification and
21 balancing of the relevant privacy and public interests, Exemption 7(C) can be applied on a
22 categorical basis. *DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749,
23 777 (1989). For example, a third party's request for law enforcement records pertaining to
24 a private citizen categorically invades that citizen's privacy, and where a request seeks no
25 official information about a government agency, the privacy invasion is unwarranted. *Id.*
26 at 780; *see also Martin v. DOJ*, 488 F.3d 446, 456 (D.C. Cir. 2007) ("The Supreme Court
27 has observed that the statutory privacy right protected by Exemption 7(C) is not so limited
28 as others." (Citation omitted.)); *Fiduccia v. DOJ*, 185 F.3d 1035, 1047-48 (9th Cir. 1999)

1 (protecting categorically records concerning FBI searches of two named individuals).

2 Both Exemptions 6 and 7(C) speak of “unwarranted” invasions of personal privacy,
3 which means that the Court must “balance the privacy interest protected by the exemptions
4 against the public interest in government openness that would be served by disclosure.”
5 *Lahr v. National Transp. Safety Bd.*, 569 F.3d 964, 973 (9th Cir. 2009) (citation omitted).
6 Although “both exemptions require such balancing, the analysis under the two provisions
7 is not the same, as Exemption 7(C)’s privacy language is broader than the comparable
8 language in Exemption 6 in two respects.” *Id.* at 974 (quotations and citation omitted).
9 First, Exemption 6 requires that the invasion of privacy be “clearly warranted,” whereas
10 Exemption 7(C) requires only that disclosure of information “could reasonably be expected
11 to constitute” an unwarranted violation of privacy. *Id.* (citation omitted). As a result, the
12 two exemptions “differ in the magnitude of the public interest that is required to override
13 the respective privacy interests protected by the exemptions.” *Id.* (citation omitted).
14 Where the government claims both exemptions, as in this matter, “it need meet only the
15 lower threshold of Exemption 7(C).” *Id.* (citation omitted).

16 Exemption 7(C) applies to information compiled for law enforcement purposes.
17 5 U.S.C. § 552(b)(7). Law enforcement purposes are not limited to criminal actions, *see*,
18 *e.g.*, *Ortiz v. HHS*, 70 F.3d 729, 730 (2d Cir. 1995) (holding that unsigned, unsolicited
19 letter used to launch criminal investigation by SSA meets threshold for law enforcement
20 purposes); *Manna v. DOJ*, 51 F.3d 1158, 1165 (3rd Cir. 1995) (finding that criminal
21 enforcement proceedings involving La Cosa Nostra meets threshold), but also civil actions,
22 *see, e.g.*, *Rugiero v. DOJ*, 257 F.3d 534, 550 (6th Cir. 2001) (explaining that “Court has
23 adopted a per se rule” that applies not only to criminal enforcement actions, but to “records
24 compiled for civil enforcement purposes as well”); *Vento v. IRS*, 714 F. Supp. 2d 137, 148
25 (D.D.C. 2010) (holding that distinguishing between civil and criminal enforcement is
26 incorrect because there “is no warrant in the law for that distinction and the federal courts
27 have rejected it”); *Envtl. Prot. Servs. v. EPA*, 364 F. Supp. 2d 575, 588 (N.D. W. Va. 2005)
28 (stating that disclosure of records compiled as part of EPA’s investigation into violations

1 of its Toxic Substance Control Act “would prematurely reveal the EPA's case . . . in the
2 administrative proceeding that is currently pending”), as well as administrative (*i.e.*,
3 regulatory) proceedings. *See, e.g., Jefferson v. DOJ*, 284 F.3d 172, 178 (D.C. Cir. 2002)
4 (reiterating that Exemption 7 ““covers investigatory files related to enforcement of all kinds
5 of laws,’ including those involving ‘adjudicative proceedings’” such as OPR conducts if
6 such inquiries are for “violations of law” and not for “oversight of the performance of
7 duties” (quoting *Rural Hous.*, 498 F.2d at 81 n.46)).

