

1
2
3
4
5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF COLUMBIA
9

10 FERNANDO LINARES BELTRANENA,

11 *Plaintiff,*

12 v.
13

14 U.S. DEPARTMENT OF STATE,

15 *Defendant.*
16

No. 1:09-cv-01457 BJR

ORDER GRANTING DEFENDANT’S
RENEWED MOTION FOR SUMMARY
JUDGMENT

17
18 This Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, case comes before
19 the court on Defendant’s Renewed Motion for Summary Judgment [Docket No. 27; Filed June
20 11, 2011] (“Renewed Motion”). Plaintiff responded [Docket No. 28; Filed June 23, 2011]
21 (“Opp.”), and Defendant replied [Docket No. 29; Filed July 8, 2011] (“Reply”). The Renewed
22 Motion is now ripe for resolution. At issue is the U.S. Department of State’s (the “Department”),
23 response to Plaintiff Fernando Linares Beltranena’s FOIA request for documents relating to the
24 denial of his application for a Non-Immigrant Visa (“NIV”). For the reasons set forth below, the
25 court grants Defendant’s Renewed Motion for Summary Judgment.

ORDER-1

1 **I. FACTUAL AND PROCEDURAL BACKGROUND¹**

2 Plaintiff Fernando Linares Beltranena is a resident and citizen of Guatemala and an
3 attorney who does business in the United States. On November 13, 2006, Mr. Beltranena
4 submitted a Non-Immigrant Visa application (“NIV”) to the Defendant, the United States
5 Department of State. On May 8, 2007, the Department’s Consul General in Guatemala notified
6 Mr. Beltranena that his application had been denied on the basis of a permanent ineligibility for a
7 U.S. Visa under Section 212(a)(C)(ii) of the Immigration and Nationality Act, which bars from
8 entry into this country any citizen of a foreign country who the immigration office believes has
9 played a role in the illicit trafficking of a controlled substance.
10

11 On September 12, 2007, Mr. Beltranena submitted a FOIA request to the Department for
12 the reasons and evidence related to the refusal of his 2006 Visa application, as well as the
13 reasons and evidence relating to the revocation of a US Visa that had been issued to him in 2003.
14 The Department responded on December 20, 2007, stating that it would begin the processing of
15 his request. Mr. Beltranena’s FOIA request was assigned the Department’s internal case control
16 number 200705478. By e-mail dated February 14, 2008, the Department informed Mr.
17 Beltranena that it had initiated searches in three file systems: Central Foreign Policy Records (the
18 principal record system of the Department of State; Office of Visa Services; and the U.S.
19 Embassy in Guatemala. The email contained a status report on the request:
20

21 The search in the Office of Visa Services has been completed and
22 the Office of Visa Services will be responding to you directly once
23 the material has been reviewed. The Central Foreign Policy Record
24 search has been completed, and is currently being prepared for
25 review. The search of the U.S. Embassy in Guatemala has not been
 completed.

¹ The “Factual and Procedural Background section of this Opinion has been adapted from the March 17, 2011 Memorandum Opinion in *Beltranena v. Clinton*, 770 F. Supp. 2d 175 (D.D.C. 2011) issued by Judge Paul L. Friedman.

1 On March 6, 2008, the Department's Office of Visa Services informed Mr. Beltranena that it had
2 searched its records, located, and reviewed 10 documents relating to his FOIA request. The Office of Visa
3 Services withheld nine of those documents in full and one document in part,² explaining:

4 The 10 documents in question pertain to State Department records
5 relating to the application for a visa or permit to enter the United
6 States. As such, they are separately protected from disclosure by
7 Section 222(f) [of the Immigration and Nationality Act] and are
8 exempt from release by the (b)(3) exemption to the [FOIA].
9 However, . . . we agree to release one document in part, as this
10 document originated with you or someone acting on your behalf,
11 and release would therefore not breach its confidentiality.

