

EXHIBIT 7



August 30, 2015

Via Electronic and First Class Mail

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**Re: Gill, et al. v. Dep't of Justice, et al.
N.D. Cal. Case No. 3:14-cv-03120 (RS)**

Dear Counsel,

Thank you for your letter of August 25, 2015. We appreciate your efforts to respond to our concerns. We believe, however, there remain substantial issues to address. *First*, we further explain why the record is incomplete. Defendants have improperly limited the scope of the record to documents bearing on the definition of suspicious activity when the agency action challenged in this case is the Functional Standard. Nor can Defendants exclude unspecified “deliberative” materials without providing a privilege log. We also discuss specific categories of documents that were considered but not included in the Administrative Record. *Second*, we believe that your response to our inquiry as to the possibility of factual stipulations further underscores the need for discovery. *Third*, given the incomplete state of the record and the necessity for discovery related to the Court’s jurisdiction, we believe summary judgment is premature and request that you agree to resolve the issues discussed in this letter before proceeding to summary judgment.

I. Incompleteness of Administrative Record

A. Scope of the Record

Defendants’ limitation of the scope of the Administrative Record rests on a mischaracterization of the agency decision challenged in this case. *See* August 25, 2015 Letter from Freeborne to Lye at 2 (“Plaintiffs’ claims *solely* challenge the permissibility of this ‘reasonably indicative’ standard, and its conformance with 28 C.F.R. Part 23.”) (emphasis added). Because the Complaint makes clear that the agency action challenged here is the Functional Standard, Defendants may not restrict the Administrative Record to the more narrow universe of documents pertaining to the definition of “suspicious activity.” Defendants must “file the entire administrative record pertinent to the omissions identified in the complaint.”

Natural Resources Defense Council, Inc. v. Train, 519 F.2d 287, 292 (D.C. Cir. 1975). It “cannot define the record by compartmentalizing” portions of the Functional Standard. *Cf. Exxon Corp. v. Dep’t of Energy*, 91 F.R.D. 26, 36-37 (N.D. Tex. 1981) (agency could not narrowly define record by “attach[ing]” “labels ... to the stages of its decisional process” and “omitting from the record all materials compiled by ‘the agency’ before rendering the final decision”).

The Complaint places Defendants on notice that Plaintiffs challenge the Functional Standard, including the process it sets forth for collecting, maintaining and disseminating suspicious activity reports, not merely its definition of suspicious activity. *See* Compl. at ¶ 42 (“Defendant PM-ISE subsequently issued a standard for SAR reporting that – unlike 28 CFR Part 23 – does not require reasonable suspicion of criminal activity before a suspicious activity report is collected, maintained, or disseminated and was not issued through the notice and comment procedure required by the APA, thus dodging public review.”) (emphasis added); ¶ 51 (“Functional Standard 1.5 constitutes final agency action and a legislative rule within the meaning of the APA”).

The claims for relief also make this clear. *See id.* at ¶ 162 (Second Claim For Relief) (“Because *Functional Standard 1.5* is broader than 28 CFR Part 23 and authorizes the collection, maintenance, and dissemination of information even in the absence of reasonable suspicion of criminal activity, it conflicts with 28 CFR Part 23.”) (emphasis added); *id.* at ¶ 168 (“PM-ISE’s *Functional Standard 1.5* is a legislative rule but was adopted without ... notice and comment....”) (emphasis added).

Furthermore, the prayer for relief further specifies that the agency action challenged in this case is the Functional Standard. *See* Complaint, Prayer for Relief at 2 (“Enter a declaratory judgment that Functional Standard 1.5 is invalid and issue a permanent injunction requiring Defendants PM-ISE and KSHEMENDRA PAUL to rescind Functional Standard 1.5....”).

Defendants’ limitation of the scope of the Administrative Record is inappropriate in light of the nature of Plaintiffs’ challenge in this case, and would also prejudice Plaintiffs. Documents bearing on the Functional Standard’s process for collecting, maintaining, and disseminating suspicious activity reports directly inform a central merits issue in this case – whether the Functional Standard conflicts with 28 C.F.R. Part 23. In addition, Defendants dispute that the issuance of the Functional Standard constitutes final agency action. The parties and the Court need the whole Administrative Record in order to evaluate that contention.

B. Documents Considered by Agency Decision-Makers

With respect to documents considered by the agency but that are missing from the Administrative Record, we wish to make three main points.

First, you address some of the examples of missing documents we drew to your attention to illustrate the incomplete nature of the Administrative Record. Our responses are below:

Guidelines Referenced in White House Memorandum. You state that “[w]hile the Functional Standard is consistent with [Guidelines 1, 3, 4, and 5], none of them motivated the creation of the Nationwide SAR initiative, and thus they are not part of the Record.” August 25, 2015 letter at 3. The relevant standard is whether the agency considered, directly or indirectly, the document at issue, not whether the document “motivated” the challenged agency decision. *See Thompson v. Dep’t of Labor*, 885 F.2d 551, 555 (9th Cir. 1989). The agency must have considered Guidelines 1, 3, 4 and 5 to ensure that the Functional Standard is “consistent with” them. August 25, 2015 letter at 3. In any event, the PM-ISE Memorandum regarding Release of Functional Standard 1.0, however, explains that the PM-ISE released Functional Standard 1.0 “in accordance with the President’s Guidelines directing the development and issuance of common standards governing how terrorism information is acquired, accessed, shared, and used within the ISE.” Admin Record, Doc. 6 at Bates 71. Guideline 1 is “Define Common Standards for How Information is Acquired, Accessed Shared and Used Within the ISE.” Thus, the PM-ISE Memorandum contradicts the assertion that no Guideline other than Guideline 2 “motivated the creation of the” NSI.

The National Strategy for Information Sharing (NSIS). You concede that the NSI “was an outgrowth” of NSIS and state that Defendants will not object if Plaintiffs cite the document in their summary judgment briefing. In light of that, we propose the document be included in the Administrative Record.

Nationwide SAR Initiative Concept of Operations (NSI CONOPS). You acknowledged that the “business process language in the Functional Standard 1.5 mirrors that in the NSI CONOPS,” but then state that “the integration of this language into both of these documents does not mean that the PM-ISE considered the NSI CONOPS in issuing the Functional Standard.” August 25, 2013 letter at 3. We do not understand how the PM-ISE could have integrated language from the NSI CONOPS into the Functional Standard without having considered that document. Moreover, EOUSA’s Guidance states that an administrative record should include “[d]ocuments and materials that were before the agency at the time of the challenged decision, even if the final agency decision-maker did not specifically consider them.” EOUSA Guidance at 8. You further state that the business process language “was not related to any change in the definition of suspicious activity.” August 25, 2015 letter at 3. As discussed above, however, the scope of the Administrative Record in this case should not be limited only to documents that bear on the definition of suspicious activity.