8 The ASH conducted investigations into cheating allegations, which files contain the
9 information responsive to parts 1 and 2 of FOIA Request 9570. These investigations can
10 result in disciplinary action, and sometimes enforcement proceedings against the
11 individuals under investigation. Additionally, if ASH determines that criminal or civil
12 penalties may be necessary, it will refer the investigation to the Department of
13 Transportation (“DOT”) Office of Inspector General (“OIG”) for further investigation and
14 determination on whether to pursue criminal or civil action. In this case, due to the media
15 attention on ASH’s investigation, OIG monitored ASH’s investigation to determine
16 whether it would also need to take action. Based on ASH’s investigation, OIG determined
17 that further action was necessary, and OIG opened its own investigation to determine
18 whether a violation of civil regulations had occurred (which has the potential to lead to an
19 enforcement action if proven). (Exh. 4, ¶ 2.) The OIG has law enforcement authority
20 pursuant to the Inspector General Act of 1978, 5 U.S.C.App. 3, § 6(e)(1), and can be
21 considered a law enforcement agency. *See generally National Aeronautics and Space*
22 *Administration v. Federal Labor Relations Authority*, 527 U.S. 229, 240 (1999) (comparing
23 OIG jurisdiction to that of other law enforcement agencies); *United States v. Heine*, 2016
24 WL 6826164, at *6, fn. 6 (D. Ore., Nov. 18, 2016) (“The FDIC’s OIG can be characterized
25 as the law enforcement arm of the FDIC[.]”).

26 The OIG conducted its own investigation into the cheating allegations. Violations
27 of federal regulations prohibiting cheating or other unauthorized conduct on written tests
28 may result in civil penalties. (Exh. 9, ¶ 3.) As a result, the ASH and OIG investigations

1 were all for law enforcement purposes, and fall within Exemption 7(C).

2 Redactions under Exemption 7(C) were made to the documents related to the ASH
3 investigations that were responsive to parts 1 and 2 of this FOIA request. The categories
4 of information redacted is shown at ¶ 28 of Bradley K. Olson's declaration (Exh. 4), and
5 are limited to information that may disclose, or allow someone to determine, the identity
6 of witnesses, complainants and interviewees in the investigations. Disclosure of this
7 information would constitute an unwarranted invasion of personal privacy, and would not
8 provide information about the activities of the FAA. The D.C. Circuit Court has held that
9 private individuals mentioned in law enforcement files are presumptively exempt from
10 disclosure unless release of that information is necessary to confirm or refute compelling
11 evidence that the agency is engaged in illegal activity. *Schrecker v. U.S. Dept of Justice*,
12 349 F.3d 657, 666 (D.C.Cir. 2003).

13 In addition, documents obtained during the ASH investigations from the Accurint
14 search tool were withheld. The Accurint reports aggregate public and proprietary
15 information on people, such as name, address, phone number, date of birth, Social Security
16 Number, assets, etc. (Exh. 4, ¶ 33.) However, the information is not always accurate. *Id.*
17 Given the amount and detail of the information contained in the Accurint reports,
18 disclosure would certainly constitute an unwarranted invasion of personal privacy.
19 Furthermore, the individuals on whom the reports were obtained were not determined to
20 be relevant to the investigation, thus making release of the reports an even more
21 unwarranted invasion of personal privacy.

22 The OIG investigative report has also been redacted pursuant to Exemption 7(C) to
23 remove names and other identifying information of the complainant, targets of the
24 investigation, witnesses and OIG agents. (Exh. 9, ¶ 10). The personal information
25 regarding the private individuals is exempt from disclosure under 7(C) as discussed. In
26 addition, OIG law enforcement are personnel also have a substantial privacy interest in
27 their personal information, publication of which could subject them to harassment and
28 annoyance in the conduct of their official duties and their personal lives. *Keys v. U.S. Dep't*

1 of *Homeland Sec.*, 570 F.Supp.2d 59, 68 (D.D.C. 2008). There is no competing public
2 interest that would override the privacy interests of the complainants, targets, witnesses
3 and OIG agents. Redaction of the personal information is therefore proper under
4 Exemption 7(C).

5 OIG also relied on Exemption 6 for redacting the personal information from its
6 investigative report. Exemption 6 of FOIA “allows an agency to withhold ‘personnel and
7 medical files and similar files the disclosure of which would constitute a clearly
8 unwarranted invasion of personal privacy.’ [5 U.S.C. § 552(b)(6).]” *Prudential Locations*
9 *LLC v. U.S. Dept. of Housing and Urban Development*, 739 F.3d 424, 429 (9th Cir. 2013).
10 The primary purpose of the exemption is “to protect individuals from the injury and
11 embarrassment that can result from the unnecessary disclosure of personal information.”
12 *U.S. Dept. of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982).

