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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Barry Goldwater Institute for Public Policy Research, Plaintiffs, vs. U.S. Department of Education, Defendants,	No. 2:24-cv-00314-SMM **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Goldwater Institute ("Institute") hereby moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. Because the Defendant U.S. Department of Education ("Department") has wrongfully withheld public records, and because there are no genuinely disputed issues of material fact, Plaintiff's Motion for Summary Judgment should be granted. The grounds for this Motion are set forth more fully in the Memorandum below and in Plaintiff's Separate Statement of Facts ("PSOF").

INTRODUCTION

In October 2023, the Department assessed the largest fine in agency history—$37.7 million—against Grand Canyon University ("GCU"), the nation's largest private, religious college. PSOF ¶ 3. This dwarfed fines previously assessed by the Department by an extraordinary magnitude, including for some of the greatest higher-education abuses in United States history. For example, the Department assessed only a $2.4

million fine against Penn State University for failing to report the sexual abuse of minors in the Jerry Sandusky case; that was then the agency's largest-ever fine. PSOF ¶ 4. It assessed a $4.5 million fine against Michigan State University when that school refused to address sexual assaults committed by its athletic director, Larry Nassar. PSOF ¶ 5. The GCU fine, therefore, exceeded by a magnitude of nearly ten, the next highest fines ever assessed by the Department against a University.

Yet the allegations here are strikingly different from the facts of those cases: the Department claims that GCU violated federal disclosure rules by failing to apprise PhD students of the requirement that they take continuing-education courses. PSOF ¶ 6. GCU categorically denies these allegations.

When the Department announced its $37.7 million fine against GCU, it did so in a press release which—as the Department intended—garnered significant media attention. *Id.* It was also reported at the time that the Department had coordinated with other federal agencies, and possibly the White House, pertaining to the GCU fine. PSOF ¶ 7.

Following these events, the Institute submitted a Freedom of Information Act ("FOIA") request to the Department, seeking a limited category of records pertaining to the Department's investigation and coordination between various federal agencies.[1] PSOF ¶ 8.

The Department failed to produce *any* records within the statutory timeframe, which prompted this lawsuit. PSOF ¶¶ 30–31. Then, after this case was filed, the Department provided some documents, but these were so heavily redacted that they amount to a nearly complete withholding of information—necessitating this motion. PSOF ¶¶ 32–34. The Department's claimed FOIA exemptions are legally baseless.

[1] Although a requester's motivation is not relevant under the FOIA, the Institute is a national public policy organization that conducts research, analysis, and policy recommendations on several issue areas, including higher education in the United States. It frequently employs FOIA to obtain documents for purposes of informing and protecting the public. *See, e.g., Goldwater Inst. v. U.S. Dep't of Health & Hum. Servs.*, 804 F. App'x 661 (9th Cir. 2020).

What's more, the Department has provided no information to justify its withholding of documents, other than simply reciting the statutory exemptions that it claims applies. PSOF ¶¶ 35–36. Because the Department has improperly withheld information from the public on a critical matter of nationwide concern, this Court should compel it to produce the documents immediately.

STATEMENT OF FACTS

Plaintiff Goldwater Institute is a free-market public policy research and litigation organization dedicated to advancing the principles of limited government, economic freedom, and individual liberty. PSOF ¶ 1. The Institute regularly publishes scholarly articles, opinion pieces, blog posts, and interacts with the public regularly through the news media and its own distribution channels discussing pressing issues of public policy, including issues in higher education. *Id.* It also routinely files FOIA requests, and requests under state versions of FOIA, to obtain information necessary for those purposes. *See, e.g.*, *Goldwater Inst.*, *supra*; *Goldwater Inst. v. City of Phoenix*, No. 1 CA-CV 24-0176 (Ariz. App., filed Mar. 18, 2024) (pending); *Solas v. S. Kingstown Sch. Dist.*, No. PC-2022-04727 (Providence, R.I. Super. Ct., filed Aug. 3, 2022) (pending); *Nebraska Journalism Tr. v. Nebraska Dep't of Env't & Energy*, 3 N.W.3d 361 (Neb. 2024) (amicus).