SAR Working Group. You acknowledge that documents related to the working group exist, but were withheld as “deliberative materials.” *Id.* As discussed above, the government bears the burden of establishing the applicability of this qualified privilege and must identify the documents it seeks to withhold in a privilege log. *See supra* Part I-B.

ISE Privacy Guidelines and documents related to their development and implementation. You acknowledge that “the Functional Standard was developed consistent with these Guidelines,” but assert that they were properly excluded because “they were not considered with

respect to the Functional Standard's definition of suspicious activity." August 25, 2015 letter at 4. The exclusion of the Privacy Guidelines and related documents rests on Defendants' inappropriate attempt to narrow the scope of the Administrative Record. *See supra* Part I-A.

Documents related to Evaluation Environment. You contend that the *Final Report: Information Sharing Environment (ISE-) Suspicious Activity Report (SAR) Evaluation Environment* need not be included in the record because it "was not considered by the PM-ISE in issuing Functional Standard 1.5 or in updating the Functional Standard to version 1.5.5." August 25, 2015 letter at 4. The Administrative Record makes explicit, however, that the process for updating the Functional Standard included consideration of information from the Evaluation Environment. *See, e.g.*, Admin. Record, Doc. 15 at Bates 131 ("the next version of the ISE-SAR Functional Standard will be modified to reflect any changes in process and data format that are identified as necessary in the course of testing the ISE-SAR Functional Standard at the various Evaluation Environment sites"). The Final Report and information related to the Evaluation Environment that was before the agency should therefore be included in the Record.

Second, you have not addressed the numerous categories of documents that were explicitly considered by the agency in formulating Functional Standard 1.5.5, described in the Administrative Record at Document 39, Bates 336 and Document 40, Bates 406 and discussed in our prior letter.

Third, you invited us to identify the additional documents considered by the agency that should be included in the Administrative Record so that you could respond. A list of the documents or categories of documents that we have identified as missing is listed in the appendix to this letter. We request that you include these documents in the Administrative Record or explain your basis for declining to do so.

C. Deliberative Process Privilege and Privilege Log

Defendants acknowledge excluding "deliberative" materials from the Administrative Record but have failed properly to invoke the deliberative process privilege. Defendants' blanket invocation of the privilege ignores its qualified nature, and the refusal to identify the specific documents or categories of withheld documents is inconsistent with judicial decisions and guidance from numerous federal agencies requiring privilege logs.

First, deliberative process is not a *per se* privilege. Rather, it "is a qualified one. A litigant may obtain deliberative materials 'if his or her need for the materials and the need for accurate fact-finding override the government's interest in non-disclosure.'" *Arizona Rehab. Hosp., Inc. v. Shalala*, 185 F.R.D. 263, 268 (D. Ariz. 1998) (setting forth multi-factor test) (citation omitted); *accord Tafas v. Dudas*, 530 F. Supp. 2d 786, 800-01 (E.D. Va. 2008) (same). Moreover, the "initial burden of establishing the applicability of the privilege is on the government." *Id.* (internal quotation marks, citation omitted); *accord Miami Nation of Indians v. Babbitt*, 979 F. Supp. 771, 778 (N.D. Ind. 1996). Internal agency materials are frequently included in administrative records. *See, e.g., High Sierra Hikers Ass'n v. Dep't of Interior*, 2011

WL 2531138 *9 (N.D. Cal. June 24, 2011) (granting motion to augment record with “internal documents” including “internal NPS documents and correspondence with HSHA and others” because “[d]ocuments on which the Government indirectly relied are appropriately part of the administrative record”); *Lloyd v. Illinois Regional Transp. Auth.*, 548 F. Supp. 575, 590 (N.D. Ill. 1982) (“plaintiffs are entitled to discover any materials, including internal memoranda..., that are necessary to complete the administrative record”); *Tenneco Oil Co. v. Dep’t of Energy*, 475 F. Supp. 299, 318 (D. Del. 1979) (“The internal memoranda, directives and guidelines generated and disseminated at a variety of levels are proper items of discovery”).

Second, and relatedly, courts frequently require an agency asserting the deliberative process privilege to provide a privilege log. *See, e.g., Tafas*, 530 F. Supp. 2d at 801 (“when claiming deliberative process privilege...the government must comply with formal procedures necessary to invoke the privilege, including the provision of a privilege log”) (internal quotation marks, citation omitted). Indeed, DOJ’s Executive Office for United States Attorneys has published guidance making clear that “[i]f documents and materials are determined to be privileged or protected, the index of record must identify the documents and materials, reflect that they are being withheld, and state on what basis they are being withheld.” *Guidance to Client Agencies on Compiling the Administrative Record*, U.S. Atty. Bull., vol. 42, no. 1 at 9 (Feb. 2000) (hereinafter “EOUSA Guidance”).¹ Numerous other federal agencies have issued guidance similarly directing the production of privilege logs specifically identifying documents withheld from an administrative record.²

The purpose of the privilege log in APA cases, like any other, is to allow the parties (and potentially the court) to evaluate the claim of privilege. *See Tenneco*, 475 F. Supp. at 319 (“DOE must identify documents or communications with sufficient specificity to enable this Court meaningfully to evaluate whether the information sought involves the internal deliberative process by which a decision or agency position was reached.”); NOAA Guidance, *supra* note 2, at 14 (“The primary purpose of a Privilege Log is to provide written justification for the withholding of documents, and to enable attorneys for each side and the Court to resolve any disputes about whether such documents must be made available.”).

¹ Available at <http://www.justice.gov/sites/default/files/usao/legacy/2006/06/30/usab4801.pdf>.

² *National Oceanic and Atmospheric Administration Guidelines for Compiling an Agency Administrative Record*, Office of the General Counsel, United States Department of Commerce, National Oceanic and Atmospheric Administration 14 (Dec. 21, 2012) (“the Custodian [of the Administrative Record] must produce a ‘Privilege Log’”) (“NOAA Guidance”), available at http://www.gc.noaa.gov/documents/2012/AR_Guidelines_122112-Final.pdf; *Standardized Guidance on Compiling a Decision File and an Administrative Record*, Office of the Solicitor, United States Department of the Interior at 12-13 (June 27, 2006) (“the AR Coordinator should create both a complete AR index and a privilege index...[A] separate privilege index must be generated if the agency is withholding any protected or privileged information”), available at <http://www.fws.gov/policy/e1282fw5.pdf>; *Guidance to Federal Agencies on Compiling The Administrative Record*, U.S. Dep’t of Justice, Environment and Natural Resources Division at 4 (January 1999) (“[i]f documents and materials are determined to be privileged or protected, the index of record must identify the documents and materials, reflect that they are being withheld, and state on what basis they are being withheld”), available at http://environment.transportation.org/pdf/programs/usdoj_guidance_re_admin_record_prep.pdf.)

