

No. 24-1953C
(Judge Hadji)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MICHAEL J. FORBES,
Plaintiff,

v.

THE UNITED STATES,
Defendant.

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S
MOTION TO SUPPLEMENT THE ADMINISTRATIVE RECORD**

BRETT A. SHUMATE
Assistant Attorney General

PATRICIA M. McCARTHY
Director

OF COUNSEL:

/s/ WILLIAM J. GRIMALDI
WILLIAM J. GRIMALDI
Assistant Director

ADAM BRADLEY
MAJ, JA
Litigation Attorney
U.S. Army Legal Service Agency

/s/ Alexander S. Brewer
ALEXANDER S. BREWER
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 307-0252
Fax: (202) 353-0641

Attorneys for Defendant

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**DEFENDANT’S OPPOSITION TO PLAINTIFF’S
MOTION TO SUPPLEMENT THE ADMINISTRATIVE RECORD**

Pursuant to Rules 7.2 and 52.1(b) of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully submits this response to the motion to supplement the administrative record filed by plaintiff, Michael Forbes. ECF No. 27.

Mr. Forbes seeks to supplement the administrative record with a broad collection of documents that were neither presented to, nor considered by, the Army at the time of the decisions he now challenges. His motion rests on the mistaken premise that the Court may expand the administrative record to incorporate evidence that he unilaterally deems relevant, even though it was never submitted to the Army decision-makers. Under well-established precedent, supplementation is disfavored and permitted only under narrow, clearly defined circumstances that Mr. Forbes has not satisfied here.

Accordingly, aside from certain documents that the United States agrees may be unredacted, the administrative record requires no alteration, and this Court should deny Mr. Forbes’s motion.

QUESTIONS PRESENTED

1. Whether the administrative record allows for effective judicial review.

2. Whether Mr. Forbes is entitled to supplementation of the administrative record with documentation that was not considered by the Army.
3. Whether Mr. Forbes is entitled to discovery concerning documentation that was not considered by the Army.

STATEMENT OF FACTS

Mr. Michael Forbes served in the United States Army until he was involuntarily discharged with an “Honorable” characterization of service on November 29, 2024. AR 1701. The Army had investigated Mr. Forbes for disrespect toward a superior commissioned officer and for engaging in counterproductive leadership. AR 92. The investigation substantiated the allegations (AR 726-727), and Mr. Forbes received a General Officer Memorandum of Reprimand (GOMOR) (AR 91, 833) and a Relief for Cause Non-Commissioned Officer Evaluation Report (NCOER) (AR 990-991), both of which were placed in his Army Military Human Resources Record (AMHRR). Based on these derogatory documents, the U.S. Army Human Resources Command (Army HRC) identified Mr. Forbes for potential denial of continued service on active duty under the Qualitative Management Program (QMP). AR 984-986. A QMP board subsequently recommended separation, and Mr. Forbes was separated on November 29, 2024. AR 1701.

Mr. Forbes sought to challenge his separation but opted to file a complaint with this Court rather than seek correction of his records before the Army Board for Correction of Military Records. As such, the United States assembled an administrative record that was comprised of the documents developed and considered by the Army when it reprimanded and separated Mr. Forbes.

On May 21, 2025, Mr. Forbes filed a motion to supplement the administrative record. Although his requests are largely difficult to decipher, it appears that he seeks documents that fall within three general categories: (1) unredacted versions of intentionally or accidentally redacted documents that already appear in the administrative record, *see* Pl. Mot. 3-7; (2) approximately 55 documents he alleges he submitted to the Department of the Army Suitability Evaluation Board (DASEB), the Army Special Review Board (ASRB), or as part of an Article 138 submission, *see id.* at 7-14; and (3) documents related to his whistleblower claim, *see id.* at 14-15.

ARGUMENT

I. Standard of Review

A. Military Pay Cases

It is well settled that, for military pay claims, “[t]he task of the reviewing court is to apply the appropriate [Administrative Procedure Act (APA)] standard of review, 5 U.S.C. § 706, to the agency decision based on the *record the agency presents to the reviewing court.*” *Walls v. United States*, 582 F.3d 1358, 1367 (Fed. Cir. 2009) (quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985)) (emphasis supplied); *AgustaWestland N. Am., Inc. v. United States*, 880 F.3d 1326, 1331 (2018) (citation omitted). “The focal point for judicial review should be the *administrative record already in existence*, not some new record made initially in the reviewing court.” *Walls*, 582 F.3d at 1367 (quoting *Fla. Power & Light*, 470 U.S. at 743) (emphasis supplied); *Axiom Res. Mgmt, Inc. v. United States*, 564 F.3d 1374, 1379 (Fed. Cir. 2009). Accordingly, the Court’s “review of a military corrections board is limited to the administrative record.” *Walls*, 582 F.3d at 1368.