Defendant, U.S. Department of Education, is an agency of the federal government within the meaning of the FOIA. PSOF ¶ 2.

On October 31, 2023, the Department issued a press release announcing a record fine of $37.7 million against GCU for allegedly deceptive practices related to its PhD programs. PSOF ¶ 3. The press release garnered significant media attention. PSOF ¶ 7.

Following this press release, on December 4, 2023, the Institute submitted a public records request to the Department (the "Request"). PSOF ¶ 8. The Department has possession and control over the records the Institute seeks under the FOIA. PSOF ¶ 11.

The Request sought communications pertaining to fines under the Higher Education Act as pertaining to GCU. PSOF ¶ 9. Specifically, the Institute requested the following documents and records:

> (1) Copies of all email communications between the individuals identified below pertaining to the Federal Student Aid's ("FSA") or the U.S. Department of Education's ("DOE") investigation and fine of Grand Canyon University ("GCU") for alleged violations of the Higher Education Act and/or federal regulations, as well as GCU's Provisional Program Participation Agreement, from January 1, 2021 to the date of this request:
>
> a. Richard Cordray
> b. Christopher Madaio
> c. Kristen Donoghue
> d. Susan Crim
> e. Lina Khan
> f. Michael Tankersley
> g. Rohit Chopra
>
> (2) Copies of records that indicate the total number of complaints submitted by members of the public to the DOE pertaining to GCU's disclosure of the cost of its doctoral programs from January 1, 2020 to the date of this request.

PSOF ¶ 10. The Request also sought an expedited production. PSOF ¶ 12.

On December 5, 2024, the Department acknowledged the Request and assigned it number 24-00550-F ("Acknowledgment"). PSOF ¶ 13. The Acknowledgment denied expedited production, and advised of an average processing time for Department FOIA requests of 185 business days. PSOF ¶¶ 14–15. The Acknowledgment did not state any unusual circumstances that would permit any extension to the FOIA's statutory 20-business day deadline, nor did it provide any date by which a determination was expected. PSOF ¶ 16.

On December 6, 2024, the Institute notified the Department that it must comply with the FOIA's statutory timeline of 20-business days. PSOF ¶ 17.

On December 13, 2023, the Department sent the Institute an email stating a search located approximately 7,000 responsive documents and seeking payment for the search ("Fee Estimate"). PSOF ¶ 18. The Fee Estimate advised that until the Institute agreed to pay the search fees, the pending search and review of responsive documents would cease. PSOF ¶ 19. The Institute responded the next day arguing that the fee

waiver should have been approved; the Department later granted that waiver. PSOF ¶ 20.

After the FOIA's statutory timeline of 20 business days expired, on January 12, 2024, the Institute sent a letter to the Department requesting production of the records. PSOF ¶ 24. On January 16, 2024, the Department emailed the Institute stating an "initial determination" would be provided—and later sent a "20 Day Status Notification" ("Status Notification"), that essentially repeated its statement that the average processing time for a request is 185 business days. PSOF ¶¶ 25–26.

The Department never issued a response indicating its determination of whether it would comply with the public records request within the FOIA's 20-business day statutory deadline. PSOF ¶ 30.

The Department failed to produce records within the statutory timeline. PSOF ¶ 31.

On February 14, 2024, the Institute filed its Complaint for Injunctive and Declaratory Relief (Doc. 1) ("Complaint") to compel the Department to comply with the statutory timeframe and produce the requested records. PSOF ¶ 32.

After the Institute filed its Complaint, on April 15, 2024, the Department provided an interim response and documents responsive to item 1 of the Request ("First Interim Response"). PSOF ¶ 33. That First Interim Response included 802 pages of documents that had been almost entirely redacted. PSOF ¶ 34. The Department claims that the withheld documents and/or portions of records redacted are subject to FOIA Exemptions 4, 5, 6, 7(A), and 7(C). PSOF ¶ 36. But beyond its bare assertion of this alleged fact, the Department has provided no explanation or further basis regarding the information withheld, or indicated its reasons for withholding the records. PSOF ¶ 37.

