

Exhibit E



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

November 2, 2018

Caroline M. DeCell
Knight First Amendment Institute
carrie.decell@knightcolumbia.org

**Re: FOIA Tracking No. FY17-275;
Knight First Amend. Inst. v. DHS et al., S.D.N.Y. No. 1:17-cv-7572**

Dear Ms. DeCell:

I write on behalf of the Office of Legal Counsel (“OLC”) regarding the above-referenced action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Pursuant to the agreement between the parties and in an attempt to narrow the issues in the case, this letter and the enclosed index provide a description of the search that was conducted and of the records that have been withheld.

OLC’s records are stored in a number of locations. OLC’s unclassified records may be located in the paper files of individual OLC employees or stored electronically in two types of electronic systems: a shared central storage system for the office’s final unclassified work product and the computer accounts of individual employees. The central storage system consists of documents in their original file format (e.g., Microsoft Office, WordPerfect, PDF) collected in folders, which are organized by date, on a shared network drive on the Department of Justice electronic file server. It is OLC’s practice to save all final unclassified written legal advice to this central storage system; accordingly, if OLC has provided any unclassified written advice or has memorialized any unclassified oral advice in writing, that advice should be accessible through this system. Because OLC attorneys use this database to perform internal research, it is in OLC’s interest to keep the database as complete as possible. OLC uses a search engine called Perceptive Workgroup Search (“Perceptive”) to perform keyword searches of this collection of final work product files. Perceptive searches the full text of documents (including PDF files) within this collection of final work product, as opposed to searching only document titles or email subject lines. The keyword searches in Perceptive support wildcards and expanders, but also capture simple variations on the terms used without the need for wildcards or expanders. For example, a search for “belief” would identify results containing “beliefs” and vice versa.

Pursuant to the agreement between the parties narrowing the request, OLC searched for records responsive to parts 1-4 and 6(a) of the FOIA request, with part 1 limited to records dated no earlier than January 19, 2017, parts 2-4 limited to final legal or policy memoranda dated no earlier than May 11, 2005, and part 6(a) limited to records dated no earlier than January 19, 2012. Based on these limitations, OLC searched the Perceptive database for responsive records within each respective date range. This search was designed to be over-inclusive and included the following terms:

- endorse w/3 spouse
- "potentially serious adverse foreign policy"
- (beliefs OR statements OR associations) w/5 "would be lawful "
- 8 w/3 1182
- 8 w/3 1158
- 8 w/3 1225
- ("first amendment" OR speech OR belief OR association) w/10 (immigrat* OR exclu* OR remov*)

The results of these searches were then manually reviewed for responsiveness. OLC's FOIA staff then consulted with subject matter experts to determine whether any responsive classified documents existed, and determined that none did.

Because part 1 of the request also sought email communications, limited to communications after January 19, 2017, OLC's FOIA staff also spoke with subject matter experts within OLC to identify possible custodians. Through these conversations, OLC identified a single custodian as the point of contact for potentially responsive communications. OLC FOIA staff then searched that custodian's email account and electronic files with variations on the same terms above plus other potentially relevant terms identified in the course of reviewing the records. The results of these searches were then also manually reviewed for responsiveness.

Finally, the Department of State referred one additional responsive record to OLC.

As you were informed in letters dated May 30, 2018 and July 16, 2018, OLC ultimately identified 128 pages of responsive records in its files, plus the record referred by the Department of State, and withheld all of those records in full. The withheld records were withheld pursuant to FOIA Exemption Five, 5 U.S.C. § 552(b)(5). All of the material withheld pursuant to Exemption Five is protected by the deliberative process and attorney-client privileges, and some of the material is also protected by the attorney work product doctrine or the presidential communications privilege. We have determined none of the material is appropriate for discretionary release.

The enclosed preliminary index identifies and describes each withheld document. This letter and index reflect OLC's preliminary determinations regarding the applicable exemptions. They are being provided to allow the parties to attempt to resolve or narrow the issues still in dispute without the Court's intervention. If you have any questions, you may contact Assistant U.S. Attorney Ellen Blain, at (212) 637-2743, or at Ellen.Blain@usdoj.gov.

Sincerely,



Paul P. Colborn
Special Counsel

Enclosure

cc: Ellen Blain, Assistant United States Attorney
United States Attorney's Office, Southern District of New York

Draft Index of Withheld Records*Knight First Amend. Inst. v. DHS et al.*, S.D.N.Y. No. 1:17-cv-7572

Doc.	Date	Description	Pages	Privilege
1	8/29/2006	Memorandum to the File from Steven P. Lehotsky, Attorney-Adviser, OLC, recording oral legal advice provided by OLC attorneys to an executive branch client agency regarding the American Servicemembers' Protection Act, including appendix.	7	Attorney-Client ("AC"); Deliberative Process ("DP")
2	8/28/2008	Email from Rosemary Hart, Special Counsel, OLC to executive branch client agency providing informal legal advice regarding 8 U.S.C. § 1182, copying John Elwood, Deputy Assistant Attorney General ("DAAG"), OLC.	3	AC; DP
3	4/8/2014	Email from Lewis Yelin, Attorney-Adviser, OLC, to executive branch client agency providing informal legal advice regarding 8 U.S.C. § 1182, copying Benjamin Mizer, DAAG, OLC, and Leondra Kruger, DAAG, OLC.	5	AC; DP
4	2/21/2018	Email from a National Security Council Deputy Legal Adviser to interagency legal working group transmitting and seeking review of drafts of two legal analyses regarding immigration policy.	27	AC; DP; Attorney Work Product ("AWP"); Presidential Communications ("PC")
5	3/12/2018	Email from a National Security Council Deputy Legal Adviser to interagency legal working group transmitting and seeking review of drafts of a legal analysis regarding immigration policy.	66	AC; DP; AWP; PC
6	3/23/2018	Email from a National Security Council Deputy Legal Adviser to interagency legal working group transmitting and seeking review of drafts of a legal analysis regarding immigration policy.	18	AC; DP; AWP; PC
7	Undated	Attachment to National Security Council briefing package containing informal legal advice attributed to OLC regarding 8 U.S.C. § 1182.	1	AC; DP; PC