“The purpose of limiting judicial review to the record actually before the agency is to guard against courts using new evidence to convert the ‘arbitrary and capricious’ standard into effectively de novo review.” *AugustaWestland*, 880 F.3d at 1331. (citation omitted). Thus, this Court generally limits its judicial review to “the administrative record already in existence, not some new record made initially in the reviewing court.” *Axiom*, 564 F.3d at 1379.

B. Supplementation of the Administrative Record

The Court thus takes a restrictive approach to supplementing the record. *Axiom*, 564 F.3d at 1380. The record should be supplemented *only if* the existing record is insufficient to permit meaningful judicial review. *Walls*, 582 F.3d at 1367-68 (emphasis supplied); *Axiom*, 564 F.3d at 1379 (supplementation of the administrative record is available only when “the omission of extra record evidence precludes effective judicial review.”) (quotation marks omitted). “Judicial review is ‘effective’ if it is consistent with the APA.” *AgustaWestland*, 880 F.3d at 1331. Moreover, “[g]enerally, the [G]overnment receives a rebuttable presumption that it has properly designated the administrative record.” *Smith v. United States*, 114 Fed. Cl. 691, 695 (2014). *See also Bar MK Ranches v. Yuetter*, 994 F.2d 735, 740 (10th Cir. 1993).

The Federal Circuit has cautioned that allowing supplementation of the record without first evaluating whether the record is sufficient to permit meaningful review is an abuse of discretion. *Axiom*, 564 F.3d at 1380 (“[T]he trial court abused its discretion in this case” by failing “to make the required threshold determination of whether additional evidence was necessary.”). Thus, before any supplementation is allowed, the Court first makes a threshold determination of “whether supplementation of the record [is] necessary in order not ‘to frustrate effective judicial review.’” *Id.* at 1381 (quoting *Camp v. Pitts*, 411 U.S. 138, 142-43 (1973)). Making that threshold determination requires the Court to “explain why the evidence omitted

from the record frustrated judicial review as to the ultimate question of whether the” agency determination was arbitrary and capricious. *AgustaWestland*, 880 F.3d at 1332. Moreover, “conclusory statements that [a court] could not conduct effective judicial review without the supplemented material . . . are insufficient under *Axiom*.” *Id.* Discovery is appropriate in military pay claims only in certain, limited circumstances: “(1) the evidence was unavailable below or (2) if there is a strong showing of bad faith or improper behavior which creates serious doubts about the integrity of the administrative action.” *Bateson v. United States*, 48 Fed. Cl. 162, 165 (2000). “In situations where the evidentiary record is found to be inadequate, it is not this Court's role to fill in the evidentiary gaps. When there are gaps, “the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation,” not to have the investigation or explanation performed in this, the reviewing court.” *Id.* (internal citations omitted).

Additionally, when a servicemember chooses to appeal to the Court directly rather than exhaust administrative remedies that would allow further supplementation of the record, he indicates satisfaction with the evidentiary record. *See Bateson*, 48 Fed. Cl. at 164 (“Plaintiffs are free to pursue their claims directly in this Court without exhausting administrative remedies. However, to proceed in this manner it would seem that Plaintiffs are either satisfied with the evidentiary record or that a sufficient basis and knowledge of the facts exist for the allegations in the complaint.”).

In contrast to a motion to supplement the record, “[a] motion to ‘complete’ the record seeks to add documents relevant to the challenged agency decision that were considered by the relevant agency decisionmakers but were not included in the record.” *Poplar Point RBBR LLC v. United States*, 145 Fed. Cl. 489, 494 (2019). But “internal deliberative materials . . . are

generally excluded from the record.” *Joint Venture of Comint Systems Corp. v. United States*, 100 Fed. Cl. 159, 169 (2011).

