IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAUSE OF ACTION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-cv-920-ABJ
	)	
INTERNAL REVENUE SERVICE,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S CROSS-REPLY IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF ITS MOTION TO STRIKE

INTRODUCTION

The issue before the Court is this: Did the Internal Revenue Service ("IRS") reasonably design its search to locate records responsive to Items Three and Four of the Cause of Action Institute ("CoA Institute") Freedom of Information Act ("FOIA") request? The answer is: The IRS has continued to evade its FOIA obligations.

The arguments and supporting declarations proffered by the IRS misconstrue the scope of the CoA Institute request and exclude any mechanism to locate records of or about unauthorized requests from the White House for the disclosure of taxpayer or return information. The agency restricted its search to a single sub-component of the Office of the Commissioner; it refused to look for responsive material outside of the E-Trak database, which relies on agency employees to upload correspondence received by the Executive Secretariat.

The IRS also neglected to adopt any methods for locating records potentially responsive to Item Four, which seeks records referring or relating to the sort of unauthorized requests at issue in Item Three. To the extent the IRS recognized the intended scope of Item Four, it refused to honor it. Instead, the IRS argued that to do so would require it to conduct an allegedly

impermissible investigation of itself. This is hardly the case. The IRS misinterprets the previous ruling of this Court on Tax Check Program records, which required the IRS to search for non-taxpayer specific records or other records of unauthorized requests that suggest wrongdoing on the part of White House or IRS officials.

Finally, the IRS continues to rely on the unfounded assertions of its declarant, Ms. McCarty, in order to justify its misconstruction of the CoA Institute FOIA request and its inadequate search methodology. The agency arguments presented in opposition to the CoA Institute motion to strike are unavailing; they suggest a confusion of the application of Fed. R. Civ. Pro. 56 in the FOIA context.

For the reasons set forth below, the Court should grant the CoA Institute cross-motion for summary judgment and the motion to strike.

ARGUMENT

I. THE IRS MISCONSTRUED THE SCOPE OF THE COA INSTITUTE REQUEST BY SEARCHING ONLY FOR RECORDS OF AUTHORIZED DISCLOSURES AND BY NEGLECTING ITEM FOUR.

The IRS search methodology evinces an improper narrowing of the scope of the October 9, 2012 CoA Institute FOIA request. *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (agencies have a "duty to construe a FOIA request liberally" (citing *Truitt v. Dep't of State*, 897 F.2d 540, 544–45 (D.C. Cir. 1990)). The IRS fails to address arguments raised by CoA Institute as to why components outside of the Office of the Executive Secretariat should be searched for responsive records. *See* Pl.'s Mem. of P. & A. in Opp'n to Def.'s Mot. for Summ. J. & in Supp. of Pl.'s Cross-Mot. for Summ. J. & Mot. to Strike at 7–10, July 1, 2016, ECF No. 69-1 ("Pl.'s Br."). The agency also continues to rely on unsupported suppositions of its employees about how and with whom the White House communicates. *See* Reply in Supp. of

the IRS's Mot. for Summ. J., Opp'n to Pl.'s Cross-Mot. for Summ. J., & Opp'n to Pl.'s Mot. to Strike at 6, Aug. 1, 2016, ECF No. 74 ("Def.'s Opp'n"). Further, the IRS fails to address how it searched for records responsive to Item Four, which seeks records about unauthorized requests for the disclosure of taxpayer or return information. By limiting its search to record systems that would likely contain only records of authorized disclosure requests from the White House, and by relying on unfounded assumptions about White House business practices, the IRS fails to revise its search in line with what this Court ordered it to do. The agency has not modified its search to locate "simple requests for information" that may represent "improper attempt[s] to access" confidential tax information. Mem. Op. at 32–33, Aug. 28, 2015, ECF No. 51; *see also* Mem. Op. at 13.

