

Ancient Coin Collectors Guild, et al. v. United States Department of State,
Civil Action No. 07-2074 (RJL) (D.D.C.)

DEFENDANT’S INFORMAL VAUGHN INDEX

Document numbers below refer to the documents as processed internally, although because of the way in which some records were administratively processed in this case, as noted below a single document number sometimes encompasses multiple records (e.g., multiple emails, or a packet of similar letters). This occasional clustering of multiple records into a single document number was of administrative effect only and has no effect on what material within those records has been released and what withheld. There is no non-exempt material in these records that can be declassified (where applicable), meaningfully segregated from the exempt material, and released.

CULTURAL PROPERTY ADVISORY COMMITTEE REPORTS

In response to Plaintiffs’ FOIA requests, the Department has withheld certain committee reports. These reports contain various redactions of material withheld on different and sometimes multiple bases. Below is a listing of the reports containing withheld material and the bases for withholding such material.

A. Withheld Committee Reports.

1. Case Number 200402941, Document E1 is the “Report of the Cultural Property Advisory Committee on the Request from the Government of the Republic of Cyprus Recommending U.S Import Restrictions in Certain Categories of Archaeological Material,” dated March 19, 1999. The document is forty-three pages in length. Originally unclassified, the document currently classified CONFIDENTIAL in part under Executive Order (“E.O.”) 12958,¹ Section 1.4(b) and (d). The document has been withheld in part under FOIA Exemptions (b)(1), (b)(3), (b)(5) and (b)(6).

2. Case Number 200402941, Document E2 is the “Report of the Cultural Property Advisory Committee on the Request from the Government of the Republic of Cyprus,” dated December 4, 1998. The document is nine pages in length. Originally unclassified, the document is currently classified CONFIDENTIAL in part under E.O 12958, Section 1.4(b) and (d). The document has been withheld in part, under Exemptions (b)(1), (b)(3) and (b)(5).

3. Case Number 200402941, Document E3 is the “Cultural Property Advisory Committee Report on the Proposal to Extend the 1999 Emergency Action on Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus,” dated August 2003. The document is fourteen pages in length. Originally unclassified, the document is currently classified CONFIDENTIAL in part under E.O 12958, Section 1.4(b) and (d). The document has been withheld in part under FOIA exemptions (b)(1), (b)(3) and (b)(5).

¹ All references to Executive Order 12958 are to that Order as amended by Executive Order 13292.

4. Case number 200704168, Document E1 and Case number 200706194, Document E11 are duplicates. Each document is a copy of a “Report of the Cultural Property Advisory Committee on the Proposal to Extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Cyprus Concerning the Imposition of Import Restrictions on Pre-Classical and Classical Archeological Material and Byzantine Period Ecclesiastical and Ritual Ethnological Materials,” dated May 7, 2007. The documents are twenty-six pages in length. Originally unclassified, the documents are currently classified CONFIDENTIAL in part under E.O. 12958, Section 1.4(b) and (d). The documents have been withheld in part under FOIA exemptions (b)(1), (b)(3), (b)(5) and (b)(6).

5. Case number 200600298, Document C1 is “The Report of the Cultural Property Advisory Committee on the Proposal to Extend the Agreement Between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archeological Material Representing the Pre-Classical and Imperial Roman Periods of Italy” dated November 2005. The document is twenty-six pages. Originally UNCLASSIFIED, the document is currently classified CONFIDENTIAL in part under E.O. 12958, Section 1.4(b) and (d). The document has been withheld in part under FOIA exemptions (b)(1), (b)(3), (b)(5) and (b)(6).

6. Case 200600298, Document C2 presents the views of certain Committee members regarding the Committee discussion and recommendations presented in Document C1 in the same case number. The document is two pages. One page is dated October 28, 2005 and bears the name of one Committee member as author. The second page was dated November 10, 2005 and bears the name of another Committee member as its author. This document contains two individual Committee members’ views and recommendations on issues related to the Committee recommendation-developing process. These pages were submitted to the Department with the Committee report that is document C1. These views do not embody the Department’s final decision on the matter discussed by these Committee members, and accordingly these minority views are pre-decisional and deliberative. As such, they are exempt from disclosure under FOIA exemption (b)(5), and there is no meaningful factual information that may be segregated and released.

B. Bases for Withholding the Aforementioned Committee Reports.

Except as otherwise noted above, the type of information withheld from the aforementioned committee reports falls into one or more of the following categories:

Information withheld under FOIA Exemption (b)(1). All of these Committee reports contain information that was provided by officials of the Government of Italy (GOI) or the Government of the Republic of Cyprus (GOC), and the Department has an express understanding with those governments that such information is to be held in confidence. Some of this information was contained in the original requests made to the United States under the 1970 UNESCO Convention, while other information was communicated to the Department separately (*e.g.*, in interviews with Bureau of Educational and Cultural Affairs (ECA) staff). The sensitivity of these documents derives from, in part, the identification of known vulnerabilities of, and instances of looting at, sensitive archaeological sites, any physical means of protecting such sites, and specific law enforcement actions against looting and smuggling.