II. Mr. Forbes Has Not Demonstrated That The Record Is Incomplete And Indicated Satisfaction With The Existing Record By Foregoing An Additional Opportunity To Supplement Prior To Filing Suit

The administrative record in this case properly reflects the materials that were before the Army at the time it made the decision to place derogatory information in Mr. Forbes personnel file and separate him under the Qualitative Management Program (QMP). Under RCFC 52.1(a), “[w]hen proceedings before an agency are relevant to a decision in a case, the administrative record of those proceedings must be certified by the agency and filed with the court.” RCFC 52.1(a). Following an AR 15-6 investigation into allegations of disrespect and counterproductive leadership, Mr. Forbes was issued a General Officer Memorandum of Reprimand (GOMOR). He was afforded the opportunity to respond, and he did so in a detailed, extensive rebuttal that included arguments and documentary evidence. AR 135-717. Mr. Forbes’s rebuttal was reviewed and considered by the issuing authority before the GOMOR was finalized.

Thereafter, Mr. Forbes was notified that he would be considered for separation under the QMP process. He was again provided the opportunity to submit written matters in response, which he did. These submissions, AR 837-1141, along with the GOMOR and relief-for-cause evaluation report, formed the basis for the QMP Board’s decision to recommend separation. The administrative record includes all materials Mr. Forbes submitted at these critical junctures. If Mr. Forbes wished to include additional documents, Mr. Forbes had the opportunity to do so during either of these processes. He cannot now supplement the record with materials he failed to submit when he had the procedural means to do so. *See Bateson*, 48 Fed. Cl. at 164 (“Plaintiff[is] free to pursue [his] claims directly in this Court without exhausting administrative

remedies. However, to proceed in this manner it would seem that Plaintiff[is] either satisfied with the evidentiary record or that a sufficient basis and knowledge of the facts exist for the allegations in the complaint.”).

Additionally, Mr. Forbes could have appealed to the Army Board for Correction of Military Records (ABCMR) and supplemented the record with any materials he believed supported his claims, including those he now seeks to introduce through litigation. The ABCMR provides the statutory mechanism under 10 U.S.C. 1552 to correct records when necessary to correct an error or remove an injustice, and it is expressly authorized to consider new evidence beyond the record before the original decision maker. Furthermore, the ABCMR is empowered to assist applicants in obtaining military records relevant to their case. 10 U.S.C. 1552(a)(3)(C). Department of Defense Directive 1332.41, para. 3.2.3, reinforces that “[b]efore granting relief, sufficient evidence justifying the relief must be on the record or provided by the applicant,” and that “[r]elief shall be denied if there is insufficient material evidence in the record or provided by the applicant to warrant relief.”

Had Mr. Forbes pursued his claims through the ABCMR, he could have presented all materials he now argues were wrongly excluded and developed a fulsome record tailored to the allegations he seeks to litigate. Instead, Mr. Forbes chose to bypass the ABCMR and file suit directly in this Court. Mr. Forbes’s “decision is not without consequences. In cases where an officer has not pursued an administrative appeal the officer has waived the right to make an administrative record and has to rely in a subsequent action for judicial review on the evidentiary record before the deciding official.” *Bateson*, 48 Fed. Cl. at 164 (citing *Krzeminski v. United States*, 13 Cl. Ct. 430, 437-438 (1987)).

As a result, the administrative record in this case is composed of the documents that were before the deciding officials, that is, Mr. Forbes's personnel files and his rebuttals during the underlying proceedings. As a result, the administrative record allows for effective judicial review to determine whether the Army's decision to separate Mr. Forbes is supported by substantial evidence. *Heisig v. United States*, 719 F.2d 1153, 1157 (Fed.Cir.1983).

III. Supplementation Of The Administrative Record Is Not Warranted

Under established precedent in the Federal Circuit, this Court will not overturn the decision of the Army unless it is "arbitrary, capricious, unsupported by substantial evidence, or contrary to the law." *Lewis v. United States*, 458 F.3d 1372, 1376 (Fed. Cir. 2006) (citation omitted). Because this Court's review of the Army's decision is limited to the record certified by the Army, a "parties ability to supplement the administrative record is limited ... to guard against courts using new evidence to convert the 'arbitrary and capricious' standard into effectively *de novo* review." *Axiom*, 564 F.3d at 1380 (internal citations omitted); *see also Young v. United States*, 497 Fed.Appx. 53, 59 n.8 (Fed. Cir. 2012) (Because "genuine issues of material fact do not preclude a judgment on the administrative record[.]" this Court resolves questions of facts based on the administrative record.) (internal citations omitted). "This is particularly important in military cases where the Federal Circuit has stated that "courts cannot substitute their judgment for that of the military departments when reasonable minds could reach differing conclusions on the same evidence." *Evans v. United States*, 129 Fed. Cl. 126, 129 (2016) (citing *Heisig*, 719 F.2d at 1156).