13 The exemption was “intended to cover detailed Government records on an
14 individual which can be identified as applying to that individual.” *Id.* at 602 (quoting
15 H.R.Rep.No. 1497, 89th Congr., 2nd Sess., 11 (1966), U.S.Code Cong. & Admin.News
16 1966, pp. 2418-2428). The term “similar files” in the exemption has a “broad, rather than
17 a narrow, meaning.” *Id.* at 600. Even records comprising “[p]urely personal details of
18 government employees, such as personal addresses, evaluation reports, and employment
19 applications” fall within Exemption 6. *Lurie v. Dept. of Army*, 970 F.Supp. 19, 35 (D.D.C.
20 1997) (citations omitted).

21 There are two steps in evaluating whether Exemption 6 applies. The first step “is
22 ensuring that disclosure implicates a personal privacy interest that is nontrivial, or, put
23 differently, more than de minimis. That determination involves assessing both the nature
24 of the privacy interest at stake and the likelihood that disclosure would lead to its invasion.”
25 *Yonemoto v. Department of Veterans Affairs*, 686 F.3d 681, 693 (9th Cir. 2011) (citations,
26 quotation marks and ellipsis omitted).

27 OIG weighed the individuals’ privacy interest in their personal information against
28 the public interest. (Exh. 9, ¶ 8.) However, “the *only* relevant public interest in the FOIA

1 balancing analysis is the extent to which disclosure of the information sought would she[d]
2 light on an agency's performance of its statutory duties or otherwise let citizens know what
3 their government is up to." *Id.* (citation omitted, emphasis and brackets in original). The
4 redacted information does not directly reveal the operations or activities of the federal
5 government. Therefore, the privacy interests outweigh the public interest, and the
6 information is properly redacted pursuant to Exemption 6.

7 **4. Exemption 7(E)**

8 Defendants have redacted certain information pursuant to Exemption 7(E). That
9 exemption protects "records or information compiled for law enforcement purposes when
10 disclosure would disclose techniques and procedures for law enforcement investigations or
11 prosecutions, or would disclose guidelines for law enforcement investigations or
12 prosecutions if such disclosure could reasonably be expected to risk circumvention of the
13 law." 5 U.S.C. § 552(b)(7)(E). The redacted information is the non-public investigatory
14 procedures and techniques appearing on one page. If disclosed, the redacted information
15 would show non-public techniques regarding interviews that ASH uses in the performance
16 of law enforcement investigations carried out by that office. (Exh. 4, ¶ 38.)

17 **5. Exclusion of Personal Identifying Information**

18 Personal identifying information has also been redacted from documents responsive
19 to Parts 1 and 2 of FOIA Request 9570 because Plaintiff stated in the Request that he was
20 not asking for such information. Parts 1 and 2 request:

21 1. Documents, reports, summaries, emails, chats, files, briefing items,
22 memoranda, etc., concerning an inquiry done by the Office of Security and
23 Hazardous Materials Safety (ASH) concerning the allegations cited in media
24 reports by Fox News and other sources, concerning changes to the FAA
25 hiring process, allegations of cheating, and allegations of misconduct by HR
26 and other employees. This request includes notes and documents concerning
27 interviews of 29 individuals, cited in a August 21, 2015 letter to Frank A.
28 LoBiondo by Michael Huerta. This includes any notes taken during the
interview, and any reports regarding the investigation sent forward. **NO
PERSONAL IDENTIFYING INFORMATION IS REQUESTED
(including names)**, except for records concerning myself, Jorge A. Rojas.
The agency has a duty to segregate and redact this information and not claim
an exemption on the entire document. Records for myself are requested under
the Privacy Act. An individual by the name of Bradley Olsen, in ASH,
conducted portions of the investigation.

1 2. All information related to inquires (*sic*) regarding cheating allegations or
2 other potential misconduct by Shelton Snow, a supervisory official. The
3 request is specifically for allegations concerning the time period June 2013
4 to the present. **No information identifying the reporting individual is
5 requested.**

6 (Doc. 13-2, p. 48) (emphasis in part 1 in original; emphasis added in part 2).