12 The Office of Visa Services noted that Mr. Beltranena could appeal its decision to withhold those
13 records to the Chairman of the Department's Appeals Review Panel. By letter of April 2, 2008,
14 Mr. Beltranena was informed that "[t]he search of the Central Foreign Policy Records was
15 completed, resulting in the retrieval of three documents responsive to the FOIA request. This
16 letter stated that all three of the documents would be withheld in full. The Department stated that
17 it would withhold two of the documents pursuant to FOIA's exemption for matters that are
18 "specifically authorized under criteria established by an Executive order to be kept secret in the
19 interest of national defense or foreign policy and . . . are in fact properly classified pursuant to
20 such Executive order[.]" 5 U.S.C. §552(b)(1). Additionally, the Department indicated that it
21 would withhold all three documents pursuant to FOIA's exemption prohibiting the disclosure, in
22 defined circumstances, of matters that are "specifically exempted from disclosure by statute[.]" 5
23 U.S.C. §552(b)(3).³ This letter likewise informed Mr. Beltranena of his right to appeal the
24 decision.

25 ² FOIA exempts certain types of information from disclosure. *See* Section II(A) and (C), below, for a discussion of
the application of exemptions in this case.

³ In determining what information to withhold, the Department eventually relied upon the FOIA exemptions set
forth in 5 U.S.C. §552(b)(1), 5 U.S.C. §552(b)(3), 5 U.S.C. §552(b)(5), 5 U.S.C. §552(b)(6), 5 U.S.C.

1 On April 11, 2008, Mr. Beltranena filed an appeal. Nearly a year later, on March 17,
2 2009, Mr. Beltranena inquired about the status of his appeal. The Department responded on April
3 13, 2009, stating that it expected Mr. Beltranena's appeal to be reviewed in the near future. The
4 Department also explained that because it had failed to respond to his appeal within twenty days,
5 Mr. Beltranena was deemed to have exhausted his administrative remedies, and was free to seek
6 judicial review. Mr. Beltranena filed his complaint on August 3, 2009. His complaint requests
7 declaratory and injunctive relief to compel the disclosure and release of agency records he
8 alleges were improperly withheld by the Department.
9

10 On December 8, 2009, several months after Mr. Beltranena filed his complaint, the
11 Department informed him by letter that it had completed its search of the records of the United
12 States Embassy in Guatemala City, Guatemala. According to the Department, that search
13 resulted in the retrieval of 13 documents responsive to Mr. Beltranena's FOIA request. The
14 Department informed Mr. Beltranena that eleven of those documents were being withheld in full,
15 one document was being released with excisions, and one document needed to be reviewed by
16 another agency. Furthermore, the Department indicated that additional disclosures could now be
17 made, and that it had identified additional responsive documents, specifically: (1) a document
18 previously withheld in part could now be released in full; (2) one additional document had been
19 retrieved from the Central Foreign Policy Records and was being released in part; and (3)
20 twenty-nine additional documents had been retrieved from the Office of Visa Services — twenty
21 six of which were being withheld in full, one was being released in part, and two were being
22 released in full.
23
24
25

§552(b)(7)(C), 5 U.S.C. §552(b)(7)(D), 5 U.S.C. §552(b)(7)(F). Third Declaration of Margaret P. Grafeld, ¶¶ 25-74.
See Section II(A), below, for the full text of each of these exemptions.

ORDER-4

1 On December 23, 2009, U.S. District Court Judge Paul L. Friedman ordered the
2 Department to produce to Mr. Beltranena a *Vaughn* index,⁴ along with all non-exempt,
3 responsive documents by February 12, 2010, and set a briefing schedule for dispositive motions.
4 See Minute Order, Dec. 23, 2009. On January 5, 2010, Mr. Beltranena served seven
5 interrogatories on the Department. In response, the Department filed a motion for a protective
6 order, requesting that the court prohibit the discovery sought by Mr. Beltranena, as well as any
7 other discovery in this case, pending the resolution of the Department's forthcoming motion for
8 summary judgment. The Department moved for partial summary judgment, attaching the
9 Declaration of Margaret P. Grafeld ("First Declaration of Margaret P. Grafeld") in support. In its
10 motion, the Department argued that it released all non-exempt responsive documents to Mr.
11 Beltranena, except for one document that was at that time pending review by another agency.
12 The Department subsequently filed a supplemental motion for summary judgment, addressing
13 the one outstanding document, attaching a supplemental *Vaughn* declaration from Ms. Grafeld
14 ("Second Declaration of Margaret P. Grafeld"). The Department indicated that the document at
15 issue had been reviewed by the United States Drug Enforcement Administration ("DEA") and
16 that the DEA had determined that the document was in fact properly a record of the Department.
17 The Department then reviewed the document and decided that it should be withheld in full. In
18 short, the Department identified a total of fifty-six documents that it determined to be responsive
19 to Mr. Beltranena's FOIA request. Fifty of those documents have been withheld in full; three
20 have been withheld in part and disclosed in part; and three have been released in full.
21
22
23
24
25

⁴ In *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), the D.C. Circuit court required a non-disclosing party to provide an itemized log correlating documents withheld in full or in part, with the reasons justifying the agency's refusal. This log has become known as a "*Vaughn* index."