On April 22, 2024, the Department provided its second interim response, stating there were no records responsive to item 2 of the Request ("Second Interim Response). PSOF ¶ 39. However, the Department went on to say that it had in its possession information identifying 750 related complaints, including written and oral complaints,

and borrower defense repayment applications. PSOF ¶ 39. The Department has not, however, provided these.

ARGUMENT

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Generally, FOIA cases are handled on motions for summary judgment because the facts are rarely in dispute. *See Lane v. Dep't of Interior*, 523 F.3d 1128, 1134 (9th Cir. 2008). In this case, there are no factual disputes, and summary judgment should be entered for Plaintiff as a matter of law.

I. The Department failed to respond within the statutory time period.

The plain language of the FOIA, and its broad construction in favor of disclosure, requires the release of public records pertaining to government processes and procedures, such as those at issue here: "Each agency *shall* make available to the public … statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available[.]" 5 U.S.C. § 552(a)(1)(B) (emphasis added). Congress enacted FOIA to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). Its purpose is to promote *transparency*, not to protect agencies *against* disclosure. Unless a clearly delineated exemption applies, "disclosure, not secrecy, is the dominant objective of the Act." *Id.*

The Institute has requested records that the FOIA requires the Department to make available. *See* 5 U.S.C. § 552(a)(1)(B).

Following a request for records, an agency must determine within 20 business days whether it will comply with the request, and the agency "shall *immediately* notify the person making such request" of its determination. *Id*. § 552(a)(6)(A)(i) (emphasis added). The 20-day period "shall not be tolled by the agency" except for one request to the requester for information or clarifying a fee assessment. *Id*. § 552(a)(6)(A)(ii). But in

either case, the requester's response to the agency ends the tolling period. *Id.* Should an "unusual circumstance" exist (as that term is defined in the FOIA[2]), the time period may be extended by 10 days, by providing written notice to the requester identifying the unusual circumstance and the date when the determination is expected. *Id*. § 552(a)(6)(B).

A failure by the agency to respond within the statutory period constitutes exhaustion of the requester's administrative remedies for the purpose of judicial action to compel disclosure. *Id*. § 552(a)(6)(C). *See Hajro v. U.S. Citizenship & Immigr. Servs.*, 811 F.3d 1086, 1092 (9th Cir. 2016) (when an agency fails to give a determination within the statutory time period, the requester can proceed directly to court).

The Institute submitted its Request under the FOIA on December 4, 2023. PSOF ¶ 8. It requested the records on an expedited basis, which would have required the Department's determination within 10 days. PSOF ¶ 12; 5 U.S.C. § 552(a)(6)(E)(ii). Within one day, the Department acknowledged the Request, denied the expedited production request, and advised the Institute that its average processing time for FOIA requests is 185 business days. PSOF ¶¶ 13–15. The Department did not identify any unusual circumstances that would permit an extension of the 20-day period, as required by the FOIA. PSOF ¶ 16; 5 U.S.C. § 552(a)(6)(B).

The Department did not respond within the statutory period and admits that it did not comply with the FOIA. PSOF ¶ 31.

In fact, after the statutory period expired, the Institute again requested the production of the records by letter. PSOF ¶ 25. But the Department did not produce any determination or response until *132 days* after the Request, and only did so after the

[2] "Unusual circumstances" means: "(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein." *Id*. § 552(a)(6)(B)(iii).

Institute filed the Complaint in this case. PSOF ¶ 33. This First Interim Response only responded to item 1 of the Request, *id.*, however, and it was not until 139 days after the Request that the Department responded to item 2 of the Request. PSOF ¶ 38. The Department did not comply with the FOIA's statutory period, despite multiple opportunities to do so.

