

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY INFORMATION CENTER,	)	
	)	
Plaintiff,	)	Civil Action No. 06-0096 (HHK)
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
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	)	
AMERICAN CIVIL LIBERTIES UNION, et al.,	)	
	)	Civil Action No. 06-00214 (HHK)
Plaintiff,	)	
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
	)	<b>CONSOLIDATED CASES</b>
Defendant.	)	
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**SECOND NOTICE OF SUPPLEMENTAL AUTHORITY  
IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Department of Justice (“DOJ”), through its undersigned counsel, and advises the Court of the recent Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, decision issued in The New York Times Company v. United States Department of Defense and United States Department of Justice, Civil No. 06-1553 (S.D.N.Y.) (Berman, J.), which serves as supplemental authority in support of DOJ’s pending Motion for Summary Judgment (Docket No. 29). Specifically, that decision (1) upholds DOJ’s determination to withhold the following Office of the Deputy Attorney General (“ODAG”) documents under Exemptions One and Three of FOIA, 5 U.S.C. § 553(b)(1), (b)(3): ODAG 3, 7, 8, 9, 10, 12, 15, 16, 17, 18, 19, 21, 22, 23, 24,

26, 28, 29, 30, 31, 32, 33, 34, 40, 41, 43, 44, 45, 48, 49, 51, 53, 54, 58, and 65;<sup>1</sup> (2) upholds DOJ's determination to withhold the following ODAG documents under Exemption One of FOIA, 5 U.S.C. § 552(b)(1): ODAG 1, 2, 5, 6, 38, 42, 46, 47, and 52;<sup>2</sup> and (3) upholds DOJ's determination to withhold ODAG 50 under Exemption Five of FOIA, 5 U.S.C. § 552(b)(5). Each of these documents is addressed as part of the defendant's pending summary judgment motion in this case.<sup>3</sup> A copy of Judge Berman's July 28, 2007, decision is attached for the convenience of the Court.<sup>4</sup>

Respectfully submitted,

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<sup>1</sup> ODAG 7, 26, 33, and 58 are not specifically listed in Judge Berman's decision, but are among the documents identified in that decision as "the documents described in Section D of the Bradbury Declaration." Mem. Op. at 11.

<sup>2</sup> DOJ did not claim that either ODAG 46 or 47 was subject to withholding under Exemption Three.

<sup>3</sup> As described in DOJ's reply brief in this matter (Docket No. 36 ), plaintiffs in these consolidated cases do not challenge the withholding of "draft documents and discussion about drafts and the drafting process (withheld under Exemption (b)(5))." See Pls' Opp. (Docket No. 33) at 44, n.25. Thus, ODAG 8, 10, 17, 18, 19, 26, 28, 29, 30, 43, 44, 45, 48, 49, 51, 53, 58, and 65, addressed by Judge Berman's opinion, are no longer at issue in this litigation. See Deft's Reply at 4 n.2.

<sup>4</sup> In addition to upholding the withholding of the classified documents identified in this Notice, Judge Berman's decision also makes certain findings with respect to, and orders in camera review of, certain unclassified documents withheld by DOJ. The plaintiffs in these consolidated cases did not challenge the withholding of any unclassified document, and thus, that portion of Judge Berman's did not address any document that is at issue in this litigation. The unclassified documents addressed in Judge Berman's decision, however, are part of the set of documents at issue in another case pending before this Court, Judicial Watch v. United States Dept. of Justice, Civil No. 06-00403 (D.D.C. ) (Kennedy, J.).

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          /s/ Rupa Bhattacharyya            
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