While we understand that the federal guidance documents discussed above were not intended to create enforceable rights against federal agencies, Defendants' production of a privilege log is recommended by numerous federal agencies, required by court decisions, and would facilitate the orderly resolution of disputes over the completeness of the AR.

* * *

We request that Defendants complete the record by certifying an Administrative Record that is consistent with the challenge in this case, *i.e.*, documents considered in the formulation of the Functional Standard, not solely its definition of "suspicious activity"; including the documents we have identified as missing; and providing a privilege log identifying withheld documents.³

II. Discovery as to the Court's Jurisdiction

You have indicated that Defendants are not currently willing to enter into the stipulations we proposed in our prior letter. Your response underscores the need for discovery related to the Court's jurisdiction. This is so because the areas in which we would seek stipulations involve information that is within the possession of Defendants and to which Plaintiffs do not have access.

You indicated that our proposed stipulations are "not factually accurate," August 25, 2015 letter at 5, but did not identify the stipulations that are inaccurate. Precisely because you contend that some, unspecified factual assertions are inaccurate, discovery is necessary. You also stated that the stipulations would need to be "more specific." *Id.* Defendants are in possession of the relevant information; Plaintiffs are unable to be more specific absent discovery. Finally, you requested more detail on potential standing stipulations regarding "the SAR process, and specifically who has access to SARs and the purposes for which SAR databases are queried and used." *Id.* But again, Defendants are in possession of the relevant information and we requested in our prior letter that Defendants provide information about these topics precisely so that Plaintiffs could formulate more detailed stipulations.

III. Record Issues Should Be Resolved Before Summary Judgment

The Court indicated in its August 25, 2015 order that the parties should propose a summary judgment briefing schedule. We believe that record issues, including the completeness

³ After Defendants complete these actions, Plaintiffs reserve the right to supplement the record and/or seek discovery to ascertain whether the newly certified Administrative Record is complete. *See, e.g., Public Power Council v. Johnson*, 674 F.2d 791, 794 (9th Cir. 1982) (courts have "permitted discovery when those challenging agency action have contended the record was incomplete, in order to provide a record of all documents and materials directly or indirectly considered by the agency decisionmakers"); *Natural Resources Defense Council*, 519 F.2d 287, 292 (D.C. Cir. 1975) ("the plaintiffs are entitled to an opportunity to determine, by limited discovery, whether any other documents which are properly part of the record have been withheld").

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of the Administrative Record and discovery into issues such as standing, should be resolved prior to briefing on summary judgment. This is necessary for an orderly presentation of the issues. *See Exxon*, 91 F.R.D. at 39-40 (denying agency's request to stay discovery pending resolution of its motion for summary judgment: "the agency's motion [for summary judgment] is premature until such time as the Court is satisfied that the 'full' record has been submitted"). In particular, we request that you inform us by September 10, 2015, the date of the next Case Management Conference, whether Defendants will agree to complete the Administrative Record as discussed in Part I above. In addition, we propose to propound limited discovery on standing issues by September 17, 2015, one week after the next Case Management Conference. Further, we request that you agree to resolve the issues discussed in this letter either informally or through motion practice before the parties proceed to summary judgment.

Sincerely,

/s/ Linda Lye

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

Attorneys for Plaintiffs

Missing Document or Category of Documents	Reasons Why The Information Should be Included in the Record	Source
<p>1. Guidelines from the White House Memorandum on Guidelines in Support of Information Sharing Environment</p> <ul style="list-style-type: none"> • Guideline 1: Define Common Standards for How Information is Acquired, Accessed, Shared and Used Within the ISE • Guideline 3: Standardize Procedures for Sensitive But Unclassified Information • Guideline 4: Facilitate Information Sharing Between Executive Departments and Agencies and Foreign Partners • Guideline 5: Protect the Information Privacy Rights and Other Legal Rights of Americans 	<p>In the White House Memorandum on Guidelines and Requirements in Support of Information Sharing Environment, President Bush set forth various five guidelines for information sharing consistent with IRTPA, but the record only includes Guideline 2 (Develop a Common framework for the Sharing of Information Between and Among Executive Departments and Agencies and State, Local, and Tribal Governments, Law Enforcement Agencies, and the Private Sector). On their face, the four other Guidelines appear to be information that the agency would and should have considered in the formulation of the Functional Standard.</p>	<p>White House Memorandum on Guidelines and Requirements in Support of Information Sharing Environment (Doc 1, Bates 1-5)</p>
	<p>The Common Terrorism Information Sharing Standards (CTISS) Program Manual is included in record (Doc 4). CTISS “supports the essential activities of acquiring, accessing, producing, retaining, protecting, and sharing terrorism information consistent with Presidential Guideline 1.”</p>	<p>CTISS (Doc 4, Bates 42)</p>
	<p>PM-ISE Memo re release of FS 1.0 explains that the ISE released FS 1.0 “in accordance with the President’s Guidelines directing the development and issuance of common standards governing how terrorism information is acquired, accessed, shared, and used within the ISE.” The agency had to have considered Guideline 1 (“Common Standards for How Information is Acquired, Accessed, Shared and Used Within the ISE”) in developing the FS because the FS constituted its effort to implement Guideline 1.</p>	<p>Doc 6 (PM-ISE Memorandum re release of FS 1.0) at Bates 71.</p>
<p>2. Information pertaining to “high level information sharing performance measures ... to be assessed no less than semiannually” – required by White House Memorandum to be developed within 90 days of December 16, 2005, in conjunction with the PM, by each head of an executive department or agency that uses intelligence or terrorism information</p>	<p>The White House memo (Doc 1 in the record) instructs agencies to develop these performance measures. Is it Defendants position that the SAR reporting standards were developed without regard to performance measures that the PM-ISE was instructed by the White House to develop?</p>	<p>Memorandum on Guidelines and Requirements in Support of Information Sharing Environment (Doc 1 at Bates 5)</p>

