

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

CAMPAIGN LEGAL CENTER,

Plaintiff,

v.

**UNITED STATES DEPARTMENT
OF JUSTICE,**

Defendant.

Civil Action No. 18-cv-1771 (TSC)

MEMORANDUM OPINION

Plaintiff Campaign Legal Center (“CLC”) sued the U.S. Department of Justice (“DOJ”), seeking to compel responses to its February 2, 2018, Freedom of Information Act request. Specifically, CLC seeks records pertaining to a letter Arthur Gary sent to the Census Bureau on December 12, 2017, requesting that it add a Citizenship question to the 2020 Census Questionnaire (hereinafter the “Gary Letter”).

On June 1, 2020, the court partly granted and partly denied each party’s cross-motion for summary judgment. ECF Nos. 29; 30. DOJ appealed the portion of the court’s order pertaining to the deliberative privilege process, and in the meantime, the parties submitted renewed cross-motions for summary judgment. ECF Nos. 48; 52.

On May 17, 2022, the D.C. Circuit reversed the court’s order in part and remanded. *Campaign Legal Ctr. v. United States Dep’t of Just.*, 34 F.4th 14 (D.C. Cir. 2022). The Circuit found that the process of drafting the Gary Letter to request the addition of a citizenship question in a way that protected the DOJ’s litigation and policy interests involved the exercise of policymaking discretion, and so the letter’s content itself was a relevant final decision for

purposes of FOIA's deliberative process privilege. *Id.* at 18. The Circuit thus held that DOJ properly withheld non-final drafts of the letter, and that most of DOJ's redactions of associated emails were lawful. *Id.* The Circuit also found that the record failed to establish whether several redacted emails were pre-decisional and deliberative, and remanded for this court to reexamine those documents. *Id.* at 18–19.

The mandate issued on July 11, 2022, ECF No. 57, and on August 7, 2022, the court instructed the parties to meet and confer, and file a Joint Status Report setting forth their respective positions on the impact of the Circuit's decision, *see* Min. Order (Aug. 7, 2022). The court then held a status conference on August 19, 2022, to discuss the parties' positions.

Upon consideration of the Circuit's decision, the parties' respective positions on the import of that decision on their pending motions, and for reasons explained at the August 19, 2022, status conference, the court will DENY WITHOUT PREJUDICE DOJ's Motion for Summary Judgment, ECF No. 48, and CLC's Cross Motion for Summary Judgment, ECF No. 52.

The parties shall meet and confer and file a joint proposed briefing schedule for renewed cross motions for summary judgment by August 23, 2022, at 5:00 pm.

Date: August 19, 2022

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge