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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **OAKLAND DIVISION**

8 VICTORIA LAW,
9 PLAINTIFF,
10 VS.
11 FEDERAL BUREAU OF PRISONS,
12 DEFENDANT.

CASE NO.: 4:24-cv-06628-YGR

**DECLARATION OF JERRY BUI IN
SUPPORT OF PLAINTIFF’S REPLY ON
MOTION FOR PARTIAL JUDGMENT ON
THE PLEADINGS AND DECLARATORY
JUDGMENT**

13
14
15 I, Jerry Bui, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following
16 statements are true and correct:

17 The following statements are made of my own personal knowledge except as to those matters
18 stated to be based on information or belief. If I were to be called as a witness, I could competently testify
19 about what I have written in this declaration.

- 20
21 1. My name is Jerry Bui. I am a digital forensics examiner and a founder of Right Forensics (a for-
22 profit entity) and Forensics Forward for Justice (a non-profit). I am providing this declaration as
23 an expert witness in the field of digital forensics and e-discovery. My professional fee for this
24 engagement is \$750/hour.
25
26 2. I have 25 years of experience in data collection, deduplication, and e-discovery productions. I
27 have testified as an expert witness more than 30 times in civil matters (for both plaintiffs and
28

1 defense) and have been deposed previously. My opinions have never been excluded or declined
2 weight by a judge, despite attempts at Daubert challenges. My expertise extends to the
3 capabilities and optimal utilization of e-discovery and document review platforms, including
4 those used by government agencies. My curriculum vitae, detailing my qualifications and
5 professional experience, is attached hereto as Exhibit 3.
6

- 7 3. I have been asked to provide my expert opinion on three primary issues related to document
8 review and production standards in litigation, specifically concerning the Bureau of Prisons
9 (BOP) and its use of the FOIAXpress system. These issues are: the pace of production, the
10 technical feasibility and “readily reproducible” standard, and general process and review
11 standards. My opinions are based on my experience, the publicly available specifications for
12 FOIAXpress, and industry standards for e-discovery and document production.
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14 **I. Summary of Opinions:** In summary, my expert opinions are as follows:

- 15 4. **Pace:** With FOIAXpress (and its integrated Casepoint features) fully enabled, a competent team
16 should achieve a production rate of no less than 1,500–2,500 pages per month under ordinary
17 FOIA review, and can proceed substantially faster on email collections with high duplicate
18 content. The claimed rate of 1,000 pages per month is extremely slow – on the order of ten times
19 slower than what modern e-discovery tools can achieve – and falls significantly below
20 contemporary industry capabilities.
21
- 22 5. **Format:** Producing multiple documents merged into a single, non-searchable PDF violates
23 widely accepted e-discovery norms (e.g., Rule 34(b)(2)(E) and Sedona Principle 12) because it
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1 destroys metadata, impedes the effective use of technology-assisted review (TAR), and unfairly
2 shifts the burden and cost of processing to the requester¹.

3
4 6. **Feasibility:** All of the record elements cited by Plaintiff as “lost” in BOP’s current process (e.g.
5 metadata, email threading, searchability) can be preserved and exported directly from
6 FOIAXpress without the need for custom coding or third-party add-ons. Indeed, the records in
7 question are likely preserved in a discoverable, well-organized format from other litigation
8 matters involving BOP, so producing them at a lower standard for FOIA effectively creates new,
9 less usable records.

10
11 7. **BOP Declarations:** Absent a persuasive showing that the agency has affirmatively disabled
12 FOIAXpress’s standard Electronic Document Review (EDR) functions, the claimed ten-fold
13 slowdown in processing time is inconsistent with both the inherent capabilities of the
14 FOIAXpress system and benchmarks from recent FOIA cases. The obstacles identified by BOP
15 are workflow choices, not technical limitations.

16
17 8. **Calculated Ambiguity:** A critical observation is that BOP's current workflow goes beyond
18 merely not using the default settings of its advanced software; it actively involves changing or
19 creating new records rather than simply providing existing documents in their default, usable
20 format. This process, which can be described as *malicious* in the ediscovery world, requires
21 deliberate steps to produce documents in an unfriendly or unusable way.
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¹ CLOUDNINE, WHAT EVERY ATTORNEY SHOULD KNOW ABOUT eDISCOVERY IN 2017 (2017),
28 <https://cloudnine.com/wp-content/uploads/2017/04/CloudNine-What-Every-Attorney-Should-Know-About-eDiscovery-in-2017-Webcast-Print-041317.pdf>

1 **II. Materials Relied Upon**

2 9. I reviewed the following documents from the Docket in *Law v. BOP*, Case No. 4:24-cv-06628-

3 YGR (N.D. Cal.):

- 4
- 5 • *Complaint*, ECF No. 1, *Exhibit to Complaint*, ECF No. 1-1
 - 6 • *Case Management Statement*, ECF No. 21
 - 7 • *Joint Request for Case Management Conference*, ECF No. 26
 - 8 • *Joint Case Management Statement*, ECF No. 28
 - 9 • *First Joint Discovery Letter Brief*, ECF No. 31, *Declaration of Kara Christenson*, ECF No. 31-2
 - 10 • *Second Discovery Letter Brief (Production Schedule)*, ECF No. 33, *Sample Production Orders*,
ECF No. 33-3, *Declaration of Kara Christenson*, ECF No. 33-4
 - 11 • *Third Discovery Letter Brief*, ECF No. 34
 - 12 • *Joint Status Report*, ECF No. 39, *Declaration of Caitlin Henry*, ECF No. 39-2
 - 13 • *Discovery Order*, ECF No. 42
 - 14 • *Tr. of Discovery Hr'g* (May 12, 2025) ECF No. 43
 - 15 • *Tr. of Discovery Hr'g* (May 27, 2025) ECF No. 44.
 - 16 • I have reviewed all production letters received by Plaintiff from BOP.

17 I reviewed the following cases

- 18
- 19 • *Law v. BOP*, Case No. 4:24-cv-06628-YGR (N.D. Cal.) *Sample Production Orders*, ECF No.
33-3 (table summarizing 28 FOIA cases in which a production schedule or status report has
20 either been ordered by a District Court or in which the parties have represented to the Court that
21 they will produce documents on a certain schedule).
 - 22 • *Pub. Health & Med. Pros. for Transparency v. U.S. Food & Drug Admin.*, No. 4:22-cv-00915-P
(N.D. Tex. 2023)
 - 23 • *Pub. Health & Med. Pros. for Transparency v. Food & Drug Admin.*, No. 4:21-cv-01058-P
(N.D. Tex. 2021)
 - 24 • *Scudder v. CIA*, 25 F. Supp. 3d 19 (D.D.C. 2014)
 - 25 • *TPS, Inc. v. U.S. Dept. of Defense*, 330 F.3d 1191 (9th Cir. 2003)
 - 26 • *California Coalition for Women Prisoners v. U.S. BOP* (4:23-cv-4155-YGR) (N.D. Cal. 2023)
 - 27 • *M.R. v. FCI Dublin* (No. 22-cv-05137)(N.D. Cal. 2023)
 - 28 • *Stevens v. United States Dep't of Health & Hum. Servs.*, No. 22 C 5072, 2025 WL 213734, at *2
(N.D. Ill. Jan. 16, 2025)
 - *Seavey v. DOJ*, No. 15-1303(D.D.C. 2017)
 - *Boundaoui v. FBI*, No. 17 CV 4782(N.D. Ill. 2017)
 - *Clemente v. FBI*, No. 13-cv-108 TFH (D.D.C. 2014)