<p>3. Information pertaining to the guideline, training and incentives for the improved and increased sharing of terrorism information, required by the White House Memorandum to be prepared within 180 days of December 16, 2005 by each head of an executive department or agency that uses intelligence or terrorism information</p>	<p>White House memo instructs agencies to develop these guidelines, training, and incentives. Is it Defendants position that the SAR reporting standards were developed without regard to guidelines and performance measures that the White House instructed agencies to develop?</p>	<p>Memorandum on Guidelines and Requirements in Support of Information Sharing Environment (Doc 1 at Bates 5)</p>
<p>4. The AG's and Secretary of Homeland Security's "comprehensive review of the authorities and responsibilities of executive departments and agencies regarding information sharing with State, local, and tribal governments, law enforcement agencies, and the private sector," required to be prepared pursuant to White House Memo's Guideline 2</p>	<p>Guideline 2's introduction states that the White House Memo directed the AG and Sec of Homeland Security to perform the aforementioned "comprehensive review." Defendants' letter of August 25, 2015 acknowledges that the NSI was established "in direct response to Guideline 2." The "comprehensive review" document is missing from the record even though it was explicitly part of the process that the White House required in completing the tasks assigned by Guideline 2, one of which was the establishment of the NSI.</p>	<p>Guideline 2 -- Develop a Common framework for the Sharing of Information Between and Among Executive Departments and Agencies and State, Local, and Tribal Governments, Law Enforcement Agencies, and the Private Sector (Doc 2 at Bates 6)</p>
<p>5. Documents related to the interagency working groups formed to implement Guideline 2, especially a sub-working group that "undertook efforts to examine certain relevant issues, including the identification of legal authorities pertinent to Guideline 2's directives."</p>	<p>The record describes the process used to complete the tasks assigned by the White House in Guideline 2 (which include establishment of the NSI) and that process included development of interagency working groups. Yet documents related to these interagency working groups are missing from the record even though these working groups were explicitly part of the process that the record describes.</p>	<p>Guideline 2 (Doc 2 at Bates 7)</p>
<p>6. Documents related to the "senior-level advisory group" established pursuant to one of the recommendations of Guideline 2, "to ensure accountability, oversight, and governance for the effective operations of this framework."</p>	<p>Guideline 2 contains findings and recommendations. The first recommendation is to create an advisory group that "should report the results of its oversight to the ISC" and "meet at least once per month during the first year of implementation." Yet documents related to this advisory group are missing from the record even though it was explicitly part of the process that the record describes.</p>	<p>Guideline 2 (Doc 2 at Bates 22)</p>

<p>7. Documents related to “a coordinated set of policies, protocols, and procedures to support,” among other things, “[d]efine the means through which State, local, tribal, and private sector data related to terrorist risks and threats and associated requirements and tasks is communicated to Federal authorities,” “[i]dentify requirements of a centralized system for reporting, tracking, and accessing suspicious incidents and activities,” and “[d]esign a mechanism to monitor and refine the above processes.”</p>	<p>Guideline 2 contains findings and recommendations. The third recommendation is for DOJ and DHS to establish coordinated policies, protocols, and procedures on specified topics. Yet documents related to these coordinated policies, protocols, and procedures are missing from the record even though they were explicitly part of the process that the record describes.</p>	<p>Guideline 2 (Doc 2 at Bates 23)</p>
<p>8. Documents related to the Guideline 2 Implementation Team</p>	<p>Guideline 2 contains findings and recommendations. The fourth recommendation is to establish an Implementation Team with representatives from DoD, DOJ, DHS, FBI, NCTC, PM-ISE, and SLT, with responsibility for “Refining the <i>standards</i> and practices to govern Federal, State, local, and tribal officials and private section interaction through the network of fusion centers linked to the national coordination group” and “Ensuring <i>compliance with applicable laws and regulations</i>, including all U.S. laws protecting individuals’ privacy and civil liberties.” Yet documents related to this Implementation Team are missing from the record even though its work was explicitly part of the process that the record describes.</p>	<p>Guideline 2 (Doc 2 at Bates 24)</p>
<p>9. Documents related to Guideline 2’s recommendation that DOJ and DHS “amend grants guidance and technical assistance to ensure that fusion center grant recipients, as a condition of receiving funding, meet delineated baseline capability requirements.”</p>	<p>Guideline 2 contains findings and recommendations. This is Recommendation 5C recommends that DOJ and DHS amend grants guidance and technical assistance. Yet documents related to this recommendation are missing from the record even though it was explicitly part of the process that the record describes.</p>	<p>Guideline 2 (Doc 2 at Bates 25)</p>

<p>10. Documents related to Guideline 2’s recommendation that “DOJ and DHS, in consultation with the Program Manager’s Office,...develop standards to assist State and major urban area fusion centers to achieve capacity to:</p> <ol style="list-style-type: none"> 1. Develop, maintain, and, as appropriate, disseminate assessments of terrorist risks and threats gathered at the State, local, or tribal level; 2. Use risk and threat assessments to identify and gather information responsive to identified threats and risks; 3. Develop the processes and protocols for ensuring that priority information — including Suspicious Incident Reports (SIRs) and Suspicious Activity Reports (SARs) — is reported to the appropriate law enforcement authorities and national entities to support its inclusion into national patterns and trends analysis; and 4. Specify the means through which the State, local, and tribal data related to terrorist risks and threats and associated requirements and tasks is communicated to Federal authorities and private sector entities.” 	<p>Guideline 2 contains findings and recommendations. Recommendation 5E recommends that DOJ and DHS in consultation with the Program Manager’s office develop fusion center standards. Yet documents related to this recommendation are missing from the record even though it was explicitly part of the process that the record describes.</p>	<p>Guideline 2 (Doc 2 at Bates 26)</p>
<p>11. Documents related to Guideline 2’s recommendation re sharing with the Private Sector</p>	<p>Guideline 2 contains findings and recommendations. Recommendation 6 contains recommendations for DHS pertaining to information sharing with the private sector. Yet documents related to this recommendation are missing from the record even though it was explicitly part of the process that the record describes.</p>	<p>Guideline 2 (Doc 2 at Bates 27)</p>

<p>12. Documents related to ISE SAR Working Group (also referred to as ISE-SAR Steering Committee or ISE-SAR Governance Panel) (only select documents included in record)</p>	<p>Doc 3, the “Information Sharing Environment Suspicious Activity Reporting (SAR) Working Group’s Business Process Analysis” states that the PM-ISE established a SAR Working Group in Nov 2006 to “review current SAR processes, identify issues and impediments and develop a common framework for improving the development, distribution, and access of terrorism suspicious activity reports across the ISE.” The working group, “which includes over 40 subject matter experts from more than 14 Federal and State organizations, met regularly through November and December [2006] to gain a baseline understanding of current SAR processes across ISE organizations, and to develop a path forward toward establishing a common ISE SAR Framework.” The record does not contain the information considered or documents and analyses produced by this Working Group even though the record makes clear that the Working Group was integral to the process of formulating the Functional Standard.</p>	<p>Doc 3 at Bates 28</p>
	<p>The record includes a one-page agenda for the June 17, 2008, July 17, 2008, September 8, 2008, October 7, 2008, February 25, 2009, April 7, 2009 meetings of the Panel. It also includes a contact list for the committee (Doc 9). Inclusion of these items reflect Defendants’ acknowledgment that the work of this Panel was considered in formulating the Functional Standard, and yet the underlying written materials generated for or by this Panel are not included in the record. Underlying written materials clearly exist. <i>See, e.g.,</i> Doc. 25 at Bates 185 (“The preliminary agenda is attached. <i>I will send additional read-ahead material prior to the meeting.</i>”)</p>	<p>Doc 8 at Bates 107 (June 17, 2008 agenda), Doc 9 (contact list for committee), Doc 10 at Bates 111 (July 17, 2008 agenda), Doc 11 at Bates 113 (Sept 8, 2008 agenda), Doc 16 at Bates 153 (Oct 7, 2008 agenda), Doc 22 at Bates 178-79 (February 25, 2009 agenda), Doc 25 at Bates 186 (April 7, 2009 agenda)</p>

