

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:21-cv-00014-TJK**

LEOPOLD et al v. U.S. GENERAL SERVICES  
ADMINISTRATION  
Assigned to: Judge Timothy J. Kelly  
Cause: 05:552 Freedom of Information Act

Date Filed: 01/05/2021  
Date Terminated: 07/27/2023  
Jury Demand: None  
Nature of Suit: 895 Freedom of  
Information Act  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**JASON LEOPOLD**

represented by **Merrick Jason Wayne**  
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**Plaintiff**

**BUZZFEED INC.**

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**Joshua Hart Burday**  
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TERMINATED: 03/01/2023  
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**Matthew Topic**  
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V.

**Defendant**

**U.S. GENERAL SERVICES  
ADMINISTRATION**

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Date Filed	#	Docket Text
01/05/2021	<u>1</u>	COMPLAINT against U.S. GENERAL SERVICES ADMINISTRATION ( Filing fee \$ 402 receipt number ADCDC-8037217) filed by JASON LEOPOLD, BUZZFEED INC.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Civil Cover Sheet, # <u>10</u> Summons)(Topic, Matthew) (Entered: 01/05/2021)
01/05/2021	<u>2</u>	NOTICE of Appearance by Matthew Topic on behalf of BUZZFEED INC., JASON LEOPOLD (Topic, Matthew) (Entered: 01/05/2021)
01/05/2021	<u>3</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by BUZZFEED INC. (Topic, Matthew) (Entered: 01/05/2021)
01/05/2021		Case Assigned to Judge Timothy J. Kelly. (adh, ) (Entered: 01/05/2021)
01/05/2021	<u>4</u>	SUMMONS (3) Issued Electronically as to U.S. GENERAL SERVICES ADMINISTRATION, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Notice and Consent)(adh, ) (Entered: 01/05/2021)
02/15/2021	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. GENERAL SERVICES ADMINISTRATION served on 1/22/2021 (Topic, Matthew) (Entered: 02/15/2021)
02/15/2021	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 1/21/2021. (Topic, Matthew) (Entered: 02/15/2021)

02/15/2021	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 1/21/2021. Answer due for ALL FEDERAL DEFENDANTS by 2/20/2021. (Topic, Matthew) (Entered: 02/15/2021)
02/22/2021	<u>8</u>	NOTICE of Appearance by Charles E.T. Roberts on behalf of U.S. GENERAL SERVICES ADMINISTRATION (Roberts, Charles) (Entered: 02/22/2021)
02/22/2021	<u>9</u>	ANSWER to Complaint by U.S. GENERAL SERVICES ADMINISTRATION.(Roberts, Charles) (Entered: 02/22/2021)
02/23/2021		MINUTE ORDER: Before the Court in this FOIA case are a complaint and an answer. It is hereby ORDERED that the parties shall meet, confer, and file a joint proposed schedule for briefing or disclosure by March 9, 2021. Signed by Judge Timothy J. Kelly on 2/23/2021. (lctjk1) (Entered: 02/23/2021)
03/09/2021	<u>10</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Roberts, Charles) (Entered: 03/09/2021)
03/11/2021		MINUTE ORDER: Upon consideration of the parties' <u>10</u> Joint Status Report, it is hereby ORDERED that the parties shall submit a further joint status report by April 8, 2021, and every thirty days thereafter, until the Court orders otherwise. Signed by Judge Timothy J. Kelly on 3/11/2021. (lctjk1) (Entered: 03/11/2021)
04/08/2021	<u>11</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Roberts, Charles) (Entered: 04/08/2021)
05/10/2021	<u>12</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Roberts, Charles) (Entered: 05/10/2021)
06/10/2021	<u>13</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Roberts, Charles) (Entered: 06/10/2021)
06/14/2021		MINUTE ORDER: Upon consideration of the parties' <u>13</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by June 25, 2021, that sets forth a proposed briefing schedule. Signed by Judge Timothy J. Kelly on 6/14/2021. (lctjk1) (Entered: 06/14/2021)
06/25/2021	<u>14</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Roberts, Charles) (Entered: 06/25/2021)
06/28/2021		MINUTE ORDER: Upon consideration of the parties' <u>14</u> Joint Status Report, it is hereby ORDERED that summary judgment briefing shall proceed according to the briefing schedule proposed by the parties. Defendant shall file its motion for summary judgment by August 6, 2021; Plaintiffs shall file their response and cross-motion by September 7, 2021; Defendant shall file its reply and response by September 27, 2021; and Plaintiffs shall file their reply by October 12, 2021. It is further ORDERED that the parties' joint request that the Court waive the requirements of LCvR 7(h)(1) is hereby GRANTED. The parties need not file statements of material facts. Signed by Judge Timothy J. Kelly on 6/28/2021. (lctjk1) (Entered: 06/28/2021)
08/06/2021	<u>15</u>	MOTION for Summary Judgment by U.S. GENERAL SERVICES ADMINISTRATION. (Attachments: # <u>1</u> Declaration of Travis Lewis, # <u>2</u> Exhibit 1)(Roberts, Charles) (Entered: 08/06/2021)
09/07/2021	<u>16</u>	Cross MOTION for Summary Judgment by BUZZFEED INC., JASON LEOPOLD. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit A-D, # <u>3</u> Text of Proposed Order)(Topic, Matthew) (Entered: 09/07/2021)
09/07/2021	<u>17</u>	Memorandum in opposition to re <u>15</u> MOTION for Summary Judgment filed by BUZZFEED INC., JASON LEOPOLD. (Attachments: # <u>1</u> Exhibit A-D, # <u>2</u> Text of Proposed Order)(Topic, Matthew) (Entered: 09/07/2021)
09/27/2021	<u>18</u>	REPLY to opposition to motion re <u>15</u> MOTION for Summary Judgment filed by U.S. GENERAL SERVICES ADMINISTRATION. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order)(Roberts, Charles) (Entered: 09/27/2021)
09/27/2021	<u>19</u>	Memorandum in opposition to re <u>15</u> MOTION for Summary Judgment filed by U.S. GENERAL SERVICES ADMINISTRATION. (See Docket Entry <u>18</u> to view