29 I reviewed the following DOJ produced materials:

- 30
- 31 • OFFICE OF INFORMATION POLICY, UNITED STATES DEPARTMENT OF JUSTICE, 2025 CHIEF FOIA
OFFICER'S REPORT FOR MARCH 2024 TO MARCH 2025 (2025),
32 <https://www.justice.gov/oip/united-states-department-justice-2025-chief-foia-officer-report> (last
33 visited Sept 8, 2025)

- 1 • OFFICE OF INFORMATION POLICY UNITED STATES DEPARTMENT OF JUSTICE, 2024 CHIEF FOIA
2 OFFICER REPORT (2025), [https://www.justice.gov/oip/united-states-department-justice-2024-
3 chief-foia-officer-report](https://www.justice.gov/oip/united-states-department-justice-2024-chief-foia-officer-report) (last visited Sept 7, 2025)
- 4 • OFFICE OF INFORMATION POLICY (OIP), DEPARTMENT OF JUSTICE, 2023 CHIEF FOIA OFFICER
5 REPORT (2025), <https://www.justice.gov/oip/page/file/1573561/dl?inline>
- 6 • OFFICE OF INFORMATION POLICY, UNITED STATES DEPARTMENT OF JUSTICE, 2022 CHIEF FOIA
7 OFFICER REPORT (2022), <https://www.justice.gov/oip/page/file/1483001/dl?inline>

8 I reviewed the following materials regarding FOIAXpress:

- 9 • U.S. DEPARTMENT OF THE INTERIOR, FOIA BULLETIN NUMBER: 23-01, FOIAXPRESS
10 ELECTRONIC TRACKING AND CASE MANAGEMENT SYSTEM (2023),
11 <https://www.doi.gov/sites/doi.gov/files/2023-0802-dfo-bulletin-23-01-foiaexpress-use-final.pdf>
- 12 • DEPARTMENT OF THE TREASURY, PRIVACY AND CIVIL LIBERTIES IMPACT ASSESSMENT (2023),
13 <https://home.treasury.gov/system/files/236/20230803-PCLIA-FOIAXpress-508.pdf>
- 14 • U.S. OFF. OF PERS. MGMT, PRIVACY IMPACT ASSESSMENT FOR FOIAXPRESS AND PUBLIC ACCESS
15 LINK (PAL) (2022), [https://www.opm.gov/information-management/privacy-policy/privacy-
16 policy/FOIAXpress-pia.pdf](https://www.opm.gov/information-management/privacy-policy/privacy-policy/FOIAXpress-pia.pdf)
- 17 • U.S. DEP'T OF JUST, PRIVACY IMPACT ASSESSMENT FOR EOUSA/USA FOIAXPRESS (2021),
18 <https://www.justice.gov/usao/page/file/1462021/download>
- 19 • AINS, INC, FOIAXPRESS FOIA TECHNOLOGY SHOWCASE DAY 1, SECTION 1: EDISCOVERY /
20 ELECTRONIC RECORD SEARCH TOOLS, REQUEST FOR INFORMATION (RFI) RESPONSE (2021),
21 [https://api.foia.gov/sites/default/files/2022-
22 10/Ains%20eDiscovery%20and%20Electronic%20Records%20Search%20Tools.pdf](https://api.foia.gov/sites/default/files/2022-10/Ains%20eDiscovery%20and%20Electronic%20Records%20Search%20Tools.pdf)
- 23 • OPEXUS, FOIAXPRESS FACTSHEET (2024), [https://www.opexustech.com/wp-
24 content/uploads/2024/05/FOIAXpress-2pg-Factsheet_5.14.24.pdf](https://www.opexustech.com/wp-content/uploads/2024/05/FOIAXpress-2pg-Factsheet_5.14.24.pdf)
- 25 • FED. MEDIATION & CONCILIATION SERV, PRIVACY IMPACT ASSESSMENT FOR FOIAXPRESS
26 (2020), <https://www.fmcs.gov/wp-content/uploads/2020/12/2020-PIA-FOIAXpress.pdf>
- 27 • AINS, INC, FOIAXPRESS FOIA TECHNOLOGY SHOWCASE DAY 1, SECTION 4: ARTIFICIAL
28 INTELLIGENCE TOOLS REQUEST FOR INFORMATION (RFI) RESPONSE (2021),
<https://api.foia.gov/sites/default/files/2022-10/Ains%20Artificial%20Intelligence%20Tools.pdf>
- OPEXUS, FOIAXPRESS ADVANCED DOCUMENT REVIEW (ADR) (2018),
<https://ains.opexustech.com/wp-content/uploads/2018/01/FOIAXpress-ADR.pdf>
- WHAT THE MERGER OF OPEXUS AND CASEPOINT MEANS FOR YOU,
[https://www.opexustech.com/resource/what-the-merger-of-opexus-and-casepoint-means-for-you/
\(last visited Sept 7, 2025\)](https://www.opexustech.com/resource/what-the-merger-of-opexus-and-casepoint-means-for-you/)
- FAST AND POWERFUL DATA PROCESSING CASEPOINT, [https://www.casepoint.com/ediscovery-
platform/data-processing/](https://www.casepoint.com/ediscovery-platform/data-processing/) (last visited Sept 7, 2025)
- FREQUENTLY ASKED QUESTIONS,
<https://docs.opexustech.com/docs/foiaexpress/11.9.X/usermanual/FAQ.htm> (last visited Sept 7,
2025)
- U.S. DEP'T OF JUST., OFF. OF INFO. POL'Y, FOIA GUIDE 2004 EDITION: PROCEDURAL
REQUIREMENTS (2021), [https://www.justice.gov/archives/oip/foia-guide-2004-edition-
procedural-
requirements#:~:text=As%20a%20general%20rule%2C%20an,of%20an%20agency%27s%20search](https://www.justice.gov/archives/oip/foia-guide-2004-edition-procedural-requirements#:~:text=As%20a%20general%20rule%2C%20an,of%20an%20agency%27s%20search)
ch

- 1 • U.S. DEPARTMENT OF STATE, CHIEF FOIA OFFICER REPORT MARCH 2020 (2020),
2 <https://foia.state.gov/FOIALIBRARY/Reports/Officer/2020.pdf#:~:text=In%20June%202019%20C%20the%20Department,At%20the%20current%20rate>
- 3 • HEALTH AND HUMAN SERVICES, PRIVACY IMPACT ASSESSMENT (PIA): OS - FOIAXPRESS - QTR4
4 - 2022 (2022),
5 https://www.hhs.gov/sites/default/files/OS_FOIAXpress.pdf#:~:text=FOIA%20Xpress%20is%20a%20Software,PAL

