

Chairman, Appeals Review Panel  
c/o Appeals Officer, A/GIS/IPS/PP/LA  
U.S. Department of State, SA-2  
Room 8100  
Washington, D.C. 20522-8100

December 7, 2017

RE: Appeal of determination of FOIA Case No. F-2017-05062, segment DRL1

Dear Chairman,

This letter raises issues specific to the State Department's redaction of some or all of the contents of documents within its control to the Global Justice Center (GJC), a legal non-profit organization, on November 1, 2017. Per the cover letter from Eric F. Stein, Director of the Office of Information Programs and Services, a search of the records of the Bureau of Democracy, Human Rights and Labor yielded 21 responsive documents. Of these 21, 17 were released with major excisions, two were withheld in full, and only one was released in full (one is still under review by a separate department).

The stated basis for withholding information in 17 documents and withholding two in full is exemption B5, "Interagency or intra-agency communications forming part of the deliberative process." **We do not agree that these documents are exempt.** In accordance with Attorney General Holder's March 19, 2009 Memorandum for Heads of Executive Departments and Agencies, which states that "an agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption," we ask that you make a discretionary disclosure of these documents in their entirety. We also request that you release any memos or other attachments included in these correspondence documents. These materials are postdecisional communications concerning decisions already made regarding the implementation of the Mexico City Policy, and are not covered under Exemption B5. (*See F.T.C. v. Warner Comm. Inc.*, 742 F2d 1156, 1161 (9th. Cir. 1984); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151-153 (1975) (final opinions or dispositions can never be protected by Exemption 5).

GJC made this FOIA request on March 6, 2017 in order to provide the public with information pertaining to the Helms Amendment and United States abortion policy – particularly in light of the fact that such policies may place the U.S. in violation of several international laws, norms and regimes including the Geneva Conventions and the Convention against Torture. GJC is a reliable source of information and legal analysis concerning U.S. foreign policy positions concerning reproductive health, especially with regard to humanitarian aid in armed conflicts.

Based on what we can glean from the only document that has been disclosed to us in full (Document C06366466, dated May 15, 2017), these communications are discussions within the bureau regarding the details of an already-established policy disseminated by a separate bureau, and thus are not deliberative. In fact, Documents C06366452, C06366454, C06366461, and C06366465 are dated May 15, 2017 or later, **after** the dissemination of the final policy guidance.

Disclosure of internal communications concerning the Helms Amendment and the reinstatement and expansion of the Mexico City Policy (now called the "Protecting Life in Global Health

Assistance” policy) will enhance GJC’s ability to inform the public about U.S. government actions that now affect up to \$10 billion in global health funding. **As they have been released to us, these documents provide no substantive details regarding a policy that is actively endangering the lives of women and girls around the world.**

In the absence of disclosing the documents in full to the GJC, we request a list identifying all of the documents withheld in part or in full by the State Department and why each document is being withheld.

Thank you for your prompt attention to this request. Please call Akila Radhakrishnan at (212) 725-6530 ext. 203 if you have any questions. The records should be sent to Janet Benshoof, Global Justice Center, 11 Hanover Square, 6<sup>th</sup> Floor, New York, NY 10005.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Benshoof". The signature is fluid and cursive, with the first name "Janet" being more prominent than the last name "Benshoof".

Janet Benshoof  
President, Global Justice Center