At no time did the Department identify any unusual circumstances that would justify withholding records past the 20-day requirement, and certainly no justification for withholding records for 185 business days. PSOF ¶ 16. In any event, under the FOIA, even if an agency *can* demonstrate "unusual circumstances," that only permits the agency with an additional 10 days to produce the records. 5 U.S.C. § 552(a)(6)(E)(ii).

The Department's failure to issue a determination in response to the Institute's Request within the statutory timeline violates the FOIA, 5 U.S.C. § 552(a)(6)(A), (B), and the Department's corresponding regulations. The Department acted arbitrarily and capriciously to withhold public records from the Institute pursuant to 5 U.S.C. § 552(a)(4)(F).

II. The Department did not narrowly construe the FOIA Exemptions.

All agency records should be disclosed upon request, unless one of the specific, enumerated exemptions apply. 5 U.S.C. § 552(a). An agency may *only* withhold information if "the agency reasonably foresees that disclosure would harm an interest protected by an exemption." *Id.* § 552(a)(8)(A)(i). However, the exemptions must be "narrowly construed" to maximize the amount of information available to the public. *U.S. Dep't of Justice v. Julian*, 486 U.S. 1, 8 (1988). And the government bears the burden of proving that a document falls within an enumerated exemption. 5 U.S.C. § 552(a)(3).

The Department failed to meet its burden that *any* enumerated exemption applies. The Department has never given any reasons for withholding public information. Instead, it has only listed the exemptions that it claims apply. PSOF ¶ 36. The Department also withheld and redacted large portions of documents under FOIA

Exemptions 4, 5, 6, 7(A), and 7(C), and withheld nearly the entirety of the records under FOIA Exemptions 5 and 7(A). PSOF ¶ 35.

But the Exemptions asserted by the Department do not apply, and the agency has failed to meet its burden justifying withholding public information.

A. The Department has not met its burden of establishing that Exemption 5 applies because the Institute seeks post-decisional documents and non-deliberative records.

Public records may be withheld under Exemption 5 only if they are "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). Courts have construed this exemption to protect from disclosure only those records that "would be traditionally privileged in civil litigation." *ACLU of N. Cal. v. U.S. Dep't of Just.*, 880 F.3d 473 (9th Cir. 2018); *see also NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 148 (1975) ("Exemption 5 withholds from a member of the public documents which a private party could not discover in litigation with the agency"). Exemption 5, furthermore, is to be "given a narrow compass." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001) (internal marks & citation omitted).

To be shielded from disclosure under Exemption 5, a document must first "fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it." *Id.* Such records may include those "that would be protected in litigation by the attorney work-product, attorney-client, and deliberative process privileges." *ACLU of N. Cal.*, 880 F.3d at 483.

To be protected by the deliberative process privilege under Exemption 5, "an agency must show that a document is *both* '(1) predecisional or antecedent to the adoption of agency *policy* and (2) deliberative, meaning it must actually be related to the process by which *policies* are formulated." *Transgender L. Ctr. v. Immigr. & Customs Enf't*, 46 F.4th 771, 783 (9th Cir. 2022) (quoting *Nat'l Wildlife Fed'n v. Forest Serv.*, 861 F.2d 1114, 117 (9th Cir. 1988)) (cleaned up & emphasis added).

The requested records are not predecisional. Documents are "predecisional" if "prepared in order to assist an agency decisionmaker in arriving at his decision." *Id.* (citation omitted). Documents may be predecisional if they "reflect the personal opinions of the writer rather than the policy of the agency." *Assembly of State of Cal. v. U.S. Dep't of Com.*, 968 F.2d 916, 920 (9th Cir. 1992) (citation omitted). Documents that lead to a decision may be predecisional, while "documents explaining or interpreting [a] decision after the fact [are] … postdecisional [and] do not enjoy the protection of the deliberative process privilege." *Id. See also Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 184 (1975) (distinguishing "predecisional memoranda prepared in order to assist an agency decisionmaker in arriving at his decision, which are exempt from disclosure, and postdecisional memoranda setting forth the reasons for an agency decision already made, which are not.")