6 I reviewed the following materials regarding industry standards:

- 7 • THE SEDONA CONF., THE SEDONA CONFERENCE GLOSSARY: E-DISCOVERY & DIGITAL
8 INFORMATION MANAGEMENT, FIFTH ED., (2024),
9 <https://thesedonaconference.org/sites/default/files/publications/Sedona%20Conference%20Glossary%20C%20Fifth%20Edition.pdf>
- 10 • LEWIS BRISBOIS BISGAARD & SMITH LLP, SOLUTIONS TO COMMON ISSUES IN DOCUMENT
11 REVIEW PROJECTS , <https://lewisbrisbois.com/assets/uploads/page-files/Solutions.pdf>
- 12 • *Legal Document Review Q&A*, BIA, <https://www.biaprotect.com/blog/legal-document-review-q-a/>
13 (last visited July 21, 2025)
- 14 • CLOUDNINE, WHAT EVERY ATTORNEY SHOULD KNOW ABOUT eDISCOVERY IN 2017 (2017),
15 <https://cloudnine.com/wp-content/uploads/2017/04/CloudNine-What-Every-Attorney-Should-Know-About-eDiscovery-in-2017-Webcast-Print-041317.pdf>
- 16 • DOCUMENT REVIEW: 6 TIPS FOR A MORE EFFICIENT AND COST-EFFECTIVE PROCESS,
17 <https://web.archive.org/web/20210618165816/https://www.jdsupra.com/legalnews/document-review-6-tips-for-a-more-8829209/>
- 18 • EPISODE #6: HOW TO REDUCE eDISCOVERY COSTS WITH INTELLIGENT ARCHIVING,
19 https://www.archive360.com/podcast/reduce_ediscovery_costs#:~:text=e,you%20have%2010%20custodians%20or
- 20 • Barclay Blair, *Getting Smart With Email In E-Discovery – How Email Threading Can Lower Costs And Increase Speed: A Case Study With Perkins Coie And Discovia*, CORPORATE COUNSEL
21 BUSINESS JOURNAL (2014), <https://ccbjournal.com/articles/getting-smart-email-e-discovery---how-email-threading-can-lower-costs-and-increase-sp#:~:text=Increasing%20Speed>
- 22 • LAURA ZAKARAS & NICHOLAS PACE, THE COST OF PRODUCING ELECTRONIC DOCUMENTS IN
23 CIVIL LAWSUITS CAN THEY BE SHARPLY REDUCED WITHOUT SACRIFICING QUALITY? (2012),
24 https://www.rand.org/pubs/research_briefs/RB9650.html#:~:text=Review%20Speeds%20May%20Have%20Reached,an%20Upper%20Bound
- 25 • <https://hilgersgraben.com/wp-content/uploads/2020/02/Who-Actually-Is-Reviewing-My-Documents.pdf#:~:text=Productivity%3F%20Analyzing%20productivity%20is%20straightforward,contract%20review%20providers%20are%20not>
- 26 • HILGERS GRABEN, WHO ACTUALLY IS REVIEWING MY DOCUMENTS? (AND WHY IT MATTERS),
27 COST CONTAINMENT AND THE NEED FOR DISRUPTION IN THE MARKET FOR DOCUMENT REVIEW ,
28 <https://hilgersgraben.com/wp-content/uploads/2020/02/Who-Actually-Is-Reviewing-My-Documents.pdf#:~:text=Productivity%3F%20Analyzing%20productivity%20is%20straightforward,contract%20review%20providers%20are%20not>
- eDISCOVERY BEST PRACTICES: WHEN IS IT OK TO PRODUCE WITHOUT LINEAR REVIEW?,
<https://cloudnine.com/ediscoverydaily/electronic-discovery/ediscovery-best-practices-when-is-it-ok-to-produce-without-linear-review/#:~:text=%28reducing%2088,any%20inadvertently%20produced%20privileged%20files>

1 **III. Pace of Production**

2 **10. Overview of Document Review and Production Process:** The typical e-discovery workflow
 3 involves several key stages: identifying custodians and data sources; forensically preserving
 4 data; processing and indexing the data (including steps like de-NISTing and text and metadata
 5 extraction); deduplicating files (using MD5/SHA-1 hashes to eliminate exact duplicates and
 6 employing email threading to collapse redundant email chains); culling by search terms and date
 7 filters; performing relevance and privilege review (often accelerated with technology-assisted
 8 review, or TAR); redacting as needed; conducting quality control (QC); exporting with a load
 9 file; and finally, producing the documents in a “reasonably usable” form, consistent with the
 10 requirements of Rule 34(b)(2)(E) and Sedona Principle 12.

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 12
 13 **11. Private-Sector E-Discovery Review Rates (Pages per Hour):** In modern e-discovery, a typical
 14 manual review speed is on the order of tens of pages per hour. A commonly cited baseline is
 15 around 50–60 pages per reviewer per hour under normal conditions^{2,3}. For example, one e-
 16 discovery primer assumes an attorney can review about *50 pages per hour*⁴, and industry
 17 discussions often use *50–60 pages/hour* as a reasonable throughput for linear document review⁵.
 18 This equates to roughly 1 page per minute, which aligns with practical reading speeds when
 19 reviewers must make relevance and privilege determinations.
 20

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 22
 23 ² ALLISON MULLINS & JUAN SOSA, AN E-DISCOVERY PRIMER: THOUGHTS ON THE
 24 TECHNICAL, PRACTICAL, AND PROPORTIONAL, NORTH CAROLINA SUPERIOR COURT JUDGES
 25 CONFERENCE (2017),
 26 [https://www.sog.unc.edu/sites/default/files/course_materials/07b%20Ediscovery%20Primer_Mullins.pdf](https://www.sog.unc.edu/sites/default/files/course_materials/07b%20Ediscovery%20Primer_Mullins.pdf#:~:text=In%20a%20case%20in%20which,for%20this%20single%20report%20type)
 27 #:~:text=In%20a%20case%20in%20which,for%20this%20single%20report%20type

28 ³ EPISODE #6: HOW TO REDUCE EDISCOVERY COSTS WITH INTELLIGENT ARCHIVING,
https://www.archive360.com/podcast/reduce_discovery_costs#:~:text=e,you%20have%2010%20custo
 dians%20or

⁴ MULLINS & SOSA

⁵ Tolson

1 12. Importantly, advanced e-discovery tools can improve effective review efficiency, though they
2 primarily do so by reducing the volume of pages requiring manual review rather than
3 dramatically increasing a human’s reading speed. For instance, *deduplication* (removing
4 duplicate documents) and *email threading* (grouping email chains) can eliminate huge swaths of
5 repetitive material. One case study showed that global deduplication of a widely circulated 20-
6 page report (sent weekly to 51 people) would cut out over 52,000 pages from the review set –
7 saving an estimated 104 attorney review hours (at 50 pages/hour) on that single item alone⁶.
8 Likewise, email threading technology has been found to accelerate document review speeds by
9 roughly 15–20% on average, by letting reviewers skip redundant emails and focus only on
10 unique content⁷. In one law firm’s experience, introducing email threading enabled reviewers to
11 increase their pace from around 8–9 documents/hour to 10+ documents/hour, a ~20% gain in
12 throughput⁸. These tools also improve consistency (e.g. ensuring an entire email thread is coded
13 uniformly), which reduces rework.
14
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16 13. Beyond culling down the dataset, Technology-Assisted Review (TAR) – also called predictive
17 coding – can drastically reduce the number of pages that require human eyes at all. In TAR,
18 algorithms learn from expert coding of sample documents and then auto-classify the rest. Studies
19 (including by the RAND Institute) have found TAR can identify relevant documents at least as
20 accurately as human reviewers, *while cutting down the manual review workload significantly*⁹.
21 For example, experts have noted that predictive coding can cut review costs (and thus hours) by
22
23

24 ⁶ MULLINS & SOSA

25 ⁷ Barclay Blair, *Getting Smart With Email In E-Discovery – How Email Threading Can Lower*
26 *Costs And Increase Speed: A Case Study With Perkins Coie And Discovia*, CORPORATE COUNSEL
27 BUSINESS JOURNAL (2014), [https://ccbjournal.com/articles/getting-smart-email-e-discovery---how-
28 email-threading-can-lower-costs-and-increase-sp#:~:text=Increasing%20Speed](https://ccbjournal.com/articles/getting-smart-email-e-discovery---how-email-threading-can-lower-costs-and-increase-sp#:~:text=Increasing%20Speed)

⁸ Blair

⁹ Tolson

1 up to ~80%¹⁰. In practical terms, if a collection would take 1,000 human hours to review linearly,
2 a well-trained TAR system might whittle that down to only ~200 hours of human verification
3 work – effectively multiplying the pages per hour a reviewer “covers” when you consider the
4 automated assistance.

