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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Before The Honorable Alex G. Tse, Magistrate Judge

LAW, )  
)  
Plaintiff, )  
)  
vs. ) No. C 24-06628-YGR  
)  
FEDERAL BUREAU OF PRISONS, )  
)  
Defendant. )  
)

San Francisco, California  
Tuesday, May 27, 2025

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING 1:00 - 1:59 = 59 MINUTES

APPEARANCES:

For Plaintiff:

Caitlin K. Henry, Esq.  
1440 Broadway  
Suite 200  
Oakland, California 94612

BY: CAITLIN K. HENRY, ESQ.

For Defendant:

Department of Justice  
United States Attorney's  
Office  
50 South Market  
Suite 1200  
San Jose, California 95113

BY: MICHAEL T. PYLE, ESQ.

Transcribed by:

Echo Reporting, Inc.  
Contracted Court Reporter/  
Transcriber  
[echoreporting@yahoo.com](mailto:echoreporting@yahoo.com)

1 Tuesday, May 27, 2025

1:00 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling 24CV6628, Law versus Federal  
5 Bureau of Prisons.

6 Counsel, beginning with Plaintiff, state your  
7 appearances now.

8 MS. HENRY (via Zoom): Good afternoon, your Honor.  
9 Caitlin Kelly Henry representing Plaintiff Victoria Law.

10 THE COURT: Thank you.

11 MR. PYLE (via Zoom): Good afternoon, your Honor.  
12 Michael Pyle for the Federal Bureau of Prisons.

13 THE COURT: Okay. Thank you. Thank you for your  
14 joint statement updating the Court.

15 Let's go ahead and get started with moving this along.  
16 Let's start with the production rates, the timing and so  
17 forth, knowing that I'm not going to rule on the -- whether  
18 or not there's been a proper exemption. I'm really focusing  
19 the inquiry on the rates that we are addressing.

20 Ms. Henry, your position is that the Bureau is not  
21 producing at the rate that you believe is required by FOIA,  
22 and you propose that I order that the document rate be 5,000  
23 documents or pages, however it's -- you wish the order to  
24 read. But I would like to hear from you, what is your  
25 justification for why you're at 5,000? How did you arrive

1 at that number, and why do you think that's legally  
2 required?

3 MS. HENRY: Thank you. So I will address the  
4 (Zoom glitch) --

5 THE COURT: You're breaking up. If you can get --  
6 I don't know why, but I didn't hear much of that last  
7 sentence. Try again.

8 MS. HENRY: Is it -- now.

9 THE COURT: Let's see here. Why don't you try  
10 again?

11 MS. HENRY: Is it clearer now?

12 THE COURT: Yes.

13 MS. HENRY: Thank you.

14 So the expedited processing statute 5 U.S.C.  
15 552(a)(6)(E)(iii) requires agencies like the BOP to make  
16 records available to requesters, like plaintiffs, who have  
17 been granted expedited processing status as soon as  
18 practicable. And in the case briefs -- the case management  
19 statements and letter briefs, I've offered a host of cases  
20 where courts have ordered agencies to process and release as  
21 much as 10 times many per pages per month as the volume that  
22 I'm seeking, the 5,000 duplicate pages.

23 THE COURT: Right. But in those cases -- I mean,  
24 it's not hard to find numerous cases out there that give you  
25 a different rate. But what is your authority to argue that

1 the Bureau of Prisons, under the evidence that's in the  
2 record, that 5,000 is the right number? I mean, I could  
3 easily show you an order that gives you a number that's  
4 likely greater than 1,000, but that doesn't provide the  
5 relief here that I think is warranted. What actually is the  
6 reason why that you can order through FOIA that the Bureau  
7 of Prisons needs to produce at 5,000 versus what they  
8 propose? I'm not saying that 1,000, I'm satisfied with  
9 that, but I'm not particularly persuaded that you've shown  
10 me so far that 5,000 is the number.

11 MS. HENRY: Well, 552(a)(3)(A) requires agencies  
12 to make the records promptly available. And in this case, I  
13 still have not been able to obtain the scope of records that  
14 are potentially responsive. I only know what is in the  
15 joint production status index that we provided to you as  
16 Exhibit 3 here, and I only have the count for the 80,000  
17 pages of e-mail. And so with 80,000 pages, that seems it  
18 would take approximately 27 years, which is not practicable,  
19 and that's not making records promptly available. My  
20 proposition --

21 THE COURT: Where is your authority? I mean,  
22 other than the number, which, you know, that may be all that  
23 I'm left to have, but -- you know, yes, by logical  
24 reasoning, if you do the math, you know, 27-year production  
25 would seem like this is -- would be frustrating the purpose

1 of FOIA and certainly may not satisfy the definition of  
2 prompt that we would normally hear, but I don't even know  
3 how you get to 5,000, so how can I evaluate it under the law  
4 and say, "Well, 5,000 is the right number"? Why isn't it  
5 4,000?

6 MS. HENRY: I think it's the Court's choice on  
7 reaching a number that is responsive to the requirements of  
8 the statute --

9 THE COURT: Right. So you -- okay. So if I'm  
10 left with that, what is your best authority for the  
11 justification for 5,000?

12 MS. HENRY: I think the range of cases in similar  
13 circumstances --

14 THE COURT: What is that case in similar  
15 circumstance? Maybe we can start with that.

16 MS. HENRY: Okay.

17 THE COURT: What is the case that I should look at  
18 the facts of the case that you're citing to me, and that is  
19 a reason why the Bureau, that particular agency, is required  
20 to increase its production rate?

21 In particular, I have to address the point that's made  
22 in the Government's papers, that if they were to produce  
23 documents at the rate of 5,000 pages, that that would  
24 essentially mean that's the -- this is the only request that  
25 the agency gets to respond to. So that's in the record. So

1 they've actually quantified that that's how it would affect  
2 the request if I ordered your production rate. What is your  
3 response to that? Should I -- do I have to ignore that?

4 MS. HENRY: I don't think you have to ignore it.  
5 I think the argument that I made last discovery hearing was  
6 more about the statutory burden being on the BOP. They're  
7 not fulfilling the burden. The Fiduccia case we discussed  
8 last time, in my opinion, forecloses the argument, the  
9 resources BOP has limited itself with, its choosing to not  
10 obtain more staffing, more budget -- and I attached the  
11 exhibits about the decreasing number of staff and the  
12 decreasing resources. The Fiduccia case says that an agency  
13 can't decline to fund itself in order to not comply with  
14 FOIA.