		document. (ztth) (Entered: 09/28/2021)
10/05/2021	<u>20</u>	Unopposed MOTION for Extension of Time to File Response/Reply by BUZZFEED INC., JASON LEOPOLD. (Attachments: # <u>1</u> Text of Proposed Order)(Topic, Matthew) (Entered: 10/05/2021)
10/07/2021		MINUTE ORDER granting Plaintiffs' <u>20</u> Unopposed Motion for Extension of Time. Upon consideration of Plaintiffs' Motion, and for good cause shown, it is hereby ORDERED that Plaintiffs' Motion is GRANTED. It is further ORDERED that Plaintiffs shall file their Reply in Support of Their Cross-Motion for Summary Judgment on or before October 19, 2021. Signed by Judge Timothy J. Kelly on 10/7/2021. (lctjk1) (Entered: 10/07/2021)
10/19/2021	<u>21</u>	NOTICE of Appearance by Joshua Hart Burday on behalf of BUZZFEED INC., JASON LEOPOLD (Burday, Joshua) (Entered: 10/19/2021)
10/19/2021	<u>22</u>	REPLY to opposition to motion re <u>16</u> Cross MOTION for Summary Judgment filed by BUZZFEED INC., JASON LEOPOLD. (Burday, Joshua) (Entered: 10/19/2021)
02/10/2022	<u>23</u>	NOTICE of Appearance by Taisa M. Goodnature on behalf of U.S. GENERAL SERVICES ADMINISTRATION (Goodnature, Taisa) (Main Document 23 replaced on 2/10/2022) (ztth). (Entered: 02/10/2022)
03/04/2022		MINUTE ORDER denying without prejudice Defendant's <u>15</u> Motion for Summary Judgment and Plaintiffs' <u>16</u> Cross-Motion for Summary Judgment. In this FOIA case, the parties have cross-moved for summary judgment as to the propriety of Defendant's withholdings under FOIA Exemption 5. <i>See</i> 5 U.S.C. § 552(b)(5). Exemption 5 "protects inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." <i>Jud. Watch, Inc. v. United States Dep't of Just.</i> , 20 F.4th 49, 52-53 (D.C. Cir. 2021) (cleaned up). The dispute between the parties is over Defendant's invocation of the deliberative process privilege. Defendant has the burden to show that this privilege, and thus Exemption 5, applies. <i>Id.</i> § 552(a)(4)(B). In an attempt to meet its burden, Defendant provides alongside its motion a declaration and <i>Vaughn</i> index. <i>See</i> ECF No. 15-1. Generally, the Court can grant summary judgment based on such documents. <i>See Reps. Comm. for Freedom of the Press v. CBP</i> , --- F. Supp. 3d ---, 2021 WL 4843970, at *2 (D.D.C. Oct. 18, 2021). But here, the declaration and <i>Vaughn</i> index descriptions are not sufficiently specific to assess whether many of the withholdings fall under the deliberative process privilege. The "agency invoking the deliberative process privilege must show (1) what deliberative process is involved, and (2) the role played by the documents in issue in the course of that process." <i>Jud. Watch</i> , 20 F.4th at 55 (cleaned up). The agency "should also explain (3) the nature of the decisionmaking authority vested in the officer or person issuing the disputed document, and (4) the relative positions in the agency's chain of command occupied by the document's author and recipient." <i>Id.</i> (cleaned up). Yet, the descriptions for many of the "draft documents" and emails concerning "transition coordination" leave the Court guessing "as to the who, what, where, and how of the deliberative process and the role played by the withheld material." <i>Id.</i> at 57. "Transition coordination," for example, could involve many different decisions — some involving the kind of policy-oriented judgment more typically covered by the privilege, or some more mundane matters less likely to be. That broad descriptor, used throughout the <i>Vaughn</i> index, "does not provide sufficient information about the nature of the specific deliberative process involved." <i>Hunton &amp; Williams LLP v. EPA</i> , 248 F. Supp. 3d 220, 242-43 (D.D.C. 2017). For many documents, the descriptions do not identify the author or recipient and "their places in the chain of command." <i>Jud. Watch</i> , 20 F.4th at 56. Some documents seem to relate to the "ascertainment decision," but it is not clear how based on the description provided. And the descriptions of various "draft documents" leave unclear the deliberative process of which those documents are a part. <i>Id.</i> at 55-56. For example, document No. 60 is described as "the draft document attached to the email on page 336. The draft document is withheld under the deliberative process privilege because it is a draft and it also contains edits and comments reflecting contributions to the deliberative process to develop the document." ECF No. 15-1 at 41. But "the email on page 336" is not in the record before the Court to assist it in evaluating its deliberative nature. Because the Court cannot yet determine the deliberative nature of many of Defendant's withholdings, it will wait to address Plaintiffs' more specific challenges and whether Defendant has shown that reasonably foreseeable harm would