The IRS argues that its search was undertaken "without consideration of whether" any record of a "request was authorized or unauthorized." Def.'s Opp'n at 5. By limiting its search to E-Trak and the Office of the Executive Secretariat, however, the IRS has, in fact, precluded the possibility of locating records of unauthorized requests. These records are not likely to have been sent to the Office of the Commissioner or logged by employees into correspondence tracking systems like E-Trak precisely because the requests would have been unauthorized.[1] The IRS does not, and cannot, explain why records of unauthorized requests, rather than authorized correspondence sent in the normal course of business, would have been forwarded to the Office of the Executive Secretariat. *Concepcion v. U.S. Customs & Border Prot.*, 767 F. Supp. 2d 141, 146 (D.D.C. 2011) (agency must "demonstrate that responsive documents would not reasonably

[1] The description of E-Trak provided by Ms. Tate indicates that the system does not automatically capture incoming correspondence but depends upon employee discretion in uploading records. *See* Tate Decl. ¶ 4, June 3, 2016, ECF No. 66-3 ("Each incoming correspondence is assigned a tracking number and scanned into the E-Trak database."). In light of the apparent mismanagement of other records indicating wrongdoing by IRS employees, it is reasonable to conclude that unauthorized requests from the White House would not have been scanned into E-Trak, no matter whether they were received by the Office of the Commissioner or another component. *See, e.g.*, Peter Schroeder, *Watchdog: IRS improperly destroyed Lerner email backups*, The Hill (June 25, 2015), http://coainst.org/2aZbhxw.

be found in other record systems[.]"). Thus, the agency fails to carry its burden in providing a reasonable explanation for its limited search methodology.

Despite repeated allegations that the Office of the Executive Secretariat is the "office responsible for tracking correspondences" from the White House, Def.'s Opp'n at 5 (citing Tate Decl. ¶ 3), the IRS omits any discussion of why this office would also be the only component likely to control records responsive to Item Four. Item Four seeks "[a]ll documents, including notes and emails, referring or relating to any communication" from the Executive Office of the President constituting a request for taxpayer or return information not made pursuant to Section 6103(g). Pl.'s SUMF ¶ 1 (citing Compl. ¶ 7, Ex. 1), July 1, 2016, ECF No. 69-1. Item Four encompasses more than email or formal correspondence; it captures all internal agency records about White House disclosure requests, authorized or unauthorized, that may have been made outside of Section 6103(g).

The supplemental declaration of Ms. Tate is unavailing in this respect. *E.g.*, Second Tate Decl. ¶ 3, Aug. 1, 2016, ECF No. 74-1 ("The Office of the Commissioner is the only office or division of the IRS likely to receive correspondence from the Executive Office of the President[.]"). Records about White House correspondence, which are not themselves records of such correspondence, fall within the scope of Item Four. They could be located in any number of IRS components.[2] *See, e.g.*, Pl.'s Br. at 8 n.6 (discussing reports to the Joint Committee on Taxation); Pl.'s Br. at 10 n.8 ("non-taxpayer-specific records about 'tax checks' generally," as maintained by the Office of Privacy, Governmental Liaison, and Disclosure).

[2] As discussed elsewhere, the IRS failed to explain how it construed the scope of Item Four and designed its search to locate responsive records. The agency instead focused on records controlled by the Disclosure Office, arguing that all such records are exempt as return information, which they are not. *See* Def.'s Opp'n at 7–9.

The supplemental declaration also raises concerns about the adequacy of the IRS search and the accuracy of its description to the Court. While Ms. Tate claims that there was a spelling error in her initial declaration of one of the search terms agreed upon by the parties, she explains that the IRS still conducted a new search using the terms "Barak," "Barack," and "Obama." Def.'s Opp'n at 6 n.2; (citing Second Tate Decl. ¶ 4–5). If the search term "Barak" was merely misspelled in the original Tate declaration, not in the search, there should have been no need for a new search. This raises the question of why the agency thought it necessary to conduct a new search in this instance—with an added term, no less—"rather than retrac[e] the original" by consulting processing notes in the AFOIA case management platform. Def.'s Opp'n at 6 n.2.