15 THE COURT: Well, is there evidence of that, that  
16 the agency, in response to FOIA, is saying, "Guess what?  
17 We're not going to fund it"? The fact is that they find  
18 themselves in that situation now. It's not like they've  
19 adjusted any kind of funding to deliver a result that's  
20 contrary to what you're arguing. It's what we have. I  
21 don't have any evidence that they are declining to fund  
22 something. That's their funding. So there's no -- I don't  
23 see any avenue that anyone has, quite frankly. There's no  
24 legal authority that I can mandate funding at a certain  
25 level.

1 MS. HENRY: In the briefing, I did make the  
2 argument that they have not requested more funds. They've  
3 admitted they're understaffed, and they have not requested  
4 more funds. And --

5 THE COURT: What authority do you have that they  
6 can request more funds to respond to your FOIA request?  
7 Your specific FOIA request or any specific FOIA -- it  
8 doesn't have to be yours. What authority is it that you --  
9 that I can order and compel the agency to increase funding?

10 MS. HENRY: (Zoom glitch). And I'm sorry, I'm out  
11 of the office right now.

12 THE COURT: Okay. It's all right.

13 MS. HENRY: I'm trying to pull things up (Zoom  
14 glitch) easier to pull up. The Nightingale vs. US  
15 Citizenship and Immigration Services case that I cited --

16 THE COURT: But that's not a Bureau of Prisons  
17 case, correct?

18 MS. HENRY: There are no Bureau of Prisons cases  
19 directly applicable.

20 THE COURT: Yeah. And the reason why I ask is  
21 because that's how -- that's -- if you're asking for a  
22 particular agency to respond in a certain course and you  
23 think that the authority supports that, then it really -- I  
24 think it has to follow that it has to be a Bureau-centered  
25 case that says that this agency can do that. And that's the

1 challenge with FOIA, admittedly, is that agencies are not  
2 created equal. Some have more funding for FOIA, and some  
3 don't. And I'm not aware of any authority that I can compel  
4 an agency and say, "Well, guess what, you have underfunded  
5 your FOIA response unit." I can't believe there's a case  
6 that gives me that authority.

7 MS. HENRY: My reading of Fiduccia was that -- and  
8 the quote in Nightingale finding that DHS and  
9 (indiscernible) failed to show they were exercising due  
10 diligence under that statutory provision I read earlier.

11 The quote is,

12 "There was no evidence in the record  
13 that they had even attempted, let alone  
14 succeeded, in persuading Congress to  
15 change the law or provide additional  
16 funds to achieve compliance" --

17 -- and there was declaratory and injunctive relief.  
18 The Moore vs. ICE case that I cited as well was releasing  
19 55,000 pages a month, and the remedial plan addressed those  
20 issues as well, but they are not BOP specific cases --

21 THE COURT: Right. And so in that last case you  
22 just cited, what was the production rate?

23 MS. HENRY: Fifty-five thousand pages a month.

24 THE COURT: Okay. And what was the agency?

25 MS. HENRY: ICE.

1 THE COURT: Yeah. So that's a very different  
2 agency. Okay. So your best authority is -- you believe you  
3 already cited in your brief.

4 MS. HENRY: Correct.

5 THE COURT: There's nothing else for me.

6 Okay. I'll turn to you, Mr. Pyle. So I'm going to  
7 kind of flip it. You believe that the agency -- that the  
8 Bureau can respond to the 1,000 pages. What's the  
9 justification for that? I mean, how do you -- how do you  
10 stop at 1,000? Why can't you go to 2,000?

11 MR. PYLE: The reason -- the way we came up with  
12 1,000, your Honor, is in our first CMC statement, we were at  
13 300 to 500 pages, which -- per month, which was what BOP is  
14 doing in the other litigation cases, and that's in the  
15 declaration of -- that we submitted. And, frankly, I -- you  
16 know, I talked with the agency about this and -- essentially  
17 to address the fact that Plaintiff's FOIA request was  
18 expedited by the agency, which doesn't, in itself, dictate a  
19 processing rate. BOP is proposing to process 1,000 pages  
20 per month, which we also think is in excess of, you know,  
21 most of the cases in this district, which are at the 500,  
22 600, you know, 700. Plaintiff cited one that was a  
23 stipulation that was 1,200 pages process per month. And the  
24 cases that we actually cited in our joint statement that we  
25 submitted last week, the cases there are all also 500 pages

1 a month or 500, I think, every other month in one of the  
2 cases, and those cases all speak to -- or not all of them,  
3 but two of them speak to the idea that, you know, you have  
4 to look at the individual agency and the individual agency's  
5 resources. And, you know, I wish there was a case that you  
6 could, you know, wave a magic wand and every --

7 THE COURT: Right. I mean, obviously, I think --  
8 I don't think we're -- I'm not doing this to just say this  
9 isn't the way it should be or whatever. We're just dealing  
10 with the reality.

11 Well, what about addressing Counsel's point? I mean,  
12 is there authority out there that I can compel an agency to  
13 go get more funding and go get a (indiscernible) --

14 MR. PYLE: No, no, no. No.

15 THE COURT: That would seem to be a separation of  
16 powers issue.

17 MR. PYLE: Yeah, I --

18 THE COURT: Yeah.

19 MR. PYLE: -- agree with that, and it's -- you  
20 know, this is just not -- this is not a situation where BOP  
21 is throwing up its hand. It's a situation where, like is  
22 happening with a lot of agencies, including where I work, a  
23 lot of people are retiring from BOP, and obviously the  
24 agency can't stop its staff from retiring.

25 THE COURT: Right, right.

1 MR. PYLE: And I think in the current environment,  
2 the idea that BOP could get any traction from Congress to  
3 increase funding.

4 THE COURT: Well, even if I were to write such an  
5 order, it would be, you know, kind of -- I don't even know  
6 what to call it, because it's not something --

7 MR. PYLE: Yes, but --

8 THE COURT: I cannot find that there's been a  
9 violation of law.

10 MR. PYLE: Yeah, but I think the hardest thing  
11 actually is the hiring freeze for BOP. They can't -- you  
12 know, they can't replace FOIA staff unless until that hiring  
13 freeze ends. And if you look at BOP's website, there's an  
14 exception to that for, like, law enforcement people, and BOP  
15 is trying to get more --

16 THE COURT: Yeah.

17 MR. PYLE: -- prison staff, but, you know, they  
18 can't hire new FOIA people. And as --

19 THE COURT: Right.

20 MR. PYLE: -- again, as the declaration said, they  
21 actually got in some people just before the hiring freeze  
22 went into place, so --

23 THE COURT: Okay.

24 MR. PYLE: -- you know, it's just -- you know,  
25 it's a difficult situation, and we proposed 1,000 pages as

1 something where we can keep muddling along. Plaintiff  
2 speaks of the 80,000 pages, and that's our current estimate.  
3 I've told her repeatedly that I do not believe that there  
4 are 80,000 pages of responsive e-mail. I think there's a  
5 lot of duplicates. I think there's a lot of just non-  
6 responsive e-mail. So I --

