

Exhibit 8



United States Patent and Trademark Office

Office of the General Counsel

January 18, 2022

VIA EMAIL

Dr. Michael Casey
mrc@maierandmaier.com

Re: *Freedom of Information Act (FOIA) Request No. F-22-00081*

Dear Dr. Casey

Since closing your Freedom of Information Act Request, **F-22-00081**, it has come to my attention that additional potentially responsive information exists. Accordingly, I have decided to reopen your request.

The FOIA Office has located 16-pages of records (in addition to what was already provided to you on August 30, 2022). The USPTO is partially withholding these pages pursuant to Exemption 5 of the FOIA. Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). This allows agencies to withhold records that are normally privileged in the civil discovery context. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. The USPTO is applying the deliberative process privilege to these records.

The deliberative process privilege protects records that are both predecisional and deliberative. *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 512 (D.C. Cir. 2011).

Here, the withheld information is predecisional because it consists of emails which express opinions and recommendations regarding proposed agency actions antecedent to the adoption of a position (*Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, 337 F.Supp.2d 146, 172 (D.D.C. 2004)). The withheld information is deliberative because it consists of employees’ recommendations and opinions on legal and policy matters. *Skinner v. U.S. Dep’t of Justice*, 2010 WL 3832602 (D.D.C. 2010) (internal citations omitted). Facts expressed in these deliberative communications are not reasonably segregable, and thus are not suitable for disclosure. Release of this material would “almost certainly have a *chilling effect* on candid expression of views.” *Schell v. Dep’t of HHS*, 843 F.2d 933, 942 (6th Cir. 1988) (emphasis added).

As required by the FOIA Improvement Act of 2016 and Department of Justice guidance, USPTO has conducted a foreseeable harm review and reasonably foresees that disclosure of the withheld material would harm an interest protected by a FOIA exemption.

You may contact the FOIA Public Liaison at 571-272-9585 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You have the right to appeal this initial decision to the Deputy General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, or you may submit an appeal electronically to FOIARequests@USPTO.gov. An appeal must be received within 90 calendar days from the date of this letter. The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons why the information should be made available and why this initial denial is in error. If you submit your appeal by mail, both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

Sincerely,

Caitlín Trujillo
USPTO FOIA Officer
Office of General Law