<p>13. Documents related to ISE SAR Working Group’s examination of “potential constraints, considerations, policies and issues relate to the release, control, handling and management of SAR information. This included consideration of the legal (i.e., U.S. persons, retention, Privacy Act and Freedom of Information Act), regulatory, and agreement-based considerations and constraints affecting the Law Enforcement (National, State, local, etc) and Intelligence Communities.”</p>	<p>Doc 3 describes the ISE SAR Working Group as examining potential constraints relating to the handling of SAR information and identifying the “challenges and issues that will need to be further addressed.” The record does not contain the ISE SAR Working Group’s examination of this issue, even though the record makes clear that the Working Group was integral to the process of formulating the Functional Standard.</p>	<p>Doc 3 at Bates 30</p>
<p>14. Documents related to the NCTC-led interagency group’s definition of “suspicious activity”</p>	<p>Doc 3 states that “[s]uspicious activity was previously defined by the NCTC-led interagency group as “behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, criminal, espionage, or other illicit intention.” The record does not contain records relating to prior definitions of “suspicious activity” even though they are referenced in the record and prior definitions would appear to be precisely the type of information the agency should have considered in formulating the Functional Standard.</p>	<p>Doc 3 at Bates 28</p>
<p>15. Documents related to the CTISS Committee, including its recommendations about functional standards to PM-ISE.</p>	<p>Common Terrorism Information Sharing Standards (CTISS) Program Manual (Doc 4) states that “the CTISS Committee, chaired by the Office of the PM-ISE with membership from all ISC departments and agencies, NIST, NCS, CNSS, and State and local representatives, will identify and recommend functional standards and technical standards for issuance by the PM-ISE to all ISE participants.” The record does not contain documents related to the CTISS Committee or its recommendations, even though its recommendations as to “functional standards ...for issuance by the PM-ISE” were explicitly part of the process described in the record.</p>	<p>Doc 4 at Bates 60</p>
	<p><i>See also</i> Doc 5 (ISE-AM-300) provides that the CTISS Committee “shall...[i]dentify and recommend functional standards and technical standards for issuance by the PM-ISE.”</p>	<p>Doc 5 at Bates 69</p>

16. ISE Implementation Plan, November 2006	The record makes clear that the agency considered this document as it is explicitly cited in the following record documents: 1) Doc 5 (Information Sharing Environment Administrative Memoranda (ISE-AM) Common Terrorism Information Sharing Standards (CTISS) Program) (Oct. 31, 2007) (hereinafter "ISE-AM-300"); 2) Functional Standard 1.0; 3) Functional Standard 1.5; (4) Functional Standard 1.5.5	1) Doc 5 (ISE-AM-300) at Bates 67; 2) Doc 7 (FS 1.0) at Bates 75; 3) Doc 28 (FS 1.5) at Bates 192; Doc 41 (FS 1.5.5) at Bates 414
17. ISE Enterprise Architecture Framework (EAF) (August 2007)	The record makes clear that the agency considered this document as it is explicitly cited in the following record documents: 1) Doc 5 (ISE-AM-300); 2) Functional Standard 1.0;	1) Doc 5 (ISE-AM-300) at Bates 67; 2) Doc 7 (FS 1.0) at Bates 75
18. ISE Enterprise Architecture Framework (EAF) Version 2.0 (September 2008)	The record makes clear that the agency considered this document as it is explicitly cited in the following record documents: Functional Standard 1.5 and FS 1.5.5	Doc 28 (FS 1.5) at Bates 192; Doc 41 (FS 1.5.5) at Bates 414
19. Privacy and Civil Liberties Implementation Guide for the Information Sharing Environment, Version 1.0 (September 2007)	The record makes clear that the agency considered this document as it is explicitly cited in the following record documents: 1) Doc 5 (ISE-AM-300); 2) Functional Standard 1.0;	1) Doc 5 (ISE-AM-300) at Bates 67; 2) Doc 7 (FS 1.0) at Bates 75;
20. National Information Exchange Model, Concept of Operations, Version 0.5 (January 9, 2007)	The record makes clear that the agency considered this document as it is explicitly cited in the following record documents: 1) Doc 5 (ISE-AM-300); 2) Functional Standard 1.0; 3) Functional Standard 1.5.5	1) Doc 5 (ISE-AM-300) at Bates 67; 2) Doc 7 (FS 1.0) at Bates 75; 3) Doc 41 (FS 1.5.5) at Bates 414
21. Nationwide SAR Initiative Concept of Operations (December 2008)	The record makes clear that the agency considered this document as it is explicitly cited in the following record documents: 1) Functional Standard 1.5 (Bates 192); 2) Functional Standard 1.5.5 In addition, the Memorandum releasing Functional Standard 1.5 states that FS 1.5 "[u]dates the operational process descriptions to align the standard with the <i>Nationwide SAR Initiative Concept of Operations</i> , released in December 2008." (Bates 187) The agency had to consider the 2008 Conops in order to align FS 1.5 with it.	1) Doc 28 (FS 1.5) at Bates 192; 2) Doc 41 (FS 1.5.5) at Bates 414; <i>see also</i> Doc 28 (Memo releasing FS 1.5) at Bates 187

22. NSI SAR Data Repository (SDR) CONOPS, January 2014	The record makes clear that the agency considered this document as it is explicitly cited in Functional Standard 1.5.5	Doc 41 (FS 1.5.5) at Bates 414
23. Office of Director of National Intelligence Chief Information Officer, Intelligence Community Enterprise Architecture Data Strategy (August 2007) (Draft Version)	The record makes clear that the agency considered this document as it is explicitly cited in Doc 5 (ISE-AM-300).	Doc 5 (ISE-AM-300) at Bates 67
24. Office of Management and Budget (OMB), Federal Transition Framework Catalog of Cross Agency Initiatives, Version 1.0, December 2006	The record makes clear that the agency considered this document as it is explicitly cited in Doc 5 (ISE-AM-300).	Doc 5 (ISE-AM-300) at Bates 67
25. OMB Circular A-119 (Transmittal Memorandum, Federal Participation in the Development and Use of Voluntary Standards)	The record makes clear that the agency considered this document as it is explicitly cited in Doc 5 (ISE-AM-300).	Doc 5 (ISE-AM-300) at Bates 67
26. National Strategy for Information Sharing (October 2007)	PM-ISE Memo re release of FS 1.0 explains that the FS “is ... in alignment with the President’s October 2007 National Strategy for Information Sharing (NSIS).” The agency clearly considered the NSIS in developing the FS because it needed to ensure that the Functional Standard was “align[ed]” with the NSIS.	Doc 6 (PM-ISE Memorandum re release of FS 1.0) at Bates 71.
	The record makes clear that the agency considered this document as it was cited by Doc 26 (“Memorandum for Release of the Information Sharing Environment (ISE) Functional Standard for Suspicious Activity Reporting, Version 1.5”) at Bates 187.	Cited as referenced in Doc 26 (“Memorandum for Release of the Information Sharing Environment (ISE) Functional Standard for Suspicious Activity Reporting, Version 1.5”) at Bates 187.
	PM-ISE Memo re release of FS 1.5 states that FS 1.5 is “in alignment with the National Strategy for Information Sharing.” (Bates 188) As noted above, the agency clearly considered the NSIS in formulating the FS to ensure the documents were “align[ed].”	Doc 28 (PM-ISE Memorandum re release of FS 1.5) at Bates 188.