		result from release of any deliberative material. <i>See</i> 5 U.S.C. § 552(a)(8)(A). That said, the Court notes that Defendant's current description of the harm may also be inadequate under Circuit precedent. Defendant's repeated use of generic language about foreseeable harm, changing only the description of the category of information withheld, may well fall short of the "focused and concrete demonstration" Circuit precedent requires. <i>Reps. Comm. for Freedom of the Press v. FBI</i> , 3 F.4th 350, 370 (D.C. Cir. 2021). The Court shall provide Defendant an opportunity either to provide a more detailed declaration or <i>Vaughn</i> index alongside a renewed motion for summary judgment, or proceed otherwise in a manner consistent with its obligations under FOIA. But, given the above, it is hereby ORDERED that Defendant's <u>15</u> Motion for Summary Judgment and Plaintiffs' <u>16</u> Cross–Motion for Summary Judgment are DENIED WITHOUT PREJUDICE. It is further ORDERED that the parties shall file a joint status report by March 18, 2022, updating the Court on how they intend to proceed and proposing a schedule for such further proceedings. Signed by Judge Timothy J. Kelly on 3/4/2022. (lctjk1) (Entered: 03/04/2022)
03/17/2022	<u>24</u>	NOTICE of Appearance by Joshua Loevy on behalf of BUZZFEED INC., JASON LEOPOLD (Loevy, Joshua) (Entered: 03/17/2022)
03/18/2022	<u>25</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 03/18/2022)
03/21/2022		MINUTE ORDER: Upon consideration of the parties' <u>25</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by May 17, 2022. Signed by Judge Timothy J. Kelly on 3/21/2022. (lctjk1) (Entered: 03/21/2022)
05/17/2022	<u>26</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 05/17/2022)
05/18/2022		MINUTE ORDER: Upon consideration of the parties' <u>26</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by July 18, 2022. Signed by Judge Timothy J. Kelly on 5/18/2022. (lctjk1) (Entered: 05/18/2022)
07/18/2022	<u>27</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 07/18/2022)
07/19/2022		MINUTE ORDER: Upon consideration of the parties' <u>27</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by September 16, 2022. Signed by Judge Timothy J. Kelly on 7/19/2022. (lctjk1) (Entered: 07/19/2022)
09/16/2022	<u>28</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 09/16/2022)
09/19/2022		MINUTE ORDER: Upon consideration of the parties' <u>28</u> Joint Status Report, it is hereby ORDERED that summary judgment briefing shall proceed according to the briefing schedule proposed by the parties. Defendant shall provide a draft <i>Vaughn</i> index to Plaintiffs by November 1, 2022; Defendant shall file its motion for summary judgment by December 1, 2022; Plaintiffs shall file their response and cross–motion by January 16, 2023; Defendant shall file its reply and response by March 1, 2023; and Plaintiffs shall file their reply by April 3, 2023. It is further ORDERED that the parties' joint request that the Court waive the requirements of LCvR 7(h)(1) is hereby GRANTED. The parties need not file statements of material facts. Signed by Judge Timothy J. Kelly on 9/19/2022. (lctjk1) (Entered: 09/19/2022)
12/01/2022	<u>29</u>	MOTION for Summary Judgment by U.S. GENERAL SERVICES ADMINISTRATION. (Attachments: # <u>1</u> Declaration of John H. Peters, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C)(Goodnature, Taisa) (Entered: 12/01/2022)
12/12/2022	<u>30</u>	Unopposed MOTION for Extension of Time to <i>Briefing Schedule</i> by BUZZFEED INC., JASON LEOPOLD. (Attachments: # <u>1</u> Text of Proposed Order)(Topic, Matthew) (Entered: 12/12/2022)
12/13/2022		MINUTE ORDER granting Plaintiffs' <u>30</u> Unopposed Motion for Extension of Time. It is hereby ORDERED that, for good cause shown, Plaintiffs' Motion is GRANTED. It is further ORDERED that Plaintiffs shall respond to Defendant's <u>29</u> Motion for Summary Judgment and file any cross–motion by February 6, 2023; Defendant shall file its reply and response by March 22, 2023; and Plaintiffs shall file their reply by

