

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Sophia Helena In 't Veld,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	08-1151
Department of State, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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DECLARATION OF MARGARET P. GRAFELD

I, Margaret P. Grafeld, declare and state as follows:

1. I am the U.S. Department of State's (Department's) Information and Privacy Coordinator and the Director of the Department's Office of Information Programs and Services (IPS). In these capacities, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Privacy Act (PA), 5 U.S.C. § 552a, and other applicable records access provisions. I have been in the employ of the Department of

State since 1974, and have served with the Department's Information Access Program for most of my tenure with the Department. I am authorized to classify and declassify national security information pursuant to Executive Order (E.O.) 12958, as amended, and Department of State regulations set forth in 22 C.F.R. §§ 9.7, 9.14. I make the following statements based upon my personal knowledge, which in turn is based on a personal review of the records in the case file established for the processing of the subject request, and upon information furnished to me in the course of my official duties. I have read the complaint filed by the plaintiff in the above-captioned matter, and I am familiar with the efforts of Department personnel to process the subject request.

2. The core responsibilities of IPS include: records access requests made by the public (under the FOIA, the Privacy Act, and the mandatory classification review requirements of E.O.12958, as amended, or the Ethics in Government Act), members of Congress, and other government agencies, and those that have been made pursuant to judicial processes, such as subpoenas, court orders, and discovery requests; records management; privacy protection; national security classification management and declassification review; corporate records archives management; research; operation and management of the

Department's Library; and the application of technology that supports these activities.

3. The purpose of this declaration is to inform the Court of the Department's responses to plaintiff's FOIA request made to the Department. A description of the administrative processing of this request follows, as well as a detailed description of the information withheld and applicable FOIA exemptions applied.

**I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST**

(IPS Case Number 200801276)

4. By letter dated February 22, 2008 (Exhibit 1), Marcia Hofmann of the Electronic Frontier Foundation (EFF) submitted a FOIA request on behalf of its client, Sophia Helena In 't Veld, for "all records concerning Ms. In 't Veld (including but not limited to electronic records) maintained in the Department of State visa databases." A statement signed by Ms. In 't Veld under penalty of perjury authorizing the Department of State to release information maintained under her name to EFF was enclosed. The statement included Ms. In 't Veld's full name, address, date and place of birth, place of visa application, type of visa issued, and the date of visa issuance. The request also included an agreement to pay up to \$25 for the processing of this request.

5. By letter dated March 24, 2008 (Exhibit 2), the Office of Information Programs and Services (IPS) acknowledged receipt of the request and assigned it case control number 200801276. IPS notified EFF that the processing of its request had begun and it would be notified as soon as responsive material was retrieved and reviewed. EFF was advised that the cut-off date for retrieving records was either the date it had given the Department by specifying a particular time frame, or the date the search was initiated. IPS informed EFF that it had been placed in the "all other requesters" fee category and that unusual circumstances could arise requiring an extension of the time limit.

6. By letter sent September 9, 2008 (erroneously dated August 9, 2008) (Exhibit 3), the Department's Office of Visa Services (VO) informed EFF that its search had resulted in the retrieval of five relevant documents, totaling eight pages. VO advised EFF that two of the documents were released in full, one was released in part, and two were denied in full.

7. By letter dated September 11, 2008 (Exhibit 4), IPS informed EFF that searches had been conducted of the Central Foreign Policy Records (a principal records system of the Department), as well as the records of VO and the American Embassy in Brussels. IPS advised EFF that the searches of the Central Foreign Policy Records and the American Embassy in

Brussels had been completed and resulted in the retrieval of no responsive documents. IPS further advised EFF that the results of VO's search and review of the records located were contained in VO's letter sent September 9, 2008. IPS informed EFF that, since fewer than two hours of search time had been expended and less than 100 pages of material had been found, there was no charge for the processing of this request. IPS also informed EFF that the Department had now concluded the processing of the request.

