

VIA CM/ECF

April 11, 2025

Honorable Alex G. Tse  
United States Magistrate Judge  
San Francisco Courthouse, Courtroom A – 15th Floor  
450 Golden Gate Avenue, San Francisco, CA 94102

Re: Law v. Federal Bureau of Prisons, Case No. 4:24-cv-06628-YGR

Dear Judge Tse,

Pursuant to Civil Standing Order§ VII.B and *Dkt.* Nos. 29 and 30, noting “this matter was recently referred for discovery, including for document production issues” and instructing the parties to submit a joint statement, Plaintiff Victoria Law (“Plaintiff”) and Defendant Federal Bureau of Prisons (“Defendant”) submit this third joint letter brief on the issue of the format of production under FOIA’s “Readily Reproducible” format requirement.

Counsel met and conferred by videoconference and communicated via email in good faith before filing the joint statement and could not resolve the issues described herein.

Counsel for Defendant will be out of the country and unavailable until May 5, 2025, and BOP thus asks that the Court not schedule a hearing, further briefing, or a further meet and confer session while Defendant’s counsel is unavailable.

Dated April 11, 2025

Respectfully submitted

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### **Plaintiff Victoria Law's Statement**

An order is needed to halt BOP's pattern of actions that impede progress in this expedited processing FOIA case, and setting a production schedule with dates, pages, and format certain. The issue briefed in this letter is the need for an order for a production format compliant with FOIA's "readily reproducible" standard. FOIA requires agencies to produce records in the format requested if they are readily reproducible in that format. BOP does not deny that the records already exist and are reproducible in the native format requested and can be transmitted that way.

Ms. Law requested records "preserved in the native format with metadata." Complaint *Dkt.* No. 1-1. E-FOIA was enacted to "improve public access to agency records and information" and to "maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government." Pub. L. No. 104-231, § 2, 110 Stat. 3048 (1996). An agency must provide the record[s] in any form or format requested... if the record is readily reproducible by the agency in that form or format." 5 U.S.C. § 552(a)(3)(B). "Where documents already exist in the requested format in an agency's system and "would require no conversion to a different format to comply with the plaintiff's format request, the records should be plainly 'readily reproducible.'" *Scudder v. CIA*, 25 F. Supp. 3d 19, 43 (D.D.C. 2014). "When an agency already creates or converts documents in a certain format...requiring that it provide documents in that format to others does not impose an unnecessarily harsh burden, absent specific, compelling evidence as to significant interference or burden." *TPS, Inc. v. United States Department of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003). BOP appears to be following standard archival and disclosure practice to preserve the natural structure of responsive records.

In the Christenson Declaration, BOP does not dispute that it already saves each file individually, that it is readily reproducible, and that it can transmit it in the native format without altering it. (*Dkt.* 31-2, Decl. ¶7). BOP asserts that it has opted not to transmit files in their original format because its FOIAXpress software purportedly makes it ten times more time-consuming to transmit the original records than to convert them into a single merged PDF. (*Id.*). The Declaration (*Id.*) does not provide specific, compelling evidence of how this time estimate was derived or calculated (no time logs, no workload projections, no staff-hour breakdowns), but a vague claim:

When responsive records are located and uploaded into the FOIAXpress database for processing, the system automatically combines documents into one large file, even if each document was initially uploaded individually. The only way to ensure individuality of records is to create a folder in the database for each document and upload the document to its respective folder one at a time. Even if an individual folder was created for each document, the only way to ensure separation of each document for production is to also download and save it individually. To be clear, different categories of responsive records are separated into individual folders in the database for organization. However, creating separate folders, downloading and saving separate folders for each and every individual record would increase processing time tenfold.

This reasoning is inadequate under FOIA's mandate to provide "readily reproducible" records in a same format in which they are stored. BOP already uses the requested format, so continuing to do so should not be considered an unnecessarily harsh burden absent clear proof—which is absent. Agencies should not be permitted to design

inefficiencies into their workflows and then use those inefficiencies to justify limiting access or shifting the time burden to Plaintiffs, who will lose substantive value in the process. “[I]t would seem anomalous for an agency that is regularly reproducing documents in a particular format as part of its ongoing business to be able to shield itself from similar production under FOIA.” *TPS, Inc.*, 330 F.3d at 1195. *See also Public.Resource.Org v. IRS*, 78 F. Supp. 3d 1262, 1267 (N.D. Cal. 2015) (“The fact that an agency may be under significant financial distress because it is underfunded does not excuse an agency’s duty to comply with the FOIA.”)