	<p>The record makes clear that the agency considered this document as it was cited by the following record document: Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010).</p>	<p>Doc 30 at 299</p>
<p>27. Documents related to ISE Performance Management Program and development of SAR performance measures</p>	<p>PM-ISE Memo re release of FS 1.0 outlines the various SAR initiatives undertaken by the PM-ISE, one of which was the “executi[on] [of] an ISE Performance Management Program with released performance measures....The PM-ISE, in consultation with the ISC, is working to refine these measures over the coming months.” This type of information is exactly the type of information that should be in record, unless the agency is taking the position that it did <i>not</i> consider performance measures in developing the Functional Standard 1.5 or 1.5.5.</p>	<p>Doc 6 (PM-ISE Memorandum re release of FS 1.0) at Bates 74.</p>

<p>28. Documents related to the ISE SAR Evaluation Environment, including</p> <ul style="list-style-type: none"> (a) Final Report: Information Sharing Environment (ISE-)Suspicious Activity Reporting (SAR) Evaluation Environment (January 2010) (b) MOU between DOJ's Bureau of Justice Assistance and PM-ISE regarding the Evaluation Environment and participation agreements with agencies in the environment (c) template/guide for FSLT entities identifying "best practices" gleaned from the Evaluation Environment (d) materials reflecting the feedback, approvals, and technical assistance provided to EE participants (Bates 283, 254) (e) communications between the agency and Evaluation Environment sites regarding the ISE-SAR EE Privacy and Civil Liberties Assessment Survey Questionnaire (Appendix A of Doc 30) (f) ISE-SAR Evaluation Environment Privacy, Civil Rights, and Civil Liberties Protection Policy Template (January 2009) 	<p>"The ISE Implementation Plan introduced the concept of information sharing evaluation environments as a cost effective approach for identifying requirements for ISE policies, business processes, capabilities, and standards.... <i>An important purpose of the evaluation environment is to test the ISE-SAR Functional Standard in an operational environment and to identify any refinements or changes to the SAR business process and data elements that may be necessary.</i> In addition, a privacy assessment will be performed in the operational environment to identify privacy issues that may arise in implementing the initial ISE-SAR Functional Standard and information flow." While the record includes select documents related to the analysis of privacy outcomes in the Evaluation Environment (Doc 15 & 30), the record is clear that the Evaluation Environment was piloted for the purpose of identifying refinements in the Functional Standard. According to Defendant's own documents and the pilot process they created, the Evaluation Environment and documents related to it should have been considered in updating the Functional Standard. All documents related to the Evaluation Environment should therefore be part of the record.</p>	<p>Doc 6 (PM-ISE Memorandum re release of FS 1.0) at Bates 74.</p>
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	<p>“the next version of the ISE-SAR Functional Standard <i>will be modified</i> to reflect any changes in process and data format that are identified as necessary in the course of testing the ISE-SAR Functional Standard at the various Evaluation Environment sites.” Bates 131. The record makes explicit that the process for updating the Functional Standard included consideration of information from the Evaluation Environment.</p>	<p>Doc 15 (Initial Privacy and Civil Liberties Analysis) at Bates 131.</p>
	<p>“The ISE-SAR Evaluation Environment contemplates an iterative process involving phased implementation of the ISE-SAR Functional Standard and IEPDs in diverse operating environments and <i>continuous reexamination of the assumptions, processes, and standards for designating and sharing ISE-SARs.</i>” Bates 152. Information gleaned through Evaluation Environment was used for purpose of updating Functional Standard’s processes and definition, and therefore necessarily considered by the agency in updating the FS.</p>	<p>Doc. 15 (Initial Privacy and Civil Liberties Analysis) at Bates 152.</p>
	<p>Item (a) in the column to the left is cited as reference by Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010)</p>	<p>Doc 30 at Bates 299</p>
	<p>Items (b) and (c) in the column to the left: DOJ’s BJA and PM-ISE entered into an MOU that set forth “the scope of the ISE-SAR Evaluation Environment activities and the roles and responsibilities of the parties to the agreement.” Bates 127 at n.7. According to the MOU, “the ISE-SAR Evaluation Environment effort will result in the development and publication of a guide or template for federal, state, local, and tribal entities to use in establishing policies, common business processes, and technical capabilities for the gathering, documenting, processing, analysis, and sharing of terrorism-related suspicious activities. The guide or template will be based on “best practices” identified at the ISE-SAR Evaluation Environment sites.” Bates 127.</p>	<p>Doc 15 (Initial Privacy and Civil Liberties Analysis) at Bates 127 & n. 7</p>

	<p>Item (d) in the column to the left: The Evaluation Environment involved each site being given options for developing privacy policies. Process for reviewing and approving their policies involved lots of feedback and approval by PGC Co-Chairs and PM-ISE, as well as notification to BJA. EE participants also received significant technical assistance from federal partners. Bates 272, 283, 254. None of these materials reflecting the feedback, approvals, and technical assistance provided to EE participants is included in the record.</p>	<p>Doc 30 at Bates 272, 283, 254</p>
	<p>Item (e) in the column to the left: As part of EE process, PM-ISE and DOJ/BJA conducted assessments of EE participants, including sending each site a survey questionnaire. <i>See</i> Bates 290. Questionnaire found at Appendix A of Doc 30 at Bates 286-89. Responses to the survey are not included in the record.</p>	<p>Doc 30 at Bates 290.</p>
	<p>Item (f) in the column to the left: According to the Final Report of the ISE-SAR EE, the Implementation Guide “builds upon the previous SAR project efforts and was developed to assist participating state and local law enforcement agencies with the implementation of the ISE-SAR Shared Spaces.” Final Report at 15.</p>	<p>Final Report of the ISE-SAR EE at 15.</p>
<p>29. ISE Privacy Guidelines and documents related to their development and implementation</p>	<p>“Consistent with ISE Privacy Guidelines and Presidential Guideline 2, and to the full extent permitted by law, this ISE-SAR Functional Standard is designed to support the sharing of unclassified information or controlled unclassified information (CUI) within the ISE.” The Functional Standard was developed “[c]onsistent with” the ISE Privacy Guidelines, which must therefore have been considered in the agency’s development of the Functional Standard. (Bates 83) See also Bates 202 (FS 1.5: “Consistent with the ISE Privacy Guidelines..., this <i>ISE-SAR Functional Standard</i> is designed to support the sharing of ...”) (emphasis in original).</p>	<p>Doc 7 (FS 1.0) at Bates 83; Doc 28 (FS 1.5) at Bates 202</p>