7 THE COURT: Right. Let's turn to that issue, if I  
8 may, about the overlapping FOIA requests with the other  
9 litigation, and, you know, the -- my read of the law is that  
10 -- is this is -- while that may be a very practical kind of  
11 consequence to do this in an effort to kind of streamline it  
12 and make it more -- you know, more akin to a true discovery  
13 dispute, that, unfortunately, I don't think FOIA -- I think  
14 the FOIA requester does have full control over what they  
15 want and what they're requesting, that there's no  
16 requirement that they de-duplicate something. The fact is,  
17 the agency can respond and, you know -- and maybe indicate  
18 that they are, but I'm not sure that the remedy is that I  
19 can say that the Plaintiff's requests are duplicate, and her  
20 FOIA request is what it is, and that -- the responses and  
21 whether or not she's entitled to response all play out from  
22 that request, and there is no distinction that can be made  
23 on the -- whether or not they're duplicated.

24 And, in fact, the other thing that will come up, most  
25 likely, is that the -- it seems that there are documents

1 that may overlap, but, you know, they were produced in a  
2 different manner through protective order in the litigation  
3 that the agency, quite frankly, is entitled to -- when  
4 produced under FOIA, to consider what a public dissemination  
5 would look like and whether or not -- and how they comply  
6 with FOIA.

7       So all of these issues will be more played out, but I  
8 don't think I factor that into the breadth of the request or  
9 the nature of the request. And right now, I'm really  
10 restricting my review and analysis to the production rate,  
11 and I'm focusing mostly on what authority I would have to,  
12 you know, try to get the Government's production rate --  
13 Bureau of Prisons' production rate higher and to see what  
14 the authority is to get it up to the 5,000, which, as I  
15 indicated before, there's not a lot of authority that gets  
16 me to the 5,000.

17       Okay. Let's turn to the other inquiry, which is the  
18 way that the records are being delivered, whether or not  
19 it's in native format or not. So, as I understand it, the  
20 Plaintiff -- the FOIA Plaintiff's request is that they would  
21 like these records produced in native format.

22       Is that correct, Ms. Henry? Did I get that correct  
23 that that's your other argument you want --

24               MS. HENRY: That is -- yes.

25               THE COURT: Okay.

1 MS. HENRY: (Indiscernible) to read the end of the  
2 Fiduccia quote into the record from the last issue before we  
3 move on. I do have that up now.

4 THE COURT: You can just incorporate the entire  
5 case. You don't need to read anything to me. It's in the  
6 record. You want me to take a look at the -- that  
7 particular case, though, in particular --

8 MS. HENRY: Yeah, and --

9 THE COURT: -- sure.

10 MS. HENRY: -- it was briefed along with a quote,  
11 "Resource constraints do not grant the  
12 agency carte blanche to repeatedly  
13 violate congressional mandated  
14 deadlines."

15 And that was Our Children's Earth Foundation --

16 THE COURT: Okay.

17 MS. HENRY: -- vs. National Marine Fisheries  
18 Services.

19 THE COURT: Correct. The agency does not get to  
20 violate the law. Understood.

21 Okay. All right. So turning to the native format,  
22 maybe that's it, you just -- you're just confirming that  
23 that's -- your request is to have the e-mails produced and  
24 provided to you in its native format.

25 MS. HENRY: Correct, I --

1 THE COURT: Okay.

2 MS. HENRY: 5 U.S.C. 552(a)(3)(B), the TPS case,  
3 the Scudder case, and Public Resources as the authority to  
4 provide the records in the readily reproducible format  
5 instead of how they've been producing them, which is  
6 changing them to make them, yes, less useful, altering --

7 THE COURT: But that quote is not saying in it's  
8 native format.

9 MS. HENRY: Correct. The statute does not use the  
10 word "native format."

11 THE COURT: Right. And -- you're not suggesting  
12 that it does. So what is your authority to say that I can  
13 compel the Government to produce these records in its native  
14 format?

15 MS. HENRY: So, readily reproducible records are  
16 records that are maintained and then transmitted in the way  
17 they are maintained. BOP says that it's possible, but  
18 they're choosing not to because transmitting a PDF, for  
19 example, as an individual PDF, they claim, would take 10  
20 times longer than merging it with a bunch of other PDFs,  
21 eliminating the names, pagination, distinguishable features.  
22 And so their declaration say that it's a matter of  
23 convenience, not that it's not technologically possible.

24 THE COURT: Okay. So the proposal that you want  
25 in a native format, the Bureau's response is that that would

1 actually increase or reduce the production rate.

2 MS. HENRY: That it would take longer.

3 THE COURT: Reduce the production rate. How do  
4 you respond to that? I mean, that's -- if they're going to  
5 say that, I mean how do I -- how do I -- how do I tell them,  
6 "Okay. In the one hand, they want to increase production  
7 rate, but you have to produce it in this way, which would  
8 reduce the production rate." Are we back at "I have to go  
9 and order them to get more people"? I don't see how to  
10 reconcile these two requests, and, actually, I think the  
11 Government may have even a further argument. They don't  
12 think it's appropriate that I can even order native format.  
13 But I'm just thinking of a practical consequence of what  
14 you're asking the Court to do, if I can even do it, is that  
15 if I were to order native format, assuming I have that  
16 authority, the response the Bureau may have is, "That's just  
17 going to take longer."

18 MS. HENRY: I can't speak to how the Government is  
19 using --

20 THE COURT: No. Well -- and neither can I.

21 MS. HENRY: I do know the FOIAXpress software has  
22 the capability to transmit PDFs that are stored as PDFs as  
23 PDFs, should they transmit it. Or they could e-mail it.  
24 They do have a box system, but they're choosing not to use  
25 the software in the way that is available. I would be happy

1 to get an expert declaration from a discovery expert on the  
2 method that they could use. I can't speak to the methods  
3 they are using.

4 THE COURT: No, but do you think that you could  
5 provide testimony that says that if they use this particular  
6 software, that it would not decrease the production rate?

7 MS. HENRY: I could seek out testimony and a  
8 declaration of -- that FOIAXpress can transmit native format  
9 documents, like, for example, a PDF saved as a PDF or an  
10 Excel saved as a -- as an Excel, with individual files, with  
11 the page numbers, and not transfer those into something that  
12 virtually makes the documents useless by merging them all  
13 together. I'm fairly confident, but I can't speak to the  
14 agency workflow, just what the software is capable of doing.

15 THE COURT: But you won't be able to address that  
16 argument that the Government is making about the production  
17 rate declining or going down.