Furthermore, the Department has informed the GOC of the pending FOIA litigation and has asked for the GOC's views as to the continued sensitivity of the underlying information. The GOC has repeatedly notified the Department that it expects the confidential status of these materials to remain unchanged pending its ongoing consideration of the issue. Accordingly, release of this material without the consent of the government, which provided it in confidence, could reasonably be expected to cause damage to our relations with that country. Therefore, the material is foreign government information that concerns our foreign affairs, and is currently and properly classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958, as amended. As such, the classified material in these documents is exempt from release under FOIA exemption (b)(1).

Information withheld under FOIA Exemption (b)(3). Additionally, the Department has withheld material from these Committee reports under exemption (b)(3), citing 19 U.S.C. § 2605 (Section 306 of the Convention on Cultural Property Implementation Act (the Act)), particularly subsections (h), (i)(1), and (i)(2). Much of the material withheld under exemption (b)(3) in these reports has also been withheld under exemptions (b)(1), as described above, and/or (b)(5), as described below.

All of the material withheld in these documents under § 2605 concerns a matter about which closed Committee proceedings took place and either consists of information provided to and considered by the Committee, or conveys the views of the Committee and of Committee members regarding the recommendations it is tasked with making about the foreign governments' requests. These views and this information, where withheld under exemption (b)(3), were discussed by the Committee during closed proceedings only. Consequently, such material must be withheld under § 306(h) of the Act, because its disclosure would reveal sensitive factual information or sensitive Committee deliberations, and public release of the information would compromise the U.S. government's negotiations. Indeed, the sensitivity of this information is demonstrated by the determination to close the portions of the Committee meetings at which such issues could be raised and, to the extent that this information originated with foreign governments, by those governments' communication to the Department of its expectations that such material would not be publicly released.

Further, some of this information was provided in confidence to ECA staff or directly to the Committee by archaeologists, curators, collectors, dealers, auction house specialists, and other individuals in the private sector. The expectation of confidentiality was necessitated by the content of the information these individuals could and did provide, including sensitive information about the quantity, quality, and objects of looting. Accordingly, such material has been withheld under § 306(i)(1) of the Act.

Also, portions of the withheld information in these documents contain sensitive facts and analysis provided in confidence by ECA employees to the Committee for its nonpublic consideration and discussion in closed sessions, including information originally provided in confidence by the GOC to ECA staff. This material has been withheld on the basis of CIA § 306(i)(2) of the Act.

Information withheld under FOIA Exemption (b)(5). These reports also recount discussions among Committee members concerning whether or not to recommend that import

restrictions be imposed or extended, and contain the specific recommendations made by the Committee, as well as (in some reports) summaries of similar Committee discussions and recommendations resulting from earlier closed meetings. As the Committee is composed of special government employees (per 18 U.S.C. § 202(a)) who are charged with providing nonbinding recommendations to the Department for consideration in the Department's subsequent final decisions, this material constitutes pre-decisional deliberative process material (with some inextricably intertwined facts that cannot be meaningfully segregated), which is exempt from disclosure under FOIA exemption (b)(5).

This exemption has also been applied in these reports to withhold summaries that were culled by the Committee from the much larger universe of facts presented to it such that their release would harm the Committee's and the Department's deliberative process by reflecting the discretionary distillation of information and exercise of judgment as to what issues are most relevant to the pre-decisional findings and recommendations.

Information withheld under FOIA Exemption (b)(6). The names of various private individuals who could not be assumed to be representing the position of a specific organization have been withheld from these reports to protect their privacy. The names of individuals who were either officials (as in the case of Committee members) or persons that appear to have represented organizations with an institutional interest in Committee affairs have been released. Other persons providing information would have had an expectation of privacy and were not informed that their identities would be publicly available, and accordingly the release of their names would constitute a clearly unwarranted invasion of their personal privacy.

In document E1 of case number 200704168, the only withholding under exemption (b)(6) is of information that would effectively identify an individual who provided frank comments on aspects of archeological training. Revealing the identity of this person might result in personal or professional disadvantage to him or her and would constitute a clearly unwarranted invasion of his or her privacy. Furthermore, it is in the public interest of the United States to be able to receive such information candidly, to facilitate good decision-making on these sometimes sensitive issues. The information is therefore exempt from release under FOIA exemption (b)(6). The information withheld under exemption (b)(6) from this document has also been withheld under exemption (b)(3), in accordance with the above description.

OTHER DOCUMENTS

A. Documents Withheld in Case 200501372.

The following documents were provided to the United States by the Government of the People's Republic of China (PRC) pursuant its formal request under Article 9 of the 1970 UNESCO Convention, with the express understanding that the U.S. government would hold them in confidence. As with many such requests, sensitive aspects of the information involve such issues as the known vulnerabilities of and instances of looting at sensitive archaeological sites, any physical means of protecting such sites, and specific law enforcement actions against looting and smuggling. The premature public release of such information could reasonably be expected to damage our relations with the PRC and frustrate potential negotiations that may ensue with the PRC regarding import restrictions. The information is currently and properly

classified under E.O. 12958 Section 1.4(b) and (d) and therefore exempt from release under FOIA exemption (b)(1).