1 On March 17, 2011, Judge Friedman issued an Opinion and Order, *Beltranena v. Clinton*,
2 770 F.Supp.2d 175 (D.D.C. 2011), granting Defendant's motion for a protective order and
3 denying both of Defendant's motions for summary judgment without prejudice. [Docket No. 27]
4 Judge Friedman reviewed the Department's two *Vaughn* declarations, and was underwhelmed by
5 the lack of detail provided by Ms. Grafeld. *Id.* at 183. For example, in these two declarations,
6 Ms. Grafeld did not describe the persons who performed the searches or how the searches were
7 performed. *Id.* Ms. Grafeld stated only that three file systems had been searched and that
8 responsive records were discovered. *Id.* Judge Friedman characterized Ms. Grafeld's statements
9 as "conclusory," and found them lacking in detail sufficient to assure the court that the
10 Department had conducted searches reasonably calculated to uncover all relevant documents. *Id.*
11 "To satisfy its burden, the Department must describe what records were searched, by whom, and
12 through what process[.]" *Id.* at 184 (internal quotation marks and citations omitted). Judge
13 Friedman deferred consideration of the exemptions claimed. *Id.* at 184, fn.5. However, he noted
14 that even assuming that the exemptions were properly applied, the declarations contained
15 statements regarding segregability that were inadequate to meet the Department's obligation in
16 this regard. *Id.* at 185-86. For many of the documents that the Department alleged were protected
17 from disclosure pursuant to an exemption, all that Ms. Grafeld offered was a brief note in the last
18 paragraph of the first declaration stating that the Department has "determined that no additional,
19 meaningful, non-exempt information can be released from the documents withheld in full or
20 part." *Id.* at 186. Judge Friedman therefore found that the Department had not met its obligation
21 to show that it had disclosed all reasonably segregable information. *Id.* Judge Friedman ordered
22 the Department to supplement its declarations to: (1) demonstrate that it performed adequate
23
24
25

1 searches for documents responsive to the request; and (2) provide detailed explanations,
2 document by document, of the Department's segregability determinations. *Id.* at 187.

3 On June 9, 2011, Defendant filed a renewed motion for summary judgment, attaching the
4 Third Declaration of Margaret P. Grafeld. This revised declaration incorporates by reference Ms.
5 Grafeld's previous declarations. The Department seeks summary judgment, contending that it
6 conducted reasonable searches for responsive records, properly withheld documents pursuant to
7 exemptions to FOIA, and complied with its obligations to produce segregable material. Mr.
8 Beltranena disagrees with each of these assertions. He seeks the court's permission to conduct
9 discovery, and asks the court to perform an *in camera* review of the documents withheld by the
10 Department. Opp. at 1. In addition, in the event that the court grants the Department's motion,
11 Mr. Beltranena seeks an award of attorneys' fees and costs. Opp. at 1.

13 On September 1, 2011, this case was reassigned to Judge Barbara Jacobs Rothstein. The
14 issues remaining for resolution on this renewed motion are as follows: (1) whether the
15 Department has demonstrated that it conducted searches that were reasonably calculated to
16 uncover all relevant, responsive documents; (2) whether the Department has adequately justified
17 its application of FOIA exemptions; (3) whether the Department has discharged its obligation to
18 provide Mr. Beltranena with all information that is "reasonably segregable;" (4) whether
19 discovery is warranted; (5) whether the court should perform an *in camera* examination of the
20 information withheld by the Department pursuant to FOIA exemptions; and finally, (6) whether
21 Mr. Beltranena is entitled to an award of attorneys' fees.
22
23
24
25

II. ANALYSIS

A. THE FREEDOM OF INFORMATION ACT AND SUMMARY JUDGMENT

FOIA imposes a duty on federal agencies to make all records promptly available to any person “upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed[.]” 5 U.S.C. §552(a)(3). FOIA is based on the premise that an informed citizenry is “vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *see also Department of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (purpose of FOIA is “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny”) (internal quotations and citation omitted). Consequently, “disclosure, not secrecy, is the dominant objective of the Act.” *Dep’t of Air Force v. Rose*, 425 U.S. at 361. At the same time, FOIA contains nine delineated exemptions that prohibit the disclosure of certain information to the public. 5 U.S.C. §552(b).