7 Plaintiff clearly states in Part 1 that he wants no personal identifying information,
8 except for records concerning himself. In Part 2 he also states that he wants no personal
9 identifying information, but attempts to limit that to the reporting individual. However,
10 both parts of the Request broadly request information related to the same investigations,
11 resulting in significant overlap between the responsive records. (Exh. 4, ¶ 18.) Although
12 Plaintiff asserts that his statement in Part 1 requesting no personal identifying information
13 is limited to Part 1, it is not that simple. (Doc. 30, p. 5.) The significant overlap of Parts 1
14 and 2 makes it impossible to neatly divide the responsive documents. Defendants have
15 reasonably applied Plaintiff's language from Part 1 to all documents responsive to Parts 1
16 and/or 2. Defendants believe this is a reasonable interpretation of the language, and a
17 reasonable application of the language in light of the fact that there is competing language
18 in Part 2 that would potentially also apply to overlapping documents.

19 **6. Redaction of Non-Responsive Portions of Documents**

20 Plaintiff complains that Defendants have redacted non-responsive portions of
21 documents that have been produced. (Doc. 30, p. 5.) Defendants agree to correct this and
22 will remove the redactions from portions of produced documents that have been redacted
23 as non-responsive.

24 **7. Production of All Records**

25 Plaintiff asserts that Defendants have failed to produce all documents responsive to
26 Request 9570. (Doc. 30, pp. 5-6.) With regard to Parts 3 and 4, the declarations of Bradley
27 K. Olson (Exh. 4), Christopher Rocheleau (Exh. 6) and Andre Williams (Exh. 5) describe
28 the searches conducted by Defendants, identify the responsive documents, and show that
the documents have been provided. Defendants are unaware of responsive documents that
have not been provided.

1 With regard to Parts 1 and 2, Plaintiff notes some emails that have been provided
2 show attachments which have not been provided. (Doc. 30, p. 6.) Those attachments have
3 now been reviewed. Copies of responsive attachments, to the extent not previously
4 produced, are being provided to Plaintiff with appropriate redactions and withholdings.
5 (Exh. 4, ¶ 25.)

6 Plaintiff notes a discrepancy between the Vaughn Index dated May 26, 2017 (Doc.
7 23-1, pp. 12-23), and the documents that have been produced. (Doc. 30, pp. 5-6.) All of
8 the documents identified in the Vaughn Index have been produced or withheld pursuant to
9 a FOIA exemption. (Exh. 4, ¶ 16.) Any discrepancies between the Vaughn Index and the
10 March 9, 2018, production are due to duplicate documents. *Id.* An additional Vaughn
11 Index II (Exh. 16) has also been provided which identifies redactions made under
12 Exemption 7(C). (Exh. 4, ¶ 28.)

13 **8. Adequacy of Search**

14 Plaintiff expresses concern over the adequacy of the search for responsive
15 documents. The attached declarations of Daniel Maggard (Exh. 3), Bradley K. Olson (Exh.
16 4), Christopher Rocheleau (Exh. 6) and Andre Williams (Exh. 5) explain in detail the
17 search for responsive records. The declarations show the search to be adequate and
18 designed to lead to the discovery of responsive records.

19 **IV. FOIA REQUEST 4019**

20 **A. Adequacy of Search**

21 Plaintiff asserts that Defendants have not conducted an adequate search for
22 documents responsive to FOIA Request 4019. The request specifically asks for “all
23 correspondence that Mr. Maggard sent or received concerning the status of the emails,
24 including the status of the emails, including the discovery that emails weren’t recoverable.”
25 (Doc. 1-3, p. 128.) Plaintiff asserts that in addition to Mr. Maggard’s emails, a full response
26 to the Request would require Defendants to also search the emails of individuals identified
27 in Mr. Maggard’s emails. (Doc. 30, p. 7.)