Documents E1, E2, E2A, E2B, E2C, E2D together constitute the “Application Filed by the Government of the People’s Republic of China According to the 1970 Convention of the United Nations Educational, Scientific and Cultural Organization to the Government of the United States for the Restriction of Import of Cultural Relics in Order to Protect Its Cultural Heritage.” These documents total 160 pages in length, and are composed of 50, 30, 21, 19, 16 and 24 pages, respectively. These documents were originally and are currently classified CONFIDENTIAL under E.O. 12958 Section 1.4(b) and (d).

Document E1 is a largely narrative explanation of background related to the looting of Chinese archaeological sites and the smuggling of illicitly acquired objects, including examples of artifacts passing to markets abroad. Document E2 describes Chinese metal artifacts susceptible to illicit export while Documents E2A, E2B, E2C, and E2D deal with other types of artifacts, such as ceramics, stone items, painting and calligraphy, and sundry articles (which includes silks, lacquers, and other artifacts from ancient China).

B. Documents Withheld in Case 200704596.

The Department withheld one document in Case 200704596, namely, Document E1. This document is a one page diplomatic note from the GOC, dated January 19, 2007. Originally not marked with classification, the document is currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. Accordingly, the document has been withheld in full under FOIA exemption (b)(1).

This formal diplomatic communication from the GOC relates to the then-forthcoming January 2007 meeting of the Committee. The GOC has expressed a desire that this note be considered confidential, pending its further review of the matter. Release of this document at this juncture despite the GOC’s objections could reasonably be expected to harm U.S. relations with that government. As such, the document is currently and properly classified under Section 1.4 (b) and (d) of E.O. 12958 and is therefore exempt from release under FOIA exemption (b)(1).

C. Documents Withheld in Case 200704168.

In addition to the material in the Committee report described above, the Department withheld the following other documents in Case 200704168 for the reasons stated below.

1. Document E2. The materials comprising this document were also responsive to request number 200706194, and were treated in that case as separate documents. Consequently, the information withheld in these materials is the same information that was withheld for the same reasons in documents E2, E3, E7, E8, E9, E10, and E11 in case number 200706194 as described below.

2. Document E3 is a one-page e-mail with a 21-page draft attachment, from an ECA employee to employees of the U.S Customs and Border Protection (CPB) at the Department of Homeland Security (DHS), copying another ECA employee. The document is dated May 29,

2007. The document was originally and is currently UNCLASSIFIED. The document has been withheld in part under FOIA exemptions (b)(2), (b)(5), (b)(6), and (b)(7)(C).

This document is an email transmitting a draft of a notice of proposed rulemaking that was edited by Department of State employees. The deliberative process privilege was cited as the basis for the (b)(5) exemption, which was applied to withhold portions of this email and the entirety of the attached draft document. The draft contained comments detailing various issues of concern that the Department had regarding the draft and as such were deliberative in nature, and the portions of the email withheld under exemption (b)(5) also describe the nature of edits made within the attachment. Additionally, the draft was not a final draft and was thus pre-decisional. The “low 2” information withheld pursuant to exemption (b)(2) consists of administrative markings such as case file numbers, record identification codes and other internal CBP codes. Names, email addresses, direct dial phone numbers and fax numbers of government employees have been redacted pursuant to FOIA exemption (b)(6) because release would be considered a clearly unwarranted invasion of privacy, given the privacy interest in protecting these personnel from unnecessary, unofficial questioning, harassment, stigmatization, and the fact that release of this material would not shed any light on how the agencies involved perform their statutory duties. This information is also withheld pursuant to exemption (b)(7)(C) because the email was created as part of law enforcement efforts to implement and enforce cultural property restrictions and is considered to be a record created for law enforcement purposes.

3. Document E4 is a report from the Law Office of the Republic of Cyprus, dated January 2007. The document is three pages. The document was originally not marked as classified, but is currently classified Confidential under E.O 12958 Section 1.4(b) and (d). The document has been withheld in full under FOIA exemption (b)(1).

This document details efforts by the GOC working with INTERPOL and foreign police authorities to identify and repatriate certain Cypriot archaeological material. The document was provided to the U.S. in confidence, and the GOC has expressly requested that it remain so. Release of the document would risk damage to our relations with the GOC and to our collaborative efforts to control illegal traffic in antiquities. The information is therefore currently and properly classified under E.O. 12958 Section 1.4 (b) and (d) and therefore exempt from release under FOIA exemption (b)(1).

4. Document E7 is composed of six separate e-mails between a private individual and an ECA employee. These emails are dated between January 17 and February 5, 2007, and collectively consist of twelve pages. These emails were originally and are currently UNCLASSIFIED. These documents have been withheld in part under FOIA exemptions (b)(3) and (b)(6).

These emails contain some information that was provided in confidence by Danielle Parks, an individual in the private sector, to a staff member of ECA’s Cultural Heritage Center in connection with the then-upcoming Committee meetings regarding potential extension of the bilateral cultural property agreement with the GOC. As this information may not be disclosed under § 306(i)(1) of the Act, it has been withheld under FOIA exemption (b)(3).

Additionally, some names and other personal information such as telephone numbers have been withheld. Release of this information might result in harassment or other clearly unwarranted invasion of personal privacy, and absent a public interest in its disclosure the information is exempt from release under FOIA exemption (b)(6).

5. Document E10 is a 17-page compilation of eight letters and e-mails dated between January 29 and February 5, 2007. These documents were originally and are currently UNCLASSIFIED. The documents have been withheld in part under FOIA exemption (b)(6).