5 U.S.C. §552(b) provides, in relevant part:

This section does not apply to matters that are--

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order; . . .

(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute--

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph. . . .

1 (5) inter-agency or intra-agency memorandums or letters which
2 would not be available by law to a party other than an agency in
3 litigation with the agency;
4 (6) personnel and medical files and similar files the disclosure of
5 which would constitute a clearly unwarranted invasion of personal
6 privacy;
7 (7) records or information compiled for law enforcement purposes,
8 but only to the extent that the production of such law enforcement
9 records or information . . . (C) could reasonably be expected to
10 constitute an unwarranted invasion of personal privacy, (D) could
11 reasonably be expected to disclose the identity of a confidential
12 source, including a State, local, or foreign agency or authority or
13 any private institution which furnished information on a
14 confidential basis, and, in the case of a record or information
15 compiled by criminal law enforcement authority in the course of a
16 criminal investigation or by an agency conducting a lawful
17 national security intelligence investigation, information furnished
18 by a confidential source, . . . or (F) could reasonably be expected to
19 endanger the life or physical safety of any individual[.]

12 The focus of FOIA is “information, not documents, and an agency cannot justify
13 withholding an entire document simply by showing that it contains some exempt material.”
14 *Krikorian v. Dep't of State*, 984 F.2d 461, 467 (D.C.Cir. 1993) (citation and internal quotation
15 marks omitted). Therefore, FOIA also imposes on federal agencies a duty to provide a requester
16 all non-exempt information that is “reasonably segregable.” 5 U.S.C. § 552(b). Non-exempt
17 portions of documents must be disclosed unless they are “inextricably intertwined with exempt
18 portions.” *Mead Data Central, Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C. Cir.
19 1977) (citations and internal quotation marks omitted).

21 The court will grant a motion for summary judgment if the pleadings, the disclosure
22 materials on file, and any affidavits or declarations show that there is no genuine issue as to any
23 material fact and that the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P.
24 56(a). The moving party bears the burden of demonstrating the absence of a genuine issue of
25 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Factual assertions in the

1 moving party's affidavits or declarations may be accepted as true unless the opposing party
2 submits its own affidavits or declarations or documentary evidence to the contrary. *Neal v. Kelly*,
3 963 F.2d 453, 456 (D.C. Cir. 1992).

4 FOIA cases frequently are decided on motions for summary judgment. *Defenders of*
5 *Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009). A district court reviews *de*
6 *novo* an agency decision regarding a FOIA request. 5 U.S.C. § 552(a)(4)(B). In a FOIA case, a
7 court may award summary judgment based solely on information provided in affidavits or
8 declarations so long as the affidavits or declarations are "relatively detailed and non-conclusory,"
9 *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (citation and internal
10 quotations marks omitted), and "describe the documents and the justifications for nondisclosure
11 with reasonably specific detail, demonstrate that the information withheld logically falls within
12 the claimed exemption, and are not controverted by either contrary evidence in the record nor by
13 evidence of agency bad faith." *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir.
14 1981). An agency must demonstrate that "each document that falls within the class requested
15 either has been produced, is unidentifiable, or is wholly exempt from [FOIA's] inspection
16 requirements." *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978) (internal quotations and
17 citation omitted).
18
19

20 **B. Adequacy of the Search for Responsive Documents**

21 Mr. Beltranena challenges the adequacy of the Department's search for documents
22 responsive to his FOIA request. He argues that the Department has failed to demonstrate with
23 sufficient detail that the "scope and method of the Defendant's searches were reasonably
24 calculated to uncover all relevant documents[.]" Opp. at 8. Mr. Beltranena complains in
25 particular of the absence of references to searches of individual email accounts and workstations,