28 The Court did not find that Defendants’ search was inadequate, nor did it order

1 Defendant to conduct any additional search. However, in good faith, in order to address
2 Plaintiff's concerns, Defendants have now searched the emails and chats of the named
3 individuals identified in Mr. Maggard's emails, whose names were provided to the
4 undersigned by Plaintiff's counsel. (Exh. 10, Declaration of Karl Picado); Exh. 11,
5 Declaration of Jay Kuperstein; Exh. 12, Declaration of Jennifer Vessels.) As a result of
6 the search, Defendants are providing 626 pages of responsive documents to Plaintiff.
7 (Exh. 18; March 30, 2018 letter to Plaintiff.)

8 In addition, portions of records were redacted pursuant to Exemption 5, based on
9 the attorney work-product and attorney-client privileges. The records redacted based on
10 the attorney work-product privilege relate to ongoing FOIA litigation, *Rojas v. FAA*, CV-
11 15-01709-PHX-ESW, currently under appeal before the 9th Circuit. The portions of the
12 records redacted consist of information prepared by the FAA's Office of Chief Counsel,
13 Employment and Labor Law Division (AGC-100) attorneys in litigation. (Exh. 13,
14 Declaration of Russell Christensen, ¶ 10.)

15 As to documents redacted pursuant to the attorney-client privilege, Defendants note
16 that the FAA's Office of Chief Counsel was actively providing advice on the FOIA
17 litigation pending in district court during the period covered by the request. The records
18 redacted consisted of inter-agency communications between AGC-100 and its clients that
19 were intended to be confidential, and not to be shared with individuals within the agency
20 who do not have a need to know AGC-100's legal advice. (Exh. 13, ¶ 13.)

21 Defendants also redacted names and personally identifying information of
22 witnesses, complainants and the subject of an ASH investigation pursuant to Exemption 6.
23 (Exh. 4, ¶ 42.)

24 Defendants respectfully request this Court to entertain the arguments in support of
25 the application of these exemptions as discussed above in sections II.A. and III.E.
26
27
28

1 **V. PLAINTIFF’S GENERAL ISSUES**

2 Plaintiff has identified additional “general issues” which are addressed below.

3 **A. Estimated Completion Dates**

4 Plaintiff seeks leave to file a motion for partial summary judgment on his cause of
5 action for failure to provide estimated completion dates, although in his Status Report
6 mischaracterizes the claim as one for failure to comply with estimated completion dates.
7 *Compare* Doc. 1, p. 11 and Doc. 30, p. 7. Defendants do not oppose this request.

8 **B. Special Counsel Referral**

9 Plaintiff wishes to defer consideration of this issue. Defendants deny that this matter
10 is appropriate for referral to a Special Counsel.

11 **C. Contempt Motion and Sanctions**

12 Plaintiff seeks leave to file a motion for contempt and sanctions. Defendants oppose
13 this request. Defendants move herein for leave to file a Motion for Summary Judgment
14 regarding FOIA Request 9570. Any motion for contempt or sanctions should await
15 resolution of Defendants’ proposed Motion for Summary Judgment.

16
17 **VI. REQUEST FOR LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT
REGARDING FOIA REQUESTS 9570 AND 4019**

18 Defendants respectfully request leave to file for summary judgment regarding their
19 responses to FOIA Requests 9570 and 4019.¹ Defendants recognize that they have
20 previously moved for summary judgment regarding FOIA Requests 9570 and 4019, and
21 that this Court denied the motion. (Doc. 26, p. 9.) Defendants further recall this Court’s
22 admonition that it would not entertain requests to apply FOIA exemptions after the Court’s
23 order on Defendants’ Motion for Summary Judgment. (Doc. 26.) Nevertheless,
24 Defendants respectfully request that this Court exercise its discretion to allow consideration
25 of the redactions and withholdings based on FOIA exemptions.

26
27 ¹ Undersigned notes that counsel for Plaintiff proposed via email that if the parties
28 are unable to resolve issues regarding the response to Request 4019, Defendants move for
partial summary judgment.