5
6 14. It’s important to note, however, that human reading speed has an upper limit. Even under ideal
7 conditions (simple documents and highly motivated reviewers), studies indicate 100 documents
8 per hour is about the ceiling for unassisted human review speed¹¹. This corresponds to an
9 average of ~36 seconds per document¹²; if each doc were, say, 1–2 pages, that’s on the order of
10 100–200 pages/hour at absolute best. In practice, reviewing complex prose or emails with
11 nuance, 50–60 pages/hour is a more realistic sustained rate. Indeed, one industry survey noted
12 that *60 documents per hour* is a typical pace for professional contract attorneys in first-pass
13 review¹³ – which, given many documents are only a page or two, dovetails with the ~50+
14 pages/hour rule of thumb. In summary, modern e-discovery platforms help by cutting out
15 redundant or low-value material (thus *increasing the effective pages/hour per reviewer by*
16 *focusing their time on unique content*), but they don’t turn humans into speed-readers. The
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22 ¹⁰ Tolson

23 ¹¹ LAURA ZAKARAS & NICHOLAS PACE, THE COST OF PRODUCING ELECTRONIC DOCUMENTS IN
24 CIVIL LAWSUITS CAN THEY BE SHARPLY REDUCED WITHOUT SACRIFICING QUALITY? (2012),
https://www.rand.org/pubs/research_briefs/RB9650.html#:~:text=Review%20Speeds%20May%20Have%20Reached,an%20Upper%20Bound

25 ¹² Zakaras & Pace

26 ¹³ HILGERS GRABEN, WHO ACTUALLY IS REVIEWING MY DOCUMENTS? (AND WHY IT MATTERS),
27 COST CONTAINMENT AND THE NEED FOR DISRUPTION IN THE MARKET FOR DOCUMENT REVIEW ,
[https://hilgersgraben.com/wp-content/uploads/2020/02/Who-Actually-Is-Reviewing-My-
28 Documents.pdf#:~:text=Productivity%3F%20Analyzing%20productivity%20is%20straightforward,cont
ract%20review%20providers%20are%20not](https://hilgersgraben.com/wp-content/uploads/2020/02/Who-Actually-Is-Reviewing-My-Documents.pdf#:~:text=Productivity%3F%20Analyzing%20productivity%20is%20straightforward,cont)

1 baseline remains on the order of tens of pages per hour per reviewer for careful document
2 analysis¹⁴.

3
4 **15. Private-Sector Document Production Output (Small Teams):** Given the above rates, a small
5 team of five full-time reviewers can process an enormous volume on a monthly basis compared
6 to typical FOIA outputs from government workers. At ~50–60 pages/hour each, a single
7 reviewer working ~8 hours a day can review on the order of 350–480 pages per day. Over a 20-
8 day work month, that’s roughly 7,000–10,000 pages per reviewer per month. Thus, a five-
9 reviewer team dedicated to the task could comfortably review on the order of tens of thousands
10 of pages per month (e.g. ~35,000–50,000 pages) under normal workflow conditions. This is
11 consistent with e-discovery project calculations seen in industry literature. For example, one
12 scenario posed by a leading e-discovery firm assumed a review team speed of *60 pages per hour*
13 – at that rate, **1.2 million pages** would take about **20,000 reviewer hours** to complete, which
14 equates to roughly 10,000 pages per reviewer per month if spread across a team¹⁵. In other
15 words, five reviewers could tackle ~50k pages/month in that scenario.
16

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18 **16.** It’s worth noting that private-sector document review often employs contract attorneys who work
19 in concentrated “review centers” full-time on a case, which is very different from how FOIA
20 staff split their time. These contract review teams can also be scaled up as needed. If a faster
21 turnaround is required, vendors can simply add more reviewers to the project (dozens, if
22 necessary) to increase the total monthly output linearly, subject to quality control limits. In a
23 managed review setting, hitting large monthly totals is routine – for instance, 10 reviewers might
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25
26 ¹⁴ EDISCOVERY BEST PRACTICES: WHEN IS IT OK TO PRODUCE WITHOUT LINEAR REVIEW?,
27 <https://cloudnine.com/ediscoverydaily/electronic-discovery/ediscovery-best-practices-when-is-it-ok-to-produce-without-linear-review/#:~:text=%28reducing%2088,any%20inadvertently%20produced%20privileged%20files>

28 ¹⁵ CloudNine

1 collectively review *hundreds of thousands of pages* in a few months’ time by dividing the labor.
2 In summary, a small team of ~5 dedicated e-discovery reviewers can typically produce on the
3 order of 25k–50k pages of reviewed material per month, far exceeding what most FOIA offices
4 produce with similar manpower. This private-sector benchmark underscores how aggressive the
5 throughput can be when review is the team’s sole focus.
6

7 17. For context, 500 pages per month is a very conservative pace – roughly equating to a single
8 FOIA analyst reviewing 25 pages per workday. Even allowing for classification review and
9 redactions, this is a far cry from private-sector review speeds. It highlights the gulf between
10 FOIA “business as usual” and what dedicated review teams can achieve. In sum, under standard
11 conditions many agencies process only a few hundred pages per month per case (on the order of
12 *10–20 pages per day* of output). This is the pace FOIA requesters and courts have grown
13 accustomed to as “reasonable” in the absence of special urgency as for an expedited case – a
14 pace that, objectively, is far below private-sector capabilities.
15

16
17 18. **Court-Ordered Production Rates in FOIA Cases (1,500+ Pages/Month):** Federal courts have
18 increasingly recognized that such low FOIA output fails to meet statutory obligations, especially
19 for large or important requests in expedited cases as I mentioned before. In FOIA litigation,
20 judges often impose higher production schedules, and there are numerous examples of courts
21 setting expectations in the 1,500–2,500 pages per month range (or more). For instance, in *Stevens*
22 *v. HHS* (N.D. Ill. 2025), the court issued a preliminary injunction requiring ICE (a component of
23 DHS) to process 1,500 pages per month in response to the plaintiff’s FOIA requests¹⁶. Many
24 other cases echo this type of figure:
25
26

27 ¹⁶ *Stevens v. United States Dep’t of Health & Hum. Servs.*, No. 22 C 5072, 2025 WL 213734, at
28 *2 (N.D. Ill. Jan. 16, 2025)

- 1 a. In *Seavey v. DOJ* (D.D.C. 2017), the court rejected the FBI’s standard 500-page plan as
2 too slow and ordered a ramped-up schedule (approximately **2,850 pages per month** in
3 that case)¹⁷.
4
- 5 b. In *Boundaoui v. FBI* (N.D. Ill. 2017), involving requests for records on surveillance of
6 Muslim communities, the court mandated a **3,500-page monthly processing rate** by the
7 FBI¹⁸.
8
- 9 c. In *Ctr. for Media Justice v. FBI* (N.D. Cal. 2020), the FBI was ordered to process **2,000**
10 **pages per month**¹⁹.
11
- 12 d. Perhaps most strikingly, in *Clemente v. FBI* (D.D.C. 2014), Judge Hogan found the FBI’s
13 offer of 500 or even 1,500 pages/month inadequate given the circumstances and instead
14 compelled a **5,000 pages per month** schedule²⁰. (The requester, an author dying of
15 liver failure, had an urgent need for records; the court deemed **5,000 pages/month**
16 “reasonable in light of the importance” of the public interest at stake²².)

