

Electronic Frontier Foundation v. U.S. Department of Justice
Civil Action No. 10-CV-0641 (RBW)
U.S. District Court for the District of Columbia

OIP Vaughn Index

This index contains a description of the 221¹ pages of records protected, either in part or in full by OIP, pursuant to Freedom of Information Act Exemption 5 (deliberative process privilege).² For clarity of presentation, the documents are assembled into two general groups and nine sub-groups. The documents in Group 1 of this Index includes records withheld from plaintiff in part (Groups 1(a) – 1(e)), and the documents in Group 2 include records withheld from plaintiff in full (2(a) – 2(d)).

Group 1: Documents withheld in part pursuant to Exemption 5.

Group 1(a): E-mail messages in which issues raised in a meeting between the U.S. and EU are discussed among DOJ officials.

Group 1(b): E-mail messages in which DOJ senior officials solicit and receive advice and discuss questions, developments, and potential ramifications, concerning the HLCG deliberations.

Group 1(c): E-mail discussions pertaining to the development of drafts.

Group 1(d): E-mail discussions pertaining to strategies, progress, and next steps regarding HLCG negotiations.

Group 1(e): Briefing material.

Group 2: Documents withheld in full pursuant to Exemption 5.

Group 2(a): Drafts.

Group 2(b): Comments on drafts.

Group 2(c): Briefing material.

Group 2(d): Handwritten meeting notes.

Acronyms:

OAG: Office of the Attorney General

ODAG: Office of the Deputy Attorney General

OPCL: Office of Privacy and Civil Liberties

CRIM: Criminal Division

DHS: Department of Homeland Security

State: Department of State

OIP: Office of Information Policy

EU: European Union

HLCG: High Level Contact Group

Identification of Relevant Department Personnel:

Thomas Burrows: CRIM

Nancy Libin: ODAG

David Ogden: ODAG

Amy Jeffress: OAG

Bruce Swartz: CRIM

Stuart Delery: ODAG

Kenneth Harris: CRIM

Emily Petty: OAG

Melanie Ann Pustay: OIP

Kirsten Moncada: OPCL

Molly Warlow: CRIM

Miriam Vogel: ODAG

¹ Although 221 pages are included in the Vaughn Index, it should be noted that these pages were not withheld in their entirety. As a result of OIP's efforts to segregate as much information as possible for release to plaintiff, many of the individual pages within documents or e-mail chains contain no redactions at all.

² Shaded entries within this Vaughn Index denote information that was withheld on behalf of the Criminal Division, and, accordingly, the justification for those withholdings is being addressed by that component.

Group 1: Description of documents that were released in part with excisions made pursuant to Exemption 5 of the FOIA.

Group	Document Numbers		Date	Description	Exemption	Pages
1(a)	SD-18 SD-23 SD-24		10/15/09 through 10/16/09	E-mail messages between David Ogden and Stuart Delery discussing issues raised by a meeting between U.S. and EU representatives on HLCG information sharing principles.	<u>Exemption 5</u> Deliberative process privilege	2
1(b)	NLI-14 NLI-23 NLI-25 NLI-48 NLI-68 NLI-69	NLI-70 NLI-71 TB-672 SD-1 SD-15	7/22/09 through 10/23/09	E-mail messages among Nancy Libin, Melanie Pustay, Thomas Burrows, and Bruce Swartz, in which senior officials seek and receive advice, and discuss questions, developments, and potential ramifications, with respect to the HLCG deliberations.	<u>Exemption 5</u> Deliberative process privilege	11

Group	Document Numbers		Date	Description	Exemption	Pages
1(c)	KMI-14 KMI-7 KMI-8 KMI-9 KM-72 KM-73 KM-74 NLI-34 NLI-35 NLI-36 NLI-37 NLI-38 NLI-39 NLI-40 MW-1 NLI-27 NLI-28 NLI-29 NLI-30 KM-104 KM-105 NLI-1 TB-60 TB-61 TB-350 TB-351	TB-352 TB-500 TB-501 TB-682 TB-683 TB-684 TB-605 TB-606 TB-551 TB-552 TB-541 NL-321 KM-113(a) KM-114 NL-426 NL-427 NL-348 NL-451 NL-183 NL-184 NL-185 NL-186 NL-188 NL-188(a) NL-102 TB-558	1/23/09 through 10/28/09	E-mail messages among Thomas Burrows, Mary Lee Warren, Kirsten Moncada, Nancy Libin, and Bruce Swartz sharing and discussing various comments and opinions in the development of drafts, including suggested language, edits, mark-ups, additions, and contextual extractions. Authors of these e-mails address questions that arise in connection with the drafts, explain their reasoning for making certain edits, and their assessments as to the effect of the prepared draft language in the context of the HLCC negotiations.	<u>Exemption 5</u> Deliberative process privilege	27