The IRS tries to justify its exclusion of certain components, *viz.*, the Office of Legislative Affairs, the Office of Media Relations, and the Office of the Deputy Commissioner for Services and Enforcement, in a similarly unavailing footnote.[3] Def.'s Opp'n at 5 n.1; *see* Second Tate Decl. ¶ 6. The agency avers that these components already use E-Trak, and responsive records would have been captured in the keyword searches that have been conducted. Yet the agency fails to provide any information that would allow the Court or CoA Institute to judge the accuracy of this claim. Despite repeated requests, the IRS continues to refuse to identify all components whose correspondence is tracked in E-Trak. *See* Pl.'s Br. at 8–9; *Oglesby v. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Moreover, the agency neglects Item Four by

[3] The IRS attempts to distract the Court by commenting that there is no "Office of White House Liaison," as previously suggested by Plaintiff. Def.'s Opp'n at 5; *see also* Mulvey Decl. ¶ 5, Ex. 2, July 1, 2016, ECF No. 69-4. Many agencies appoint official liaisons with the White House. *See, e.g.*, Dep't of Commerce, *Office of the White House Liaison*, http://coainst.org/2aZoFiG (last accessed Aug. 29, 2016); Dep't of State, *Department Organization*, http://coainst.org/2aOQkUm (last accessed Aug. 29, 2016) ("The Under Secretary [for Management] also oversees the Office of White House Liaison."). Considering the lack of publicly-available information about the structure and operations of the IRS, it is reasonable that Plaintiff would have referenced such a component as the "Office of the White House Liaison." In any case, the absence of a White House liaison at the IRS is not dispositive nor even relevant to the broader question of search adequacy.

failing to explain why these components would not reasonably be expected to control records referring or relating to the communications sought by Item Three.

II. THE IRS MISCHARACTERIZED THE RULING OF THIS COURT AND IMPROPERLY REFUSED TO SEARCH THE OFFICE OF DISCLOSURE FOR RECORDS RESPONSIVE TO ITEM FOUR.

The IRS initially argued that it did not search the Office of Privacy, Governmental Liaison, and Disclosure ("Office of Disclosure") because "Tax Check Program [c]orrespondence is no longer at issue" in this case. Tate Decl. ¶ 3 n.1; Mem. of P. & A. in Supp. of the IRS's Mot. for Summ. J. at 8 n.1, June 3, 2016, ECF No. 66-2 ("Def.'s Br."). The IRS now suggests that CoA Institute has disregarded the previous ruling of this Court and "fundamental[ly] misunderstand[s]" Section 6103 and the Tax Check Program. Def.'s Opp'n at 7. On each argument, the IRS is wrong. This Court determined that it could not "accept the [IRS] assertion that any and all documents that might be responsive to items three and four . . . would be exempt as a matter of law." Mem. Op. at 31–32. The IRS offers no explanation for why it did not conduct a supplemental search of the Office of Disclosure, except to repeat an argument already rejected by the Court.

It bears repeating: this Court determined that not all of the records maintained by the Office of Disclosure were exempt as confidential "return information." Mem. Op. at 32. Instead, a "determination . . . must be made on a case-by-case basis in light of the nature and content of the request" and the responsive records. Mem. Op. at 32. "[R]ecords that indicate that confidential taxpayer information was misused, or that government officials made an improper attempt to access that information"—whether those records are maintained by the "Tax Check Program" or another IRS component—would be outside the scope of the ruling. Mem. Op. at 33. The ruling is consistent with precedent. *E.g.*, *Church of Scientology v. Internal*

Revenue Serv., 792 F.2d 146, 151 (D.C. Cir. 1986) ("Congress would not have adopted such a detailed definition of return information in Section 6103 if it had simply intended the term to cover all information in IRS files[.]"), *aff'd* 792 F.2d 153 (D.C. Cir. 1986). Records of unauthorized requests, as well as non-taxpayer specific records about White House disclosure requests generally, whether authorized or not, would not be exempt as a matter of law. Pl.'s Br. at 10 n.8. The IRS failed to undertake any steps to modify its search to target such records. *See* Tate Decl. ¶ 3 n.1; Def.'s Br. at 8 n.1.

One proffered—yet unpersuasive—justification for this failure is that "tax checks" are not requests from the Executive Office of the President. This is irrelevant. While the Court did question whether "tax check" records were responsive, *see* Mem. Op. at 25, it did not reach a conclusion on the matter. In any case, the IRS has maintained that "tax check" records were, in fact, responsive to the CoA Institute request. Mem. Op. at 24 ("[D]efendant did conduct a search, and it determined that the only responsive records would be 'tax checks' and related records.'"); Decl. of Denise Higley ¶ 23, Apr. 14, 2014, ECF No. 16-3 ("I determined that any records responsive to items 3 and 4 would be return information exempted from disclosure . . . Therefore, I did not conduct a search for requests for 'tax checks' that would be responsive[.]").