18 MS. HENRY: How the BOP chooses to use software, I  
19 don't think I could get a declaration on that. What the  
20 software is capable of if they did want to use it in a more  
21 expedited manner, I think --

22 THE COURT: Okay. And it could very well be that  
23 I just don't have the background in the software that you're  
24 talking about, but I'm not necessarily hearing anything that  
25 you're able to tell me about -- I will let Mr. Pyle respond

1 to it about the production rate, but I am interested to know  
2 that if I can look at this issue, which he may have a  
3 response to or that this is the appropriate time for me to  
4 look at this issue, that ordering it produced in a certain  
5 format, even if they were to do that and could do that, that  
6 the consequence of that would be X.

7 So with that information, hearing what the arguments  
8 are by Ms. Henry, Mr. Pyle, what comments do you have with  
9 respect to the native file? Let's first start, you know, is  
10 that something I should be doing? Can I -- should I be  
11 addressing that issue?

12 MR. PYLE: I think that there isn't authority for  
13 what she's asking for, the native format. She hasn't cited  
14 a case. The Scudder, TPS, and Public Resource cases she  
15 cites are much more finite, where somebody is saying, "I  
16 have evidence that this agency uses zip files, and I want  
17 the zip file of this document," or they keep it in, you  
18 know, this particular -- "I know that people provide things  
19 to the agency in a particular format, and we want it in that  
20 same format," and it's about very finite categories of  
21 documents. And then she's actually talking about a  
22 different issue, which is this agency, like every agency  
23 I've dealt with, produces documents, you know, responsive to  
24 FOIA in -- usually in big PDFs. And we cited the Sai vs.  
25 Transportation Security Administration case from the

1 District of Columbia, where a judge looked at this exact  
2 issue and said that, just as an agency with paper records  
3 doesn't need to staple together each document by itself,  
4 when you're producing things electronically, you don't have  
5 to separate, you know, each of the documents. And I guess  
6 as a practical matter, I just -- it doesn't ring  
7 particularly true to me, because the cover letters from --

8 THE COURT: Well, why don't we start with --

9 MR. PYLE: -- the agency explains --

10 THE COURT: -- just to make sure we're all level  
11 set here, what is the proposal in terms of how the  
12 Government can produce its records under FOIA. And then Ms.  
13 Henry seemed to indicate that the way it's going to be  
14 produced, it's either not going to be usable, or there's  
15 going to be some other reason. So I need to kind of get an  
16 understanding of that. So your proposal is that the agency  
17 can produce these records responsive to FOIA in PDF format.  
18 Is that each document is its own separate PDF --

19 MR. PYLE: No.

20 THE COURT: -- or is it going to be batched, and  
21 it's going to be one PDF file with pages one through 100?

22 MR. PYLE: Some of the recent productions have  
23 been hundreds of pages of various forms.

24 THE COURT: Okay.

25 MR. PYLE: And the agency believes that you can

1 look at and you can see where one record begins and another  
2 one starts, but it is a -- usually a several hundred page  
3 PDF.

4 THE COURT: Okay. And so, Ms. Henry, starting  
5 with that, that's how you've been getting documents. Are  
6 you -- is your position that those documents, as produced in  
7 its PDF format, is not usable for you, or inconvenient and  
8 kind of cumbersome for you to have it in PDF. I mean, it's  
9 -- it can't be you can't look at the documents. It can't be  
10 like that. That's not the issue.

11 MS. HENRY: That's not the issue.

12 THE COURT: Yeah.

13 MS. HENRY: (Zoom glitch) issue is they don't  
14 comply with the statute. They're stored. They could be  
15 transmitted the way they're stored. They have names, they  
16 have authors, they have all the information --

17 THE COURT: Okay.

18 MS. HENRY: -- (Zoom glitch), right? So for the  
19 first thing that was transmitted, it was 171 individual PDFs  
20 that were records retention and destruction. They were on  
21 the National Records Administration website as individual  
22 files clearly named. Instead of just sending that link,  
23 they merged all of these into one thing, and you can't see  
24 where one begins and one ends. The tort claims forms were  
25 all stripped of the individual bundle. They come in a

1 bundle. In the declaration, it was described. And so  
2 instead of having each person's zip file or a PDF of each  
3 person named by the claim number, the claim numbers were  
4 eliminated, redacted. And so you get maybe four PDF merged  
5 into one, and then all of them merged into one document of  
6 hundreds of pages.

7 And so for the things that -- I don't know what is  
8 forthcoming because it hasn't been communicated to me. Are  
9 all the e-mails going to come, instead of individual e-mails  
10 or messages, as 1,000 page PDFs instead of in their native  
11 e-mail format? I've asked for the e-mail metadata to narrow  
12 the scope of the search. I've offered to narrow the scope  
13 with different proposals and have not heard back on -- I'm -  
14 - we're negotiating. I know that the Government is not open  
15 to giving the metadata on the e-mail and -- as a way to  
16 narrow it. Hopefully, I will hear back on other ways to  
17 narrow it. But, basically --

18 THE COURT: Give me an example of the metadata  
19 that you think would be available to you if the e-mails were  
20 produced in the native file that, as a result of it not  
21 being produced in native, you're not getting that  
22 information. What is an example of the metadata?

23 MS. HENRY: So if it was civil discovery, you  
24 could look through in --

25 THE COURT: But this is not civil discovery --

1 MS. HENRY: Correct.

2 THE COURT: -- right? That's the problem. The  
3 problem is that if you were in discovery in litigation, then  
4 I would probably have a little more authority. This is  
5 under FOIA. So FOIA doesn't get to necessarily -- I'm not  
6 aware of any legal authority that allows you to get to the  
7 metadata of how the records were kept by the Bureau when  
8 they were transmitted. But that's what I'm trying to get  
9 you. I'm trying to get you the documents, obviously, in a  
10 usable format, but it seems like you may be trying to get  
11 information that you would get if you were a litigant in  
12 discovery, but I'm not sure you would get it in FOIA.

13 MS. HENRY: In the statute -- so whatever is  
14 readily reproducible. In my mind, e-mail is readily  
15 reproducible. The proposal to narrow the e-mail by saying,  
16 you know, "Just give" --

17 THE COURT: So "readily producible," doesn't that  
18 mean that they don't -- the Government doesn't have to  
19 create records for you?

20 MS. HENRY: Correct.

21 THE COURT: Right. So it's however it's -- can be  
22 produced to you is how you're going to get it. Yeah, you're  
23 not going to get the -- you're not going to get a specially  
24 created document, a summary or anything like that. So the  
25 Government is not required to create record -- a record for

1 you for anything under FOIA.