The only information withheld in document E10 is a single private e-mail address. Release of that information would be a clearly unwarranted invasion of personal privacy, with no countervailing public interest in disclosure, and the information is therefore exempt from release under FOIA exemption (b)(6).

6. Document CA1 is a three-page letter, dated February 3, 2007, from Dr. Danielle Parks to the chairman of the Committee. The document was originally and is currently UNCLASSIFIED. This document was withheld in part under FOIA exemption (b)(6). The only excision in this document is the author's home telephone number. Although Dr. Parks is deceased, the telephone number may continue to be used by others in her household, and there is no public interest whatsoever in its disclosure. The information has therefore been withheld under FOIA exemption (b)(6).

7. Document EA1 is a one-page chain of three e-mails among Department employees, all dated July 13, 2007. This document was withheld in part under FOIA exemption (b)(5). The only information withheld in this document is a comment in the earliest of the three e-mails describing and explaining the reasoning behind some edits that were made in a draft of a diplomatic note to the Republic of Cyprus. The comment is part of the pre-decisional exchange of views on what the final text of the proposed note to the GOC on Cypriot coins should be. Accordingly, it is part of the Department's internal deliberative process and exempt from disclosure under FOIA exemption (b)(5).

8. Document EA1A is the draft diplomatic note attached to document EA1, above. The document is two pages in length and dated July 13, 2007. The document has been withheld in full under FOIA Exemption (b)(5). This draft diplomatic note contains some editing marks and a blank space marking where text needed to be filled in later. As an internal draft, it constitutes a pre-decisional recommendation on the text of the note and is exempt from disclosure under FOIA exemption (b)(5) as part of the deliberative process.

9. Document EA2 is an e-mail, one page in length, from ECA employees to an employee in the Department's Office of the Legal Adviser, dated July 6, 2007. The document has been withheld in full under FOIA exemption (b)(5).

This email forwards an attached draft of a diplomatic note (document EA2A, described below) responding to a note from the GOC, which is also attached to the email (document EA3, described below). This email seeks legal approval of the draft and continues specific previous deliberations about how best to respond to the GOC note. It also includes a proposed schedule of events related to the draft note. This email is part of the pre-decisional deliberative process.

involving the content and manner of correspondence between the U.S. and the GOC on the issue of importation of Cypriot items into the U.S. Furthermore, it is information shared by a Department employee with a Department lawyer, in confidence, for the purpose of obtaining legal advice and approval. As such, this email contains information subject to the attorney-client and deliberative process privileges. Accordingly, it is exempt from disclosure under FOIA exemption (b)(5).

10. Document EA2A is a draft diplomatic note forwarded by Document EA2. The document is two pages, and prospectively marked with the date July 16, 2007. The document has been withheld in full under FOIA Exemption (b)(5). The draft of a communication to be sent to a foreign government was one of the attachments subject to the consultations in document EA2. As a draft, it constitutes a pre-decisional legal recommendation regarding the text of the proposed diplomatic note and is, therefore, exempt from disclosure under FOIA exemption (b)(5) because it is protected by the deliberative process and attorney-client privileges.

11. Document EA8A is an undated one-page document from the Director of the Department of Antiquities in the GOC. Originally unclassified, the document is currently classified CONFIDENTIAL under Sections 1.4(b) and (d) of E.O. 12958. The document has been withheld in full under FOIA exemption (b)(1). This document expresses specific views of a GOC official regarding the protection of Cypriot heritage in the form of archaeological materials from looting and illegal export from the island. It was provided to the Department in confidence as an attachment to document EA8 (described below), and the GOC has expressly indicated that this document should be maintained in confidence. Its release without the GOC's consent could therefore be harmful to our relations with the GOC. The document is currently and properly classified CONFIDENTIAL under E.O. 12958, Sections 1.4 (b) and (d) and is exempt from release under FOIA exemption (b)(1).

12. Documents EA3, EA3A, EA6, EA8, EA9A and EA12A

- a. Document EA3 is a diplomatic note from the Cypriot Ministry of Foreign Affairs to the U.S. Embassy in Nicosia, Cyprus, dated January 19, 2007, and is one page in length.
- b. Document EA3A is a Greek-language communication from the Cypriot Ministry of Foreign Affairs to its embassy in Washington, dated January 19, 2007, and is one page in length.
- c. Document EA6 is an email from the Second Secretary and Consul of the Cypriot Embassy in Washington, to an ECA employee, dated January 19, 2007, and is one page in length.
- d. Document EA8 is an e-mail from the Second Secretary and Consul of the Cypriot Embassy in Washington to an ECA employee, dated February 5, 2007, and is one page in length.
- e. Document EA9A is a letter from an official of the Department of Antiquities of the Cypriot Ministry of Communications and Works to an ECA employee, dated May 14, 2007, and is one page in length.

- f. Document EA12A is a letter sent on behalf of an official of the Department of Antiquities of the Cypriot Ministry of Communications and Works, to an ECA employee, dated July 10, 2007, and is one page in length.

The above six documents (EA3, EA3A, EA6, EA8, EA9A and EA12A) are currently and properly classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. These documents have been withheld in full under FOIA exemption (b)(1).