1 Although, as noted above, the general rule is that an agency “must assert all
2 exemptions at the same time, in the original district court proceeding,” *August v. FBI*, 328
3 F.3d 697, 699 (D.C. Cir. 2003), quoting *Maydak v. DOJ*, 218 F.3d 760, 764-65 (D.C.Cir.
4 2000), courts have also “avoided adopting a ‘rigid “press it at the threshold, or lose it for
5 all times approach” to . . . agencies’ FOIA exemptions claims.” *Id.*, quoting *Senate of*
6 *Puerto Rico v. DOJ*, 823 F.3d 574, 581 (D.C.Cir. 1987). For example, the D.C. Circuit
7 Court has recognized two exceptions to the general rule. The first is for “extraordinary
8 circumstances where, from pure human error, the government failed to invoke the correct
9 exemption and will have to release information compromising national security or
10 sensitive, personal, private information unless the court allows it to make an untimely
11 exemption claim. The second is where a substantial change in the factual context of the
12 case or an interim development in the applicable law forces the government to invoke an
13 exemption after the original district court proceedings have concluded.” *Citizens for*
14 *Responsibility and Ethics in Washington v. United States Department of Justice*, 854 F.3d
15 675, 680 (D.C.Cir. 2017). However, the D.C. Circuit Court has also criticized a request by
16 an agency to raise FOIA exemptions in an untimely manner where the agency did not
17 provide an explanation as to its failure to assert the exemptions. *Id.*

18 Defendants should have, but did not, assert all the FOIA exemptions described
19 above in Section III.E. at the time they provided their responses to Plaintiff on these
20 requests. (Doc. 13-2, p. 51.) This occurred at least in part as a result of the application by
21 ASH internal policy guidance and “standard procedures” which limit what documents are
22 provided to persons requesting documents about another person. (Exh. 14, ¶ 7.)

23 Defendants are rewriting their ASH Policy Guidance to ensure that all FOIA
24 requests handled by ASH are thoroughly reviewed, and all appropriate FOIA exemptions
25 are asserted at the time of the response to the extent a Glomar response is not appropriate.
26 (Exh. 14, ¶ 8.) This will ensure that all requests are individually reviewed and responded
27 to in accordance with FOIA rather simply following a “standard procedure” which may
28 result in redactions or withholdings not authorized under FOIA. As a result of the new

1 ASH Policy Guidance, Defendants will meet the general rule that all exemptions be
2 asserted at the same time in the original district court proceedings, unless a Glomar
3 response based on Exemptions 6 and 7(C) is the appropriate response. *Maydak v. DOJ*,
4 218 F.3d 760, 764 (D.C.Cir. 2000).

5 Having acknowledged their responsibility for not asserting the exemptions in a
6 timely manner, and presented this Court with their plan to ensure that FOIA exemptions
7 are asserted in a timely manner in the future, Defendants suggest that the first extraordinary
8 circumstance recognized in *Citizens for Responsibility and Ethics in Washington* is present
9 here. The first prong has been met: the correct exemptions were not asserted due to pure
10 human error. Defendants acknowledge this.

11 With regard to Request 9750, the second prong is also present: if Defendants are
12 unable to assert the exemptions described in Section III.E, then they will be required to
13 release information compromising national security and sensitive, personal, private
14 information.

15 The documents withheld pursuant to Exemption 2 include information regarding the
16 Biographical Assessment, one of critical tools in the process used to identify the most
17 qualified applicants for Air Traffic Controllers. The BA was professionally developed and
18 validated based upon years of extensive research of the Air Traffic Control Specialist
19 (“ATCS”) occupation in accordance with relevant professional standards and legal
20 guidelines for pre-employment selection testing. The BA was validated to predict pass rates
21 at the FAA Academy, and predict certification of an ATCS at his or her first assigned
22 facility. (Exh. 7, ¶ 9.)

23 Disclosure of the Biographical Assessment information and the basis for scoring
24 and weighting given to each question would diminish the validity and the utility of the
25 instrument for the selection of persons into the ATCS occupation. The release of this
26 information would materially and negatively impact the FAA’s interest in the selection of
27 persons most likely to succeed in the occupation and undercut years of research that have
28 been conducted on these items. Disclosure of the basis for scoring and weighting would

1 enable future test takers to artificially inflate their scores on the instrument thereby giving
2 them an unfair advantage in competing for a job under merit principles. As a result,
3 Defendants would be less likely to hire the most qualified candidates for Air Traffic
4 Controllers.

5 Furthermore, the development and validation of the Biographical Assessment for
6 the Air Traffic Skills Assessment program cost several million dollars. Release of this
7 information would constitute a significant waste of expertise and tax dollars.