2 MS. HENRY: (Zoom glitch) for is to narrow the  
3 scope of the e-mails. There are ways that we can narrow it  
4 without looking through all the e-mails. There's been no  
5 proposal to alter the record.

6 THE COURT: Okay. Well, that sounds like that's  
7 an area that you can continue to meet and confer over, on  
8 how that is. I'm not sure why that discussion can't happen  
9 or why it hasn't happened because of that -- again, the  
10 issue then becomes there's only so much -- and I want to  
11 acknowledge the fact that the parties have met and conferred  
12 quite a bit. It's not like you aren't doing that work. But  
13 the issue is, you know, at some point, I think the Plaintiff  
14 is, as already indicated in her last joint statement, that  
15 it's not all on her effort to have to do that. The issue  
16 is, you know, I think there has to be an understanding of  
17 how the documents are going to be produced. And then there  
18 has to be indicated to me what's deficient about it.  
19 Whether or not all -- you can just say it doesn't comply  
20 with FOIA, that doesn't really help me. It has to be what  
21 precisely is -- makes it deficient under FOIA. So -- and it  
22 could be that Ms. Henry just doesn't have the info yet  
23 because she doesn't know how it's going to be produced, and  
24 maybe Mr. Pyle doesn't even know the complete answer to that  
25 either, but it sounds like some of it you do, some -- you --

1 you've already produced records. And so sticking with that,  
2 documents that have been produced in a way that the agency  
3 defines as readily producible, what about those documents --  
4 I think I've heard some of it -- are not -- are incomplete?

5 MS. HENRY: I don't know what's left in terms of  
6 the number and type of documents. I would like to obtain  
7 that information.

8 THE COURT: Well, I'm just focusing on the  
9 documents you have. So the documents that you've seen now,  
10 that you've seen how they're coming to you.

11 MS. HENRY: There's five --

12 THE COURT: And you've already indicated some way  
13 that they are, that you believe that there's -- I thought I  
14 heard you say that there was no way that you could tell  
15 where the documents began and -- where they end and they  
16 began.

17 MS. HENRY: Yes, in the five releases, there have  
18 been problems. The first release that I began describing  
19 was the -- there's a website --

20 THE COURT: Okay.

21 MS. HENRY: -- the National (Zoom glitch)  
22 Administration. Instead of pointing me to that website or  
23 just saying, "Here's the links for each one of these records  
24 policies," I was given a PDF where all those were merged and  
25 made indistinguishable for the merging. And it took going

1 back and forth to understand these were just a printout from  
2 the website where everything had an individual file name,  
3 and in that file there was, for example, the creator or the  
4 date or anything that would be there that would be helpful,  
5 but they were broken up so you could tell where a policy  
6 began and a policy ended.

7 THE COURT: Okay. Let's stop you there.

8 Mr. Pyle, you want to respond to that?

9 MR. PYLE: Yeah. I mean, on that particular one,  
10 she can -- she or her client can go to that website if they  
11 want, to have that information. She keeps saying that, you  
12 know, BOP, like, they're intentionally trying to make this  
13 stuff unusable. The software that they use, that -- that's  
14 how they process records is it --

15 THE COURT: Well, that's how they maintain the  
16 record in their system of records. Is it that --

17 MR. PYLE: This one is a bad example, because it's  
18 actually not a BOP record.

19 THE COURT: Well, it's a bad example maybe for  
20 you, because you might (Zoom glitch).

21 MR. PYLE: No, it's a bad example because it's not  
22 actually a BOP record. It's a --

23 THE COURT: Oh.

24 MR. PYLE: -- the records are from different  
25 agencies.

1 THE COURT: Yeah, that is a bad example. Right,  
2 so -- but this record is in the BOP system of records. Is  
3 it not?

4 MR. PYLE: No.

5 THE COURT: It is not.

6 MR. PYLE: BOP got them off of a -- the website  
7 and processed them --

8 THE COURT: So how is that even -- how is that  
9 even -- and maybe we're veering into whether or not this is  
10 a document that should be produced under FOIA or not, which  
11 may be part of another litigation. And that -- you're  
12 right, Mr. Pyle, hearing that, this may not be a very good  
13 example. I'm looking for --

14 MS. HENRY: I can move through the next four --

15 THE COURT: Okay. Okay.

16 MS. HENRY: -- (Zoom glitch). I was just going  
17 chronologically.

18 THE COURT: Sure.

19 MS. HENRY: So the second production was on the --  
20 item 710 and 12, the grievances. And so there was a  
21 printout of a database. So this was stored in a database  
22 format, but converted to PDF, so it's different than PDF  
23 just being merged from PDF, so -- it needs to be translated.  
24 And so instead of sending each one of those records  
25 individually that would have information like the file

1 names, the authors, when they were created, the versions,  
2 anything like that, they were all sent as one, and they  
3 weren't grouped by theme or item number from the request  
4 that they were responding to, or things like that. So that  
5 took a while to parse.

6 I can go to item -- release number three.

7 THE COURT: So this actually -- if I'm  
8 understanding this particular issue, this may go to -- Mr.  
9 Pyle, in your letter brief to the Court, you indicate that  
10 this may not be resolved on a letter brief, that this might  
11 be something more appropriate in another procedural effort.  
12 But the question I have is, if data is being inputted,  
13 stored in the Bureau of Prisons record a certain way, and  
14 then it's being produced in FOIA out in a certain way, then  
15 the issue is, what you're describing that you want them to  
16 do seems to sound like you want them to create a record that  
17 the Bureau doesn't already have.

18 MS. HENRY: No, just transmit the record as is.  
19 And if it's not in a readily readable format, then transmit  
20 it in a --

21 THE COURT: But you would agree with me that the  
22 Bureau is not required, under FOIA, to create a record for  
23 you --

24 MS. HENRY: Correct. The only thing --

25 THE COURT: -- right?

1 MS. HENRY: -- (Zoom glitch) try to narrow the  
2 scope of e-mail, if there was a way to understand how to  
3 reduce the e-mail. And that was --

4 THE COURT: The quantity of e-mails, I totally  
5 agree. But it sounds to me like you're describing -- the  
6 way that you have been getting this data is not particularly  
7 usable because you can't make sense of it, but that's how  
8 the data has been entered into the system of records at the  
9 Bureau, and so that's all you would be entitled to is how  
10 they do that.

11 Maybe, Mr. Pyle, you need to jump in and try to clear  
12 up this example.

13 MR. PYLE: I think it's another not great example  
14 because it's a -- the documents are being -- you know, we're  
15 trying to be responsive, and so they have databases that  
16 have the information, and so they pull it out of the  
17 database and, in essence, create documents. But we think  
18 that's appropriate under FOIA because we have the  
19 information, and then we can -- they can produce information  
20 from their database and release it, and that's what we've  
21 been doing. But I don't think -- well, I -- I'm getting  
22 over my skis because I'm not a technological person --

23 THE COURT: Right.

24 MR. PYLE: -- but I'm skeptical that pulling a  
25 document out of a database would have the kind of

1 information she thinks would be in an individual PDF pulled  
2 from a database.