1 except for those at the U.S. Embassy in Guatemala. Opp. at 8. But as the Department states in
2 support of its renewed motion, FOIA does not require a “perfect search that uncovers every
3 responsive document that might possibly exist.” Reply at 3. In analyzing the adequacy of a FOIA
4 search, the court is guided by principles of reasonableness. *Oglesby v. Army*, 920 F.2d 57, 68
5 (D.C.Cir.1990). To obtain summary judgment on the issue of the adequacy of the records search,
6 an agency must show that, looking at the facts in the light most favorable to the requester, the
7 agency’s search was “reasonably calculated” to uncover relevant documents. *Weisberg v. DOJ*,
8 745 F.2d 1476, 1485 (D.C.Cir.1984) (citations omitted). *See also Oglesby*, 920 F.2d at 68
9 (agency must show “good faith effort to conduct a search for the requested records, using
10 methods which can be reasonably expected to produce the information requested”); *Shaw v. State*
11 *Dep’t*, 559 F.Supp. 1053, 1057 (D.D.C.1983) (agency’s search need not be exhaustive, merely
12 reasonable). To carry this burden, the agency may submit affidavits or declarations that, in
13 reasonable detail and in a non-conclusory fashion, set forth the scope and method of the agency’s
14 search. *Perry v. Block*, 684 F.2d 121, 126 (D.C.Cir.1982). In the absence of evidence to the
15 contrary, such affidavits or declarations are sufficient to show an agency’s compliance with
16 FOIA. *Id.* at 127.

19 Ms. Grafeld’s Third Declaration successfully establishes the adequacy of the
20 Department’s searches in response to Mr. Beltranena’s FOIA request. The court will not repeat
21 all of the relevant facts recounted at length by Ms. Grafeld, but it notes in particular that Ms.
22 Grafeld states that the Department conducted nine searches in four records systems, and that she
23 clearly identifies who performed the searches, as well as their qualifications and experience. She
24 also explains how the searches were performed. Third Declaration of Margaret P. Grafeld, ¶¶ 3-
25 24. She provides the terms it used to search the records systems, which included various

1 arrangements of Mr. Beltranena's name. *Id.* The court finds that Ms. Grafeld's Declaration is
2 neither conclusory nor lacking in detail. The record clearly demonstrates a good faith effort on
3 the part of the Department to respond to Mr. Beltranena's FOIA request "using methods which
4 can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.
5 Consequently, the court cannot agree with Mr. Beltranena's critique of the Department's efforts.
6 Moreover, the court finds that the Department has successfully addressed the concerns Judge
7 Friedman outlined in *Beltranena v. Clinton*, 770 F.Supp.2d 175 (D.D.C. 2011). Judge Friedman
8 expressed dismay at the lack of detail provided in the First and Second Declarations of Margaret
9 P. Grafeld, noting that she had failed to provide the requester or the court with details about who
10 performed the searches or how the searches were performed. *Id.* at 183. This has been remedied.
11 Judge Friedman explained that in order to carry its burden, "the Department must describe what
12 records were searched, by whom, and through what process[.]" *Id.* at 184 (internal quotation
13 marks and citations omitted). Ms. Grafeld has done that. The court therefore finds that the
14 Department has shown that its searches in response to Mr. Beltranena's FOIA request were
15 reasonably calculated to uncover responsive documents.
16

17
18 Mr. Beltranena believes himself entitled to propound discovery relative to the adequacy
19 of the search and review process. *Opp.* at 9-10. Discovery is generally disfavoured in FOIA
20 cases. *Judicial Watch, Inc. v. Dep't of Justice*, 185 F.Supp.2d 54, 65 (D.D.C. 2002). In the
21 instant matter, where the court has determined that the Department's search was adequate to
22 satisfy the requirements of FOIA, discovery is unnecessary.
23

24 **C. Application of FOIA Exemptions and Segregability**

25 It is incumbent upon an agency withholding information pursuant to an exemption to
justify its determination. *Beck v. DOJ*, 997 F.2d 1489, 1491 (D.C. Cir. 1993). To satisfy this