All the above documents are diplomatic communications sent by officials of the GOC to the U.S. government in confidence. They all constitute foreign government information, the unauthorized disclosure of which is presumed to cause damage to U.S. national security under Section 1.1 (c) of E.O. 12958. Moreover, disclosure by the U.S. government of information provided in confidence by a foreign government would inevitably cause damage to relations with that government. Any such disclosure would also damage U.S. foreign relations by causing the foreign government concerned and, perhaps, other governments, to hesitate to share information with the U.S. government in the future. Furthermore, the foreign government has expressly indicated and reiterated its expectation that these documents would be maintained in confidence. Accordingly, these foreign government documents are currently and properly classified CONFIDENTIAL under Section 1.4 (b) and (d) of E.O. 12958 and are exempt from disclosure under FOIA exemption (b)(1).

13. Documents EA7, EA11, EA11A, and EA13

- a. Document EA7 is a memorandum from ECA's Cultural Heritage Center to the Embassy of the Republic of Cyprus, dated June 14, 2007. The document is two pages (each page of which was counted as a separate document in internal processing and in the letters sent to plaintiff).
- b. Document EA11 is an e-mail from an ECA employee to an official in the Department of Antiquities of the Ministry of Communications and Works of the GOC, dated July 6, 2007, transmitting document EA11A. The document is one page in length.
- c. Document EA11A is a letter from an ECA employee to an official in the Department of Antiquities of the Ministry of Communications and Works of the GOC, dated July 16, 2007. The document is five pages in length. (No material has been withheld from the last three pages of this document.)
- d. Document EA13 is an email from an ECA employee to an official in the Department of Antiquities of the Ministry of Communications and Works of the GOC, dated July 10, 2007, and is one page in length.

The above four documents (EA7, EA11, EA11A, and EA13) are currently and properly classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. These documents have been withheld in full under FOIA exemption (b)(1).

All the above four documents are parts of the diplomatic exchange of communications between Department officials and officials of the GOC on questions pertaining to the importation into the U.S. of Cypriot archaeological and/or ethnological material, an exchange that the GOC understood to be, and has expressly requested be, treated as confidential. The disclosure of these documents could damage relations between the U.S. and Cyprus. They are, therefore, currently and properly classified CONFIDENTIAL under Section 1.4 (b) and (d) of E.O. 12958 and exempt from disclosure under FOIA exemption (b)(1).

14. Documents EA15, EA17, EA18, EA20, EA20A, EA21, EA23, and EA23A
 - a. Document EA15 is an e-mail from an individual commenter addressed to the Committee, dated February 6, 2007, and is one page in length.
 - b. Document EA17 is an e-mail from another individual commenter to the Committee, dated February 6, 2007, and is two pages in length.
 - c. Document EA18 is an e-mail from an executive of the Cyprus-U.S. Chamber of Commerce to the Committee, dated February 6, 2007, and is one page in length.
 - d. Documents EA20 and EA20A are two parts of one e-mail to the Committee (an essentially blank cover email and its attachment) from two individuals who identify themselves in the letter as “writers,” dated February 6, 2007, and is two pages in length.
 - e. Document EA21 is an e-mail to the Committee from an individual who identifies himself in the letter as a “writer-historician” (*sic*), dated February 6, 2007, and is one page in length.
 - f. Document EA23 is an essentially blank e-mail transmitting Document EA23A, a letter to the Committee from an art history student. The transmitting e-mail is dated February 6, 2007. The letter is undated. The two documents are collectively two pages in length.

All of the above eight documents (EA15, EA17, EA18, EA20, EA20A, EA21, EA23, and EA23A) have been released in part. These documents have been withheld in part under FOIA exemption (b)(6).

All the above documents are communications from members of the public to the Department commenting on the inclusion in an agreement between the U.S. and Cyprus of provisions restricting the importation into the U.S. of Cypriot coins and other antiquities. The only information withheld from these documents is personal information, such as the names, titles (where unrelated to the substance of the communication or where release would risk identification of a withheld name), email addresses, and telephone numbers of the senders. The disclosure of this information would further no significant public interest beyond what has already been released from these documents and thus would constitute a clearly unwarranted invasion of personal privacy. All of these documents are denied in part under FOIA exemption (b)(6).

D. Documents Withheld in Case 200706194.

1. Documents E2, E3, E6, E7, E8, E9, E10. These seven documents are a one-page Action Memorandum, with five attachments collectively 25 pages in length, to the Assistant Secretary of ECA from the ECA Principal Deputy Assistant Secretary. The full packet was administratively treated as a single document (Document E2) in Case No. 200704168, and as separate documents in this case. The withheld material is the same in both cases, specifically:

a. Document E2 is the aforementioned “Action Memorandum” itself and also its first attachment (Tab A). This document is UNCLASSIFIED, and is three pages in length. The document has been withheld in part under FOIA exemption (b)(5). This Action Memorandum recommends approval of the extension of the Memorandum of Understanding (MOU) with the GOC concerning the restriction on importing certain types of objects into the United States. Material withheld from the first attachment to the memorandum (entitled “Additional Background”) recounts the Committee’s specific recommendations and provides additional reflections and comments on these recommendations for consideration by the Assistant Secretary, including candid reflection on the process and a summary of relevant views provided by attorneys in the Department’s Office of the Legal Adviser. The withheld material is predecisional and deliberative, and also subject in part to the attorney-client privilege, and thus exempt from release under FOIA exemption (b)(5).