As we will explain below in more detail, the documents Mr. Forbes seeks either do not relate to the Army's decision to issue a GOMOR or separate Mr. Forbes, the decisions that Mr. Forbes challenges in his complaint, or were not before the deciding officials. *See Generally*

Pl. Mot. at 7 – 15. They are unnecessary for effective judicial review and Mr. Forbes makes no showing otherwise.

Instead, Mr. Forbes alleges that under RCFC 26, the administrative record should be supplemented to include the additional documents. Pl. Mot. at 2. RCFC 26 addresses discovery before this Court. But “judicial review in military pay cases is normally limited to the administrative record before the military board.” *Bateson*, 48 Fed. Cl. at 164 (citing *Long v. United States*, 12 Cl.Ct. 174, 177 (1987)). Because judicial review is limited to the administrative record, “discovery is unnecessary.” *Id.* (quoting *Long*, 12 Cl. Ct. at 177). As a result, this Court previously has denied a servicemember’s attempt to supplement the administrative record under RCFC 26. *See Evans*, 129 Fed. Cl. at 129-130 (2016). Because military pay records are decided on the administrative record, RCFC 26 is wholly inapplicable to this proceeding.

Nor does Mr. Forbes demonstrate a need for discovery under the narrow circumstances in which it could be appropriate. The Court in *Bateson* explained that the Court may go beyond the administrative record and allow discovery only if “(1) the evidence was unavailable below or (2) if there is a strong showing of bad faith or improper behavior which creates serious doubts about the integrity of the administrative action.” *Bateson*, 48 Fed. Cl. at 165. But in this case, as the Court explained in *Bateson*, the first exception is inapplicable to Mr. Forbes because Mr. Forbes “did not pursue administrative remedies below, i.e., with the [ABCMR].” *Id.* Additionally, the second exception also does not apply to this case, because Mr. Forbes has not provided sufficient evidence to overcome the strong presumption that the Army performed its duties correctly when it certified the administrative record. “A plaintiff . . . must establish a deficiency with cogent and clearly convincing evidence” to overcome “the strong presumption that the Government

discharged its duties correctly, lawfully, and in good faith.” *Neutze v. United States*, 88 Fed. Cl. 763, 769 (2009) (quotations omitted). While Mr. Forbes makes allegations of bad faith and improper behavior in his complaint and his cross-motion for judgement on the administrative record, Mr. Forbes does not sufficiently allege bad faith on part of the Army as it relates to the administrative record. Pl. Mot. at 1-3; *see Wyatt v. United States*, 23 Cl. Ct. 314, 319 (1991) (“[plaintiff] has raised the specter of bad faith . . . but he has not made the strong showing required to trigger a right to present new evidence.”). That is because the documents Mr. Forbes submitted at all critical junctures in this case are in the administrative record and the Army permitted Mr. Forbes to submit all documents he sought to include in the administrative record at those junctures.

Mr. Forbes seeks to supplement the record with dozens of documents that fall into two broad categories: (1) redacted or missing materials; and (2) documents that were available to Mr. Forbes but not submitted during the GOMOR or QMP processes. Pl. Mot. at 7-15. We respond below to each category of supplementation requests in Mr. Forbes’s motion to supplement the administrative record.

A. Mr. Forbes’s Requests To Unredact Documents

As detailed above, Mr. Forbes’s first category of documents allege “unnecessary redactions” included in the administrative record. Although the United States agrees that some documents may be unredacted, others must remain redacted.

First, Mr. Forbes contends that certain publicly available documents – specifically, OMB Memorandum M-10-23, AR 157, and portions of the APA ethics guidance, AR 618-635, appear to be improperly redacted or obstructed in the administrative record. Pl. Mot. at 3-7. These are publicly accessible and were included in the administrative record in some form. Upon review,

the Government does not object to the inclusion of clean, publicly available versions of these documents in the administrative record, as they are already part of the record in substance and their unredacted form would not alter the agency's decision-making basis.

Second, Mr. Forbes asserts that communications between him and the 1st Special Forces Command Inspector General, AR 585-593, were inappropriately redacted. Pl. Mot. at 7.

