IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEMOCRACY FORWARD FOUNDATION, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, Defendant.	Case Number: 1:17-CV-01877-EGS

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

February 27, 2018

Javier M. Guzman
(D.C. Bar No. 462679)
Skye L. Perryman
(D.C. Bar No. 984573)
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
(202) 448-9090
jguzman@democracyforward.org
sperryman@democracyforward.org

Counsel for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes & Letters

INTRODUCTION

This matter, which arises under the Freedom of Information Act, 5 U.S.C. § 552, involves a significant issue of public concern: the extent of communications between members of the Trump-Pence Transition Team and the Department of Justice Executive Office of United States Attorneys ("EOUSA"), which provides executive support for all U.S. Attorney's Offices throughout the country. These communications are of critical importance to the public's understanding of any attempts by the Transition Team to improperly influence law enforcement investigations of individuals with close ties to President Trump that were being conducted at the time of the transition.

The law applicable to this matter is well settled. FOIA requires the release of government records upon request. 5 U.S.C. § 552. And to prevail on summary judgment in a FOIA action, an agency must first demonstrate that it has made "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The agency has not done so here. Its search is plainly inadequate—refusing to search the electronic mail or other documents of EOUSA employees and instead substituting the personal recollection of four employees to describe the full scope of communications between EOUSA and the Trump-Pence Transition Team. Accordingly, summary judgment should be denied.

I. Factual Background

The Trump-Pence Transition Team operated from approximately November 9, 2017 to January 20, 2017. During that time, the Transition Team communicated often via electronic mail with federal agencies. As discussed more fully below, it is a matter of significant public concern whether any members of the Transition Team were seeking to influence ongoing and politically

sensitive investigations by various U.S. Attorney's Offices, including investigations involving close associates of President Trump or individuals whom later would be appointed to key Administration positions.

FBI Investigation of the Trump Campaign During the Transition

According to public reports, at the time of the transition, individuals affiliated with Donald Trump's 2016 presidential campaign were being investigated by the FBI for possible collusion with the Russian government to influence the U.S. election.[1] The FBI's investigation initially began in July 2016, and public reports during the transition confirmed the investigation was scrutinizing "at least three Trump campaign advisers," including campaign chairman Paul Manafort, (who has been indicted for conspiracy against the United States), Carter Page, and Roger Stone.[2]

Press reports during the transition also stated that the FBI "focused particular attention on what cyber experts said appeared to be a mysterious computer back channel between the Trump Organization and the Alfa Bank, which is one of Russia's biggest banks and whose owners have longstanding ties to Mr. Putin."[3]

Law Enforcement Investigations During the Transition

At the time of the transition, in addition to the FBI's Russia investigation, federal law

---

[1] Eugene Kiely, *Timeline of Russia Investigation*, FactCheck.org (last updated Feb. 27, 2018), http://www.factcheck.org/2017/06/timeline-russia-investigation/. ("Since July 2016, the FBI has been investigating the Russian government's attempt to influence the 2016 presidential election, including whether President Donald Trump's campaign associates were involved in those efforts.").

[2] Michael S. Schmidt et al., Intercepted Russian Communications Part of Inquiry into Trump Associates, N.Y. Times, Jan. 19, 2017, https://www.nytimes.com/2017/01/19/us/politics/trump-russia-associates-investigation.html?mcubz=0

[3] Eric Lichtblau & Steven Lee Myers, *Investigating Donald Trump, F.B.I. Sees No Clear Link to Russia*, N.Y. Times, Oct. 31, 2016, https://www.nytimes.com/2016/11/01/us/politics/fbi-russia- election-donald-trump.html?mcubz=0&_r=1.

enforcement officials were actively conducting criminal investigations of individuals and companies with ties to President Trump, including individuals being vetted for senior Administration positions. For example, "Michael T. Flynn told President Trump's transition team weeks before the inauguration that he was under federal investigation for secretly working as a paid lobbyist for Turkey during the campaign."[4] Despite this warning, Mr. Flynn was appointed National Security Adviser, giving him access "to the president and nearly every secret held by American intelligence agencies."[5] The FBI was also actively investigating potential financial crimes committed by Mr. Manafort. According to reports, "The F.B.I. investigation into Mr. Manafort began [in the spring of 2016], and was an outgrowth of a criminal investigation into his work for a pro-Russian political party in Ukraine and for the country's former president, Viktor F. Yanukovych."[6]