Group	Document Numbers		Date	Description	Exemption	Pages
1(d)	NLI-42 NLI-43 NLI-44 NLI-45 NLI-46 SD-5 SD-16 NL-68 NLI-52 NLI-53 NLI-54 NLI-55 NLI-56 TB-465 TB-466 TB-715	TB-716 TB-597 NL-171 NL-89 NL-13 NLI-57 NLI-59 NLI-60 NLI-61 NLI-62 NLI-63 NLI-64 NLI-65 NLI-67	9/3/09 through 10/27/09	E-mails among Bruce Swartz, Mary Lee Warren, Nancy Libin, Thomas Burrows, Miriam Vogel, Stuart Delery, Kirsten Moncada, and Patricia Reedy consisting of discussions and opinions about negotiation strategies, the progress of the deliberations, and next steps in the HLCG deliberations, including reactions by DOJ officials to issues raised during HLCG deliberations, and discussions and analysis of pertinent U.S. statutes and case law.	<u>Exemption 5</u> Deliberative process privilege	17

Group	Document Numbers	Date	Description	Exemption	Pages
1(e)	TB-696 TB-697 TB-710 TB-711 TB-712 NL-231(b) TB-456(a) TB-456(b)	8/26/09 through 10/27/09	E-mail messages among Mary Lee Warren, Kenneth Harris, Bruce Swartz, Molly Warlow, Thomas Burrows, Amy Jeffress, Emily Petty, and Stuart Delery regarding the creation of briefing materials for upcoming meetings with EU member state dignitaries, as well as the briefing materials themselves.	<u>Exemption 5</u> Deliberative process privilege	14
	SD-24(a) SD-24(b) SD-24(c)		Two copies of an October 7, 2009 memorandum (one with a handwritten notation) from Nancy Libin to the Deputy Attorney General, through Stuart Delery, concerning a U.S.-E.U. meeting in Brussels, and an attachment thereto consisting of a preliminary "Agreed Text from the HLCG Experts" dated October 2, 2009. Redacted information consists of the author's briefing of senior officials on the meeting, and portions of the attachment consisting of sections that were subsequently changed in the final version of the text.		11

Group 2: Description of documents protected in full pursuant to Exemption 5 of the FOIA.

Group	Document Number	Date	Description	Exemption	Pages
2(a)	<div> <div>KMI-9(a) KMI-10(a) KMKC-6(a) KM-85(a) KM-86(a) KM-87(a) KM-88(a) KM-89(a) NL-143(a) NL-231(g) TB-578(a) TB-528(a)</div> <div>TB-598(a) TB-353(a) NLI-77(c) TB-390(a) TB-526(a) TB-426(a) TB-438(a) TB-438(b) TB-534(b) NLI-30(a)</div> </div>	Undated	Various drafts, including mark-ups, proposed language, and edits by U.S. government personnel, including drafts of: a proposed agreement on data privacy protections; joint EU-U.S. statement on enhancing transatlantic cooperation; insert regarding HLCG conclusions; and agendas for upcoming EU-U.S. meetings.	<u>Exemption 5</u> Deliberative process privilege	60
2(b)	<div> <div>TB-464(a) KM-90 KM-91 KM-92 NLI-73 NLI-74 NLI-75 NLI-76 NLI-77 TB-389(a)</div> </div>	Undated, 4/3/09, 9/28/09	Discussion papers and general comments, including e-mails among Kirsten Moncada, Thomas Burrows, Mary Lee Warren, Nancy Libin, and various DHS and State officials, on drafts and revisions to drafts.	<u>Exemption 5</u> Deliberative process privilege	11
2(c)	<div> <div>OIPGEB-1 TB-17(a) NL-231(a)</div> </div>	3/16/09 through 10/28/09	Briefing materials consisting of a “briefing book” for the Attorney General, and draft talking points/briefing papers for upcoming meetings with EU member state dignitaries.	<u>Exemption 5</u> Deliberative process privilege	50

Group	Document Number		Date	Description	Exemption	Pages
2(d)	KMI-1 KMI-4 KMI-5 NLI-82 NLI-83 NLI-84	NLI-85 NLI-86 NLI-87 NLI-89 NLI-90 NLI-91	Various Dates (some undated)	Handwritten notes of senior DOJ officials from teleconferences, meetings, and other discussions. Notes which include the author's evaluations and contemporaneous thoughts on internal U.S. discussions regarding HLCG deliberations and negotiations, as well as notes to self and questions for follow-up.	<u>Exemption 5</u> Deliberative process privilege	18