17 19. It is clear from these precedents that courts expect agencies to scale up throughput when
18 warranted. Production rates on the order of **1,500–2,500 pages per month** are frequently cited as
19 *attainable benchmarks* in FOIA litigation, and agencies have been ordered to meet them.
20 Notably, agencies often protest that diverting resources to one case will harm others – for
21 example, in one filing DHS argued that processing 3,000 pages/month for a plaintiff would
22

24 ¹⁷ *ACLU v. U.S. Dep’t of Justice*, 3:19-cv-00290-EMC, 2021 WL 2518143.

25 ¹⁸ *Id.*

26 ¹⁹ *Id.*

27 ²⁰ *Clemente v. Fed. Bureau of Investigation*, 71 F. Supp. 3d 262, 269 (D.D.C. 2014).

28 ²¹ *ACLU v. U.S. Dep’t of Justice*, 3:19-cv-00290-EMC, 2021 WL 2518143.

²² *Id.*

1 interfere with its ability to meet other obligations²³²⁴. However, judges have not hesitated to
2 require higher rates when an agency’s “business as usual” pace would effectively thwart the
3 FOIA’s purpose.
4

5 20. In short, published FOIA cases and court orders show that monthly production of thousands of
6 pages in expedited cases is considered feasible. Schedules of **1,500+ pages per month** (and in
7 some cases well above 2,000 pages/month) have been mandated by judges to ensure timely
8 compliance with FOIA^{25,26}. This dramatically outpaces the 300–500 page norm that agencies
9 often put forward. The fact that agencies *can* hit these higher numbers under court order
10 undermines any claim that, say, a few hundred pages a month is the maximum possible. It also
11 aligns with the reality that if dedicated resources are applied (as would happen in discovery), the
12 review of several thousand pages monthly is entirely manageable.
13

14 **21. Authoritative Sources on Review Productivity:** The above benchmarks are drawn from
15 credible, authoritative sources. I have data from government reports and court opinions, as well
16 as industry research:
17

- 18 1. **Government and Court Sources:** The DOJ’s Office of Information Policy summarizes
19 FOIA court decisions and policies – for example, it notes the *Stevens v. HHS* injunction
20
21

22 ²³ Knight First Amendment Institute v. U.S. Dep’t of Homeland Security et al.,
23 No. 17 Civ. 7572 (ALC) (S.D.N.Y. 2018)(Defendants letter tou Judge Carter)
24 [https://www.law.berkeley.edu/wp-content/uploads/2021/03/2018-04-
25 20_07572_ECF52_DefsLetterBriefReProcess.pdf#:~:text=would%20agree%20to%20a%20reasonable,
%E2%80%9CCBP%E2%80%9D%29%2C%20United](https://www.law.berkeley.edu/wp-content/uploads/2021/03/2018-04-20_07572_ECF52_DefsLetterBriefReProcess.pdf#:~:text=would%20agree%20to%20a%20reasonable,%E2%80%9CCBP%E2%80%9D%29%2C%20United)

26 ²⁴ *Id.*

27 ²⁵ *Stevens v. United States Dep't of Health & Hum. Servs.*, 2025 WL 213734, at *2.

28 ²⁶ *ACLU v. U.S. Dep't of Justice*, 3:19-cv-00290-EMC, 2021 WL 2518143 (N.D. Cal. April 24, 2021) (ECF No. 130)(Joint Status Report)(collecting cases).

1 of 1,500 pages/month for ICE²⁷. Chief FOIA Officer Reports (e.g. the State Department's
 2 2020 report) provide insight into typical agency processing rates (State cited ~300
 3 pages/month as a common negotiated rate)²⁸. Judicial opinions in cases like *Clemente*,
 4 *Seavey*, *Boundaoui*, etc., explicitly state the expected page-per-month production figures
 5 and rationale^{29,30}. These court orders serve as benchmarks that FOIA practitioners
 6 frequently reference when arguing about reasonable timelines.
 7

8 **22. Industry White Papers and Studies:** The e-discovery rates come from respected analyses such
 9 as the RAND Corporation's study on e-discovery costs (which quantified review speeds and the
 10 impact of technology)³¹. E-discovery blogs and vendor white papers (CloudNine, Relativity,
 11 Archive360 podcast, etc.) also document standard review metrics – for example, the *CloudNine*
 12 blog illustration of 60 pages/hour review speed³², or the Archive360 discussion confirming ~50–
 13 60 pages/hour as a common manual review pace³³. These sources are widely accepted in the
 14 legal tech community and often cited to establish what an efficient review team can do.
 15 Additionally, the Sedona Conference and Electronic Discovery Reference Model (EDRM)
 16 materials (not explicitly cited above but underlying some sources) set forth best practices that
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 18
 19
 20
 21

22 ²⁷ *Stevens v. United States Dep't of Health & Hum. Servs.*, 2025 WL 213734, at *2.

23 ²⁸ U.S. DEPARTMENT OF STATE, CHIEF FOIA OFFICER REPORT MARCH 2020 (2020),
 24 <https://foia.state.gov/FOIALIBRARY/Reports/Officer/2020.pdf#:~:text=In%20June%202019%2C%20the%20Department,At%20the%20current%20rate>

25 ²⁹ *Clemente v. Fed. Bureau of Investigation*, 71 F. Supp. 3d 262, 269 (D.D.C. 2014).

26 ³⁰ *ACLU v. U.S. Dep't of Justice*, 3:19-cv-00290-EMC, 2021 WL 2518143.

27 ³¹ Tolson

28 ³² CloudNine

³³ Tolson

1 assume similar productivity figures (e.g. roughly 50 documents/hour as a baseline in cost
2 estimates³⁴).

3
4 23. All these references point to a consistent conclusion: BOP's current FOIA production pace is
5 exceedingly low compared to empirical norms. In private-sector e-discovery, reviewers routinely
6 handle dozens of pages per hour and teams produce tens of thousands of pages per month with
7 modern tools³⁵³⁶. Even within the FOIA context, courts have recognized that agencies *should* be
8 able to process on the order of **1,500–2,500 pages monthly** (or more) when pressed³⁷³⁸. Thus,
9 any Bureau of Prisons assertion that it can only manage a few hundred pages a month is at odds
10 with both industry standards and the higher throughput levels that other federal agencies have
11 been compelled to achieve. The evidence from case law, DOJ reports, and e-discovery
12 benchmarks strongly supports expecting significantly higher monthly output from BOP – on the
13 order of thousands of pages – if adequate resources and modern techniques are applied.
14

15 **24. FOIAXpress Capabilities and Impact on Pace:** The FOIAXpress Electronic Document
16 Review (EDR) module is specifically designed to streamline and speed up FOIA document
17 review in light of the proliferation of electronic records. FOIAXpress is marketed as a powerful
18 tool for automating the FOIA request process, saving organizations time and resources³⁹ by
19 transforming traditional, labor-intensive FOIA workflows into an efficient electronic process⁴⁰. It
20
21

22 ³⁴Zakaras & Pace

23 ³⁵ Tolson

24 ³⁶ CloudNine

25 ³⁷ *Stevens v. United States Dep't of Health & Hum. Servs.*, 2025 WL 213734, at *2.

26 ³⁸ *ACLU v. U.S. Dep't of Justice*, 3:19-cv-00290-EMC, 2021 WL 2518143.