In addition, throughout the 2016 presidential campaign and transition, the Cyprus-based investment company, Prevezon Holdings, was under investigation by the U.S. Attorney's Office for the Southern District of New York for an alleged $230 million tax fraud scheme.[7] Natalia Veselnitskaya, while serving as counsel to the owner of Prevezon Holdings, secretly met with high ranking Trump-Pence campaign officials —including Donald Trump Jr., Jared Kushner,

[4] Matthew Rosenberg & Mark Mazzetti, *Trump Team Knew Flynn was Under Investigation Before He Came to White House*, N.Y. Times, May 17, 2017, https://www.nytimes.com/2017/05/17/us/politics/michael-flynn-donald-trump-national-security-adviser.html?mcubz=0&_r=0.
[5] *Id*.
[6] *Id*.
[7] Neil MacFarquhar & Andrew E. Kramer, *Natalia Veselnitskaya, Lawyer Who Met Trump Jr., Seen as Fearsome Moscow Insider*, N.Y. Times, July 11, 2017, https://www.nytimes.com/2017/07/11/world/europe/natalia-veselnitskaya-donald-trump-jr-russian-lawyer.html?mcubz=0&_r=0.

and Mr. Manafort —during the campaign.[8] When President Trump took office on January 20, 2017, all of the above-mentioned investigations were active.

Amid Ongoing FBI Investigations, President Trump Attempts to Influence, Then Fires James Comey

According to sworn testimony by former FBI Director James Comey, President Trump asked him for "loyalty" at a dinner on January 27, 2017, stating "I need loyalty. I expect loyalty."[9] On February 14, 2017, President Trump cleared the Oval Office and, alone with Mr. Comey, stated to him, "I hope you can see your way clear to letting this go, to letting Flynn go."[10]

In March 2017, President Trump called Mr. Comey to ask what the FBI could do to "lift the cloud" around his Administration regarding Russia. According to Mr. Comey, he refused to offer the President his "loyalty," and the FBI's investigations detailed above continued.[11] On May 9, 2017, President Trump fired Mr. Comey. In December, President Trump admitted to knowing at the time of Mr. Flynn's firing that he (Flynn) had misled the FBI.[12]

Amid Ongoing Law Enforcement Investigations, President Trump Fires U.S. Attorney Preet Bharara

On March 10, 2017, President Trump demanded the resignation of 46 U.S. Attorneys. Then U.S. Attorney for the Southern District of New York, Preet Bharara, refused to submit his

---

[8] Ben Protess, Jessica Silver-Greenberg, & Jesse Drucker, *Big German Bank, Key to Trump's Finances, Faces New Scrutiny*, N.Y. Times, July 19, 2017, https://www.nytimes.com/2017/07/19/business/big-german-bank-key-to-trumps-finances-faces-new-scrutiny.html?mcubz=0.

[9] *Full Transcript and Video, James Comey Testimony*, N,Y. Times, Jun. 8, 2017, https://www.nytimes.com/2017/06/08/us/politics/senate-hearing-transcript.html

[10] *Id*.

[11] *Id*.

[12] Tweet by Donald J. Trump, Dec. 2, 2017, https://twitter.com/realdonaldtrump/status/937007006526959618?lang=en ("I had to fire General Flynn because he lied to the Vice President and the FBI. He has pled guilty to those lies. It is a shame because his actions during the transition were lawful. There was nothing to hide!").

resignation and was fired the next day. At that time, Mr. Bharara's office was conducting criminal investigations into Tom Price, then the Secretary of Health and Human Services, and Prevezon Holdings, the above-mentioned company whose owner was a client of Natalia Veselnitskaya.[13]

DOJ Rejects Congressional Inquiries Into Potentially Improper Contacts Between Political Officials and Law Enforcement Personnel

On March 30, 2017, in a letter addressed to Attorney General Jeff Sessions, nine Senators on the United States Senate Judiciary Committee requested "information about contact between the Justice Department and U.S. Attorney's Offices on pending federal investigations prior to the firing of 46 U.S. attorneys on March 10, 2017," citing "potential contacts between political officials and law enforcement personnel in contradiction to longstanding policy."[14] On June 28, 2017, DOJ responded, summarily stating it was not in a position to respond to the Senators' request for information regarding improper contact between DOJ and U.S. Attorneys' Offices on pending federal investigations prior to March 10, 2017.