Mr. Forbes submitted these communications as part of his GOMOR rebuttal. The documents appear to have been highlighted during the command's review and were likely saved or scanned in a manner that obscured underlying text. These documents were not intentionally redacted. Because the command reviewed these documents as part of its decision to file the GOMOR in Mr. Forbes's permanent record, the Government does not object to the inclusion of unobstructed copies in the administrative record.

Third, Mr. Forbes argues (albeit in the next section of his motion) that the October 2021 "thievery" investigation, AR 513-514, should be included in unredacted form. Pl. Mot. at 7. However, the documents cited were presented by Mr. Forbes in their redacted form as part of his GOMOR rebuttal. Mr. Forbes received the documents through a FOIA request and submitted them to the GOMOR issuing authority in that condition. Because the Army's decision-maker reviewed the redacted version, and not any later-unredacted copy, the record should reflect the same. The administrative record must capture what the Army actually considered—not what Mr. Forbes believes it should have considered in hindsight—in order to avoid *de novo* review.

B. Mr. Forbes's "Supplemental Evidence" Is Either Not Necessary For Effective Judicial Review Or Should Have Been Presented To The Army During The Separation Process

In his "supplemental evidence" section, Mr. Forbes contends that three records were entirely omitted from the administrative record: his applications to the Department of the Army

Suitability Evaluation Board (DASEB) and the Army Special Review Board (ASRB), and his March 31, 2023 Article 138 request for redress. Pl. Mot. at 7-8.

First, as to the Article 138 request, Mr. Forbes asserts that its full text was improperly excluded from the record. Upon review, the Government has found the appropriate document and does not oppose Mr. Forbes amending the administrative record with the document. The Government has attached the document to this response at Exhibit One. The April 5, 2023, memorandum from Colonel Brunson summarizes Mr. Forbes's allegations and documents the command's consideration and disposition of the request. AR 549-550.

Second, regarding the DASEB and ASRB materials, they are not necessary for effective judicial review for two independent reasons. First, Mr. Forbes does not allege in his complaint that he submitted an application to either board. *See Generally* Complaint, ECF No. 5. Second, his complaint does not allege any legal error stemming from their adjudications. *Id.* As such, neither board's decision is at issue in this case, and the administrative record should not include proceedings or materials related to them. The Court's review must be confined to the record before the agency decision-makers whose actions are being challenged—in this case, the GOMOR issuing authority and the QMP board. Mr. Forbes does not contend that either the DASEB or ASRB played a role in issuing the GOMOR or in the decision to separate him under QMP. Nor does he identify any error in the review processes of those boards that would fall within this Court's jurisdiction. Indeed, Mr. Forbes's complaint is silent as to whether he ever submitted applications to the DASEB or ASRB. *See generally* Compl. He attaches no applications or final decisions, and he asserts no claim for relief based on either board's action. In the absence of any such claim, Mr. Forbes cannot now retroactively expand the record by

seeking to include materials submitted to boards whose decisions he has not placed before the Court.

Third, the bulk of Mr. Forbes's motion seeks to add documents that were in his possession or readily available to him at the time of the Army's decision, but which he failed to submit during the two formal opportunities afforded to him: his rebuttal to the GOMOR and his submission to the QMP Board. These materials include emails, Inspector General complaints, internal correspondence, patient rights documentation, and commentary concerning the Human Performance and Wellness (HPW) program. *See generally* Pl. Mot. at 8-14. The administrative process provided Mr. Forbes with a full and fair opportunity to present matters for consideration by the Army. In response to the GOMOR, he submitted an extensive written rebuttal—spanning dozens of pages and referencing supporting materials. AR 135-717. He was then notified that his record would be considered by the QMP Board and was again invited to submit materials for review. He availed himself of that opportunity as well. *See generally*, AR 837-1141. At no point does Mr. Forbes claim that he was prevented from submitting any specific document or that the Army refused to consider materials he attempted to provide. Having declined to include certain documents during the administrative process, Mr. Forbes cannot now use this litigation as a vehicle to rewrite the record. The administrative record reflects what was before the decision-makers at the time of the GOMOR filing and the QMP separation decision.