The question of whether "tax checks" are responsive to Item Three distracts from the more important question of why the IRS failed to conduct a supplemental search for records that did not constitute "return information" or, in the alternative, to provide a "more detailed declaration" for why such searches were unwarranted. Mem. Op. at 34. While the agency is silent about its search of the Office of Disclosure for records of unauthorized disclosure—*e.g.*, "a simple request *for* the [taxpayer] file itself by someone in the Executive Office of the President[] ('Can I *see* 'X's Return Information?'')," Mem. Op. at 32 (emphasis in original), it tries to claim

that searches for non-taxpayer-specific records would "impermissibly expand the scope of the FOIA request." Def.'s Opp'n at 8. This is not so.

The IRS reliance on *Miller v. Casey*, 730 F.2d 773 (D.C. Cir. 1984), and *Gillin v. Internal Revenue Service*, 980 F.2d 819 (1st Cir. 1993), is inapposite. In *Miller*, the requester "made a specific inquiry about specific actions," namely, efforts by the American government and other Western powers to overthrow the communist regime in Albania. 730 F.2d at 777. The *Miller* court accepted the Central Intelligence Agency construction of the request at issue because the requester "incorporate[d] a basic assumption" about the existence of records of an actual "covert Albanian mission." *Id.* at 776. Mr. Miller sought "hard facts concerning a specific event" and not, as he later tried to suggest, "unofficial reports of rumored activities[.]" *Id.* In this case, CoA Institute is not suggesting that the IRS broaden its search. CoA Institute is requesting, in the first instance, that the agency conduct a search according to the plain language of Item Four: "All documents, including notes and emails, referring or relating to any communication described in [Item Three]." Pl.'s SUMF ¶ 1. The IRS has not provided any description of its search for these records, whether in the Office of Disclosure or elsewhere.

Reliance on *Gillin* is similarly misplaced. That case concerned ambiguity in request language and the obligation of a requester to clarify ambiguity before the issuance of a final determination or the beginning of litigation. 980 F.2d at 823 ("Since [the requester] and not the IRS, was in a position to recognize and correct the ambiguity, we think it sensible that [the requester] bear the burden of clarification."). There is no ambiguity as to Item Four. The IRS fails to explain the efforts it undertook to locate records "referring or relating" to the sort of records that may be responsive to Item Three. CoA Institute does not expand the scope of its request by identifying the inadequacy of this explanation.

III. THE IRS IMPROPERLY REFUSED TO SEARCH EMAIL CORRESPONDENCE FOR RESPONSIVE RECORDS.

The IRS recites the proper legal standard for determining search adequacy but fails to describe how its search in this case was reasonably calculated to locate records responsive to Items Three and Four. The IRS search efforts remain insufficient in large part because the agency has effectively narrowed the scope of the request. By refusing to search email and by limiting its search to E-Trak, the agency precluded the possibility of locating records of unauthorized disclosure requests. The IRS interpretation of Item Three also demonstrates a fundamental misunderstanding of the sort of records the Court ordered the agency to take reasonable steps to locate on remand. *See, e.g.*, Mem. Op. at 32 (discussing records of unauthorized disclosure, such as a "a simple request *for* the [taxpayer] file itself by someone in the Executive Office of the President[]") (emphasis in original). Unless the IRS undertakes a search of email through the Microsoft Exchange Server or another e-discovery tool such as Clearwell or Encase eDiscvoery,[4] its search will remain fatally flawed. *See Oglesby*, 920 F.2d at 68 ("[An] agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested."); *see also Leopold v. Nat'l Sec. Agency*, No. 14-00805, 2016 WL 3747526, at *5 (D.D.C. July 11, 2016) (holding, in a case involving the availability of Clearwell, that "[g]iven that these emails and their attachments can be searched using an eDiscovery tool without needing to open each email and its attachments individually . . . , Defendants have not demonstrated that doing so would constitute an undue burden.").