1 burden, an agency may provide a requester with a *Vaughn* index. *Schoenman v. FBI*, 573
2 F.Supp.2d 119, 133 (D.D.C. 2008). Such an index must set forth: (1) a description of each
3 document or piece of information withheld; (2) the exemption under which the information was
4 withheld; and (3) the exemption's relevance to the information. *Id.* Summary judgment may be
5 granted where the agency declarations describe "the justifications for nondisclosure with
6 reasonably specific detail, demonstrate that the information withheld logically falls within the
7 claimed exemption, and are not controverted by either contrary evidence in the record nor
8 evidence of agency bad faith." *Id.* at 133-34 (citation and internal quotation marks omitted).
9 Although the burden of proof is on the agency with respect to exemptions, agency affidavits and
10 declarations are presumed to have been made in good faith. *Id.* at 134.

12 In the instant case, the Department withheld various pieces of information based on seven
13 FOIA exemptions. Third Declaration of Margaret P. Grafeld, ¶¶ 25-74. Some pieces of
14 information have been withheld pursuant to more than one exemption. *See, e.g.*, Third
15 Declaration of Margaret P. Grafeld, ¶32 (describing a document exempt from disclosure under
16 not only 5 U.S.C. §552(b)(3), but also (b)(1), (b)(6), (b)(7)(C) and (b)(7)(F)). The great majority
17 of non-disclosures, however, are withheld pursuant to 5 U.S.C. §552(b)(3), which prohibits the
18 disclosure of matters that are "specifically exempted from disclosure by statute," if the statute
19 "requires that the matters be withheld from the public in such a manner as to leave no discretion
20 on the issue; or . . . establishes particular criteria for withholding or refers to particular types of
21 matters to be withheld[.]" In this case, the Department contends that Section 222(f) of the
22 Immigration and Nationality Act forbids it from disclosing information pertaining to the issuance
23 or refusal of Visas to the public.
24
25

Section 222(f) provides in relevant part:

1 The records of the Department of State and of diplomatic and
2 consular offices of the United States pertaining to the issuance or
3 refusal of visas or permits to enter the United States shall be
4 considered confidential and shall be used only for the formulation,
5 amendment, administration, or enforcement of the immigration,
6 nationality, and other laws of the United States, except that . . . (1)
7 in the discretion of the Secretary of State certified copies of such
8 records may be made available to a court which certifies that the
9 information contained in such records is needed by the court in the
10 interest of the ends of justice in a case pending before the court. 8
11 U.S.C. § 1202(f) (1976).

12 Indeed, that statute has already been held to qualify as a withholding statute under Exemption 3.

13 Under section 222(f), the Secretary of State has no authority to
14 disclose material to the public. In that sense the confidentiality
15 mandate is absolute; all matters covered by the statute “shall be
16 considered confidential.” The Secretary has the discretion to
17 disclose section 222(f) material to a court which certifies that the
18 information is needed in the interest of justice in a pending case,
19 but that authority does not relieve the Secretary of the mandate to
20 treat the matter as confidential. The statute thus permits the
21 Secretary to do only that which any agency subject to a
22 confidentiality requirement would be required to do if it received a
23 court order or subpoena to produce specified documents.
24 Therefore, since the discretion granted the Secretary under section
25 222(f) does not relieve him of his absolute duty to keep the matters
confidential, we hold that the statute qualifies as a withholding
statute under Exemption 3(A).

18 *Medina-Hincapie v. Department of State*, 700 F. 2d 737, 741-42 (D.C.Cir. 1983) (footnotes,
19 citations, and internal quotation marks omitted). The court finds it worthwhile to note that Mr.
20 Beltranena’s entire FOIA request, which seeks the reasons and evidence related to the refusal of
21 his 2006 Visa application, as well as the reasons and evidence relating to the revocation of a US
22 Visa that had been issued to him in 2003, is for information that is likely to be exempt pursuant
23 to 5 U.S.C. §552(b)(3).