With respect to release #1 the Declaration inaccurately claims that merging over 170 unique files from the NARA website<sup>1</sup> into one PDF where there is no distinction between where each of the original records and the next begins is in fact in native format. “BOP’s release ... was provided in native format, as these documents were downloaded from PDFs on National Archives website.” (*Dkt. 31-2*, Decl. ¶7). The claim that merging over 100 individual PDFs into a single, undifferentiated PDF constitutes a production “in native format” is both inaccurate and misleading. BOP justifies its action by stating that it “downloaded the documents from the NARA website,” but this fact is irrelevant if BOP did not preserve the format in which those documents were made available to the public. Downloading multiple PDFs and then bundling them into one file is a transformation, not a faithful reproduction. The result is not what existed on NARA’s system—which is the benchmark for native format here. Before BOP changed it, each file had its own metadata, filename, and structure, and was meant to be accessed and understood individually. Each file included: A distinct filename (e.g., Title “Institution Inmate Case Files” and Number/Filename “DAA-0129-2017-0002”); individual metadata (creation date, author, etc.); and logical separation showing where one file begins and ends. BOP’s actions stripped away embedded metadata distinguishing one record from the next, and Plaintiff’s ability to determine where one record ends and another begins.

In release 4 BOP combined approximately 89 tort claims into a 637-page morass. In release 4, BOP redacted the claim number critical for identifying and distinguishing each unique claim and where each claim might start and end. When BOP removes a record identifier used by the agency to distinguish claims, it prevents Plaintiff from reliably determining how many distinct claims are reflected in the production or what attachments correspond. By redacting, BOP removed essential data that enables understanding of the record’s structure. Even if some part of the claim file were subject to a valid exemption, the claim number itself does not, on its face, reveal protected information and is critical to preserving the integrity and individuality of the record. Plaintiff’s counsel spent 4 hours and utilized three different pieces of software to attempt to divide and parse the claims. Plaintiff worked with a discovery software consultant whose software was unable to divide the claims, eventually engaging in 4 hours of manual review to parse. This is the tip of the iceberg in costs and fees associated with attempting to process records each time BOP releases in this manner. BOP removing structural division between records (and in this release , files, claims, or packets) causes the reader to guess, based on context, where one set of records concludes and the next begins.

In this Letter Brief BOP does not deny that its Content Manager-Administrative Tort system stores claims individually in “packets” or “packages” in the readily reproducible native format requested, and that they can be transmitted that way, just that it would take an

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<sup>1</sup> RECORDS CONTROL SCHEDULES NATIONAL ARCHIVES, <https://www.archives.gov/records-mgmt/rcs/schedules/index.html?dir=/departments/department-of-justice/rg-0129>

“unreasonable” amount of time. Each time BOP produces all records as a single, merged document without separation (which it would not be permitted to do under discovery rules), BOP makes it extremely difficult and time consuming to attempt to accurately assess the scope of the production, evaluate completeness, or cross-reference claims with other information.

Producing in readily reproducible native format isn't just a technical or semantic issue. It directly affects the ability of the requester to: identify each individual record; understand the contents and scope of each record; and ensure completeness and accuracy in production. The BOP's production method transforms what should be a clear, organized set of records into a confusing morass—one that obstructs transparency and violates case law. Though it may save the government time, it shifts that time to Plaintiff Counsel's billable hours by adding what might also be ten times increase in work to Plaintiff's counsel to attempt to manually parse, separate, and reconstruct what the agency's Declaration acknowledged that it maintains as separate files in the ordinary course of business. Plaintiff does not request that BOP create a new record, Plaintiff requests and order that BOP transmit the record in its original file and format, as maintained in the ordinary course of business.

### **Defendant Federal Bureau of Prisons' Statement**

BOP does not believe this issue is appropriate for a letter brief at this time. All three cases cited by Plaintiff -- *Scudder v. CIA*, 25 F. Supp. 3d 19, 43 (D.D.C. 2014). *TPS, Inc. v. United States Department of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003). *Public.Resource.Org v. IRS*, 78 F. Supp. 3d 1262, 1267 (N.D. Cal. 2015) – involved summary judgment rulings. BOP believes that is the appropriate juncture for deciding the issue, not by means of a letter brief.

Plaintiff has not provided any legal authority supporting its argument that it is entitled to have each record produced separately or that it is entitled to metadata, and that should be enough to deny this letter brief.

BOP contends that it is under no legal obligation to arrange Plaintiff's releases by releasing individual records as Plaintiff requested. FOIA does not require agencies to “organize documents to facilitate FOIA responses.” *Shapiro v. U.S. Dep't of Justice*, 37 F. Supp. 3d 7, 20 (D.D.C. 2014) (quoting *Goulding v. IRS*, No. 97-5628, 1998 WL 325202, at \*5 (N.D. Ill. June 8, 1998)); *Prison Legal News v. Lappin*, 780 F. Supp. 2d 29, 45–46 (D.D.C. 2011) (court agreed with the government it had “no responsibility under the FOIA to organize the responsive records in any particular manner or provide explanatory material to accompany the responsive records.”)

Nor is such a requirement imposed by the “form or format” provision of E-FOIA. In *Sai v. Transp. Sec. Admin.*, 466 F.Supp.3d 35, 48-49 (D.D.C. 2020), the Court held that a request for an agency to produce individual files of records was inconsistent with the case law holding that FOIA does not require an agency to arrange responsive records in a particular order. The Court reasoned that “[i]mposing such a duty for electronic records would dramatically expand the demands that FOIA imposes on federal agencies with no indication that Congress intended to make such a fundamental change to the law or that it intended to impose an organization requirement that does not exist for paper records.” *Id.* at 48. The Court reasoned that with paper records FOIA does not require an agency to staple together each separate record, and did not “see any meaningful distinction between this hypothetical request for staples and Plaintiff's request for discrete PDFs. Both requests go the organization of the records sought, which as the

Court explained, is not covered by the FOIA.” *Id.* The Court granted summary judgment with respect to this issue in favor of the agency, holding that an agency is not required to release individual PDF files.