		April 24, 2023. Signed by Judge Timothy J. Kelly on 12/13/2022. (lctjk1) (Entered: 12/13/2022)
01/26/2023	<u>31</u>	Joint STATUS REPORT by BUZZFEED INC., JASON LEOPOLD. (Topic, Matthew) (Entered: 01/26/2023)
02/24/2023	<u>32</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 02/24/2023)
02/27/2023	<u>33</u>	NOTICE of Appearance by Merrick Jason Wayne on behalf of BUZZFEED INC., JASON LEOPOLD (Wayne, Merrick) (Entered: 02/27/2023)
02/27/2023		MINUTE ORDER: Upon consideration of the parties' <u>32</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by April 25, 2023 advising the Court of their progress toward resolving any dispute over attorneys' fees and, if necessary, proposing a briefing schedule, unless a stipulation of dismissal is filed before then. Furthermore, based on Plaintiff's representation that it will not challenge Defendant's Exemption 5 withholdings, Defendant's <u>29</u> renewed motion for summary judgment is hereby DENIED AS MOOT. Signed by Judge Timothy J. Kelly on 2/27/2023. (lctjk1) (Entered: 02/27/2023)
02/28/2023	<u>34</u>	MOTION to Withdraw as Attorney <i>Joshua Burday</i> by BUZZFEED INC., JASON LEOPOLD. (Attachments: # <u>1</u> Text of Proposed Order)(Topic, Matthew) (Entered: 02/28/2023)
03/01/2023	<u>35</u>	ORDER granting <u>34</u> Motion to Withdraw as Counsel. See Order for details. Signed by Judge Timothy J. Kelly on 3/1/2023. (lctjk1) (Entered: 03/01/2023)
04/25/2023	<u>36</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 04/25/2023)
04/26/2023		MINUTE ORDER: Upon consideration of the parties' <u>36</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by May 25, 2023 advising the Court of their progress toward resolving any dispute over attorneys' fees and, if necessary, proposing a briefing schedule, unless a stipulation of dismissal is filed before then. Signed by Judge Timothy J. Kelly on 4/26/2023. (lctjk1) (Entered: 04/26/2023)
05/25/2023	<u>37</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 05/25/2023)
05/26/2023		MINUTE ORDER: Upon consideration of the parties' <u>37</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by June 26, 2023, unless a stipulation of dismissal is filed before then. Signed by Judge Timothy J. Kelly on 5/26/2023. (lctjk1) (Entered: 05/26/2023)
06/23/2023	<u>38</u>	Joint STATUS REPORT by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 06/23/2023)
06/27/2023		MINUTE ORDER: Upon consideration of the parties' <u>38</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further joint status report by July 26, 2023, unless a stipulation of dismissal is filed before then. Signed by Judge Timothy J. Kelly on 6/27/2023. (lctjk1) (Entered: 06/27/2023)
07/26/2023	<u>39</u>	STIPULATION of Dismissal <i>with Prejudice</i> by U.S. GENERAL SERVICES ADMINISTRATION. (Goodnature, Taisa) (Entered: 07/26/2023)