Plaintiff's FOIA Request and DOJ's Inadequate Response

To understand and explain to the public the nature of the Transition Team's communications with the U.S. Attorneys' Offices, on June 2, 2017, Plaintiff submitted a FOIA request to EOUSA seeking the following:

- All communications, including any attachments, sent to or from the "Chair" of the Presidential Transition Team, Mike Pence.

---

[13] *See* Robert Faturechi, *Fired U.S. Attorney Preet Bharara Said to Have Been Investigating HHS Secretary Tom Price*, ProPublica, March 17, 2017, https://www.propublica.org/article/preet- bharara-fired-investigating-tom-price-hhs-stock-trading.

[14] Ltr. from Senate Judiciary Comm. Democrats to Jeff Sessions, U.S. Att'y Gen. (Mar. 30, 2017), https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=0DD150D7-7E38- 4EC4-AD72-0B3ADB0E8937.

- All communications, including any attachments, sent to or from any "Vice Chair" of the Presidential Transition Team, including: Marsha Blackburn, Chris Christie, Mary Fallin, Michael Flynn, Newt Gingrich, Rudy Giuliani, Cynthia Lummis, Kathleen Troia "KT" McFarland, Cathy McMorris Rodgers, Jeff Sessions, or Tim Scott.

- All communications, including any attachments, sent to or from any member of the "Executive Committee" of the Presidential Transition Team, including: Lou Barletta, Pam Bondi, Chris Collins, Sean Duffy, Trey Gowdy, Jared Kushner, Tom Marino, Rebekah Mercer, Steven Mnuchin, Devin Nunes, Anthony Scaramucci, Kiron Skinner, Peter Thiel, Donald Trump Jr., Eric Trump, Ivanka Trump, Reince Priebus, Stephen Bannon, Amata Coleman Radewagen, Safra Catz, Tom Dadey, Nick Langworthy, Mike McCormack, Joe Mondello, or John Sweeney.

- All communications, including any attachments, sent to or from any staff member or representative of the Presidential Transition Team, including but not limited to: Aaron Chang, Steven Cheung, AJ Delgado, Jeff DeWit, Jessica Ditto, George Gigicos, Michael Glassner, Stephanie Grisham, Katrina Pierson, Sean Spicer, Nick Ayers, Kellyanne Conway, David Bossie, Aaron Chang, Steven Cheung, AJ Delgado, Jeff DeWit, Jessica Ditto, George Gigicos, Michael Glassner, Stephanie Grisham, Hope Hicks, Don McGahn, Jason Miller, Stephen Miller, Katrina Pierson, Josh Pitcock, Dan Scavino, Marc Short, or Katie Walsh.

After two months of receiving no response to either the FOIA request or to a phone inquiry regarding the request, Plaintiff filed suit to obtain the documents that it had requested. Approximately three months later, EOUSA produced a single document—the Presidential Transition Briefing Book—that it has represented was provided to members of the Trump-Pence Transition Team. EOUSA did not conduct any electronic searches for communications to or from the Transition Team.[15] Rather, EOUSA's search consisted solely of asking the EOUSA director and three other individuals if they recalled or were aware of such communications.

II. Legal Standard

Although "FOIA cases are typically and appropriately decided on motions for summary judgment," *Marino v. Dep't of Justice*, 993 F. Supp. 2d 1, 11–12 (D.D.C. 2013), "unlike the review of other agency action that must be upheld if supported by substantial evidence and not

[15] *See* Exhibit A to Pl's Response to Def's Stmt. of Undisputed Material Facts.

arbitrary or capricious, the FOIA expressly places the burden "on the agency to sustain its action" and directs the district courts to "determine the matter de novo." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 754–55 (1989). "[A] party seeking summary judgment in a FOIA case still "must show, viewing the facts in the light most favorable to the [non-moving party] that there is no genuine issue of material fact."" *Scudder v. Cent. Intelligence Agency*, 25 F. Supp. 3d 19, 28 (D.D.C. 2014).