The Request did not seek any documents regarding internal agency deliberations. Instead, it seeks communications between certain key individuals both within and outside the agency, discussing the fine of GCU for their alleged violations of the Higher Education Act and other federal regulations.

Further, while any decision by the Department here was not a "policy decision" under the FOIA, it appears that numerous documents in this case are *post*-decisional.[3] From the limited unredacted portions of the documents provided, it appears that the decision was made to impose a fine upon GCU, and *afterwards*, there were communications with GCU notifying them of the fine and alleged violations. *See, e.g.*, PSOF ¶ 40. There are also communications with the White House coordinating the press release announcing the record fine against GCU. *See* PSOF ¶ 41. All these records *follow* the decision to fine GCU, and are thus, post-decisional and not exempt from disclosure. Yet the Department withheld them.

[3] *See* POLICY, Black's Law Dictionary (12th ed. 2024) ("A standard course of action that has been officially established by an organization, business, political party, etc.")

The requested records are also not deliberative. Documents are deliberative if "disclosure of materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." *Transgender L. Ctr.*, 46 F.4th at 783. Just designating documents a draft does not automatically make it privileged under the deliberative-process privilege. *Id.* Again, the documents here do not contemplate any policy decision of the Department; these records also post-date the decision to fine GCU. What's more, none of these records appear to pertain to formulating any policy decision or plan about *whether* to fine GCU. Instead, they appear to include records about how to publicly discuss a decision that had *already* been made.

The Department has not met its burden of proving that Exemption 5 entitles it to withhold records responsive to the Request. In fact, the Department admits that it did not provide any justification for withholding documents beyond a blanket claim that certain exemptions apply. PSOF ¶¶ 36–37. Based on the information provided, it seems plain that Exemption 5 does not apply, and without additional information or *in camera* review, it is impossible to determine if the agency has sustained its burden of proof. From the limited portions of unredacted records that were provided, however, it is plain that its reliance on Exemption 5 is baseless, and withholding on that basis violates the FOIA.

B. The Department has not met its burden of establishing that Exemption 7(A) applies because the Institute seeks documents that do not interfere with enforcement proceedings.

Exemption 7(A) applies to records compiled for law enforcement purposes, "but *only* to the extent that the production of such law enforcement records or information … could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). The purpose of this Exemption is "to prevent disclosures which might prematurely reveal the government's cases in court, its evidence and strategies, or the nature, scope, direction, and focus of its investigations, and thereby enable suspects to establish defenses or fraudulent alibis or to destroy or alter evidence." *Bagwell v. U.S.*

Dep't of Educ., 183 F. Supp.3d 109, 118 (D.D.C. 2016) (internal marks & citation omitted). *See also NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224–236 (1978) (discussing history of Exemption 7).

The agency must meet its burden of proof by showing that "it is a law enforcement agency, that the withheld documents were investigatory records compiled for law enforcement purposes, and that disclosure of those documents would interfere with pending enforcement proceedings." *Lewis v. IRS*, 823 F.2d 375, 379 (9th Cir. 1987). It cannot meet that burden here.

- *The Department is not a law enforcement agency.* The Department has not asserted that it is a law enforcement agency. The term "law enforcement" is not defined in FOIA, or in the Department's regulations, *see* 34 C.F.R. § 5, but the ordinary understanding of law enforcement agency is—as Justice Alito observed in an opinion explaining Exemption 7—an entity "charged with 'the apprehension of alleged offenders *as well as crime detection and prevention*." *Milner v. Dep't of Navy*, 562 U.S. 562, 583 (2011) (Alito J. concurring) (quoting R. De Sol, *Crime Dictionary* 82 (1982)) (emphasis in original). And the Department is obviously not that. However, assuming *arguendo* that the Department's Federal Student Aid Office[4] has oversight and enforcement abilities, the Department still does not meet its burden of proof for showing that the documents were compiled for law "enforcement purposes," or that complying with the request would interfere with any pending enforcement proceeding.
- *The requested documents were not compiled for law enforcement purposes.* As the Department is not a law enforcement agency, it could not have compiled documents for law enforcement purposes. Additionally, the

