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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALLIANCE OF CALIFORNIANS FOR
COMMUNITY EMPOWERMENT, et al.,
Plaintiffs,
v.
FEDERAL HOUSING FINANCE
AGENCY,
Defendant.

Case No. 13-cv-05618-KAW

**ORDER DENYING CROSS-MOTIONS
FOR SUMMARY JUDGMENT
WITHOUT PREJUDICE**

Re: Dkt. Nos. 35, 41

The parties in the above-captioned case filed cross-motions for summary judgment concerning the adequacy of Defendant's search for documents responsive to Plaintiffs' FOIA request and the withholding of certain documents responsive to that request. In light of Defendant's various concessions concerning the adequacy of its search, and the fact that certain searches remain outstanding, a ruling on the cross-motions would be premature. Accordingly, the Court denies both motions without prejudice to re-filing in the event the parties are unable to resolve the issues raised by their motions.

The Court notes, however, that while it allowed Defendant to lodge the documents at issue in this case for *in camera* review, it is clear that Defendant has not sufficiently reviewed these documents. This perhaps explains the absence of sufficient detail in the *Vaughn* index, which contains entries that merely recite the elements of a claimed exemption, e.g., "[t]his document is being withheld in its entirety pursuant to exemption (b)(5), containing deliberative process and attorney-client material[,]" and it certainly raises questions about the propriety of Defendant's exemption and privilege assertions. For example, one document, which is, in large part, publicly-available, is claimed privileged. Other documents clearly warrant protection from disclosure, but not under the privilege Defendant asserts, and some clearly do not warrant protection at all or, at

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least, not in their entirety. In light of these deficiencies, the Court cautions Defendant from resorting to *in camera* review in the future without "justify[ing] FOIA withholdings in as much detail as possible on the public record" before doing so. *See Lion Raisins v. U.S. Dep't of Agriculture*, 354 F.3d 1072, 1084 (9th Cir. 2004). The Court reminds Defendant that *in camera* review is not a substitute for submitting an adequate *Vaughn* index and declarations that contain sufficient detail to give the Court a factual basis for determining whether claimed exemptions or privileges apply to withheld documents. *See id.* at 1083-84 ("The district court's reliance on *in camera* review as a substitute for public affidavits deprived both the district court and this court of the informed advocacy upon which the fairness of adversary proceedings depends.") (footnote omitted). Therefore, in the event that the parties renew their cross-motions for summary judgment, Defendant shall supply an adequate *Vaughn* index and sufficiently detailed declarations.

IT IS SO ORDERED.

Dated: 09/04/14


KANDIS A. WESTMORE
United States Magistrate Judge