3 THE COURT: Ms. Henry, as far -- as much as you  
4 know, I mean, are these documents delivered to the Bureau or  
5 maintained in the Bureau in a hard copy document, and that  
6 is somehow stored, and you just want it back to you in that  
7 method that it's stored?

8 MS. HENRY: I don't think there are hard copies,  
9 but if I could make an analogy --

10 THE COURT: Okay.

11 MS. HENRY: -- (Zoom glitch) individual ECF  
12 filings --

13 THE COURT: Okay.

14 MS. HENRY: -- (Zoom glitch) docket. So if there  
15 was a filing from a plaintiff, you would want just that  
16 filing. You would want to be able to identify, is it a  
17 plaintiff's filing? If it was a filing from a defendant,  
18 you would want to be able to identify that, and you would  
19 want just the filing. I understand that they are in -- I  
20 could be educated on some of these, and there are lots of  
21 records that will come in the future that could be stored in  
22 different manners that are not necessarily PDF, so that's  
23 why establishing this early is important. If there's one  
24 record about one person or one record from one system, I'm  
25 just asking for the records as they're maintained to be

1 transmitted to me instead of merged with 50 or 100 other  
2 systems, databases, records.

3 MR. PYLE: And that's what the Sai vs. Department  
4 of Transportation case I cited says we don't have to do.  
5 And I'm just not aware of any authority that says the  
6 Government needs to, you know, produce each document as a  
7 separate individual thing, and I'm not aware of a case,  
8 certainly none has been cited, that an agency is required to  
9 produce e-mail in -- you know, individual e-mails.

10 My -- I guess my suggestion is we both -- you know, we  
11 would like you to resolve the processing rate. I think the  
12 issue with format may be something that would best be  
13 deferred until we have some specific examples to show you.  
14 An e-mail might be the time to --

15 THE COURT: Well, the -- you know, the issue is --  
16 I think what I'm hearing Ms. Henry articulate too is that  
17 she, without kind of an understanding of how these records  
18 are going to be produced to her and why -- or at least an  
19 explanation to her that she can be satisfied if she needs to  
20 come to court and get relief from or that she really -- the  
21 law is what it is on that, but it -- I am -- I'll just tell  
22 you, for me, because I'm the one potentially making  
23 decisions, is that it's not clear to me that the records  
24 that are in question, that are being produced, are going to  
25 be produced in a way that is not required or is going to be

1 in violation of FOIA. Now, it may not be in a way that's  
2 usable. I don't even know to what extent I have to make it  
3 usable, given the limitations that the agency isn't required  
4 to create records. It's just required to hand them over in  
5 the way that they're kept, so -- and every time Ms. Henry  
6 describes instances where she's challenged by the  
7 production, the Government's response is that's not a good  
8 example. So that doesn't particularly help me. It doesn't  
9 help me kind of figure out what the answer should be. You  
10 know, let's go to e-mails, because that, to me, seems like  
11 where there's -- I don't know how many e-mails are going to  
12 be -- that are going to be responsive under FOIA, but,  
13 typically, e-mails are kept by custodian, by who -- the  
14 recipient or who they sent, so I'm not sure that --

15 Ms. Henry, how do you anticipate getting e-mails are  
16 going to be more usable for you?

17 MS. HENRY: I understand that agencies produce e-  
18 mail in e-mail format that you can go through, stored the  
19 same way an e-mail is stored. We negotiated the scope and  
20 narrowed the scope many --

21 THE COURT: Okay. So you figured out what  
22 category of e-mails, who the custodians are, and so forth,  
23 but in terms of the actual format of the e-mail, you're  
24 saying that you haven't seen it in the format that you think  
25 you should be seeing it in.

1 MS. HENRY: I haven't seen any e-mail. There's  
2 been no update in months.

3 THE COURT: So maybe this is premature, to the  
4 extent you actually haven't seen the production yet, to see  
5 how it is, and then you can question and challenge and say,  
6 I -- "this cannot possibly be the way that I'm going to get  
7 e-mails." I'm assuming you've seen e-mails in the  
8 litigation. You've seen something.

9 MS. HENRY: I've only seen what's on the public  
10 record --

11 THE COURT: I see.

12 MS. HENRY: -- (Zoom glitch) we're not requesting  
13 what's in the public record. My client already filed a  
14 motion to intervene and obtained --

15 THE COURT: Right. And I'm not talking about the  
16 content of the e-mail, because they may be very different.  
17 I'm talking about the format of the e-mail.

18 So given that you've seen some e-mails and whatever  
19 they may be -- they may not be responsive, but at least  
20 you've seen the format. Can you comment on the formatting  
21 of the e-mails that you saw in the litigation?

22 MS. HENRY: I don't think e-mail -- I think the e-  
23 mail, if they were produced because there was a limited  
24 period of discovery before a consent decree, and then turned  
25 into a PDF and put onto a docket is the same thing as being

1 able to search and index using a discovery software that  
2 processes e-mail in the native format, I think that a BOP  
3 tech person would be more appropriate than me to talk about  
4 the technology. I could get a discovery expert, and that  
5 could be (Zoom glitch) system that I use to talk about how  
6 e-mail is processed.

7 THE COURT: Well, that may be -- that may be  
8 necessary for both sides to have their technical folks  
9 communicate, so that you can convey appropriately to me.  
10 Otherwise, I'm going to have to have somebody educate me on  
11 what it is. But right now, I'm not getting enough detail  
12 that I can actually opine on it, and I'm not -- and, you  
13 know, instead of just kicking it to the curb, I would like  
14 to see if there's a way to get this formatting issue,  
15 because you're on a production schedule as it is, so,  
16 presumably, I want to get to the bottom of how these records  
17 are being produced. To the extent that there are issues  
18 that need to be resolved, I would like to do that. So does  
19 it make sense -- when is the next production?

20 MS. HENRY: It's overdue, and we haven't actually  
21 been on a schedule that BOP has been meeting. They've been  
22 late to their production.

23 THE COURT: Okay. So that's one thing to talk  
24 about, so once we kind of figure out what the production  
25 rate is. Is there -- and I did contemplate having the

1 parties meet. You did give me some detail in your  
2 statements about what the production schedule should be, but  
3 I would like to get more granular about it now. So you can  
4 propose to me the timing of your productions, the dates, and  
5 then you can counter that, of course, and tell me when you  
6 can and cannot do that.