	The record makes clear that the agency considered the ISE Privacy Guidelines as they are explicitly cited in the following record document: Initial Privacy and Civil Liberties Analysis (Doc 15) and Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010) (Doc 30).	Doc 15 Doc 30 at Bates 299
30. Documents related to Legal Issues Working Group of the ISE Privacy Guidelines Committee (PGC)	The Initial Privacy and Civil Liberties Analysis of the ISE-SAR Functional Standard (Doc 15) states that it was prepared by the Office of the PM-ISE in consultation with the aforementioned Legal Issues Working Group of the ISE Privacy Guidelines Committee. Documents related to this Committee were therefore considered in developing the Initial Privacy and Civil Liberties Analysis, which was in turn considered in the development of the Functional Standard.	Doc 15 at Bates 122
31. Documents related to the 2008 Privacy and Civil Liberties Roundtable (only select material's included in record)	The record includes select documents related to the 2008 Privacy and Civil Liberties Roundtable (the agenda, attendee list, description of meeting purpose and ground rules) but not the presentations or notes from the meeting. These documents were explicitly part of the process described in the record. And these documents clearly exist, as made clear by Doc 14: "There will be presentations and an opportunity for open dialogue among all participants to allow for many perspectives. Notes will be taken throughout the day, and summaries [redacted] will be provided to all participants and made available to the public." (Bates 120)	Doc 12 (agenda) at Bates 114-15, Doc 13 (attendee list) at Bates 116-19, Doc 14 (meeting description of meeting purpose and ground rules) at bates 120.
32. National Criminal Intelligence Sharing Plan	The record makes clear that the agency considered this document as it was explicitly cited in the following record document: Document 19 (noting that document was developed "[i]n furtherance of the recommendations of the <i>National Criminal Intelligence Sharing Plan</i> ") (Bates 163)	Doc 19 at Bates 163.

33. Attachment to Document 23	The record includes an email from Mohamed Elibiary to the redacted officials at the agency, in which Mr. Elibiary provides feedback on the Functional Standard. The email refers to a bulletin issued by the North Central Texas Fusion System as illustrative of concerns by civil rights advocates. The email twice indicates that the bulletin was “attached” (Bates 181, 182) but the bulletin is not included in the record.	Doc 23 at Bates 181, 182.
34. Drafts of each of the Functional Standards	The agency clearly had drafts of Functional Standard 1.0, 1.5, and 1.5.5 that were circulated for comments before each Standard was finalized. Except for one draft of FS 1.5.5 that is included in the record at Document 39, the record contains no other drafts. Such drafts clearly exist. For example, Doc 24 is an email string that includes a March 30, 2009 email from Mike German suggesting edits to the “definition of ‘Suspicious Activity’ on page 2...” (Bates 184). Mr. German was clearly provided a draft of Functional Standard 1.5 but this draft or the correspondence transmitting it to him is not included in the record.	Doc 24 at Bates 184.
35. Presidential Memorandum dated April 10, 2007 (Assignment of Functions Relating to the Information Sharing Environment)	The record makes clear that the agency considered this document as it was explicitly cited in the following record documents: FS 1.5 (Bates 192) and FS 1.5.5 (Bates 414) and therefore must have been considered by the agency. (Bates 192)	Doc 28 (FS 1.5) at Bates 192; Doc 41 (FS 1.5.5) at Bates 414.
36. DNI memorandum dated May 2, 2007 (Program Manager’s Responsibilities)	The record makes clear that the agency considered this document as it was explicitly cited in the following record documents: FS 1.5 (Bates 192) and FS 1.5.5 (Bates 414) and therefore must have been considered by the agency. (Bates 192)	Doc 28 (FS 1.5) at Bates 192; Doc 41 (FS 1.5.5) at Bates 414.
37. ISE Suspicious Activity Reporting Evaluation Environment (EE) Segment Architecture, December 2008	The record makes clear that the agency considered this document as it was explicitly cited in the following record documents: Cited as reference by: 1) FS 1.5; 2) FS 1.5.5	Doc 28 (FS 1.5) at Bates 192; Doc 41 (FS 1.5.5) at Bates 414
38. Baseline Capabilities for State and Major Urban Area Fusion Centers: A Supplement to the Fusion Center Guidelines (Sept 2008)	The record makes clear that the agency considered this document as it was explicitly cited in the following record document: Cited as reference by Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010)	Doc 30 at Bates 299.

39. Fusion Center Privacy Policy Development – Privacy Civil Rights and Civil Liberties Policy Template (April 2010)	The record makes clear that the agency considered this document as it was explicitly cited in the following record document: Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010)	Doc 30 at Bates 299
40. Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Project (October 2008)	The record makes clear that the agency considered this document as it was explicitly cited in the following record document: Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010)	Doc 30 at Bates 300
	The Final Report of the ISE-SAR Evaluation Environment explains the seminal role this document played in the Evaluation Environment, (Final Report of the ISE-SAR EE at v, 11-12) which in turn was developed and thus considered by the agency in order to update the Functional Standard. <i>See</i> discussion Evaluation Environment (Row 29 above).	Final Report of the ISE-SAR EE at v, 11-12.
41. Suspicious Activity Reporting Process Implementation Checklist (November 2008)	This document is a companion to the Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Project (October 2008), which should have been included in the record but was not. <i>See</i> Final Report of the ISE-SAR EE at 12-13.	Final Report of the ISE-SAR EE at 12-13.
42. The Nationwide Suspicious Activity Reporting Initiative Status Report (February 2010)	The record makes clear that the agency considered this document as it was explicitly cited in the record: Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010)	Doc 30 at Bates 299
43. Feedback provided to agency on Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (May 2010 draft)	The record contains the Privacy, Civil Rights, and Civil Liberties Analysis and Recommendations: Nationwide Suspicious Activity Reporting Initiative (July 2010) as well as “[p]roposed redlines and feedback provided by Michael German (ACLU).” (Docs 29 and 30). It seems unlikely that the <i>only</i> feedback the agency received and considered was from Mike German of the ACLU. It also seems unlikely that the agency only received feedback on this document, among the documents in the record. The record, however, does not contain feedback from any other person or entity, or feedback on most of the other documents in the record.	Docs 29, 30.
44. White Paper: A Brief History of the Information Sharing Environment (http://go.usa.gov/bxMA)	The record contains information about privacy roundtables conducted by the agency. This document was identified as among the materials provided to attendees at the privacy roundtables but is not included in the record.	Doc 37 at Bates 329