Fourth, Mr. Forbes states a CD of all rebuttal evidence was delivered to a Judge Advocate General's office and signed for. Pl. Mot at 13; *see also* Pl. Mot. at 2. The Army has informed undersigned counsel that the CD Mr. Forbes delivered had a wax seal to it, which corrupted the CD. Thus, the CD was never considered by the Army. The Army informed Mr. Forbes the CD was corrupt, and Mr. Forbes opted to submit those materials as hard copies. To

the extent Mr. Forbes is arguing that the CD contains his rebuttals to the GOMOR and QMP separation decision, those rebuttals are already included in the administrative record. *See* AR 135-717, 837-1141.

Fifth, Mr. Forbes's requests additionally involve emails, conversations, and other records documenting internal communications and preliminary determinations. But as this Court's precedent holds, administrative records do not contain internal deliberative materials. *Joint Venture of Comint*, 100 Fed. Cl. at 169 ("internal deliberative materials . . . are generally excluded from the record."); *Tafas v. Dudas*, 530 F. Supp. 2d 786, 794 (E.D. Va. 2008) ("Only if internal agency documents themselves introduce 'factual information not otherwise in the record' must those portions of the documents be included in the administrative record") (quoting *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1242 (D.C. Cir. 1975). "Requiring the inclusion of deliberative materials in the administrative record would pressure agencies to conduct internal discussions with judicial review in mind, rendering 'agency proceedings . . . useless both to the agency and to the courts.'" *Tafas*, 530 F. Supp. 2d at 794. (quoting *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm'n*, 789 F.2d 26, 44-45 (D.C. Cir. 1986) (en banc)).

Sixth, to the Mr. Forbes seeks the inclusion of documents related to broader allegations of reprisal, injustice, or Privacy Act violations, the proper venue for doing so was the ABCMR. That board provides a statutory forum under 10 U.S.C. § 1552 where a service member may submit new evidence and seek equitable relief outside the confines of this Court's limited review. *See* Def. MJAR at 17 (seeking to dismiss Mr. Forbes's Privacy Act claim). Mr. Forbes elected not to pursue that route. He may not now invoke supplementation to circumvent the procedural limits that attach to judicial review in this Court.

C. Documents Related To Mr. Forbes's Whistleblower Claim Are Not Necessary For Effective Judicial Review Because This Court Does Not Possess Jurisdiction Over Such A Claim

The Court should deny Mr. Forbes's request to supplement the administrative record with inspector general and whistleblower documents because they relate to claims that fall outside of this Court's jurisdiction and thus are not necessary for effective judicial review.

The vast majority of the requests Mr. Forbes makes in his final section relate to his claims under the Privacy Act, the Military Whistleblower Protection Act (MWPA), or were never considered by his command in issuing a GOMOR or by Army HRC in deciding to separate Mr. Forbes. As we explain in our motion for judgement on the administrative record, this Court lacks jurisdictions over Mr. Forbes's claims under the MWPA. Def. Mot. at 18-20. Because Mr. Forbes cannot establish that these documents are required for effective judicial review, he cannot satisfy the high burden to supplement the administrative record with these documents. *See Riser v. United States*, 93 Fed. Cl. 212, 218 (2010); *Bateson*, 48 Fed. Cl. at 165; *Krzeminski*, 13 Cl. Ct. at 437. Furthermore, the documents Mr. Forbes seeks to be included in the administrative record were never considered by the Army decision makers, and therefore are entirely unnecessary for judicial review. *See Axiom*, 564 F.3d at 1379 (“[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.”) (quoting *Camp v. Pitts*, 411 U.S. 138, 142 (1973)). For example, Mr. Forbes, in both the “supplemental evidence” and whistleblower sections of his motion, requests dozens of documents he received or relate to his communications with the Inspector General to be supplemented to the administrative record, but outside of the documents he included in his rebuttals to the GOMOR and QMP separation decision, the deciding officials did not review any documents from the Inspector General.

CONCLUSION

The United States is not aware of any gaps in the record filed to date that would preclude the Court from conducting a meaningful and effective review of the claims in Ms. Forbes's complaint. Accordingly, we respectfully request that the Court deny Mr. Forbes's motion to supplement the administrative record in its entirety.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

PATRICIA M. McCARTHY
Director

/s/ WILLIAM J. GRIMALDI
WILLIAM J. GRIMALDI
Assistant Director

OF COUNSEL:

ADAM BRADLEY
MAJ, JA
Litigation Attorney
U.S. Army Legal Service Agency

/s/ Alexander S. Brewer
ALEXANDER S. BREWER
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-0252
Fax: (202) 353-0641

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Attorneys for Defendant