7 MR. PYLE: I think we're actually in agreement.  
8 One of the things we're in agreement on is a release of  
9 records every 30 days.

10 THE COURT: Okay. Mr. Pyle, you're late. The  
11 Government is late.

12 MS. HENRY: Repeatedly.

13 THE COURT: Repeatedly.

14 MR. PYLE: Well --

15 THE COURT: Is this an instance where it's because  
16 you want a court order that you can now waive it in front of  
17 your client without revealing any attorney/client?

18 MR. PYLE: We have said we think you can and --

19 THE COURT: Well, I think I'm intending to do that  
20 now.

21 MR. PYLE: -- expect you to do that.

22 THE COURT: I'm intending to issue an order that  
23 talks about production rate --

24 MR. PYLE: Yeah, what I'm telling you as the --

25 THE COURT: -- and then a schedule.

1 MR. PYLE: What I'm telling you as the  
2 representative of BOP is that we do not object to an order  
3 that says --

4 THE COURT: Okay.

5 MR. PYLE: -- a processing rate and that -- or at  
6 least be made every 30 days. And often in court orders,  
7 it'll say, you know, the first production under this new  
8 thing is going to be on, you know, whatever date.

9 THE COURT: Okay. Okay. All right. So you can  
10 contemplate and inform the client that my anticipated rate  
11 of production -- and not in terms of how many documents, but  
12 at least the timing will be every 30 days, or how about the  
13 last day of every month? Because 30 days may be --

14 MS. HENRY: We had already negotiated this issue  
15 about monthly or four weeks, so an earlier time period and  
16 more opportunities instead of the end of every month.

17 THE COURT: Sure.

18 MS. HENRY: We had already negotiated if that  
19 works for you, your Honor.

20 THE COURT: So I've already tentatively ruled it's  
21 going to be at the end of every month.

22 MS. HENRY: Okay.

23 THE COURT: Okay. So we'll -- and so that you can  
24 start telling the client that I would like to have that done  
25 and that in -- I mean, I'm not sure you can get a lot

1 produced on the 30th of May. But where I'm going with this  
2 is I want to -- I want Ms. Henry to be in a better position  
3 of articulating, based on what she's seeing, what it is  
4 that's not acceptable, because, right now, she's operating  
5 with very limited information that I don't think she can  
6 advise me, in a way that she would like to, as to what's  
7 wrong. I mean, I have some idea. She's articulated some of  
8 it. But I need to actually kind of go through with a little  
9 more granularity as to what's the fact of, if at all, and  
10 then, Mr. Pyle, you can be in a position to say, "This is  
11 all we can do, and this is why, under FOIA" or not, or come  
12 to some understanding of how it should be once Ms. Henry has  
13 an opportunity to see, for example, in particular, the  
14 production of the e-mails.

15 MS. HENRY: And the other items we were requesting  
16 is the total page estimate. We don't have estimates. We  
17 don't know, other than that (indiscernible) spreadsheet, any  
18 information about what has been done, which is why we  
19 believe that FOIA has been violated, and we don't know when  
20 the case will be completed. So under that expedited  
21 standard, any information in the order regarding the scope  
22 of the case or the monthly updates we have requested be more  
23 comprehensive to understand the scope of the case, what has  
24 been done. Anything your Honor would include beyond just  
25 the date and the page numbers would be welcome by Plaintiff.

1 THE COURT: My question with respect to that is,  
2 if you are in the opinion that the Government is -- has  
3 violated FOIA in that regard -- we're not talking about  
4 production rates. We're talking about more like they're not  
5 responding to, you know, these category of records are  
6 responsive and whether they're -- they are or they aren't.

7 This brings me back to my original inquiry, which is I  
8 do not believe that is my charge. So this is not a report  
9 and recommendation. So those are specific instructions  
10 given by the district court. That is not what Judge  
11 Gonzalez Rogers has referred to me. While I may or may not  
12 have authority to do that, I don't believe that is to be my  
13 charge. If you believe that the Government is not producing  
14 records under FOIA and has withheld inappropriately under  
15 one of the exemptions, then your remedy is to file your  
16 motion with the district court and say, "They're violating  
17 FOIA in that regard." So that, I think, is where that issue  
18 gets resolved.

19 MS. HENRY: (Zoom glitch) --

20 THE COURT: Yeah.

21 MS. HENRY: -- the provisions about making a  
22 determination, the statutory framework we briefed on  
23 determination.

24 THE COURT: Okay. All right. So I -- so I'm a  
25 little unclear what you -- what other item you think I

1 should address in your discovery letter. Production rates,  
2 the formatting of the records, but what else is there that  
3 you think that I should be able to address?

4 MS. HENRY: We don't know how the records exists.  
5 There's been no determination, and that was the operative  
6 word I think that distinguishes --

7 THE COURT: How many records are out there?

8 MS. HENRY: And that would help define the scope  
9 of the case and understand --

10 THE COURT: Right, the scope of relief that you're  
11 seeking, and that, again, is --

12 So I don't -- Mr. Pyle, you want to address that? I  
13 mean, do you know how many records there are out there,  
14 what's in the system of records?

15 MR. PYLE: I don't. What I can tell you is the  
16 problem with the agency is processing records to release  
17 them. The agency has more resources in terms of lawyers who  
18 -- Kristi Sutton, who's a lawyer with BOP and was involved  
19 in the CCWP case for the agency, I do know that she is  
20 gathering a lot of records and providing them, but the  
21 problem is the -- processing them.

22 THE COURT: Do you believe that FOIA requires the  
23 agency to disclose there are X many of documents responsive  
24 to this request?

25 MR. PYLE: I think that's an issue that you can't

1 decide because that is --

2 THE COURT: That I cannot decide. Yeah --

3 MR. PYLE: -- that gets to the merits. No, that's  
4 to the merits of FOIA.

5 THE COURT: Or do you -- but would FOIA -- would  
6 the Government have to give that answer to Ms. Henry if  
7 Judge Gonzalez Rogers says that you do?

8 MR. PYLE: If Judge Gonzalez issued an order --

9 THE COURT: That says that you have to tell -- you  
10 have to tell Ms. Henry how many documents are out there.

11 MR. PYLE: Yeah. But again, it --

12 THE COURT: Yeah.

13 MR. PYLE: I just keep coming back to the reality  
14 that we can -- what I think would be better for everybody is  
15 for processing -- you know, start processing at the --

16 THE COURT: But I can understand -- I can  
17 understand Ms. Henry figuring or, at least, arguing to me  
18 that it would be helpful to know how many documents are out  
19 there, because that weighs in to -- that is a relevant piece  
20 of information to know the processing rate. If you were to  
21 tell me that the number of documents that are responsive in  
22 this case are 10,000, then we can kind of figure out what  
23 the appropriate response production rate should be. If you  
24 come back and say there are 1 billion documents out there  
25 that are responsive, then that number obviously changes. So

1 her inquiry is relevant. The question is, who can order her  
2 to get that relief? I don't think I can because it goes  
3 into the merits of FOIA whether or not you are or not  
4 withholding it, but I definitely think that that is an issue  
5 that, at some point, it's a relevant inquiry here.