24 Because of a general lack of detailed information, Judge Friedman declined to rule on the
25 applicability of the exemptions in this case. *Beltranena v. Clinton*, 770 F.Supp.2d 175, 184, fn. 5

(D.D.C. 2011). Now that Ms. Grafeld has provided: (1) a description of each document or piece of information withheld; (2) the exemption under which the information was withheld; and (3) the exemption's relevance to the information, the court has the information necessary to make this determination. It is clear that the Department has, in its Renewed Motion, successfully demonstrated the applicability of the claimed exemptions. For example, a description of Document G2 may be found in Ms. Grafeld's original declaration: "Document G2 is a memorandum to the consular file at Embassy Guatemala. Undated. One page. UNCLASSIFIED . . . providing additional background biographic information about Plaintiff, together with commentary on the revocation of his visa." First Declaration of Margaret P. Grafeld at ¶57, 60. Ms. Grafeld's third declaration states that the information in Document G2:

is subject to withholding in its entirety under Section 222(f) of the INA because it consists in its entirety of a record pertaining to the issuance or refusal of a visa to enter the United States. The Document has been subject to a line-by-line review for the purpose of releasing any non-exempt information; however, it contains no information that may be reasonably segregated and released, such as visa applications or other records that were previously in Plaintiff's possession.

Third Declaration of Margaret P. Grafeld at ¶29. The Department has provided a similar level of detail and information for each document containing withheld information. These declarations describe "the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor evidence of agency bad faith." *Shoenman*, 573 F.Supp.2d at 133-34. The court hereby finds that the Department has adequately demonstrated its justifications for the application of FOIA's exemptions and that the material withheld was properly exempt from disclosure under FOIA.

1 Further, the court is also of the opinion that the Department has discharged its obligation
2 to provide Mr. Beltranena with all the information that is “reasonably segregable.” 5 U.S.C. §
3 552(b). The Third Declaration of Margaret P. Grafeld carefully outlines, on a document-by-
4 document basis, the process by which the Department conducted its segregability determinations.
5 Third Declaration of Margaret P. Grafeld, ¶¶25-74. The Declaration also states with respect to
6 each piece of withheld information, that the information “contains no information that may be
7 reasonably segregated and released, such as visa applications or other records that were
8 previously in Plaintiff’s possession.” *Id.* It is especially clear that the Department has discharged
9 its obligations in this regard when comparing the Ms. Grafeld’s first declaration, which Judge
10 Friedman found to be lacking, with her third declaration. For example, Document G7 is a
11 “printout of a report generated from a consular database entitled ‘Applicant Information.’ Dated
12 January 22, 2002. One page. UNCLASSIFIED. Withheld in full. Exemption (b)(3), INA
13 §222(f).” First Declaration of Margaret P. Grafeld at ¶64. This, like the other entries in the first
14 declaration, provided no information on segregability, save a brief note in the last paragraph of
15 the first declaration stating that the Department has “determined that no additional, meaningful,
16 non-exempt information can be released from the documents withheld in full or part.” First
17 Declaration of Margaret P. Grafeld at ¶112. The Third Declaration of Margaret P. Grafeld
18 provides an altogether different level of detail. After referring the reader to the original
19 declaration for a description of the document, she states that Document G7
20
21

22 is subject to withholding in its entirety under Section 222(f) of the
23 INA because it consists in its entirety of a record pertaining to the
24 issuance or refusal of a visa to enter the United States. The
25 document has been subject to a line-by-line review for the purpose
of releasing any non-exempt information; however, it contains no
information that may be reasonably segregated and released, such
as visa applications or other records that were previously in
Plaintiff’s possession.

1 Third Declaration of Margaret P. Grafeld at ¶31. The court is satisfied that Ms. Grafeld's third
2 declaration adds this level of detail with respect to each document or piece of information
3 withheld.

4
5 Moreover, review of the segregability issue under the exemption prohibiting disclosure of
6 material for matters that are "specifically exempted from disclosure by statute[.]" 5 U.S.C. §
7 552(b)(3), differs somewhat from the review conducted in relation to FOIA's other exemptions.
8 *Goland v. CIA*, 607 F.2d 339, 350 (D.C.Cir.1979). When material is withheld under the
9 exemption contained at 5 U.S.C. § 552(b)(3), the scope of the exemption is not provided in the
10 text of FOIA itself, but rather by the disclosure-prohibiting statute made applicable by the
11 exemption. *Goland*, 607 F.2d at 350. Therefore, the court is mindful that while an agency must
12 provide a "detailed justification" for the non-segregability of any material withheld, an agency is
13 also constrained by the need to avoid compromising "the secret nature of potentially exempt
14 information." *Mead Data*, 566 F.2d at 261. In *Medina-Hincapie v. Department of State*, 700 F.2d
15 737, 742 (D.C.Cir.1983), a case involving the same exemption and the same withholding statute,
16 the D.C. Circuit held that Section 222(f) effectively prevents visa applicants from obtaining any
17 materials beyond those that had at one time or another been in the applicant's possession. *See*
18 *Medina-Hincapie*, 700 F.2d at 742 n. 20, 744 (noting that the Department of State had, prior to
19 the court's decision, returned several documents to the applicant after it had determined that they
20 had previously been in the applicant's possession and thus were not covered by the
21 confidentiality limitation of Section 222(f)).