27 ³⁹ OPEXUS, FOIAXPRESS FACTSHEET (2024), https://www.opexustech.com/wp-content/uploads/2024/05/FOIAXpress-2pg-Factsheet_5.14.24.pdf

28 ⁴⁰ *Id.*

1 incorporates advanced features that directly address common bottlenecks in document
2 processing:

- 3
- 4 a. **Automated Deduplication:** FOIAXpress EDR **automatically removes duplicate**
5 **documents (including duplicate emails and email threads) and retains the integrity**
6 **of email chains**, thereby reducing the volume of documents for review by up to 60–
7 70%⁴¹⁴². This significant culling of duplicative material before human review
8 dramatically trims the page count that reviewers must manually assess. Deduplication –
9 particularly hash-based identification of exact duplicates and consolidation of email
10 threads – is widely recognized as one of the most effective ways to cut down review
11 volume, and it is considered standard practice to perform this step prior to review.
- 12
- 13 b. **Technology-Assisted Review (TAR):** FOIAXpress EDR supports modern TAR
14 workflows (sometimes referred to as “TAR 3.0”), employing real-time predictive coding
15 and conceptual clustering. This supervised machine learning process learns from human
16 reviewer input to classify documents so that human reviewers can focus primarily on the
17 most likely relevant documents, drastically reducing the time and expense required for
18 large-scale reviews⁴³.
- 19
- 20 c. **Optimized Throughput:** With these advanced tools enabled, a minimally competent
21 review team using FOIAXpress could realistically process on the order of **10,000 pages**
22

23

24 ⁴¹ OPEXUS, FOIAXPRESS ADVANCED DOCUMENT REVIEW (ADR (2018),
25 <https://ains.opexustech.com/wp-content/uploads/2018/01/FOIAXpress-ADR.pdf>

26 ⁴² *Id.*

27 ⁴³ AINS, INC, FOIAXPRESS FOIA TECHNOLOGY SHOWCASE DAY 1, SECTION 1: eDISCOVERY /
28 ELECTRONIC RECORD SEARCH TOOLS, REQUEST FOR INFORMATION (RFI) RESPONSE (2021),
<https://api.foia.gov/sites/default/files/2022-10/Ains%20eDiscovery%20and%20Electronic%20Records%20Search%20Tools.pdf>

1 **per week**, which translates to an effective review throughput of roughly **400–500 pages**
2 **per hour** when the automation is factored in. In other words, FOIAXpress’s features can
3 elevate an agency’s processing capacity well beyond what purely manual review could
4 achieve.

5
6 d. **Casepoint Integration:** It is also notable that OPEXUS, the developer of FOIAXpress,
7 has recently merged with Casepoint, a leading e-discovery software provider⁴⁴. This
8 merger integrates Casepoint’s high-performance data discovery and processing
9 capabilities directly into the FOIAXpress platform. Casepoint’s technology, for example,
10 advertises the ability to process hundreds of file types “roughly 10× faster than the
11 industry average,” with powerful AI features for culling data⁴⁵. All of these capabilities
12 are available as out-of-the-box features of FOIAXpress – meaning the BOP has at its
13 disposal a state-of-the-art FOIA processing platform, if fully utilized.
14

15 25. Given BOP’s current staffing limitations, a more realistic production target under constrained
16 conditions—not ideal industry conditions—would still exceed the 1,500–2,500 pages/month.
17

18 26. This assessment is further supported by the fact that comparable agencies under court
19 supervision routinely meet or exceed processing rates of 1,500 pages per month, often with
20 software less capable than FOIAXpress.
21

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23
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⁴⁴ WHAT THE MERGER OF OPEXUS AND CASEPOINT MEANS FOR YOU,
26 <https://www.opexustech.com/resource/what-the-merger-of-opexus-and-casepoint-means-for-you/> (last
27 visited Sept 7, 2025)

28 ⁴⁵ FAST AND POWERFUL DATA PROCESSING CASEPOINT, <https://www.casepoint.com/ediscovery-platform/data-processing/> (last visited Sept 7, 2025)

1 II. “Readily Reproducible” / Technical Feasibility

2 28. **Elements of a “Record” in Litigation:** In the context of litigation (and modern e-discovery), a
3 “record” is understood to encompass not just the visible content of a document but also its
4 associated metadata and structural information. This includes, for example, metadata fields such
5 as creation and modification dates, authors, and file system properties; the relationships between
6 documents (e.g. email attachments or threaded email conversations and their parent-child links);
7 the format of each file (native file type, whether it’s an email message, a PDF, a spreadsheet,
8 etc.); and other characteristics like file size and hash values (digital fingerprints). These elements
9 are crucial for establishing a document’s authenticity, provenance, and context within a larger
10 collection of information. In other words, the informational value of a record in litigation is
11 derived not only from its content but also from *how* it exists in an electronic system (where it
12 came from, how it was maintained, and how it relates to other records).
13
14

15 29. **What Is Lost in BOP’s Current Production Methodology:** The production methodology
16 described in BOP’s declarations – in which, for example, email threads are **merged together**
17 **into single PDF files** and multiple form documents (such as tort claim forms) are bundled into
18 aggregate PDFs – causes a significant degradation of these crucial record elements:
19

- 20 a. **Batching Multiple Records into One PDF:** When multiple logically separate
21 documents or an entire email thread are merged into one continuous PDF, it destroys the
22 original document boundaries and strips away metadata that would normally accompany
23 each individual file. The individual file names, original creation/modification timestamps,
24 and other system metadata of the component records are lost or obscured. It also breaks
25 the parent-child relationships (e.g. an email and its attachment become just sequential
26 pages in one PDF) and disrupts the sequential context of email conversations. In effect,
27
28

1 this practice creates a new document that did not exist in that form originally. E-
2 discovery professionals consider this kind of merging to be a highly disfavored practice,
3 as it runs contrary to standard production protocols. Indeed, converting electronic records
4 from their native forms into a combined static format like a PDF inevitably discards or
5 alters some metadata and structural information unless painstaking measures are taken to
6 preserve them separately⁴⁶.

7
8 b. The current workflow employed by BOP for document review and production is archaic
9 and backwards, more akin to practices from 15-20 years ago than to modern e-discovery
10 standards, despite BOP's access to state-of-the-art tools like FOIAXpress and its
11 integrated Casepoint features. This is not a limitation of the tools themselves, but a
12 workflow choice.

13
14 c. **Non-Searchable Image PDFs:** Producing documents as image-only PDFs (without
15 embedded text) means that the records are not electronically searchable. This outcome
16 directly contravenes the spirit of Sedona Principle 12, which emphasizes that ESI
17 productions should be in a form that is reasonably usable (and searchable) by the
18 receiving party⁴⁷. While PDF can be an acceptable production format in many
19 circumstances, an image-only PDF (especially a multi-document compilation) is
20 essentially an *archaic* format by modern standards. It forces the requester to either
21 manually read each page or apply their own OCR to reconstruct text – steps that should
22 have been unnecessary. This lack of searchability greatly impedes efficient review of the
23
24

25 ⁴⁶ THE SEDONA CONF., THE SEDONA CONFERENCE GLOSSARY: E-DISCOVERY & DIGITAL
26 INFORMATION MANAGEMENT, FIFTH ED., (2024),
27 <https://thesedonaconference.org/sites/default/files/publications/Sedona%20Conference%20Glossary%20C%20Fifth%20Edition.pdf>

28 ⁴⁷ CLOUDNINE

1 production. Notably, FOIAXpress itself has built-in OCR capabilities: any documents
2 uploaded into FOIAXpress are automatically processed with OCR to make them text-
3 searchable⁴⁸. BOP's choice to deliver non-searchable PDFs thus implies that it did not
4 utilize even the default searchability features of the very software it is using.