To obtain summary judgment, an agency must show, among other things, that it conducted an adequate search for responsive records. "It is elementary that an agency responding to a FOIA request must conduct[ ] a search reasonably calculated to uncover all relevant documents, and, if challenged, must demonstrate beyond material doubt that the search was reasonable." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (internal quotations marks and citations omitted). If "the record leaves substantial doubt as to the sufficiency of the search, summary judgment for the agency is not proper." *Id.*

III. Argument

"The Supreme Court has explained that the FOIA is a means for citizens to know what their Government is up to. This phrase should not be dismissed as a convenient formalism. It defines a structural necessity in a real democracy." *Shapiro v. U.S. Dep't of Justice*, 969 F. Supp. 2d 18, 25 (D.D.C. 2013) (denying EOUSA's motion for summary judgment under FOIA) (citing *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989). The "basic policy" and "dominant objective" of FOIA is to further "disclosure, not secrecy," *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976), and it acts as a check against corruption by holding the government accountable to those it governs. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The documents sought by Plaintiff in this action—

communications between the Trump-Pence Transition Team and EOUSA—are of significant importance to the public interest and to FOIA's underlying objective of facilitating government transparency.

The issue at this stage is the adequacy of EOUSA's search for responsive records. Notwithstanding Plaintiff's straightforward request for communications between the Transition Team and EOUSA, the agency has failed to conduct an adequate search for documents—including failing to conduct any electronic searches of email or other communications—and has failed to provide an adequate explanation of the limited search that it did conduct. Unsurprisingly, that limited inquiry has yielded limited records: a single briefing book EOUSA was long aware of but only recently produced in litigation. Because EOUSA has not met its burden on summary judgment of describing or conducting a reasonable search, summary judgment should be denied.

A. EOUSA's Declarations Are Insufficient to Warrant Summary Judgment

To prevail on its motion, EOUSA must, as a threshold matter, submit evidence demonstrating that it conducted a good-faith effort to search for responsive materials in a way that is reasonably expected to produce the information requested. *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir.1983) ("Under FOIA, an agency must undertake a search that is reasonably calculated to uncover all relevant documents."); *Oglesby*, 920 F.2d at 68 ("An agency moving for summary judgment in a FOIA case must first demonstrate that it made a good-faith effort to search for responsive materials in a manner "reasonably expected to produce the information requested."). To meet that burden, an agency's declarations must describe with reasonable detail the search that was performed and must demonstrate that the search was likely to yield responsive records. *Sandoval v. U.S. Dep't of Justice*, No. CV 16-1013 (ABJ), 2017 WL

5075821, at *8 (D.D.C. Nov. 2, 2017). "[C]onclusory assertions about the agency's thoroughness are insufficient." *Id.* (citing *Morley v. CIA*, 508 F.3d 1108, 1121 (D.C. Cir. 2007)). The agency must not only explain its search methodology but also explain why no other record system or search would likely produce responsive documents. *Oglesby*, 920 F.2d at 68 ("It is not clear from State's affidavit that the Central Records system is the *only* possible place that responsive records are likely to be located. At the very least, State was required to explain in its affidavit that no other record system was likely to produce responsive documents.").

EOUSA has failed to meet its threshold burden. Its declarations contend that because there were only three employees who were "authorized" to communicate with the Transition Team, those individuals are the only persons who might possess responsive documents. But this ignores that Plaintiff's FOIA requests seeks both *incoming and outgoing* communications *to and from* all of EOUSA and the Transition Team, not only those EOUSA employees who were authorized to communicate with that team. In so confining its inquiry, and resting it on the presumption that there were no other communications, EOUSA interpreted the scope of the request too narrowly. *See Utahamerican Energy, Inc. v. Mine Safety & Health Admin*., 725 F. Supp. 2d 78, 83 (D.D.C. 2010) (determining search inadequate where agency "centered the search around the Congressional and OIG requests for documents, and not around [plaintiff's broader] request").

