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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

RENO NEWSPAPERS, INC., a Nevada, corporation,	)	3:09-CV-683-ECR-RAM
	)	
Plaintiff,	)	
	)	<u>Order</u>
vs.	)	
	)	
UNITED STATES PAROLE COMMISSION	)	
and UNITED STATES DEPARTMENT OF	)	
JUSTICE,	)	
	)	
Defendants.	)	
	)	

This is an action filed under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, challenging Defendants' decision to redact and withhold certain documents in response to Plaintiff's FOIA request.

Now pending are a motion for summary judgment (#13) filed by Plaintiff on July 21, 2010 and a cross-motion for summary judgment (#17) filed by Defendants on September 8, 2010. The motions are ripe, and we now rule on them.

**I. Factual and Procedural Background**

On September 4, 2009, Plaintiff Reno Newspapers Inc., a Nevada Corporation doing business as RGJ Legal Affairs ("RGJ") reported that RGJ employee Martha Bellisle submitted a written FOIA request to the United States Parole Commission (the "USPC"). (Compl. ¶ 11 (#1).) On September 16, 2009, the USPC's FOIA specialist responded to RGJ, enclosing 19 pages of documents with certain portions

1 redacted and stating that the USPC was withholding 92 pages in full  
2 pursuant to 5 U.S.C. § 552(b)(6) and 552(b)(7). (Id. ¶¶ 13, 14.)  
3 On October 5, 2009, counsel for RGJ responded in writing,  
4 specifically requesting a written index with respect to each of the  
5 withheld documents so that "RGJ would be afforded a meaningful  
6 opportunity to evaluate and potentially contest the USPC's action in  
7 withholding the requested documents." (Id. ¶ 15.) Also on October  
8 5, 2009, RGJ appealed the decision of the USPC's FOIA specialist to  
9 the Chairman of the USPC. (Id. ¶ 16.) The administrative appeal  
10 reiterated RGJ's request for a written index with respect to each of  
11 the withheld documents. (Id.) By a letter dated October 19, 2009,  
12 the Chairman of the USPC denied the administrative appeal and  
13 refused to provide the RGJ with a written index with respect to the  
14 withheld documents. (Id. ¶ 17.)

15 On November 23, 2009, Plaintiff filed the complaint (#1) in the  
16 present lawsuit. On January 29, 2010, the FOIA specialist conducted  
17 further review of the Commission's records and sent 32 redacted  
18 pages to Plaintiff. (Ds.' Opp. and MSJ at 4 (#16).) On April 7,  
19 2010, Defendants provided an additional 44 pages of records, 38  
20 pages of which contain redactions. (P.'s MSJ at 10 (#13).) On May  
21 25, 2010, Plaintiff appealed the April 7, 2010 disclosure to the  
22 Chairman of the Commission. (Id. at 10.) On May 26, 2010,  
23 Defendants provided the RGJ with an index of withheld and redacted  
24 documents. (P.'s MSJ at 10 (#13).) This index indicated that over  
25 500 documents were withheld in full. (Id.)

26 On July 21, 2010, Plaintiff filed a motion for summary judgment  
27 (#13) asserting that documents requested by Plaintiff from  
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1 Defendants are not protected under FOIA. On September 8, 2010,  
2 Defendants filed an opposition to Plaintiff's motion for summary  
3 judgment and cross-motion for summary judgment (#16). On October 8,  
4 2010, Plaintiff filed a reply (#20) in support of Plaintiff's motion  
5 for summary judgment and in opposition to Defendants' cross-motion  
6 for summary judgment.

7 On January 21, 2011, this Court filed an order (#24) granting  
8 Defendants fourteen days to file an amended Vaughn index with the  
9 Court and granting Plaintiffs fourteen days thereafter to submit a  
10 response. On February 7, 2011, Defendants filed their amended  
11 Vaughn index (#25) (the "Amended Index"). On February 22, 2011,  
12 Plaintiffs filed their response (#26) to Defendants' Amended Index.

