

HONORABLE RICHARD A. JONES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOPHAT TES,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
STATE, *et. al.*,

Defendants.

Case No. 2:17-cv-00175-RAJ

ORDER

I. INTRODUCTION

This matter is before the Court on Plaintiff’s Motion to Produce Complete Administrative Record. Dkt. # 28.

II. BACKGROUND

This is an APA action where Plaintiff challenges the U.S. Citizenship and Immigration Services’ (USCIS) decision to revoke Form I-130 Petitions filed on behalf of his purported wife and her two daughters. Dkt. # 14 at 2. Plaintiff claims that there is missing information from the produced administrative record, including notes that were relied upon in revoking the petitions. Dkt. # 28 at 5 (referencing “refusal notes”). In responding to the motion, Defendants attach a partially-redacted eleven-page document consisting of three State Department memoranda that were considered in adjudicating Plaintiff’s I-130 petitions. Dkt. # 33 at 9; Dkt. # 34-1. Defendants claim that this supplemental material completes the record. Dkt. # 33 at 12. Defendants also claim that

1 the motion should be stricken for failure to adhere to this Court’s meet-and-confer
2 requirement. *Id.* at 7. Plaintiff did not file an reply brief in response to the motion.

3 **III. DISCUSSION**

4 The administrative record “consists of all documents and materials directly or
5 indirectly considered by agency decision-makers and includes evidence contrary to the
6 agency’s position.” *Thompson v. Dept. of Labor*, 885 F.2d 551, 555 (9th Cir. 1989); *see*
7 *also Portland Audubon Soc’y v. Endangered Species Cmte.*, 984 F.2d 1534, 1548 (9th Cir.
8 1993) (“When it appears the agency has relied on documents or materials not included in
9 the record, supplementation is appropriate.”). A petitioner shall be permitted to inspect the
10 record of a proceed which constitutes the basis for a decision, subject to certain exceptions.
11 8 C.F.R. § 103.2. On the record before the Court, it appears that Defendants have made a
12 supplemental disclosure encompassing Plaintiff’s request, subject to redactions made
13 pursuant to the “law enforcement privilege.” Dkt. # 33 at 9-12; *see also* Dkt. # 35 (detailing
14 documents that were not considered in the decision-making process and therefore not
15 produced). Although neither recognized nor rejected by the Ninth Circuit, the law
16 enforcement privilege allows agencies to keep information related to law enforcement
17 techniques and procedure from disclosure. *See, e.g., Commonwealth of Puerto Rico v.*
18 *United States*, 490 F.3d 50, 64 (1st Cir. 2007) (recognizing a qualified privilege for law
19 enforcement techniques and procedures); *In re Dep’t of Investigation of the City of N.Y.*,
20 856 F.2d 481, 483–84 (2d Cir. 1988). Because Plaintiff does not challenge the assertion
21 of the law enforcement privilege, the Court accepts Defendants’ explanation for the
22 redactions and finds the parties’ issue resolved. Accordingly, the Court **DENIES**
23 Plaintiff’s motion as moot.

24 As Defendants aver, this is the type of issue that could have easily been resolved
25 without judicial intervention. Dkt. # 33 at 7. Both parties are hereby on notice that any
26 subsequent motion that fails to comply with the meet and requirement will be stricken.

1 **IV. CONCLUSION**

2 For the reasons stated above, the Court **DENIES** Plaintiff's motion as moot. Dkt.
3 # 28.

4
5 DATED this 20th day of May, 2019.

6 
7

8 The Honorable Richard A. Jones
9 United States District Judge