Furthermore, EOUSA's assertion that its Director's Office is the only unit that would have had potentially responsive documents is conclusory and does not support summary judgment. EOUSA submitted a declaration of Vinay J. Jolly, an EOUSA attorney advisor assigned to administer the agency's response to FOIA. He explains that he was aware of the Transition Team Briefing Book, which consisted of materials prepared for the Transition Team

by EOUSA, prior to submission of Plaintiff's FOIA request, and that he released the book to Plaintiff. Jolly Decl. ¶ 7. Mr. Jolly further avers that, based on his nine years of experience in EOUSA, the Director's Office is the only EOUSA component "where any other records responsive to Plaintiff's request would likely be located since the Director's Office would be the only component to have authority to communicate with the Transition Team." *Id*. ¶ 8. That experience, however, would have at most involved one previous transition, and possibly not even that, given that he would have started in EOUSA in January 2009. Nor does he state that he was involved in searching for records sought concerning communications with any prior Presidential transition team, which in any event would have involved completely different parties than the Trump-Pence Transition Team. Thus, Mr. Jolly's assertion of "experience" is the type of conclusory averment that is insufficient at the summary judgment stage.

Apart from the questionable foundation provided by Mr. Jolly's experience, his averment that the Director's Office was the only office "to have authority to communicate with the Transition Team," suggests only that there were not likely any outgoing communications (i.e., communications *to* the Trump-Pence Transition Team) from any EOUSA office other than the Director's Office. Mr. Jolly provides no explanation about whether other EOUSA components would have received *incoming* communications from the Transition Team. Indeed, EOUSA has failed to provide any non-conclusory explanation as to why the Director's Office is the *only unit* within EOUSA that would have *received* communications from the Trump-Pence Transition Team; it does not aver that the Transition Team was informed of the authority protocols within DOJ-EOUSA or that, in the event it was aware of such authority protocols, it followed them with respect to its communications.

In any event, Plaintiff did not limit its FOIA request to communications that were "authorized" by EOUSA nor did it simply seek outgoing correspondence from EOUSA to the Transition Team; it sought both incoming and outgoing communications, including communications from the Transition Team to EOUSA. Under FOIA, "[t]he agency [is] bound to read [the request] as drafted, not as [ ] agency officials ... might wish it was drafted… and it may not narrow the scope of a FOIA request to exclude materials reasonably within the description provided by the requester." *Urban Air Initiative, Inc. v. Envtl. Prot. Agency*, 271 F. Supp. 3d 241, 255–56 (D.D.C. 2017) (citing *Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir. 1984); *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 889–90, 892 (D.C. Cir. 1995)) (internal quotations omitted). Here, however, Mr. Jolly's declaration that the Director's Office was the only EOUSA component with "authority" to communicate with the Transition Team ignores that Plaintiff's request is not so limited and fails to explain why such a limiting of the search was appropriate and calculated to obtain all responsive incoming communications.

EOUSA Deputy Director and Counsel Norman Wong's declaration is similarly infirm. Mr. Wong describes a meeting facilitated by the DOJ Justice Management Division ("JMD") that he and three other agency officials attended with Transition Team members. Wong Decl. ¶ 4. He states that neither he nor the three other individuals who attended the meeting engaged in written communications with the Transition Team members; that they did not "delegate such communications to any other members of the EOUSA Executive Staff;" that he is "unaware of any other contact between EOUSA *leadership* and any Transition Team members;" and that "direct communication with the Transition Team was closely coordinated through JMD." *Id*. ¶ 4 (emphasis added). These averments raise more questions than they answer. As with Mr. Jolly's Declaration, Mr. Wong's statements are focused only on communications that he and his three

colleagues would have authorized—which, at best, speaks to outgoing communications from EOUSA to the Transition Team. He does not aver that anyone sought to confirm that there were in fact no other communications with any EOUSA staff or to confirm with JMD as to whether it facilitated or is aware of any other contacts. Indeed, the only step Mr. Wong took in that respect was to speak and email with three individuals from the Director's Office: Director Wilkinson, Ms. Bell and Mr. Pelletier. *Id.* ¶ 5. In short, Mr. Wong's declaration fails to provide any detail as to why others in the Director's Office and/or in EOUSA generally would not have been expected to have received written communications with members of the Transition Team and is, accordingly, not sufficient to meet EOUSA's burden at the summary judgment stage. *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) ("At the very least, [an agency is] required to explain in its affidavit that no other record system was likely to produce responsive documents.").