22
23
24 Mr. Beltranena requests that the court exercise its authority to order *in camera* review of
25 the documents to scrutinize the Department's determinations. Although FOIA authorizes the
court to examine the contents of withheld agency records "*in camera* to determine whether such
ORDER-17

1 records or any part thereof shall be withheld,” 5 U.S.C. § 552(a)(4)(B), our Circuit has
2 established that the “decision whether to perform *in camera* inspection is left to the ‘broad
3 discretion of the trial court judge,” ’ *Lam Lek Chong v. DEA*, 929 F.2d 729, 735 (D.C.Cir.1991)
4 (quoting *Carter v. U.S. Dep’t of Commerce*, 830 F.2d 388, 392 (D.C.Cir.1987)). “In camera
5 inspection may be appropriate in two circumstances: when agency affidavits are insufficiently
6 detailed to permit meaningful review of exemption claims, and when evidence of agency bad
7 faith is before the court.” *Lam Lek Chong*, 929 F.2d at 735. Neither circumstance is present here.
8 The court is satisfied that the Third Declaration of Margaret P. Grafeld Declaration adequately
9 describes the segregability analysis undertaken and provides sufficiently detailed justifications
10 for the non-segregability of each document. The court is also confident that there is no bad faith
11 on the part of the Department in this case. There is no evidence in the record to suggest bad faith;
12 to the contrary, the Department has provided the court with evidence of a review that was
13 thorough, albeit belated. Therefore, the court declines to exercise its discretion to order an *in*
14 *camera* review.
15

16 **D. Attorneys’ Fees**

17
18 Finally, Mr. Beltranena seeks an award of attorneys’ fees. Opp. at 12. He claims a right to
19 an assessment of fees and costs pursuant to 5 U.S.C. § 552, which provides for fees in FOIA
20 cases to a party who substantially prevails. Mr. Beltranena asserts that he has substantially
21 prevailed regardless of the result of the Department’s Renewed Motion, because after he filed his
22 complaint, the Department identified additional documents responsive to his FOIA request, two
23 of which were released to him in full. Opp. at 12. The Department, on the other hand,
24 characterizes its release of two additional documents as a sign of its good faith, rather than
25 evidence that Mr. Beltranena has substantially prevailed. Reply at 8. *See Landmark Legal Found.*

1 v. *EPA*, 272 F. Supp.2d 59, 63 (D.D.C. 2003) (emphasizing that the “continuing discovery and
2 release of documents does not prove that the original search was inadequate, but rather shows
3 good faith on the part of the agency that it continues to search for responsive documents”).
4 Although the court appreciates that the delays encountered by Mr. Beltranena were frustrating, it
5 agrees with the Department’s analysis. In a case such as this one, where the Department has
6 performed adequate searches for documents responsive to Mr. Beltranena’s FOIA request, has
7 properly applied exemptions and has presented evidence of a carefully-conducted segregability
8 analysis, an award of attorneys’ fees to Mr. Beltranena would be inappropriate.
9

10 **III. CONCLUSION**

11 Mr. Beltranena filed a Motion for Hearing on October 12, 2011. The court finds that this
12 matter has been adequately briefed, and that a hearing would not be helpful. Therefore, the court
13 hereby DENIES Plaintiff’s Motion for Hearing. For all the foregoing reasons, the court hereby
14 GRANTS Defendant’s Renewed Motion for Summary Judgment, and DISMISSES this case in
15 its entirety, with prejudice.
16

17 DATED this 21st day of October, 2011.
18

19 **A**
20

21 ~~Barbara~~ Barbara Jacobs Rothstein
22 U.S. District Court Judge
23
24
25