There is also authority that BOP does not need to release documents with metadata. *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 241 F. Supp. 3d 14, 23 n.4 (D.D.C. 2017) (“[T]he metadata in the . . . emails [found in the custodian’s nongovernment email account] does not in itself make each email unique [under the FOIA] as compared to the forwarded reproduction of the email in [his government email] account.”) (citing *Covad Commc’ns Co. v. Revonet, Inc.*, 267 F.R.D. 14, 20 (D.D.C. 2010) (“In the absence of some reason to believe that the metadata will yield an answer that the hard copy will not, production of the information in native format [ ] is not necessary.”)); *Citizens for Resp. & Ethics in Wash. v. DOJ*, No. 18-007, 2020 WL 2735570, at \*3-4 (D.D.C. May 26, 2020) (confirming that agency appropriately “defined each single email and each single text as ‘a record,’ “[that is to say] select emails and texts within the [entire email or text] thread[,]” while rejecting plaintiff’s argument that “a record must constitute only ‘the full native form in which it is maintained by the agency’” and noting that plaintiff’s definition of a record “is [not] found within the [FOIA] statute”); *see also Forsham v. Harris*, 445 U.S. 169, 185 (1980) (“The Freedom of Information Act deals with ‘agency records,’ not information in the abstract.”).

E-FOIA—which was passed in light of the growing use of electronic records, Pub. L. No. 104-231, § 2(a)(5), 110 Stat. 3048, 3048—does not require anything more. E-FOIA was not intended to expand the coverage of FOIA to allow requesters to obtain abstract information about electronic records in addition to the records themselves. Instead, it merely “clarifie[d] existing practice by making the [FOIA] statute explicit” that “[r]ecords which are subject to the FOIA shall be available under the FOIA when the records are maintained in electronic format.” H.R. Rep. No. 104-795, at 18 (1996). To affect this clarification, Congress provided that the term “record” includes “any information that would be an agency record subject to the requirements of [FOIA] when maintained by an agency in any format, including an electronic format.” 5 U.S.C. § 552(f)(2)(A). The new provision did “not broaden the concept of agency record,” and “matter not previously subject to FOIA . . . [was] not made subject to FOIA.” H.R. Rep. No. 104-795 at 19–20.

BOP’s release of 568 pages of records on December 20, 2024, was provided in native format, as these documents were downloaded from PDFs from the National Archives website. Christenson Dec. ¶7. While BOP’s second release did include print outs from various databases which were released together, the cover letter identified the applicable redaction codes; the redactions were clearly marked on each page containing redactions, and it was easy to see which record was which. *Id.* The second release was also made in native format, as the Sentry database results automatically convert to PDFs upon downloading so results cannot be produced in any other manner. *Id.*

As to the production of property claims that Plaintiff complains about, to manage all aspects of every administrative tort claim, including property claims, received BOP utilizes a case management database known as Content Manager-Administrative Tort (CM-AT). *Id.* When a tort claim is received by BOP, it is entered into CM-AT, which is the official BOP

system of record for all tort claims received. *Id.* Any and all documents related to the tort claim, including the tort claim itself and attachments, investigation documentation, recommendations and final response letter to the claimant, are scanned into CM-ATC in pdf format and maintained therein. *Id.* To retrieve an entire tort claim packet, the case documents are downloaded as a .zip file. *Id.* When the documents contained in the .zip file are extracted, they extract as a pdf file. *Id.* To download each item individually from CM-AT, then upload each item individually into FOIAXpress, process the records, and download them individually from FOIAXpress for production would take an unreasonable amount of time. *Id.* In addition, the first page of each tort claim package is a letter acknowledging BOP's receipt of the claim. *Id.* The acknowledgement letter identifies specifically the date the claim was received. *Id.* Even though claims have varying numbers of pages of documents, every claim has an acknowledgement letter containing a received date. *Id.* To determine the first page of the next claim, simply identifying the received date allows Plaintiff to differentiate one claim from another. *Id.*

When responsive records are located and uploaded into the FOIAXpress database for processing, the system automatically combines documents into one large file, even if each document was initially uploaded individually. *Id.* The only way to ensure individuality of records is to create a folder in the database for each document and upload the document to its respective folder one at a time. *Id.* Even if an individual folder was created for each document, the only way to ensure separation of each document for production is to also download and save it individually. *Id.* To be clear, different categories of responsive records are separated into individual folders in the database for organization. *Id.* However, creating separate folders, downloading and saving separate folders for each and every individual record would increase processing time **tenfold.**" *Id.* (emphasis added). BOP urges the Court to consider this increase in processing time to not order BOP to process more than 1000 pages per month.