## 13 14 II. Summary Judgment Standard in FOIA Cases

15 Summary judgment allows courts to avoid unnecessary trials  
16 where no material factual dispute exists. N.W. Motorcycle Ass'n v.  
17 U.S. Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994). The court  
18 must view the evidence and the inferences arising therefrom in the  
19 light most favorable to the nonmoving party, Bagdadi v. Nazar, 84  
20 F.3d 1194, 1197 (9th Cir. 1996), and should award summary judgment  
21 where no genuine issues of material fact remain in dispute and the  
22 moving party is entitled to judgment as a matter of law. FED. R.  
23 CIV. P. 56(c). Judgment as a matter of law is appropriate where  
24 there is no legally sufficient evidentiary basis for a reasonable  
25 jury to find for the nonmoving party. FED. R. CIV. P. 50(a). Where  
26 reasonable minds could differ on the material facts at issue,  
27 however, summary judgment should not be granted. Warren v. City of

1 Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 116 S.Ct.  
2 1261 (1996).

3 "Summary judgment is the procedural vehicle by which nearly  
4 all FOIA cases are resolved." Los Angeles Times Commc'ns, LLC v.  
5 Dep't of the Army, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006). The  
6 court conducts a de novo review of an agency's response to a FOIA  
7 request. 5 U.S.C. § 552(a)(4)(B); U.S. Dep't of Justice v. Reporters  
8 Comm. for Freedom of Press, 489 U.S. 749, 755 (1989). The usual  
9 summary judgment standard detailed above does not extend to FOIA  
10 cases because the facts are rarely in dispute and courts generally  
11 need not resolve whether there is a genuine issue of material fact.  
12 Minier v. Cent. Intel. Agency, 88 F.3d 796, 800 (9th Cir. 1996).

13 Instead, in deciding whether summary judgment is appropriate in  
14 a FOIA case, the court must first evaluate "whether the agency has  
15 met its burden of proving that it fully discharged its obligations  
16 under the FOIA." Id. The agency must demonstrate that it has  
17 conducted a search reasonably calculated to uncover all relevant  
18 documents. Zemansky v. U.S. Env'tl. Prot. Agency, 767 F.2d 569, 571  
19 (9th Cir. 1985). Second, if the agency satisfies its initial  
20 burden, the court must determine "whether the agency has proven that  
21 the information that it did not disclose falls within one of the  
22 nine FOIA exemptions." Los Angeles Times Commc'ns, 442 F. Supp. 2d  
23 at 894. We have previously held that the appropriate standard for  
24 summary judgment in FOIA cases is as follows: "[i]n a suit brought  
25 to compel production, an agency is entitled to summary judgment if  
26 no material facts are in dispute and if it demonstrates that each  
27 document that falls within the class requested either has been

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1 produced or is wholly exempt from the Act's inspection  
2 requirements." Nevada v. United States DOE, 517 F. Supp. 2d 1245 (D.  
3 Nev. 2007).

### 4 5 III. Discussion

#### 6 A. Vaughn Index Requirement

7 As detailed in our order (#24) dated January 21, 2011,  
8 government agencies seeking to withhold documents requested under  
9 FOIA are required to supply the opposing party and the court with a  
10 "Vaughn index," identifying "each document withheld, the statutory  
11 exemption claimed, and a particularized explanation of how  
12 disclosure of the particular document would damage the interest  
13 protected by the claimed exemption." Wiener v. F.B.I., 943 F.2d  
14 972, 977 (9th Cir. 1991). In meeting its burden, "the government  
15 may not rely upon 'conclusory and generalized allegations of  
16 exemptions.'" Church of Scientology of Cal. v. U.S. Dep't of the  
17 Army, 611 F.2d 738, 742 (9th Cir. 1980) (quoting Vaughn v. Rosen,  
18 484 F.2d 820, 826 (D.C. Cir. 1973)).