## II. THE SEARCH PROCESS

8. The Department's search for records responsive to plaintiff's request was designed to uncover all responsive records. When a FOIA request is received, IPS evaluates the request and determines which offices, overseas posts, or other records systems within the Department may reasonably be expected to contain the information requested. This determination is based on the description of records set forth in the request letter, and is tempered by any specified limitation on applicable fees and/or any specified limitation on records systems to be searched. It also requires a familiarity with records system holdings, applicable records disposition schedules, and the substantive and functional mandates of the numerous offices within the Department, as well as its Foreign

Service posts and missions. Such factors as the nature, scope, and complexity of the request itself also are relevant. In this case, plaintiff specifically asked for records "maintained in the Department of State visa databases," and therefore, the Department's searches were focused on records systems pertaining to visas. Accordingly, searches were conducted of the records of the Office of Visa Services (VO) and the American Embassy in Brussels, where Ms. In 't Veld submitted her visa application. Although records maintained in the Department's visa databases are electronic records, the Department observed the request's somewhat ambiguous specification that it was "not limited to electronic records," and construing the request broadly in an abundance of caution the Department therefore searched all of its visa records, whether paper or electronic, and whether stored in a visa database or not. This search encompassed all of VO's visa databases and VO's offsite retired files, as well as relevant databases and files at the Consular Section of the American Embassy in Brussels. In a further abundance of caution, the Department also searched the Central Foreign Policy File, a principal records system of the Department.

9. Responsive VO records were found in the search of the following databases and files: the Consular Lookout and Support System (also known as "CLASS" or the "lookout" database); and the Non-Immigrant Visa ("NIV") section of the Consular

Consolidated Database ("CCD"). Documents are found in these databases by searching for the name of the visa applicant and cross-checking with other information such as dates of birth to ensure that, for example, records do not pertain to a different individual with the same name. The CCD database uses a literal search, and VO conducted several searches using variations of Ms. In 't Veld's name to find the responsive records, and the search of the CLASS database used a "fuzzy" search algorithm which automatically checks similar names and dates of birth. In addition, VO searched retired visa files maintained at an offsite facility, the Kentucky Consular Center (KCC), and located three responsive records. To search the KCC, VO sends KCC a request for boxes based on the date of visa issuance or refusal and the location of the embassy or consulate general where the visa application was filed. In this case, KCC used these parameters to locate a box containing three documents concerning Ms. In 't Veld. In addition to those searches, the American Embassy in Brussels searched its paper and electronic visa files for records on plaintiff and located no additional responsive material. The Embassy confirmed that any visa records from the time period in question are no longer maintained at the Embassy and would have been retired and either scanned into the Consular Consolidated Database (CCD) or stored

in the KCC. As discussed above, those files were also searched in this case.

10. Five responsive documents were found as a result of the search of VO records. Two of these documents were released in full, one was released in part, and two were denied in full. No additional responsive documents were found in the search of the Consular Section's records at the American Embassy in Brussels.

11. The Central Foreign Policy File ("Central File") contains official record copies of almost all incoming and outgoing Departmental telegrams between the Department and Foreign Service posts as well as other select substantive correspondence documents including diplomatic notes, correspondence to and from the White House, members of Congress, and other federal agencies, position papers and reports, memoranda of conversations, and interoffice memoranda. Because the Central File is the Department's most comprehensive and authoritative centralized compilation of documents, it is by far the most frequently searched in response to FOIA requests. In this case, in an abundance of caution, the Department searched the Central File using various variations of the plaintiff's name. This search yielded no responsive documents.

12. The searches described above were performed by individuals who are familiar with both the subject matter of



plaintiff's request and also the contents and organization of the records systems searched. The Department's search was reasonably calculated to uncover all responsive documents and there are no other places in the Department that could be searched with a reasonable possibility of yielding additional documents responsive to this FOIA request.

### III. EXEMPTIONS CLAIMED

#### FOIA Exemption (b) (3) - Exempted by Statute

13. Title 5 U.S.C. Section 552(b)(3) states that the FOIA does not apply to matters that are

"specifically exempted from disclosure by statute (other than Section 552(b) of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

14. Among the statutes that bring information under this exemption is:

#### Title 8 U.S.C. Section 1202(f)

15. Title 8 U.S.C. § 1202(f) (section 222(f) of the Immigration and Nationality Act (INA), as amended) states in pertinent part that:

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only

for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that:

- (1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

16. In Medina-Hincapie v. Department of State, 700 F. 2d 737 (D.C. Cir. 1983), the United States Court of Appeals for the District of Columbia Circuit found that section 222(f) of the INA (codified as 8 U.S.C. § 1202(f)) qualifies as a withholding statute under both parts A and B of Exemption 3.