b. Document E3 is entitled “Determinations to Extend Memorandum of Understanding Between the Government of the United States and the Government of the Republic of Cyprus Concerning the Imposition of Import Restrictions on Pre-Classical and Classical Archeological Objects and Byzantine Ecclesiastical and Ritual Ethnological Material.” The document was signed and dated May 30, 2007 by then-Assistant Secretary Dina H. Powell. The document is five pages in length. Originally UNCLASSIFIED, the document is currently classified CONFIDENTIAL in part under E.O. 12958 Section 1.4(b) and (d). The document has been withheld in part under FOIA exemptions (b)(1) and (b)(3).

This document represents the formal agency decision to extend an international agreement and the full reasoning for that decision. The only withholdings in this document are five paragraphs of the formal determinations to extend the agreement between the U.S. government and the GOC concerning import restrictions on relevant objects. The withheld sections summarize the specific factual considerations underlying each of the Assistant Secretary’s determinations pursuant to the Act (that the patrimony of Cyprus is in jeopardy from pillage of the relevant material, that Cyprus has acted consistently with the 1970 UNESCO Convention, that U.S. import restrictions would be beneficial, and that they would be in the international interest). This material relates to matters involved in closed Committee proceedings (the Committee having been tasked with providing the Assistant Secretary with recommendations on the exact same issues), and its disclosure would compromise U.S. negotiating objectives or bargaining positions in future cultural property issues with the GOC and other countries, including by chilling other governments’ willingness to engage with the U.S. by making similar requests. Accordingly, this material has been withheld under exemption (b)(3), based on § 306(h) of the Act and, to the extent the information originated in confidence from the private sector or the GOC for provision to the Committee, § 306(i)(1) and (2) of the Act, respectively.

Similarly, because some of this information in these same paragraphs originates in materials that were provided by the GOC in confidence, and which the GOC has expressly requested continue to remain in confidence, disclosure of the information could reasonably be expected to harm U.S. foreign relations with the GOC and future international negotiations. Accordingly, material in these paragraphs is currently and properly classified based on Section 1.4(b) and (d) of E.O. 12958, such that it must be withheld under FOIA exemption (b)(1) as well.

c. Document E6 is a letter from the then-Acting Assistant Secretary of State for European Affairs to the Assistant Secretary for ECA. The letter is signed but undated, and is one page in length. The document is UNCLASSIFIED, and has been withheld in full under FOIA exemption (b)(5). This three-paragraph letter contains the Bureau of European Affairs' (EUR's) views and rationale for its recommendation on the aforementioned MOU extension. There is no factual information that is segregable from the expression of EUR's viewpoints and recommendations. As deliberative recommendations provided by one Department bureau to another for assistance in the latter's final decision on the matter, this material is internal, predecisional, deliberative process information and, therefore, exempt from release under FOIA exemption (b)(5).

d. Document E7 is a letter dated April 30, 2007, from the Ambassador of the Embassy of Cyprus in Washington to the EUR Assistant Secretary at the Department. The letter is two pages in length. Originally not marked with classification, the document is currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. The document has been withheld in full under FOIA exemption (b)(1).

This letter from the ambassador concerns the renewal of the aforementioned MOU. It was sent with the expectation that the information contained in the letter would be treated in confidence. Release of this information despite the request of the GOC that it remain confidential could undermine our future negotiations with Cyprus and could be reasonably expected to damage relations with that country. The letter is currently and properly classified CONFIDENTIAL under Section 1.4 (b) and (d) of E.O. 12958 and is therefore exempt from disclosure under FOIA exemption (b) (1).

e. Document E8 is a diplomatic note from the Cyprus Ministry of Foreign Affairs to the U.S. Embassy in Nicosia, dated January 19, 2007. The document is one page. Originally not marked with classification, the document is currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. The document has been withheld in full under FOIA exemption (b)(1). The text of this document is identical to the text of document EA3 in FOIA request number 200704168 and has been withheld for the same reasons.

f. Document E9 is a diplomatic note Number CQ/A.14.1.5, dated July 2006. The document is three pages in length. Originally not marked with classification, the document is currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. The document has been withheld in full under FOIA exemption (b) (1).

This formal diplomatic communication expresses specific GOC views regarding the renewal and terms of the aforementioned MOU. It was sent by the GOC with the understanding

that the information provided would be considered confidential. Unapproved release of this information, particularly in light of the request of the GOC that it remain confidential, could damage relations with the GOC. This information is currently and properly classified CONFIDENTIAL under Section 1.4 (b) and (d) of E.O. 12958 and is therefore exempt from disclosure under FOIA exemption (b) (1).

g. Document E10 is a diplomatic note, dated August 17, 2006, from the Embassy of Cyprus in Washington to the Department of State. The document is two pages in length. Originally not marked with classification, the document currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O 12958. The document has been withheld in full under FOIA exemption (b)(1). This note contains the GOC's response to proposed amendments to the aforementioned MOU. This note was sent with the understanding that its contents would be held in confidence and is therefore classified CONFIDENTIAL under E.O. 12958, Section 1.4 (b) and (d) and is therefore exempt from release under FOIA exemption (b) (1).