[4] CoA Institute explicitly indicated that the IRS should work with its Information Technology E-discovery Program Management Office to conduct a search of email correspondence. *See* Decl. of Ryan P. Mulvey, Exs. 2, 4–5, July 1, 2016, ECF No. 69-4. The IRS never responded directly to this recommendation, and the agency has not provided an explanation as to why even a limited search could not be undertaken with the e-discovery tools at its disposal. *See* Internal Revenue Serv., Counsel Litigation Support Project (CLSP) – Privacy Impact Assessment (Feb. 8, 2012), *available at* http://coainst.org/2b9xDNU (explaining IRS use of "Clearwell" e-discovery tool); Internal Revenue Serv., Encase eDiscovery Privacy Impact Assessment Information (Apr. 17, 2014), *available at* http://coainst.org/2aMQzAW (explaining IRS use of "Encase eDiscovery" tool).

The IRS argues that "E-Trak is used to store correspondences that are received by email," and therefore any search of E-Trak would include all relevant "email correspondences." Def.'s Opp'n at 2. This is inaccurate. In her declaration, Ms. Tate indicates that E-Trak does not automatically capture correspondence; it is left to the discretion of employees to ensure that correspondence is "scanned into" the platform. Tate Decl. ¶ 4; *supra* note 1. Even if E-Trak (or other records systems such as AFOIA and EDIMS) capture some email, this does not relieve the IRS from its obligation to search for records in other systems or in individual employee email accounts.[5] *See Jefferson v. Bureau of Prisons*, No. 05-00848, 2006 WL 3208666, at *6 (D.D.C. Nov. 7, 2006).

It is hardly "speculative" to posit that correspondence from the White House soliciting IRS employees to violate Section 6103—which this Court has recognized as the kind of records sought, in part, by Items Three and Four, *see* Mem. Op. at 12–13, 31–34—might not have been properly handled and catalogued. *See* Pl.'s Br. at 11 (discussing publicly acknowledged instances of IRS wrongdoing and mishandling of records); *cf. True the Vote, Inc. v. Internal*

[5] CoA Institute offered "to collaborate . . . in identifying a discrete number of potential record custodians . . . whose computers could be search[ed] for responsive e-mail records." Pl.'s Br. at 10–11. The IRS retorts that CoA Institute was "unable to identify with any reasonable specificity a record keeper" and therefore placed the burden on the IRS to do so. Def.'s Opp'n at 3–4. The CoA Institute failure in 2015–16 to identify individual agency employees from 2009–12 who might have responsive records is no surprise given the recognized "'asymmetrical distribution of knowledge'" between a requester and an agency. *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 146 (D.C. Cir. 2006) (citation omitted). Agencies bear the burden in attempting to identify potential custodians. *See Hall & Assocs. v. Envtl. Prot. Agency*, 83 F. Supp. 3d 92, 98 (D.D.C. 2015) (official contacted other employees to locate records and other custodians). CoA Institute merely offered to cooperate with the agency in designing a limited preliminary set of custodians whose email could be searched, but the agency refused to cooperate or even to provide basic information regarding potential custodians. In most civil cases, the Federal Rules of Civil Procedure address this information disparity. *See, e.g.*, Fed. R. Civ. Pro. 26(a)(1)(A) (requiring, in part, each party to make initial disclosures of relevant documents or to describe their location and to identify potential witnesses). Although these rules, and the case law in this and other jurisdictions, require parties to cooperate in litigation, *see, e.g.*, *Newman v. Borders, Inc.*, 257 F.R.D. 1, 3 n.3 (D.D.C. 2009), there is no equivalent requirement in FOIA matters. LCvR 26.2(a)(9). Such cooperation, which would be within IRS discretion in this case, frequently resolves disputed issues, narrows issues presented to the Court, and/or reduces costs. *See generally The Sedona Conference Cooperation Proclamation* (July 2008), http://coainst.org/2bqNcAm (last visited August 29, 2016); Sedona Conference, *The Case For Cooperation*, 10 Sedona Conf. J. 339 (2009 Supp.).

Revenue Serv., et al., No. 14-5316 (D.C. Cir. Aug. 5, 2016) (discussing ongoing Constitutional violations by IRS employees in the context of determining whether actions for injunctive and declaratory relief were moot).