19 A Vaughn index should satisfy the following requirements:  
20 "(1) The index should be contained in one document, complete in  
21 itself; (2) The index must adequately describe each withheld  
22 document or deletion from a released document; (3) The index must  
23 state the exemption claimed for each deletion or withheld document,  
24 and explain why the exemption is relevant." Voinche v. F.B.I., 412  
25 F. Supp. 2d 60, 65 (D. D. C. 2006).

26 The FOIA creates a presumption in favor of disclosure of  
27 government documents. Dept. of the Air Force v. Rose, 425 U.S. 352,

1 360-61 (1976). An agency may withhold a document "only if the  
2 information contained in the document falls within one of the nine  
3 statutory exemptions to the disclosure requirements set forth in §  
4 552(b)." Bowen v. United States Food and Drug Admin., 925 F.2d  
5 1225, 1226 (9th Cir. 1991). These exemptions are to be narrowly  
6 construed. Cal-Almond, Inc. v. United States Dep't of Agriculture,  
7 960 F.2d 105, 107 (9th Cir. 1992); United States Dep't of Justice v.  
8 Julian, 486 U.S. 1, 7 (1988).

9 Furthermore, even if part of a document is FOIA exempt, the  
10 agency still must disclose any portions which are not exempt - i.e.,  
11 all "segregable" information - and must address in its Vaughn index  
12 why the remaining information is not segregable. The district court  
13 must make specific factual findings on the issue of segregability to  
14 establish that the required de novo review of the agency's  
15 withholding decision has in fact taken place. Wiener, 943 F.2d at  
16 988. The Court may not "simply approve the withholding of an  
17 entire document without entering a finding on segregability . . .  
18 ." Id., citing Church of Scientology, 611 F.2d at 744.

19 The Ninth Circuit Court of Appeals has not stated that there is  
20 a general presumption of good faith in an agency's affidavits,  
21 although other courts have applied such a presumption. See, e.g.,  
22 Jones v. FBI, F.3d 238, 242 (6th Cir. 1994) (citing United States  
23 Dep't of State v. Ray, 502 U.S. 164, 179 (1991) "We generally accord  
24 Government records and official conduct a presumption of  
25 legitimacy."); Ingle v. United States Dep't of Justice, 698 F.2d  
26 259, 265 (6th Cir. 1983)(quoting Cox v. United States Dep't of  
27 Justice, 576 F.2d 1302, 1312 "If the Government fairly describes the

1 content of the material withheld and adequately states its grounds  
2 for nondisclosure, and if those grounds are reasonable and  
3 consistent with the applicable law, the district court should uphold  
4 the government's position." ).

5 B. Adequacy of Defendants' Amended Vaughn Index

6 Our order (#24) dated January 21, 2011 found Defendants'  
7 original Vaughn index deficient and granted Defendants fourteen days  
8 within which to file an amended Vaughn index that (i) states with  
9 greater specificity why an exemption is relevant to a particular  
10 document; (ii) clearly states whether any information contained in a  
11 withheld document is segregable; and (iii) clarifies whether  
12 Defendants had law enforcement or administrative functions with  
13 respect to any exemptions claimed under 5 U.S.C. § 552(b)(7)(C).  
14 Defendants filed their Amended Index (#25) with the Court on  
15 February 22, 2011.

16 The Amended Index is a seventy-entry index divided into two  
17 categories: material from the Commission and the material from the  
18 United States Probation Office (the "USPO"). Each category is  
19 further divided into two subcategories: documents released in part  
20 and documents withheld in full.

21 i. Form of Amended Index

22 In their response, Plaintiffs allege that the Amended Index  
23 fails as a proper Vaughn index because "it is not in affidavit form  
24 and/or sworn to." (P.'s Resp. at 3 (#26).) Plaintiffs correctly  
25 state that both the Ninth Circuit Court of Appeals and the D.C.  
26 Circuit Court of Appeals have issued opinions contemplating that a  
27 Vaughn index may be in affidavit form. Wiener v. F.B.I., 943 F.2d  
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1 972, 979 (9th Cir. 1991); Vaughn v. Rosen, 484 F. 2d 820, 826 fn. 20  
2 (D.C. Cir. 1973). Here, however, Plaintiffs incorrectly conflate  
3 the courts' finding that a Vaughn index may take the form of an  
4 affidavit with a holding that a Vaughn index must take such form.  
5 Indeed, the Ninth Circuit Court of Appeals has held that while "[a]n  
6 affidavit may be necessary to verify that the agency has nothing  
7 more in its possession than what it has described," the "form of  
8 disclosure is not critical." Fiduccia v. United States Dep't Of  
9 Justice, 185 F.3d 1035, 1043-44 (9th Cir. 1999). Rather, "what  
10 matters is the substantive adequacy of the disclosures, in whatever  
11 form...[a]ny form - letter, Vaughn index, affidavit, copy of  
12 redacted document - may be adequate or inadequate, depending on the  
13 circumstances." Id. at 1044.

14 We therefore find that Plaintiff's contention that the Amended  
15 Index fails as a proper Vaughn index because it is not in affidavit  
16 form, nor was it submitted through sworn testimony by Defendants,  
17 fails.

18 ii. Exemptions Claimed In Amended Index

19 In their original Vaughn index, Defendants did not in every  
20 case explain why an exemption listed with respect to a withheld  
21 document was relevant. (Order (#24).) As such, the original index,  
22 as a whole, failed to demonstrate a "logical connection between the  
23 information and the claimed exemption . . . ." Salisbury v. United  
24 States, 690 F.2d 966, 970 (D.C. Cir. 1982).

25 In its response (#26) to Defendants' Amended Index, Plaintiff  
26 alleges that the Amended Index is deficient in that it fails to  
27 explain (i) as to the deliberative process exemption claims, why  
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1 release of the documents would adversely impact Defendants' conduct  
2 in the future; and (ii) as to the privacy claims, how any particular  
3 document could potentially result in harassment, embarrassment or  
4 unwarranted public attention to either parolee Garrido or third  
5 parties.

6 We find that Defendants' Amended Index successfully addresses  
7 the deliberative process exemption claims pursuant to 5 U.S.C. §  
8 552(b)(5) and the law enforcement exemption claims pursuant to 5  
9 U.S.C. § 552(b)(7), but does not sufficiently segregate unprotected  
10 information for which a privacy exemption is claimed under 5 U.S.C.  
11 § 552(b)(6).

12 a. Exemption Pursuant to 5 U.S.C. § 552(b)(5) - The  
13 Deliberative Process Privilege

14 The "deliberative process" exemption under 5 U.S.C. § 552(b)(5)  
15 ("Exemption 5") exempts from public disclosure confidential inter-  
16 agency memoranda on matters of law or policy. 5 U.S.C. § 552(b)(5);  
17 See Nat'l Wildlife Fed'n v. United States Forest Serv., 861 F.2d  
18 1114 (9th Cir. 1988). To qualify for Exemption 5 under the  
19 "deliberative process" privilege, "a document must be *both* (1)  
20 'predecisional' or 'antecedent to the adoption of agency policy' and  
21 (2) 'deliberative,' meaning 'it must actually be related to the  
22 process by which policies are formulated.'" Nat'l Wildlife Fed'n,  
23 861 F.2d at 1117. These requirements recognize that the underlying  
24 purpose of the "deliberate process" privilege to "'protect[] the  
25 consultative functions of government by maintaining the  
26 confidentiality of advisory opinions, recommendations, and  
27 deliberations comprising part of a process by which governmental

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1 decisions and policies are formulated.'" Id. at 1118 (quoting Jordan  
2 v. United States Dep't of Justice, 591 F.2d 753, 774 (D.C. Cir.  
3 1974). This protection encourages the frank and open discussion of  
4 ideas and therefore improves the inter- and intra-agency decision-  
5 making process.

6 Plaintiff contends that Defendants have not alleged any facts  
7 to show that the deliberative process would be compromised by  
8 showing what facts Defendants relied upon in deciding that Garrido  
9 was a suitable candidate for parole. (P.'s Resp. at 12 (#26).) We  
10 disagree. Where Defendants have claimed exemption under 5 U.S.C. §  
11 552(b)(5) for a particular document, they have identified such  
12 document as both predecisional and deliberative. For example, with  
13 respect to item 23 on the Amended Index, Defendants claim Exemption  
14 5 protection on the basis that the document "includes the USPC's  
15 analysis of the case and tentative recommendation by the hearing  
16 examiner for the parole decision." (Am. Index at 17 (#25).) That  
17 the recommendation was tentative indicates that the document was  
18 predecisional, and that it includes an analysis and recommendation  
19 indicates that the document was deliberative.

20 Plaintiff emphasizes the lapse in time between the creation of  
21 the requested documents and Plaintiff's FOIA request for such  
22 documents as if this lapse is material to Defendant's privacy  
23 interest in the information contained therein. (P.'s Resp. at 11  
24 (#26).) FOIA protection, however, does not come with an expiration  
25 date. To impose a time limit on the protection for communications  
26 involving an agency's deliberative process would effectively

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1 eliminate the incentive for the frank and open discussion of ideas  
2 that Exemption 5 is intended to engender.

3 b. Exemption Pursuant to 5 U.S.C. § 552(b)(6) -  
4 Clearly Unwarranted Invasion of Personal Privacy and Defendants'  
5 Duty to Segregate Unprotected Information.

6 5 U.S.C. § 552(b)(6) exempts from disclosure under FOIA  
7 "personnel and medical files and similar files, the disclosure of  
8 which would constitute a clearly unwarranted invasion of personal  
9 privacy" ("Exemption 6"). The threshold question here is whether  
10 the requested documents constitute "personnel and medical and  
11 similar files." The Ninth Circuit Court of Appeals has held that  
12 personnel files "ordinarily contain information such as 'where [an  
13 individual] was born, the names of his parents, where he has lived  
14 from time to time, his high school or other school records, results  
15 of examinations, [and] evaluations of his work performance."  
16 Dobronski v. F.C.C., 17 F.3d 275, 277 (9th Cir. 1994), quoting Dep't  
17 of the Air Force v. Rose, 425 U.S. 352, 377 (1976). The Ninth  
18 Circuit Court of Appeals has held, for example, that there is no  
19 blanket exemption for presentence investigation reports under FOIA.  
20 Julian v. United States Dep't of Justice, 806 F.2d 1411 (9th Cir.  
21 1986). However, the Ninth Circuit has noted in dicta that Exemption  
22 6 may be triggered when a request for a presentence report is made  
23 by a third party, as opposed to by the subject of the report. Id. at  
24 1417, n. 4.

25 We have previously ruled that the language of Exemption 6  
26 expresses "a carefully considered congressional policy favoring  
27 disclosure which instructs the court to tilt the balance in favor of  
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1 disclosure." Associated Gen. Contractors, Etc. v. United States,  
2 Etc., 488 F. Supp. 861 (D. Nev. 1980).

3       The Ninth Circuit Court of Appeals has held that courts should  
4 consider the following four factors in determining whether an  
5 invasion of privacy is "clearly unwarranted" for purposes of 5  
6 U.S.C. § 552(b)(6):

7       "(i) the plaintiff's interest in disclosure; (ii) the public  
8 interest in the disclosure; (iii) the degree of the invasion of  
9 personal privacy; and (iv) the availability of any alternate means  
10 of obtaining the requested information." Dobronski v. F.C.C., 17  
11 F.3d 275 (9th Cir. 1994). See also Church of Scientology of  
12 California v. United States Dep't of Army, 611 F.2d 738 (9th Cir.  
13 1979).

14       In their Amended Index, Defendants describe as personnel,  
15 medical or similar files withheld in full pursuant to Exemption 6  
16 documents such as Garrido's parole application, a USPC assessment  
17 prepared before a parole hearing, the USPC's initial parole hearing  
18 summary, bank statements, and monthly parole supervision reports  
19 submitted by Garrido to the USPO Probation Officer.

20       In its response (#26) to the Amended Index, Plaintiff contends  
21 that "it defies credulity to believe" that there is no information  
22 contained in the documents withheld by Defendants that would not  
23 violate a privacy interest of Garrido or a third party. (P's Resp.  
24 at 10 (#26).) 5 U.S.C. § 552(b) directs that "[a]ny reasonably  
25 segregable portion of a record shall be provided to any person  
26 requesting such record after deletion of the portions which are  
27 exempt. . . ." A district court may not "simply approve the

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1 withholding of an entire document without entering a finding on  
2 segregability." Weiner, 943 F.2d at 988.

3 In evaluating the merits of applying Exemption 6 to the  
4 documents withheld in whole by Defendants, we have considered the  
5 four factors set forth by the Ninth Circuit Court of Appeals in  
6 Dobronski. Both Plaintiff and the public have strong interest in  
7 the disclosure of information regarding Defendants' decision that  
8 Garrido was a suitable candidate for parole, as the motivating  
9 factors behind this decision could indicate a deficiency in our  
10 nation's parole system. Garrido's privacy interest in the withheld  
11 documents appears to range from a clear privacy interest in medical  
12 (Am. Index ¶ 61 (#26)) and bank records (Id. ¶ 58) to a more  
13 nebulous one in documents such as a USPO Probation Officer's  
14 chronological reports (Id. ¶ 54). With respect to the fourth prong  
15 of the Dobronski test, there does not appear to be an alternate  
16 source of information for Defendants' reasoning in determining that  
17 Garrido was eligible for parole.

18 Given Plaintiff's and the public's strong interest in the  
19 Defendants' determination that Garrido was eligible for parole and  
20 the congressional policy in favor of disclosure, we are inclined to  
21 agree with Plaintiffs that the Amended Index (#25) fails to  
22 adequately justify Defendants' failure to disclose any "reasonably  
23 segregable portion" of the following documents withheld in full on  
24 the basis of Exemption 6, listed by paragraph number as they appear  
25 on the Amended Index (#25): ¶ 22-¶ 32, ¶ 54-¶ 56, ¶ 59, ¶ 62, ¶ 65,  
26 ¶ 66. 5 U.S.C. § 552(b). We therefore order Defendants to release

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1 to Plaintiff all segregable information contained in the foregoing  
2 documents.

3 iii. Clarifying Whether Defendants had Law Enforcement or  
4 Administrative Functions with respect to any Exemptions Claimed  
5 Under 5 U.S.C. § 552(b)(7).

6 5 U.S.C. § 552(b)(7) encompasses six different exemptions that  
7 shield from public disclosure information about individuals where  
8 the "information [was] compiled for law enforcement purposes"  
9 (collectively, "Exemption 7"). The threshold issue in any Exemption  
10 7 claim is "whether the agency involved may properly be classified  
11 as a 'law enforcement' agency." Church of Scientology of California  
12 v. United States Dep't of Army, 611 F.2d 738, 748 (9th Cir. 1979).  
13 "The term 'law enforcement purpose' has been construed to require an  
14 examination of the agency itself to determine whether the agency may  
15 exercise a law enforcement function." Id. An agency with "a clear  
16 law enforcement mandate, such as the FBI, need only establish a  
17 'rational nexus' between enforcement of a federal law and the  
18 document for which an exemption is claimed." Id.; see also  
19 Rosenfeld v. United States Dep't of Justice, 57 F.3d 803, 808 (9th  
20 Cir. 1995). However, "an agency which has a 'mixed' function,  
21 encompassing both administrative and law enforcement functions, must  
22 demonstrate that it had a purpose falling within its sphere of  
23 enforcement authority in compiling the particular document." Id.

24 In their Amended Index, Defendants allege that each of the USPC  
25 and USPO has a singular law enforcement purpose rather than a mixed  
26 law enforcement and administrative function. (Am. Index at 1 (#25).)  
27 Defendants ground this allegation in a reading of the Parole

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1 Commission and Reorganization Act ("PCRA"), Pub. L. 94-233, 90 Stat.  
2 219-231, codified at 18 U.S.C. § 4201 (1976), that establishes a  
3 statutory law enforcement function for the USPC and USPO. Absent  
4 compelling evidence presented by Plaintiff to the contrary, we are  
5 persuaded that Defendants are agencies with law enforcement mandates  
6 for purposes of Exemption 7.

7 In its response (#26), Plaintiff alleges that Defendants'  
8 declarations of their law enforcement purposes are insufficient to  
9 address the threshold of Exemption 7. According to Plaintiff,  
10 Defendants rely solely on their status as law enforcement agencies  
11 as the premise from which we should conclude that any record  
12 maintained by Defendants was compiled for law enforcement purposes.  
13 We disagree. As to each entry in the Amended Index for which  
14 Defendants assert Exemption 7, Defendants provide a description of  
15 how the particular document has a rational nexus to Defendants' law  
16 enforcement activities.

17 We therefore find that Defendants have properly asserted  
18 Exemption 7 on the Amended Index.

19 C. Admissibility of Special Report

20 Attached to Plaintiff's motion (#13) for summary judgment  
21 is a Special Report by the Office of the Inspector General of the  
22 State of California (#13-2) (the "Special Report") concerning the  
23 California Department of Corrections and Rehabilitation's  
24 supervision of parolee Garrido. In their opposition to Plaintiff's  
25 motion for summary judgment and cross-motion for summary judgment  
26 (#16), Defendants challenge the admissibility of the Special Report  
27 on various evidentiary grounds: (i) that the Special Report is

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1 hearsay; (ii) that no foundation has been laid to establish that the  
2 California Inspector General is familiar with the federal parole  
3 system or with Garrido's case in particular; (iii) that the  
4 California Inspector General's statements in the Special Report are  
5 not subscribed as true under penalty of perjury; (iv) that the  
6 Special Report is not relevant to the issues raised in this FOIA  
7 action; and (v) that the Special Report has not been properly  
8 authenticated. (Ds.' Resp. at 8-9 (#16).)

9       We find that Defendants' first and third challenges to the  
10 Special Report fail because the Special Report was submitted not "to  
11 prove the truth of the matter asserted," but to demonstrate the  
12 public's perception and legitimate concern as to Garrido's parole  
13 and supervision. See, e.g., Dep't of the Air Force v. Rose, 425  
14 U.S. 352, 360 (1976)(newspaper excerpts and press releases allowed  
15 to illustrate the extent of public concern). Defendants' second  
16 challenge to the Special Report is likewise not well taken. The  
17 Special Report indicates that the California Inspector General  
18 reviewed Garrido's federal parole files and based his comments on  
19 Defendants' performance on such review. Defendants' fourth  
20 challenge to the Special Report, alleging that it is not relevant to  
21 the issue at hand, also fails. The State of California's  
22 investigation into Garrido's parole and supervision indicates that  
23 there may be a public interest in a similar investigation at the  
24 federal level as well. Finally, Defendants argue that the Special  
25 Report has not been properly authenticated. Plaintiff correctly  
26 notes that Federal Rule of Evidence 901 requires only evidence  
27 "sufficient to support a finding that the matter in question is what

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1 its proponent claims." (P's Reply at 7 (#20).) The Special Report  
2 bears the signature of the California Inspector General, which  
3 renders the document self-authenticating pursuant to Federal Rule of  
4 Evidence 902(2).

