

**Statement Regarding Withholdings in
American Oversight v. U.S. Dep't of Justice, 19-cv-02272 (D.D.C.)¹**

Plaintiff has requested additional information regarding certain information that was withheld by OIP in its February 28, 2020 production. Specifically, Plaintiff inquires as to whether the withheld information is factual and properly covered by the deliberative process privilege of Exemption 5. This statement will address each identified piece of information in turn.

- Document ID: 0.7.695 .10593; page 20200207-0000001 (“facilities management issues” section)
 - This page contains a list of issues to discuss at a meeting in preparation for the Attorney General’s appearance before a Congressional Appropriations Committee, Subcommittee on Commerce, Justice, Science, and Related Agencies (CJS Appropriations Subcommittee). In this instance, these issues appear under the heading “Bureau of Prisons (30 min, 3-3:30pm).” One of the issues listed under this heading is “Facilities Management Issues,” which pertains to the subject of Plaintiff’s request. This issue is independent of the other issues listed under the “Bureau of Prisons (30 min, 3-3:30pm)” heading. The other (redacted) issues listed do not pertain to the subject of Plaintiff’s FOIA request.
 - The recommendation by the Office of Legislative Affairs of the other potential issues to discuss in preparation for the Attorney General’s appearance before the CJS Appropriations Subcommittee is deliberative.
- Document ID: 0.7 .22218 .433258; page 20191213 -0000003 (text following “just an update” and “can we get a copy [redacted]”)
 - The released portions of this email chain reflect that ODAG staff received an invitation to attend a Board of Judges meeting. The information withheld within the February 4, 2019 6:55 PM email consists of internal Departmental deliberative, preparatory discussions for this meeting. This withheld information does not contain factual information or substance about the subject matter of Plaintiff’s request.
 - In the course of evaluating the February 3, 2019 9:55 AM email, OIP determined that it would be appropriate to release the previously withheld information. A revised copy of this email chain is attached.

¹ OIP is providing this informal statement regarding its withholdings to American Oversight to facilitate the parties’ confidential and good faith efforts to narrow or eliminate issues for judicial resolution in the captioned case. The information provided may be used for that purpose only and is protected by Federal Rule of Evidence 408. OIP believes the information provided herein to be accurate; however, OIP reserves the right to present additional or different information in any filing that may ultimately be made with the court.

- Document ID: 0.7.22218 .433037 page 20191213-0000024 (Hurwitz's message is redacted, to which O'Callaghan merely responds thanks)
 - OIP, in consultation with BOP, evaluated this withholding and determined that FOIA Exemptions 7(A), 7(E), and 7(F), rather than FOIA Exemption 5, are the proper bases to withhold this information. A revised copy of this email chain is attached.
- Document ID: 0.7.22218 .433037 page 20191213-0000025 (Redacted bullets following "For Awareness")
 - The content of the bullet points in Kilgallon's February 3, 2019 3:33 PM email is deliberative because Kilgallon's purpose for providing these bullet points was to brief senior leadership on a developing matter in order to inform senior leadership's decision-making process on how to respond, whether to respond, and whether to take additional, internal action as it pertains to the developing matter. Further, these bullet points consist of the information Kilgallon considered most pertinent to that decision-making process. In this regard, the withheld information reflects Kilgallon's own subjective evaluation and opinions regarding the matter.
- Document ID: 0.7.695.10594; page 20200207-0000265 (RE: MDC Brooklyn Protestors, entirely redacted)
 - OIP, in consultation with BOP, evaluated the withholding in the February 3, 2019 5:26 PM email and determined that FOIA Exemptions 7(A), 7(E), and 7(F), rather than FOIA Exemption 5, are the proper bases to withhold this information. A revised copy of this email chain is attached.
 - The February 3, 2019 5:28 PM email consists of attorney work-product.
- Document ID: 0.7.22218 .433000; 20191213-0000093 (email chain between DAG Rosenstein and PDAG O'Callaghan likely contains significant factual information that has been redacted.)
 - The released portions of this email chain reflect that ODAG staff received an invitation to attend a Board of Judges meeting. The information withheld within this page reflects deliberative, preparatory discussions for this meeting, including deliberations about potential steps that should be taken prior to the meeting in preparation for the meeting, as well as deliberations as to proposed Departmental actions to be taken on the substantive issues at MDC-Brooklyn.
- Document ID: 0.7.22218.433029 20191213-0000040 (line written by DAG Rosenstein followed by completely factual statement by Hurwitz)
 - The line written by DAG Rosenstein consists of a question to Hurwitz. Intertwined within this question is deliberative information that made it difficult to segregate the sentence. Generally, DAG Rosenstein was asking for an update on conditions at the prison. OIP released Hurwitz's response to that question.

Lan, Iris (ODAG)

From: Lan, Iris (ODAG)
Sent: Monday, February 4, 2019 6:55 PM
To: Rosenstein, Rod (ODAG); O'Callaghan, Edward C. (ODAG)
Cc: Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG)
Subject: FW: Invitation to attend Board of Judges Meeting Tuesday Feb. 5, 2019 at 1:00PM 3rd Floor Judges Dining Room

Just FYI update:

(b)(5)

USA and A/AG also met with Chief Judge today as a part of the A/AG's visit to EDNY. During the meeting, one of topics they discussed was Department's attention to the MDC issue. (b)(5)

Begin forwarded message:

From: "Donoghue, Richard (USANYE)" (b)(6)
Date: February 3, 2019 at 10:29:09 AM EST
To: "Rosenstein, Rod (ODAG) (JMD)" <Rod.Rosenstein5@usdoj.gov>
Cc: "O'Callaghan, Edward C. (ODAG) (JMD)" <Edward.C.O'Callaghan@usdoj.gov>, "Ellis, Corey F. (ODAG) (JMD)" <Corey.F.Ellis@usdoj.gov>, "Peterson, Andrew (ODAG) (JMD)" <Andrew.Peterson@usdoj.gov>
Subject: Re: Invitation to attend Board of Judges Meeting Tuesday Feb. 5, 2019 at 1:00PM 3rd Floor Judges Dining Room

Sir,

The memo is attached.

Rich

<attachment 1.pdf>

Sent from my iPhone

On Feb 3, 2019, at 9:55 AM, Rosenstein, Rod (ODAG) <Rod.Rosenstein5@usdoj.gov> wrote:

Can we get a copy of the report from Deirdre referenced in the judge's email?

On Feb 3, 2019, at 4:30 AM, O'Callaghan, Edward C. (ODAG)

<ecocallaghan@jmd.usdoj.gov<<mailto:ecocallaghan@jmd.usdoj.gov>>>
wrote:

This is the Chief Judge in EDNY.

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Lan, Iris (ODAG)"
<irlan@jmd.usdoj.gov<<mailto:irlan@jmd.usdoj.gov>>>
Date: February 2, 2019 at 6:56:15 PM EST
To: "O'Callaghan, Edward C. (ODAG)"
<ecocallaghan@jmd.usdoj.gov<<mailto:ecocallaghan@jmd.usdoj.gov>>>
Subject: Fwd: Invitation to attend Board of Judges Meeting Tuesday
Feb. 5, 2019 at 1:00PM 3rd Floor Judges Dining Room

FYSA only.

Begin forwarded message:

From: "Donoghue, Richard (USANYE)"
(b)(6)
Date: February 2, 2019 at 6:50:30 PM EST
To: "Lan, Iris (ODAG)"
<irlan@jmd.usdoj.gov<<mailto:irlan@jmd.usdoj.gov>>>
Subject: Fwd: Invitation to attend Board of Judges Meeting Tuesday
Feb. 5, 2019 at 1:00PM 3rd Floor Judges Dining Room

FYI

Sent from my iPhone

Begin forwarded message:

From:
(b)(6) Dora Irizzary - US Courts
Date: February 2, 2019 at 6:19:54 PM EST
To: "Donoghue, Richard (USANYE)"
(b)(6)
Cc: <Michelle_Gelernt@fd.org<mailto:Michelle_Gelernt@fd.org>>, <Deirdre_Vondornum@fd.org<mailto:Deirdre_Vondornum@fd.org>>, "DuCharme, Seth (USANYE)"
<Seth.DuCharme@usdoj.gov<<mailto:Seth.DuCharme@usdoj.gov>>>
Subject: Re: Invitation to attend Board of Judges Meeting Tuesday
Feb. 5, 2019 at 1:00PM 3rd Floor Judges Dining Room

Dear Richard:

Thank you. It may be prudent to have someone from your civil division, perhaps the civil rights unit, at the meeting as well since any possible resulting litigation will likely be handled by the civil division of your office. We would welcome anyone you so designate.

Deirdre provided a summary report of her observations by email to me last night. I have to say that I and the few judges with whom I have shared it thus far are appalled and distressed at the inhumane way in which the inmates are being treated.

The situation is exploding on twitter and other media. I understand that a rally was scheduled for 1:00 pm today. It is beyond my understanding why Nydia Velasquez was not allowed to accompany Deirdre and your investigator as they toured the facility. The excuse given was that Deirdre and your investigator were touring the facility pursuant to court order.

It is apparent that we are not getting full and accurate information from the MDC and that the administrators are obstructing efforts at obtaining such information. The Warden's response that electricity should be restored by Monday also is unresponsive to the other issues such as why no additional blankets were distributed, leaks in the roof that has water seeping into the cells, the damage caused by the electrical fire last weekend that left computer and phone service out of order, the failure to dispense medication to inmates, and the lack of visitation by family and attorneys.

Have you had any discussions with your SDNY counterpart, Mr. Berman? SDNY is dealing with this issue as well since they have inmates housed at MDC just as we have inmates housed at MCC. Hearings are scheduled in SDNY and EDNY for early next week. Perhaps a joint call by the two of you to DOJ in DC would send a powerful message about the dire situation being faced here. It may go a long way in avoiding a tragedy and/or future litigation.