The IRS argues that to take seriously the intended scope of the CoA Institute request would amount to a self-investigation. In a sense, however, every FOIA request is an investigation into agency operations. Congress enacted the FOIA "to introduce transparency into government activities." *Stern v. Fed. Bureau of Investigation*, 737 F.2d 84, 88 (D.C. Cir. 1984). Public access to records evidencing unauthorized requests from the White House for the disclosure of taxpayer or return information advances the purpose of FOIA. *See Nat'l Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) ("The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."). Given the availability of agency-wide tools for the search of email, and without an explanation of how the use of these tools would be unreasonably burdensome, the IRS cannot avoid its obligation to conduct a comprehensive search that includes all email correspondence.

IV. THE IRS RELIED ON INADMISSIBLE STATEMENTS THAT SHOULD BE STRICKEN AND THE COA INSTITUTE MOTION TO STRIKE IS NOT MOOT.

The IRS continues to rely on unfounded assertions to justify its misconstruction of Item Three. Instead of addressing the concerns raised by CoA Institute in its motion to strike, especially with respect to the inadmissibility of statements about White House business practices and the attitude of IRS employees to confidentiality provisions of the Internal Revenue Code, *see* Pl.'s Br. at 12–15, the IRS argues that a motion to strike is "disfavored." The agency recites in conclusory fashion that the assertions proffered by Ms. McCarty are based on "personal

knowledge." Def.'s Opp'n at 9. The agency also argues that the motion to strike is moot. Def.'s Br. at 11. These arguments are unpersuasive.

Notwithstanding the careful approach with which courts approach motions to strike, the requirements of Fed. R. Civ. Pro. 56(c)(4) are plain enough: "personal knowledge by [an] affiant is unequivocal, and cannot be circumvented. An affidavit based on information and belief in unacceptable." *Londrigan v. Fed. Bureau of Investigation*, 670 F.2d 1164, 1174 (D.C. Cir. 1981). CoA Institute does not ask the Court to strike the McCarty Declaration in its entirety, but to exercise discretion and use "a scalpel, not a butcher knife," to carefully excise statements based on speculation. *Perez v. Volvo Car Corp.*, 247 F.3d 303, 315 (1st Cir. 2001).

The statements in question—the final sentence of paragraph three of the McCarty Declaration, as well as the entirety of paragraph five, Pl.'s Br. at 12—are essential to the IRS argument for the adequacy of its search. For example, paragraph five is the sole basis for the claim that White House correspondence would be forwarded to the Office of the Executive Secretariat, which the IRS relied upon in refusing to search outside that office. IRS's SUMF ¶ 11, June 3, 2016, ECF No. 66-1; Def.'s Br. at 5. Thus, the motion to strike is not moot.

The IRS also confuses the extension of the personal knowledge requirement in the FOIA context. Pl.'s Br. at 12 n.11. While courts do extend personal knowledge to officials who acquire information in the performance of their duties, this is limited to information about FOIA procedures and request processing. *See Inst. for Pol'y Studies v. Cent. Intelligence Agency*, 885 F. Supp. 2d 120, 133 (D.D.C. 2012); *Schoenman v. Fed. Bureau of Investigation*, 575 F. Supp. 2d 166, 172 (D.D.C. 2008); *see also Safecard Servs., Inc. v. Secs. & Exch. Comm'n*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). CoA Institute does not challenge Ms. McCarty on the basis of her description of how the FOIA request at issue was handled. The motion to strike instead concerns

allegations that form premises underlying IRS search efforts. The extension of the personal knowledge of Fed. R. Civ. Pro. 56(c) in FOIA cases is unwarranted here, and the Court should only "accept[] those statements in the [McCarty Declaration] that clearly indicate personal knowledge[.]" *Elzeneiny v. Dist. of Columbia*, 125 F. Supp. 3d 18 (D.D.C. 2015).

CONCLUSION

For the foregoing reasons, Plaintiff CoA Institute requests that this Court grant the CoA Institute cross-motion for summary judgment and the motion to strike. There is no genuine issue of material fact and CoA Institute is entitled to judgment as a matter of law.

Dated: August 31, 2016

Respectfully submitted,

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