5 Defendants' objections to the admission of the Special Report  
6 are therefore not well taken. We find that the Special Report is  
7 admissible for the purpose of demonstrating the public's perception  
8 and legitimate concern as to Garrido's parole and supervision.

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#### IV. Conclusion

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In FOIA cases, the burden is on the government to show (i) that withheld documents and redacted portions of documents are exempt from disclosure; and (ii) that portions of withheld documents that are not FOIA-exempt are not segregable from the remainder of the document. These showings are made by the production of a Vaughn index, which must (i) detail each withheld document and each deletion from a released document; (ii) state the exemption claimed for each deletion or withheld document; (iii) explain why such exemption is relevant; and (iv) state why a document held in full was not segregable.

We have found that the Amended Index properly asserts the deliberative process exemption claims pursuant to 5 U.S.C. § 552(b)(5) and the law enforcement exemption claims pursuant to 5 U.S.C. § 552(b)(7), but does not sufficiently segregate unprotected information for which a privacy exemption is claimed under 5 U.S.C. § 552(b)(6). As such, Defendants will be required to release to Plaintiff all segregable information contained in the following

1 documents as listed on the Amended Index (#25): ¶ 23, ¶ 24, ¶ 26, ¶  
2 27, ¶ 28, ¶ 29, ¶ 30, ¶ 32, ¶ 54, ¶ 55, ¶ 59, ¶ 62, ¶ 65. 5 U.S.C. §  
3 552(b).

4 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's motion (#13)  
5 for summary judgment is **GRANTED** in part and **DENIED** in part: **GRANTED**  
6 as to Defendants' claims of exemption under 5 U.S.C. § 552(b)(6)  
7 with respect to the segregable information contained in the  
8 following documents as listed on the Amended Index (#25): ¶ 22-¶ 32,  
9 ¶ 54-¶ 56, ¶ 59, ¶ 62, ¶ 65, ¶ 66; and **DENIED** as to Defendants'  
10 claims of exemption under 5 U.S.C. § 552(b)(5), 5 U.S.C. § 552(b)(7)  
11 and 5 U.S.C. § 552(b)(6) with respect to the following documents as  
12 listed on the Amended Index (#25): ¶ 33, ¶ 34, ¶ 57, ¶ 58, ¶ 60, ¶  
13 61, ¶ 63, ¶ 64, ¶ 67-¶ 70.

14 **IT IS HEREBY FURTHER ORDERED** that Defendants' cross-motion  
15 (#17) for summary judgment is **GRANTED** in part and **DENIED** in part:  
16 **GRANTED** as to Defendants' claims of exemption under 5 U.S.C. §  
17 552(b)(5), 5 U.S.C. § 552(b)(7) and 5 U.S.C. § 552(b)(6) with  
18 respect to the following documents as listed on the Amended Index  
19 (#25): ¶ 33, ¶ 34, ¶ 57, ¶ 58, ¶ 60, ¶ 61, ¶ 63, ¶ 64, ¶ 67-¶ 70;  
20 and **DENIED** as to Defendants' claims of exemption under 5 U.S.C. §  
21 552(b)(6) with respect to the following documents as listed on the  
22 Amended Index (#25): ¶ 22-¶ 32, ¶ 54-¶ 56, ¶ 59, ¶ 62, ¶ 65, ¶ 66.

23 **IT IS HEREBY FURTHER ORDERED** that Defendants shall, within  
24 twenty-one (21) days, provide Plaintiff with all segregable  
25 information for which Defendants made a claim of exemption pursuant  
26 to 5 U.S.C. § 552(b)(6) with respect to the segregable information  
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1 contained in the following documents as listed on the Amended Index  
2 (#25): ¶ 22-¶ 32, ¶ 54-¶ 56, ¶ 59, ¶ 62, ¶ 65, ¶ 66.

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DATED: March 28, 2011.

Handwritten signature of Edward C. Reed in black ink.

UNITED STATES DISTRICT JUDGE