I appreciate that your assistants have been doing what they can to obtain information as directed by judges on individual cases, but that approach

Hugh Hurwitz

From: Hugh Hurwitz
Sent: Sunday, February 3, 2019 6:31 PM
To: O'Callaghan, Edward C. (ODAG); Barnett, Gary E. (OAG); Bumatay, Patrick (OAG);
Rosenstein, Rod (ODAG)
Cc: Peterson, Andrew (ODAG); Ellis, Corey F. (ODAG); Lan, Iris (ODAG); Perkins, Paul
(ODAG)
Subject: MDC - Brooklyn Power

Power is on! Verifying now it is on everywhere. Will update.

Hugh
Sent from my Samsung Galaxy smartphone

----- Original message -----

From: "O'Callaghan, Edward C. (ODAG)" <Edward.C.O'Callaghan@usdoj.gov>
Date: 2/3/19 5:31 PM (GMT-05:00)
To: Hugh Hurwitz <HHurwitz@bop.gov>
Cc: Andrew Peterson <Andrew.Peterson@usdoj.gov>, Corey Ellis <Corey.F.Ellis@usdoj.gov>, Iris Lan
<Iris.Lan3@usdoj.gov>, Paul Perkins <Paul.Perkins@usdoj.gov>
Subject: Re: MDC - Brooklyn Protestors

Thanks

Edward C. O'Callaghan
202-514-2105

On Feb 3, 2019, at 5:27 PM, Hugh Hurwitz <HHurwitz@bop.gov> wrote:

(b)(7)(A), (b)(7)(E), (b)(7)(F)

[REDACTED]

Hugh
Sent from my Samsung Galaxy smartphone

----- Original message -----

From: "O'Callaghan, Edward C. (ODAG)" <Edward.C.O'Callaghan@usdoj.gov>
Date: 2/3/19 5:08 PM (GMT-05:00)
To: Hugh Hurwitz <HHurwitz@bop.gov>, Andrew Peterson <Andrew.Peterson@usdoj.gov>,
Corey Ellis <Corey.F.Ellis@usdoj.gov>, Iris Lan <Iris.Lan3@usdoj.gov>, Paul Perkins
<Paul.Perkins@usdoj.gov>
Subject: Fwd: MDC - Brooklyn Protestors

>>> "O'Callaghan, Edward C. (ODAG)" 02/03/2019 17:08 >>>
Hugh are you (b)(7)(A), (b)(7)(E), (b)(7)(F)

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Ellis, Corey F. (ODAG)" <cfellis@jmd.usdoj.gov>
Date: February 3, 2019 at 4:27:30 PM EST
To: "O'Callaghan, Edward C. (ODAG)"
<ecocallaghan@jmd.usdoj.gov>, "Peterson, Andrew (ODAG)"
<anpeterson@jmd.usdoj.gov>
Subject: Fwd: MDC - Brooklyn Protestors

Corey F. Ellis
202-305-5544

Begin forwarded message:

From: "Kilgallon, John (USMS)" <JKilgallon@usms.doj.gov>
Date: February 3, 2019 at 3:33:35 PM EST
To: "Bacon, Antoinette T. (ODAG)"
<atbacon@jmd.usdoj.gov>, "Ellis, Corey F. (ODAG)"
<cfellis@jmd.usdoj.gov>
Cc: "Kilgallon, John (USMS)"
<JKilgallon@usms.doj.gov>, "Broshow, Brent (USMS)"
<BBroshow@usms.doj.gov>
Subject: MDC - Brooklyn Protestors

Toni / Corey,

For Awareness.....as this is likely to make the news in NY:

- (b)(5)

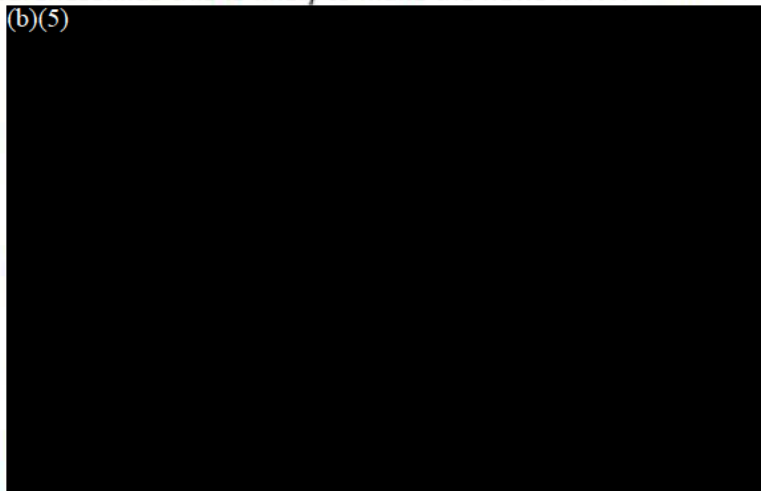
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Lan, Iris (ODAG)

From: Lan, Iris (ODAG)
Sent: Sunday, February 3, 2019 5:28 PM
To: O'Callaghan, Edward C. (ODAG)
Subject: Re: MDC - Brooklyn Protestors

(b)(5)

> On Feb 3, 2019, at 5:26 PM, Hugh Hurwitz <HHurwitz@bop.gov> wrote:

>

> (b)(7)(A), (b)(7)(E), (b)(7)(F)