45. Privacy, Civil Rights, and Civil Liberties Protection Framework (http://go.usa.gov/bxMJ)	The record contains information about privacy roundtables conducted by the agency. This website contains links to a number of documents, including the ISE Privacy Guidelines, the ISE Privacy Guidelines Implementation Manual, Frequently Asked Questions about the Privacy Guidelines, Privacy and Civil Liberties Implementation Guide, Fusion Center Privacy, Civil Rights, and Civil Liberties Template, and Privacy Guidelines Implementation Workbook. This website was identified as among the materials provided to attendees at the privacy roundtables but the website and the documents linked from this website are not included in the record.	Doc 37 at Bates 329
46. Information Sharing Environment (http://ise.gov)	The record contains information about privacy roundtables conducted by the agency. This website was identified as among the materials provided to attendees at the privacy roundtables but is not included in the record.	Doc 37 at Bates 329
47. ISE Building Blocks (http://www.ise.gov/building-blocks)	The record contains information about privacy roundtables conducted by the agency. This website was identified as among the materials provided to attendees at the privacy roundtables but is not included in the record.	Doc 37 at Bates 329
48. DHS Portal for Information on State and Major Urban Area Fusion Centers	The record contains information about privacy roundtables conducted by the agency. This website was identified as among the materials provided to attendees at the privacy roundtables but is not included in the record. The links provided in the materials (http://go.usa.gov/bxeY) is no longer functional.	Doc 37 at Bates 329
49. Nationwide Suspicious Activity Reporting Initiative Program Management Office (NSI PMO) (http://nsi.ncirc.gov)	The record contains information about privacy roundtables conducted by the agency. This website was identified as among the materials provided to attendees at the privacy roundtables but is not included in the record.	Doc 37 at Bates 329
50. 2012 ISE Annual Report to Congress (http://go.usa.gov/bxee)	The record contains information about privacy roundtables conducted by the agency. This document was identified as among the materials provided to attendees at the privacy roundtables but is not included in the record.	Doc 37 at Bates 329

51. 2012 National Strategy for Information Sharing and Safeguarding	The record contains information about privacy roundtables conducted by the agency. This document was identified as among the materials provided to attendees at the privacy roundtables but is not included in the record. In addition, this document is cited as a reference by Functional Standard 1.5.5 (Bates 414)	Doc 37 at Bates 329; Doc 41 (FS 1.5.5) at Bates 414
52. Materials from 2010 privacy roundtable	“The PM-ISE has hosted several roundtable discussions in 2008, 2009, and 2010” with privacy and civil liberties/rights groups; purpose of consultation with groups is “soliciting feedback and inputs related to the protections and safeguards that are required and essential elements of the ISE.” Bates 328. The record contains select materials from the 2008 (Doc 12, 13, 14), 2009 (Doc 20, 21, 23, 24) but not materials from the 2010 roundtable.	Doc 37 at Bates 328
53. Comments on Functional Standard 1.5.5, including: (a) comments provided by Mike Sena and Vernon Keenan and any other person or entity on proposed changes to the ISE-SAR Functional Standard for version 1.5.5. (b) “comments made by state and local analysts/investigators and supervisors regarding the ISE-SAR assessment process” (c) Input from “Office of the Director of National Intelligence, the Department of Homeland Security (DHS), the Department of Justice, the Federal Bureau of Investigation (FBI), and the NSI Program Management Office” and other agencies over the course of “five major rounds of review”	Item (a) in column to the left: Document 39 is an email string that includes an email sent to Mike Sena, Chair of the National Fusion Center Association, and Vernon Keenan, Chair of the Criminal Intelligence Coordinating Council, “sharing proposed changes to the ISE-SAR Functional Standard for version 1.5.5.” ECF No. 52-2. The email string includes an email from Defendant Paul informing Sena and Keenan ““I wanted to provide you with a final opportunity to review the proposed issuance, in your capacities as President of the NFCA, Chair of the CICC, and chair of the Global Privacy Committee.” (Bates 336). The email string then forwards to other individuals Paul’s email to Sena and Keenan, and notes that Sena “promised a response soon. Vern is expecting it.” <i>Id.</i> Thus, the record makes clear that Sena commented on the draft and Keenan likely did as well, but their comments are not included in the record. It is also exceedingly unlikely that the only comments received by the agency on draft Functional Standard 1.5.5 were from Sena and Keenan. These other comments should be provided as well.	Doc 39 at Bates 336.

	<p>Item (b) in column to the left: Document 39 explains that “In response to comments made by state and local analysts/investigators and supervisors regarding the ISE-SAR assessment process, federal partners developed descriptive examples for each behavioral category and criteria, which will provide context to analysts/investigators and supervisors and enhance their ability to assess the application of the 16 pre-operational behavior categories and criteria.” (Bates 336) But these comments were not included in the record.</p>	<p>(b) Doc 39 at Bates 336.</p>
	<p>Item (c) in column to the left: According to the Executive Summary of Key Policy Changes in FS 1.5.5, the process for updating FS 1.5 included “guidance and input on proposed language changes” from the “Office of the Director of National Intelligence, the Department of Homeland Security (DHS), the Department of Justice, the Federal Bureau of Investigation (FBI), and the NSI Program Management Office....This process included ISA IPC representatives, P/CRCL officials and staff, and operational staff. Following five major rounds of review, the stakeholders reached agreement on key policy updates for FS v. 1.5.5.” Comments received included “substantive nontechnical updates ... offered by the FBI and DHS [but not accepted by the PM-ISE]” and “advisory comments ... received from the [Privacy and Civil Liberties Oversight Board].” This “guidance and input” over the course of “five major rounds of review” is not included in the record.</p>	<p>(c) Doc 40 at Bates 406.</p>

54. Information Exchange Package Documentation	According to the Final Report of the ISE-SAR Evaluation Environment, which should be but is not in the Record, the “IEPD was ultimately enhanced to be consistent with the ISE Privacy Guidelines and the Privacy and Civil Liberties Policy Development Guide and Implementation Templates. The development of the IEPD ultimately resulted in the development of the ISE-SAR Functional Standard.” Final Report SARISE-SAR EE at 9. According to this document, the agency must have considered the IEPD since it resulted in the development of the Functional Standard.	Final Report ISE-SAR EE at 9.
55. Privacy and Civil Liberties Policy Development Guide and Implementation Templates	According to the Final Report of the ISE-SAR Evaluation Environment, which should be but is not in the Record, the “IEPD was ultimately enhanced to be consistent with the ISE Privacy Guidelines and the Privacy and Civil Liberties Policy Development Guide and Implementation Templates. The development of the IEPD ultimately resulted in the development of the ISE-SAR Functional Standard.” Final Report SARISE-SAR EE at 9. According to this document, the agency must have considered the Templates since they resulted in the development of the Functional Standard.	Final Report ISE-SAR EE at 9.