6 Go ahead. Ms. Henry, you wanted to say something.

7 MS. HENRY: Our argument would be what we briefed  
8 in the CREW case, the agency's determination must include,  
9 "The scope of documents that the agency  
10 will produce, as well as the scope of  
11 the documents that the agency plans to  
12 withhold under any exemptions."

13 And that was the Citizens for Responsibility and Ethics  
14 in Washington case that we cited for that --

15 THE COURT: Yeah. So that's -- that -- and that  
16 is the presiding judge's job, because all of that gets teed  
17 up through the motion for summary judgment, what's an  
18 appropriate withholding, and that's -- that, I understand  
19 very clearly, has not been conceded. The fact that we're  
20 talking about production rates is really separate and  
21 distinct from how many documents are out there. So that is  
22 not an issue that I believe I can order, given the  
23 information, because that would be overstepping the  
24 referral. The referral of what is responsive is -- that's  
25 up to Judge Gonzalez Rogers. Now, what I'm doing in basing

1 the production rates is I'm evaluating the record that is  
2 before me on what is an appropriate production rate, given  
3 the state of the record. All I'm saying right now is maybe  
4 that production rate changes depending upon what further  
5 findings are made in the case by the appropriate judge. And  
6 it doesn't mean it all goes to the benefit of the Plaintiff.  
7 Maybe it goes to the benefit of the Government under that  
8 circumstance. I don't know. It's not my inquiry. But I do  
9 think that the ultimate responsive documents, the  
10 appropriate withholdings, whatever, that final number is a  
11 relevant number. It certainly seems relevant. It seems  
12 relevant to the inquiry of production rates. That would  
13 affect my analysis. But, right now, based on the record  
14 that I have and information that I have that I can get an  
15 order, then I'm going to make the -- I'm going to rule on  
16 the discovery letters and comply with the referral as made  
17 by Judge Gonzalez Rogers.

18 MR. PYLE: Yeah. And, your Honor, I guess to be  
19 helpful, the 80,000 page number, which, again, as I said --

20 THE COURT: And I understand that's disputed.

21 MR. PYLE: -- I don't believe it -- I don't  
22 believe that's --

23 THE COURT: Correct. I understand, and I'm not  
24 going to -- I'm not going to weigh in on --

25 MR. PYLE: But --

1 THE COURT: -- whether or not you're right or  
2 you're wrong.

3 MR. PYLE: But --

4 THE COURT: But, you know, I hear you --

5 MR. PYLE: But I think the reason the agency  
6 figured out how much there was is because they view that as  
7 the biggest volume of the request. And there's a number of  
8 them that are not very many pages.

9 THE COURT: I see.

10 MR. PYLE: But one thing -- anyway --

11 THE COURT: So let me make sure I understand you.  
12 So in determining the Government's production rate, the  
13 1,000 documents per period -- production period.

14 MR. PYLE: A thousand pages.

15 THE COURT: That was pages. So the 1,000 pages  
16 took into account the number of documents that they believe  
17 are responsive. It wasn't pulled out of thin air.

18 MR. PYLE: No, it wasn't --

19 THE COURT: Okay. Okay.

20 MR. PYLE: -- pulled out of thin air --

21 THE COURT: Right.

22 MR. PYLE: -- and --

23 THE COURT: Okay.

24 MR. PYLE: And again --

25 THE COURT: So that may be helpful in terms of,

1 you know, figuring out what you need the information for. I  
2 mean, the ultimate number of what records are maybe useful  
3 and required in the production rate discussion, and that --

4 MS. HENRY: (Zoom glitch) that the statute  
5 552(a)(7) does require having the date of production, so the  
6 numbers and the date. We're 321 days in and --

7 THE COURT: Yeah.

8 MS. HENRY: -- we don't have any of that defined.  
9 That's why I'm pressing the issue and understanding the real  
10 scope of the case. We're waiting and waiting, and we will  
11 be doing motions practice, but we still --

12 THE COURT: Yeah.

13 MS. HENRY: -- (Zoom glitch) have a defined scope  
14 of the case, though.

15 THE COURT: I totally understand why you're going  
16 to do it. I just don't -- I just don't believe I have the  
17 authority to get that information now, because in order for  
18 me to say, "What is the number of records that are  
19 responsive?" it's going to come in -- the first thing the  
20 Government is going to say, "We believe -- if forced to do  
21 this, which we don't think you can do right now, we're going  
22 to have to assert that we properly withheld these number of  
23 documents under exemption," whatever, and I won't be able to  
24 opine, rule, or otherwise adjudicate that defense. That's  
25 why it's impossible for me to say, "Okay. Let's get to the

1 bottom of all of that." I can't do that without getting  
2 through the step of the Government's defenses, which are  
3 appropriately raised at a particular juncture. That's not  
4 now. So in order to get to the number of records that are  
5 out there, with the scope of the cases and so forth, and  
6 that you can take back to Judge Gonzalez Rogers and tell her  
7 we need to know for whatever reason.

8       Now, as a result of all of that information coming out  
9 and let's say that ruling happens, then there may be an  
10 opportunity for it to come back and revisit the issue of  
11 production rate. So there's -- just because I find  
12 production rate X for each period doesn't mean that period  
13 of time is static for the perpetuity of the litigation,  
14 depending upon information as it becomes known, available,  
15 especially to me. Now, I'll be very clear in the order that  
16 whatever information I base this on is based on the record  
17 as it exists at the time of the order, and at the time of  
18 the order, there is no evidence indicating how many records  
19 are actually responsive.

20       Okay. I think I have enough. Anything else before  
21 we're submitted on your discovery letters?

22               MR. PYLE: Thank you, your Honor. It's  
23 submitted --

24               THE COURT: Okay, great.

25               MR. PYLE: -- for us.

1 THE COURT: All right. Ms. Henry, anything else  
2 you want to add to your papers?

3 Okay. Very good. We're adjourned. Thank you.

4 MR. PYLE: Thank you, your Honor.

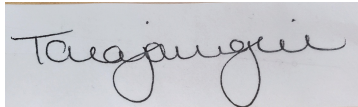
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



Echo Reporting, Inc., Transcriber  
Wednesday, June 11, 2025