2. Documents E13 and E14 are an email and its attachment, and are together duplicates of document E3 in case 200704168, discussed above. The same material in these documents has been withheld for the same reasons.

3. Document E15 is a chain of five emails dated from July 10, 2007 to July 11, 2007. The emails span two pages as printed. These emails are UNCLASSIFIED. These emails have been withheld in part under FOIA exemptions (b)(6) and (b)(7)(C). Names, email addresses, telephone numbers and fax numbers of lower level CBP employees are redacted pursuant to FOIA exemption (b)(6) because release would be considered a clearly unwarranted invasion of their privacy, for the same reasons as described in document E3 in case 200704168 above. This information also withheld pursuant to exemption (b)(7)(C) because these emails were created as part of law enforcement efforts to implement and enforce cultural property restrictions and is considered to be a record created for law enforcement purposes.

4. Document E33 is a three email chain, dated July 13-16, 2007, with the common subject: MOU Ceremony Guest List. The emails as printed span one page. These emails are UNCLASSIFIED, and have been withheld in part under FOIA exemption (b)(6). Names, email addresses, direct dial phone numbers and fax numbers of lower level CBP employees are redacted pursuant to FOIA exemption (b)(6) because release would be considered a clearly unwarranted invasion of their privacy, for the same reasons as described in document E3 in case 200704168 above.

5. Documents E28 and E31

a. Document E28 is a chain of two short e-mails dated July 11, 2007 on the subject "July 19 event." This email chain spans two pages as printed, and is UNCLASSIFIED. This email chain has been withheld in part under FOIA exemption (b)(6).

b. Document E31 is a July 13, 2007, email and attachment entitled "MOU Ceremony – Guest List". The document collectively is four pages in

length and is UNCLASSIFIED. The document has been withheld in part under FOIA exemption (b)(6).

In these two email exchanges, email addresses, phone numbers, and private information wholly unrelated to official duties about a number of persons have been withheld. Release of this information could lead to the possible harassment of these individuals and would constitute a clearly unwarranted invasion of their personal privacy. The information is therefore exempt from release under FOIA exemption (b)(6).

6. Document E18 is a draft of a release by the Department's spokesman dated July 19, 2007, and entitled "U.S and Cyprus Extend Agreement to Protect Archeological and Ethnological Heritage of Cyprus." The document is two pages in length and is UNCLASSIFIED. The document has been withheld in full under FOIA exemption (b)(5). This document is a draft version of a statement to be issued by the Department spokesman. The language of the draft is not identical to the final statement that was ultimately issued. The alteration in the draft language reflects pre-decisional deliberations as to both the substance and phrasing of the statement, and as such this draft is material exempt from release under FOIA exemption (b)(5).

7. Document E30 is a two email chain among Department employees dated July 12 and 13, 2007, and is one page in length as printed. The document is UNCLASSIFIED, and has been withheld in full under FOIA exemption (b)(5). The emails in this chain involve a discussion of the wording of the invitation to the July 19 ceremony commemorating the signing of the Cyprus-U.S. MOU. The first email sends draft language, and the more recent email offers comments and corrections. The information they contain is thus pre-decisional deliberative material and therefore exempt from disclosure under FOIA exemption (b)(5).

8. Document E41 is a one-page letter dated July 11, 2007, from the Director of the Department of Antiquities of the GOC to an ECA employee. Originally UNCLASSIFIED, the document is currently classified CONFIDENTIAL under Section 1.4 (b) and (d) of E.O. 12958, and has been withheld in full under FOIA exemption (b)(1).

This letter deals with issues related to the catalog that is a part of the request by the GOC for the renewal of the MOU on import restrictions of certain Cypriot archaeological objects into the U.S. As information from the GOC that was received under an express arrangement of confidentiality, it has been referred to the GOC for that government's views about release. Given the GOC's expectations of confidentiality and recent reaffirmation of those expectations, release of this information without the approval of the GOC could reasonably be expected to damage U.S. relations with that country. This information is currently and properly classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958 and is therefore exempt from disclosure under FOIA exemption (b)(1).

9. Documents E43 and E46

- a. Document E43 is a five-page document regarding copyright and other issues relating to a Committee database of images of objects related to the import restrictions. The document is undated. Originally

UNCLASSIFIED, the document is currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958, and has been withheld in part under FOIA exemption (b)(1).

- b. Document E46 is a four-page document regarding copyright and other issues relating to a Committee database of images of objects related to the import restrictions. The document is undated. Originally UNCLASSIFIED, the document is currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958, and has been withheld in part under FOIA exemption (b)(1).

The only information withheld from these two documents is the same first page of each document. This page was sent by ECA to the GOC to solicit its input regarding use and copyright issues related to pictures and documentation provided to the U.S. in connection with use in illustrating types of antiquities covered by import restrictions. These documents were a part of the diplomatic exchange of materials with the GOC that the parties agreed would be considered confidential and are therefore considered foreign government information. Their release could harm U.S.-Cyprus relations and the climate for future negotiations. Accordingly, the material is currently and properly classified CONFIDENTIAL under E.O. 12958 Section 1.4(b) and (d) and is therefore exempt from release under FOIA exemption (b)(1).