Thus, because "the record leaves substantial doubt as to the sufficiency of the search, summary judgment for the agency is not proper." *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 497 (D.D.C. 2017) (citing *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990); *Sandoval*, 2017 WL 5075821, at *10 (determining that EOUSA's description of its search was inadequate to warrant summary judgment because the declaration lacked details relevant to assessing whether the "conducted searches that were reasonably calculated to uncover all relevant documents").

B. EOUSA's Search Was Inadequate.

EOUSA did not conduct any electronic searches reasonably calculated to lead to responsive documents. It instead asserts that because the four individuals in one unit—the Director's Office—were the only individuals "authorized" to communicate with the Transition

Team, asking those individuals about any responsive records they may have constitutes a reasonable search under FOIA. EOUSA is mistaken.

"To evaluate the adequacy of a search under FOIA, a court must first examine the scope of the request itself." *See Nation Magazine, Washington Bureau v. U.S. Customs Serv.,* 71 F.3d 885, 889 (D.C. Cir. 1995). The agency has an obligation to construe the FOIA request liberally. *Id*. at 890; *see also Leopold v. Dep't of Justice*, 130 F. Supp. 3d 32, 43–44 (D.D.C. 2015), *on reconsideration in part*, No. 14-CV-00168 (APM), 2016 WL 7839130 (D.D.C. Apr. 25, 2016).

Here, Plaintiff sought incoming and outgoing communications between EOUSA and the Transition Team. Plaintiff's request specified certain members of the Transition Team who would have engaged in such communications to help direct the agency's search. In response, EOUSA produced a prepared briefing book that was used in a meeting with the Transition Team, and Mr. Wong spoke with the three individuals from the Director's Office who, along with him, attended the meeting with the Transition Team, to determine if those individuals sent or received communications to or from the Transition Team. The individuals assert that they had no such communications and, thus, EOUSA maintains that it need not conduct any electronic searches for additional communications. EOUSA's search, however, was not reasonably calculated to obtain responsive records because Plaintiff's request *was not* limited to individuals who met with the Transition Team or individuals authorized to communicate with the Transition Team.

EOUSA's reliance on Judge Collyer's decision in *James Madison Project v. Dep't of Justice*, 257 F.Supp.3d 154 (D.D.C. 2017), Defs' Mem. at 10-11, is inapposite. In that case, plaintiffs sought analyses and documents pertaining to a particular book, but did not seek communications. *James Madison Project*, 257 F. Supp.3d at 157 (describing the categories of documents in the FOIA request). Notably, EOUSA has cited no case for the proposition that

where a requester seeks communications to and from a component of an agency (here EOUSA) and a third party (here the Transition Team), it is reasonable for the agency to act as it has done here: rely on the account of four individuals in a particular department to justify not conducting an actual search. *Id*. at 162. ("[A]n agency cannot fail to search at all based upon alleged personal knowledge."). And, conducting such a search here would not be unduly burdensome; the request only seeks communications for a two-month period. The search that EOUSA conducted was plainly inadequate: it was not reasonably calculated to lead to a retrieval of all responsive materials and relied on an overly narrow interpretation of Plaintiff's FOIA request, *See supra* at 8-10. Accordingly, summary judgment should be denied. *Leopold*, 130 F. Supp. 3d 32, 43–44 (D.D.C. 2015), *on reconsideration in part*, No. 14-CV-00168 (APM), 2016 WL 7839130 (D.D.C. Apr. 25, 2016) (denying summary judgment based on inadequate search).

CONCLUSION

For the forgoing reasons, EOUSA's motion should be denied.

Dated: February 27, 2018

Respectfully submitted,

/s/ *Skye Perryman*
Javier M. Guzman
(D.C. Bar No. 462679)
Skye L. Perryman
(D.C. Bar No. 984573)
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
(202) 448-9090
jguzman@democracyforward.org
sperryman@democracyforward.org

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2018, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM-ECF system.

/s/ *Skye L. Perryman*
Skye L. Perryman