5
6 d. **Transmission via Box.com:** BOP delivers the productions via the cloud file-sharing
7 service Box. Using such a method for FOIA productions is not inherently problematic,
8 but if done improperly it can introduce additional technical issues. For example, when
9 downloading files individually from Box, the file timestamp can be reset to the time of
10 download rather than preserving the original file's timestamp. This means that unless
11 extra steps are taken (such as providing a checksum or separate metadata log), the
12 recipient cannot discern the original modification or creation date of the files from the
13 files themselves. In BOP's current workflow, where records are bundled and then
14 downloaded via Box, this adds yet another layer of metadata degradation (file dates
15 overwritten to the date of export or download). In sum, the use of Box *without*
16 *precautions* can further strip or alter metadata (such as file system dates), compounding
17 the loss of context discussed above.
18
19

20 **30. FOIAXpress's Technical Feasibility to Preserve Record Elements:** All of the above losses
21 and issues are not a consequence of limitations in FOIAXpress, but rather a result of choices in
22 how BOP is using (or not using) the system. FOIAXpress EDR has the inherent technical
23 capability to preserve and produce all of the record elements discussed, without any custom
24 programming or third-party plug-ins. Based on FOIAXpress's documentation and features:
25
26

27 ⁴⁸ FREQUENTLY ASKED QUESTIONS,
28 <https://docs.opexustech.com/docs/foiexpress/11.9.X/usermanual/FAQ.htm> (last visited Sept 7, 2025)

- 1 a. **Metadata Preservation:** FOIAXpress can export productions with accompanying
2 metadata files (e.g., in standard DAT or CSV load file format) that contain the full
3 metadata for each document. In a typical e-discovery production, a DAT load file
4 provides a table of metadata (and extracted text) for each document produced.
5 FOIAXpress fully supports this – it can output the collected data in a load file with all
6 relevant fields, so that names, dates, and other metadata are preserved⁴⁹.
7
- 8 b. **Email Threading and Attachments:** FOIAXpress is capable of ingesting email
9 container files (like PST files or MBOX mailboxes) and “exploding” them into individual
10 messages and attachments while maintaining the relationships between every message
11 and its attachments. This means an email and its attachments can be kept linked together
12 (via family IDs or other metadata) in the production, rather than being concatenated into
13 one file or separated without context. The software automatically identifies email threads
14 and duplicate emails – for instance, it knows that the last email in a thread contains all
15 prior messages, and it can flag those for easier handling⁵⁰. It can also identify and
16 preserve the parent-child links so that anyone reviewing the production can trace which
17 attachment belonged to which email, etc. In short, FOIAXpress can preserve sequential
18 context and relationships; it is technically feasible to produce each email as an individual
19 document (with attachments as separate files but cross-referenced), or at least to logically
20 separate them while preserving the connection information.
21
- 22 c. **Searchable Text (OCR and Native Text):** The system supports producing records in
23 ways that preserve their text. FOIAXpress can output documents in native formats when
24
25
26

27 ⁴⁹ AINS, INC

28 ⁵⁰ *Id.*

1 appropriate (for example, providing an email in .eml or .msg format, or an Excel
 2 spreadsheet in .xlsx format), or in image form with extracted text or OCR provided. It
 3 also has the capability to generate searchable PDF files. As noted, FOIAXpress
 4 automatically OCRs image documents upon ingestion⁵¹, so producing non-searchable
 5 images is a choice, not a necessity. In any event, FOIAXpress can ensure that the text of
 6 electronic records remains machine-searchable in the production, either by producing
 7 natives or by providing an OCR/text layer for any images.
 8

9 **d. Load Files and Document Unitization:** FOIAXpress EDR supports exporting
 10 productions with standard load files (such as .DAT and .OPT files). An .OPT image
 11 cross-reference file, for instance, can be used to indicate document breaks and page
 12 counts, and the .DAT to provide metadata and Bates numbers. Using these, the
 13 production can be loaded into review platforms with all document boundaries and family
 14 groupings intact. This is a common way in litigation to produce e-mails and attachments
 15 – each as a separate document, linked by a family ID in the metadata. FOIAXpress
 16 readily produces these standard load files, which means BOP could **deliver the**
 17 **documents individually** (rather than in one PDF) while still providing all necessary
 18 information to reconstruct the collection on the receiving end⁵².
 19

20 **e. Security and Audit Features:** FOIAXpress, being a government-focused solution, is
 21 FedRAMP-certified and maintains detailed audit logs of actions taken on FOIA
 22 requests⁵³. Every step (collection, redaction, export, etc.) can be logged. Thus, arguments
 23
 24

25 ⁵¹ OPEXUS

26 ⁵² *Id.*

27 ⁵³ HEALTH AND HUMAN SERVICES, PRIVACY IMPACT ASSESSMENT (PIA): OS - FOIAXPRESS -
 28 QTR4 - 2022 (2022),
https://www.hhs.gov/sites/default/files/OS_FOIAXpress.pdf#:~:text=FOIA%20Xpress%20is%20a%20S

1 that producing in a different format would compromise security or chain-of-custody are
2 unfounded – the system is designed to handle sensitive records in a secure manner while
3 still allowing efficient processing and production.
4

5 **31. BOP’s Estimate of a Tenfold Increase in Production Time:** BOP has suggested that

6 producing the records in their native (or otherwise separately maintained) form – as opposed to
7 the bundled PDFs currently being used – would result in a ten-fold increase in production time.
8 In my opinion, this claim is not accurate, not reasonable, and not supported by technical reality.
9 It is inconsistent with the demonstrated capabilities of FOIAXpress and with industry best
10 practices in document processing. For example, one of BOP’s declarants (Kara Christenson)
11 asserted that taking 170 PDF files downloaded from the National Archives website and merging
12 them into one PDF constituted producing in “native format.”⁵⁴
13

14 **32.** This assertion is simply incorrect and not credible. Merging separate PDF files into one does not
15 preserve their native format; instead, it fundamentally alters the documents by stripping out their
16 individual file identities (names, metadata, etc.) and lumping them together. It creates a new
17 aggregated record that is different from each original file – essentially the opposite of producing
18 in native form. Similarly, BOP’s practice of merging individual “packets” of tort claim forms
19 from its internal system (where they are maintained as separate records per claim) into a single
20 PDF for production is an arbitrary workflow choice that serves to degrade the fidelity of the
21 produced records. Notably, in other litigation (such as *California Coalition for Women Prisoners*
22 *v. U.S. BOP* and *M.R. v. FCI Dublin*), BOP has likely preserved those same tort claim packets as
23 separate, individual documents, as one would expect. In other words, BOP clearly has the ability
24
25

26
27 software,PAL

28
⁵⁴ Declaration of Kara Christenson, ECF No. 31-2 at 32.

1 to treat each claim packet as a distinct file when it wants to (and indeed must, for proper
2 evidence preservation), yet in this FOIA case it is choosing to combine them, to the detriment of
3 the requester.

4
5 33. Moreover, under FOIA’s “readily reproducible” requirement, if a record already exists in a
6 requested format (or one that can be provided with minimal effort), the agency is expected to
7 provide it in that format. Courts have held that where documents already exist in an agency’s
8 system in the format requested and require *no conversion* to a different format, they should be
9 deemed “readily reproducible” in that format (see *Scudder v. CIA*, 25 F. Supp. 3d 19 (D.D.C.
10 2014)). Likewise, an agency is not unduly burdened by producing records in a format that it
11 already uses or maintains as part of its normal operations (see *TPS, Inc. v. U.S. Dept. of Defense*,
12 330 F.3d 1191 (9th Cir. 2003)). Here, BOP’s own litigation preservation obligations in the other
13 cases mentioned mean that these records exist in a standard, discoverable format in BOP’s
14 possession. Producing them in a degraded form for FOIA is essentially creating new, inferior
15 versions of records that are *already* organized and review-ready. In the private sector, it is
16 routine to reuse work product—if a set of documents has been collected and reviewed for one
17 matter, that vetted dataset can often be leveraged for a subsequent matter with overlapping
18 records, saving enormous time and effort. BOP could have applied the same principle here, since
19 much of the data had already been gathered and organized for other litigation. Instead, the
20 methodology being used in this FOIA production disregards that prior work and results in an
21 unnecessarily labor-intensive re-processing that yields poorer quality outputs.
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1 **III. Process & Review Standards**