10. Documents E47 and E48

- a. Document E47 is a July 10, 2007 exchange of e-mails between an ECA employee and an official of the GOC Department of Antiquities. The document is two pages in length. Originally unclassified, the document is currently classified CONFIDENTIAL under E.O. 12958 Sections 1.4(b) and (d), and has been withheld in full under FOIA exemption (b)(1).
- b. Document E48 is a copy of a July 10, 2007 letter from the Cyprus Department of Antiquities to an ECA employee. The document is one page in length. Originally unclassified, the document is currently classified CONFIDENTIAL under E.O. 12958 Sections 1.4(b) and (d), and has been withheld in full under FOIA exemption (b)(1).

Document E48 is an attachment to one of the emails in Document E47. Together these two documents are an exchange of correspondence concerning the GOC's provision of information to the U.S. to facilitate its efforts to impose import restrictions on banned items. These documents are part of the diplomatic exchange of materials with the GOC that the parties agreed would be considered confidential and are, therefore, considered foreign government information. The release of these documents could harm U.S.-Cyprus relations and the climate for future negotiations. The material is currently and properly classified CONFIDENTIAL under E.O. 12958 Section 1.4(b) and (d) and is therefore exempt from release under FOIA exemption (b)(1).

11. Documents E42, E44, E45 and E50

- a. Document E42 is a letter from an ECA employee to the Director of Cyprus Antiquities, dated July 16, 2007, bearing the signature of a GOC

official dated October 7, 2007. One page. Originally UNCLASSIFIED, currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. Withheld in full under FOIA exemption (b)(1).

- b. Document E44 is an e-mail from an ECA employee to an official of the Cyprus Antiquities Department. Dated July 08, 2007. One page. Originally UNCLASSIFIED, currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. Withheld in full under FOIA exemption (b)(1).
- c. Document E45 is the same as document E42, except without the GOC official's signature information. One page. Originally UNCLASSIFIED, currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. Withheld in full under FOIA exemption (b)(1).
- d. Document E50 is a letter from the Director of Cyprus Antiquities to an ECA employee, dated May 14, 2007. One page. Originally UNCLASSIFIED, currently classified CONFIDENTIAL under Section 1.4(b) and (d) of E.O. 12958. Withheld in full under FOIA exemption (b)(1).

These four documents are correspondence exchanged in the course of the negotiations of the aforementioned extension of the MOU on Cyprus antiquities. Documents E42, E44, and E45 relate to the provision by the GOC of photographic examples to be used in implementation of the restrictions imposed by the MOU, and Document E50 is a letter forwarding a proposed change to the MOU. This correspondence is part of the diplomatic exchange of materials with the GOC that the parties agreed would be considered confidential and is therefore considered foreign government information. Its release could harm U.S.-Cyprus relations and the climate for future negotiations. The material is currently and properly classified CONFIDENTIAL under E.O. 12958 Sections 1.4(b) and (d) and is therefore exempt from release under FOIA exemption (b)(1).

12. Document E51 is an undated, 46-page draft of a catalog of ancient Cypriot coins provided by the GOC. Originally unclassified, the document currently classified CONFIDENTIAL under E.O. 12958, Section 1.4 (b) and (d), and has been withheld in full under FOIA exemption (b)(1). This draft was a part of a confidential exchange of information between the U.S. and the GOC, regarding the renewal of an MOU on import restrictions of archaeological materials from Cyprus into the U.S. Unapproved release of this information, particularly in light of the request of the GOC that it remain confidential, could damage relations with the GOC and hamper future negotiations. This information is therefore properly classified under Sections 1.4 (b) and (d) of E.O. 12958 and is exempt from release under FOIA exemption (b)(1).

13. Document AE1 has a cover page titled Appendix II followed by two pages of text, a page of bibliography and abbreviations, and a catalog of coins. The document totals 94 pages in length and is undated. Originally unclassified, the document is currently classified CONFIDENTIAL under E.O. 12958, Section 1.4(b) and (d), and has been withheld in part under FOIA exemption (b)(1).

All of document AE1 has been released except for a two-page introduction provided in confidence by the GOC. The two pages detail the concerns of the Cypriot government regarding Cypriot antiquities, including coins, and set forth certain requests of the U.S. government. These two pages constitute foreign government information the unauthorized disclosure of which is presumed to cause damage to U.S. foreign relations under Section 1.1(c) of E.O. 12958. The unauthorized disclosure of this information by the U.S. would clearly cause damage to U.S. relations with Cyprus and cause that government, and perhaps other governments, to hesitate to share information with the U.S. government. Accordingly, the two pages are currently and properly classified CONFIDENTIAL and are exempt from disclosure under FOIA exemption (b)(1).

14. Document U4 is a proposed guest list, dated July 17, 2007, for the signing ceremony of a Memorandum of Understanding between the U.S. and Cyprus, on July 19, 2007. The document is four pages, and has been withheld in part under FOIA exemption (b)(6).

The only items redacted from this document are the names and email addresses of certain law enforcement personnel, and the personal email addresses of certain invitees. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy and would shed no further light on the operations of the government beyond what has already been released. Accordingly, it is exempt from disclosure under FOIA exemption (b)(6).