8 Two of the primary duties of Air Traffic Controllers are to support national security
9 and homeland security operations. *LeGrande v. U.S.*, 687 F.3d 800, 803 (7th Cir. 2012)
10 (“Operating under FAA directives, the primary duties of air traffic controllers are to
11 prevent collisions between aircraft flying in the air space sectors assigned to them,
12 organizing and expediting the flow of air traffic, and supporting national security and
13 homeland security operations.”). Any compromise in the FAA’s ability to hire the best Air
14 Traffic Controller will therefore compromise the ability to support national security.

15 The documents subject to the attorney-client privilege, or which are attorney work-
16 product, and which fall under Exemption 5, can also have implication for national security
17 issues. As shown in Lisa Holden’s declaration (Exh. 8) and the relevant Vaughn Index
18 (Exh. 15), the redacted information contained legal advice and work-product, some of
19 which was related to on-going investigations and litigation. As discussed above, the very
20 hiring process for Air Traffic Control Specialists has implications for national security.
21 The ability of FAA attorneys to support that process, and related matters such as
22 investigations related to that process, to support litigation or other issues related to that
23 process, is an important piece of the FAA’s role in national security.

24 The attorney-client privilege and attorney work-product privilege are not creatures
25 of FOIA, but are broadly recognized privileges intended to ensure that attorneys and clients
26 can communicate frankly and completely in order to facilitate sound advice and
27 representation. Defendants suggest that it is in the public interest to maintain and
28 strengthening the soundness of advice and representation provided by attorneys.

1 Some documents withheld or redacted also contain sensitive, personal, private
2 information as discussed above in section III.E.3. This falls squarely within the first
3 extraordinary circumstance described by the D.C. Circuit Court. In addition, Defendants
4 suggest that individuals should not be subject to an intrusion of their privacy interests due
5 to the fact that the government did not assert a FOIA exemption in a timely manner. The
6 individuals should not bear brunt of this situation.

7 Defendants also redacted information pursuant to Exemption 7(E). The redacted
8 information would show non-public techniques regarding interviews that ASH uses in the
9 performance of law enforcement investigations carried out by that office. The public has
10 a strong interest in ensuring that its laws are properly enforced. Disclosing investigative
11 techniques can thwart the government's efforts to enforce the law. The public interest
12 therefore supports application of this exemption in this matter.

13 With regard to Request 4019, the second prong is also met. Defendants redacted
14 names and personally identifying information of witnesses, complainants and the subject
15 of an ASH investigation pursuant to Exemption 6. This is precisely the sensitive, personal,
16 private information that could be exposed if Defendants are not allowed to make an
17 untimely assertion of Exemption 6.

18 Defendants also redacted information pursuant to Exemption 5, under the attorney
19 work-product and attorney-client privileges. As discussed above, FAA attorneys support
20 the mission of the agency, and thereby support national security. There is also a strong
21 public interest in protecting the soundness of and advice and representation provided by
22 government attorneys. The public interest thus supports the application of this exemption.

23 In short, both prongs of the D.C. Circuit's first "exceptional circumstance" are met
24 by the responses to both Request 9570 and 4019.

25 In addition to the D.C. Circuit's "exceptional circumstance" analysis, Defendants
26 believe that there are strong public policy reasons to allow Defendants to raise otherwise
27 untimely FOIA exemptions. *See* III.E., *supra*.

28 Defendants therefore respectfully request that this Court exercise its discretion and

1 grant leave for Defendants to file a Motion for Summary Judgment regarding the responses
2 to FOIA Requests 9570 and 4019, within fourteen days.

3
4 **CONCLUSION**

5 Defendants respectfully request that this Court approve the application of FOIA
6 exemptions as described herein, and grant Defendants leave to file a Motion for Summary
7 Judgment regarding the responses to FOIA Requests 9570 and 4019, within fourteen days.

8 Respectfully submitted this 30th day of March, 2018.

9 ELIZABETH A. STRANGE
10 First Assistant United States Attorney
District of Arizona

11 *s/Paul A. Bullis*
12 PAUL A. BULLIS
Assistant U.S. Attorney

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16
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18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on this 30th day of March, 2018, I electronically transmitted
20 the attached document to the Clerk's Office using the CM/ECF System for filing and
21 transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

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26
27 *s/Lauren M. Routen*
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