[4] *See U.S. Department of Education to Establish an Enforcement Office Within Federal Student Aid,* U.S. Dep't of Educ. (Oct. 8, 2021), https://www.ed.gov/news/press-releases/us-department-education-establish-enforcement-office-within-federal-student-aid.

requested records do not pertain to a *law enforcement* purpose. The fine imposed against GCU was not one of a criminal nature, and there is no indication that the Department believed or believes otherwise. In fact, the Department publicly announced that it had *concluded* its investigation of GCU, and made that point clear in a public press release. *See* U.S. Department of Education (October 31, 2023)[5] (The Department's press release and fine imposed on GCU "comes after a thorough investigation."). So many of the requested records were prepared *at the conclusion of* the investigation and fine. There appears therefore to be no possibility for those records to interfere with any enforcement activities. Or, at a minimum, the Department bears the burden of showing otherwise, and it has not even attempted to meet that burden.

- *The requested documents would not interfere with pending law enforcement proceedings.* Production of the requested documents would also not interfere with a pending law enforcement proceeding because there *is* no pending law enforcement proceeding. The investigation and fine have concluded, and therefore, there is no pending action against GCU in which the requested documents would interfere. Again, as the Department bears the burden of proof, it is required to show otherwise, and it has not carried its burden of proving that Exemption 7(A) applies. Based on the limited records that were provided, the Department is stretching Exemption 7(A) so broadly as to effectively withhold records that should be made available to the public—in violation of the FOIA.

[5] https://www.ed.gov/news/press-releases/us-department-education-office-federal-student-aid-fines-grand-canyon-university-377-million-deceiving-thousands-students.

C. If any portions of the documents could be exempt from disclosure, they are segregable from those that are not exempt.

Even if a FOIA exemption applies to the records the Department has withheld, FOIA requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552(b). The Department bears the burden of establishing that all reasonably segregable portions of the documents at issue have been segregated and disclosed. *Pacific Fisheries Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008). Additionally, "[c]ourts must apply that burden with an awareness that the plaintiff, who does not have access to the withheld materials, is at a distinct disadvantage in attempting to controvert the agency's claims." *Maricopa Audubon Soc'y v. U.S. Forest Serv.*, 108 F.3d 1089, 1092 (9th Cir. 1997) (internal marks & citation omitted). The Court may make "specific findings as to whether factual information has been properly segregated and disclosed in all documents or portions of documents that the [agency] claims are exempt from disclosure." *Pac. Fisheries*, 539 F.3d at 1150.

Here, the Department has not made a reasonable effort to segregate and disclose any information that is clearly not exempt. Nor has it provided a *Vaughn*[6] index. Plaintiff is therefore at a disadvantage in assessing whether the claimed exemptions have been appropriately applied and legitimately exempt material properly segregated from nonexempt material. Consequently, the Department must either release the withheld records, or establish through competent evidence that all reasonably segregable portions have been segregated and disclosed. *Goldwater Inst.*, 804 F. App'x at 664–65. If it fails to do so, the Institute respectfully requests that this Court conduct an *in camera* review, and make findings as to whether the portions of withheld documents can be segregated and disclosed.

[6] Under FOIA, an agency must notify the requester of its determination "and the reasons therefor." 5 U.S.C. § 552(a)(6)(A). Many agencies choose to do so through a *Vaughn* index to disclose as much information as possible without thwarting the purpose of the exemption. *See Citizens Comm'n on Hum. Rts. v. FDA*, 45 F.3d 1325, 1328 (9th Cir. 1995).

CONCLUSION

Based on the foregoing, summary judgment should be entered in Plaintiff's favor with an Order from the Court to produce the records. Alternatively, the Department should be ordered to produce a *Vaughn* index.

RESPECTFULLY SUBMITTED this 26th day of July 2024 by:

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CERTIFICATE OF SERVICE

Document Electronically Filed and Served on all counsel of record by ECF this 26th day of July 2024.

/s/ *Kris Schlott*
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