17. Information has been withheld from three documents in this case under the visa statute, 8 U.S.C. § 1202(f). The withheld information relates directly to the issuance or refusal of a visa or permit to enter the United States in specific cases. The information, therefore, is required to be withheld under the FOIA (b)(3) exemption.

18. Because 8 U.S.C. § 1202(f) requires the Department to hold in confidence records pertaining to the issuance or refusal of visas, the Department does not release any such records, aside from records that were previously in the possession of an applicant (e.g., visa application forms). The Department has performed a line-by-line analysis of the Department of State information reviewed in this case, and, as noted below, has

released all documents that were previously in the possession of Ms. In 't Veld (here, her visa application form and supporting material), except for information added to those records by consular officials after Ms. In 't Veld's possession of them.

#### IV. DOCUMENT DESCRIPTIONS

##### Documents V1 and V2

19. Document V1 is a printout of a visa database report pertaining to Ms. In 't Veld and her visa application.

Generated July 10, 2008. Two pages. Marked "SENSITIVE BUT UNCLASSIFIED (SBU)." Denied in Full. FOIA Exemption (b)(3), under 8 U.S.C. Section 1202(f).

20. Document V2 is a printout of a different report from a visa database pertaining to Ms. In 't Veld. Generated July 10, 2008. One page. Marked "SENSITIVE BUT UNCLASSIFIED (SBU)". Denied in Full. FOIA Exemption (b)(3), under 8 U.S.C. Section 1202(f).

21. Documents V1 and V2 are printouts of reports from the non-immigrant visa section of the CCD database. All of the information in these documents pertains to the issuance or refusal of a visa to enter the United States, material which is considered confidential under Section 222(f) of the Immigration and Nationality Act, 8 USC Section 1202(f). These documents are printouts of different types of reports generated from databases

used by the Department in tracking and responding to visa applications. In current non-immigrant visa issuance procedures, much of the information that was once communicated by telegram and filed in a subject's file is now posted to a Consular Affairs database where it may be accessed by authorized persons involved with the process, whether in Washington or at an embassy or a consulate overseas. Among the typical types of reports that may be accessed in the system are, for example, ones relating to the applicant's own visa history; information about visa applicants, including persons with the same or similar name; and security advisory opinions, which are required of certain categories of visa applicants. All of the information withheld in this case is specifically protected from disclosure by 8 U.S.C. Section 1202(f) and therefore is exempt from release under FOIA exemption (b)(3). Because all of the information withheld in these database reports pertains the issuance or refusal of particular visas, there is no meaningful non-exempt information in any of these documents that may be segregated from the exempt material and released.

22. Document V3 is a Nonimmigrant Visa Application Form DS-156 that was submitted by Ms. In 't Veld. Dated June 20, 2005. Two pages. Released with excisions. FOIA Exemption (b)(3), 8 U.S.C. Section 1202(f).

23. This document is the Nonimmigrant Visa Application Form DS-156 submitted on June 20, 2005, by Ms. In 't Veld at the U.S. Embassy in Brussels, Belgium for a visa to enter the United States with a European Parliament delegation. The application contains personal identification information, such as the applicant's name, date and place of birth, occupation, name of spouse, and purpose of the intended travel to the United States. The application has been released in part. The only material excised was added by consular officials and pertains to the adjudication of the application. Such information is considered confidential under Section 222(f) of the Immigration and Nationality Act and therefore exempt from release under FOIA Exemption (b)(3). Because only the consular markings and annotations have been excised, there is no additional meaningful non-exempt information in this document that may be segregated from the exempt material and released.

#### CONCLUSION

24. In summary, the Department initiated and completed searches of all records systems reasonably expected to contain the information sought by plaintiff. Five responsive records were located. Of these, two were released in full, one was released with excisions and two were denied in full. All of the documents addressed herein have been carefully reviewed for

reasonable segregation of non-exempt information, and I have determined that no segregation of meaningful information in the withheld documents can be made without disclosing information warranting protection under the law.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 11<sup>th</sup> day of September 2008.

A handwritten signature in cursive script, reading "Margaret P. Grafeld", written over a horizontal line.

Margaret P. Grafeld