2 **34. Deduplication Prior to Review:** Deduplication of documents *before* review is an industry-
 3 standard practice in e-discovery. It is widely regarded as one of the most effective steps for
 4 reducing the volume of documents that must be reviewed by humans. In fact, it is often said to be
 5 the single most efficient way to cut down review volume. FOIAXpress’s EDR module
 6 specifically advertises its ability to achieve roughly a 60–70% reduction in document volume
 7 through de-duplication⁵⁵, which directly translates to increased efficiency and reduced review
 8 time. By removing exact duplicates (and even threading email chains to eliminate wholly
 9 redundant emails) prior to reviewer eyes on documents, agencies and litigants can dramatically
 10 speed up the pace of production. If BOP is not deduplicating (or not doing so effectively) before
 11 review, it is departing from this well-established standard, which in turn would explain a
 12 significantly slower pace.
 13
 14

15 **35. Relevance Review as a Search Quality Indicator:** In any document review project, if a
 16 significant portion of the documents reviewed are ultimately deemed non-responsive to the
 17 request, it serves as a red flag about the quality of the search and collection process. For
 18 example, if BOP reviewers had to go through 1,000 pages but found 500+ pages to be “non-
 19 responsive,” that strongly suggests that the initial search terms or criteria pulled in a lot of
 20 irrelevant material. The Department of Justice’s FOIA guidance emphasizes that an agency’s
 21 search must be “reasonably calculated to uncover all relevant documents”⁵⁶ – which by
 22 implication means it should be targeted enough *not* to drown in irrelevant data. A well-calibrated
 23
 24
 25

26 ⁵⁵ OPEXUS

27 ⁵⁶ U.S. DEP’T OF JUST., OFF. OF INFO. POL’Y, FOIA GUIDE 2004 EDITION: PROCEDURAL
 28 REQUIREMENTS (2021), <https://www.justice.gov/archives/oip/foia-guide-2004-edition-procedural-requirements#:~:text=As%20a%20general%20rule%2C%20an,of%20an%20agency%27s%20search>

1 search or a refined technology-assisted culling process should yield a higher precision set of
2 documents. In modern e-discovery practice, advanced search and TAR workflows, after an initial
3 training period, often achieve responsiveness rates above 80% in the documents that are
4 reviewed first (i.e., most of the documents a reviewer sees are actually relevant). By contrast, a
5 response rate as low as 50% (or worse) indicates an inefficient review process – either the search
6 was overbroad or not using available tools to prioritize likely-relevant material. In this case, such
7 a high non-response rate would indicate that BOP could and should have refined its searches or
8 utilized FOIAXpress’s analytical tools (like concept clustering or relevance ranking) to better
9 target truly responsive records, rather than expending resources reviewing hundreds of irrelevant
10 pages.
11

12
13 **36. Technical Capabilities of FOIAXpress vs. BOP’s Methodology:** FOIAXpress is a modern,
14 capable system designed specifically for efficient FOIA processing. Its publicly documented
15 features include, among other things:

16
17 a. **Broad Ingestion of Electronic Formats:** FOIAXpress can ingest and handle a wide
18 variety of electronic file types and email repositories. It supports **native** ingestion of PST
19 email archives, ZIP files, MBOX mailboxes, Microsoft Office documents, PDFs, and
20 more⁵⁷. In other words, it can directly take in the types of raw data that contain the
21 records at issue (such as email files exported from Outlook, or exports from BOP’s
22 record systems) without needing to convert everything to PDF first.

23
24 b. **Duplicate and Near-Duplicate Detection; Email Threading:** The software
25 automatically detects exact duplicate documents using hash values and can flag near-
26

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⁵⁷ AINS, INC

1 duplicates as well⁵⁸. It also performs email threading, identifying where an email is part
2 of a larger thread and recognizing when an email at the end of a chain contains all the
3 content of earlier messages⁵⁹. It uses these capabilities to present reviewers with only the
4 unique content and to avoid repetitive review. Additionally, FOIAXpress provides
5 conceptual clustering of documents, which groups similar documents by content –
6 another tool that can be used to expedite review and ensure consistency.
7

8 c. **Technology-Assisted Review (TAR):** FOIAXpress EDR includes integrated TAR
9 functionality, meaning reviewers can employ machine learning to prioritize and classify
10 documents. The system allows for real-time predictive coding, where the software learns
11 from reviewer tagging to predict responsiveness across the document set⁶⁰. This can
12 dramatically cut down on the number of documents that require manual review by
13 focusing human effort on the most likely relevant documents first.
14

15 d. **Automated Redaction Tools:** FOIAXpress (especially with the Casepoint integration
16 and optional AI modules) offers in-place AI-assisted redaction for common sensitive
17 information. This includes the ability to automatically detect and redact things like Social
18 Security numbers, phone numbers, and other Personally Identifiable Information (PII),
19 and even to detect faces in images or scans (through integration with AI tools). Such
20 features can reduce the manual burden of applying exemptions and ensure consistency in
21 redactions.
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26 ⁵⁸ *Id.*

27 ⁵⁹ *Id.*

28 ⁶⁰ *Id.*

1 e. **Flexible Export Options (Native or Load File):** When it comes time to produce the
2 documents, FOIAXpress can export in a variety of formats. Agencies can produce in
3 native file format when appropriate (for example, produce an Excel spreadsheet in Excel
4 format, or an email in an .eml file), or they can produce in a static image format
5 (TIFF/PDF) accompanied by load files containing metadata and extracted text for each
6 document⁶¹. The system will also generate Bates numbers and track them. In short,
7 FOIAXpress fully supports producing ESI in the same manner that litigants in federal
8 court routinely do – either natively or as images with an accompanying load file –
9 thereby preserving metadata and document structure.
10

11 f. **Auditing and Chain-of-Custody:** FOIAXpress (and its underlying eCase platform)
12 maintains detailed audit logs and is operated in a FedRAMP-secure cloud. This means
13 every action (upload, search, review decision, redaction, export) can be logged and later
14 reviewed if needed. It provides a clear chain-of-custody for the records. This is important
15 for defensibility: it ensures that producing records in a more granular format (e.g.,
16 individually with metadata) in no way compromises the integrity of the process – the
17 system can account for each record and what was done to it.
18
19

20 **37. Assessment of BOP's Current Production Methodology:** The methodology BOP is using –
21 characterized by merging multiple documents into single files, producing non-searchable images,
22 and generally not leveraging automation – does not align with industry standards for e-discovery
23 or FOIA processing. Based on FOIAXpress's capabilities discussed above, it is clear that the
24 bottlenecks and difficulties BOP claims to face are self-imposed. Nothing about FOIAXpress
25 requires an agency to combine files or drop metadata; those are choices. This approach appears
26

27 ⁶¹ *Id.*
28

1 to be an outdated workflow, reminiscent of practices from 15–20 years ago, rather than one
2 befitting the modern technology that BOP has at its disposal. It suggests that BOP’s process is
3 still heavily reliant on manual, labor-intensive steps and is not taking advantage of available
4 technology enhancements. Unless BOP has affirmatively decided to turn off or ignore
5 FOIAXpress’s standard features like deduplication, email threading, and TAR, its claims of a
6 ten-fold slowdown and extraordinary burden are simply not credible. In my opinion, the
7 agency’s current method is inefficient not only for this requester but systemically – it inevitably
8 creates a “zero-sum” scenario where staff time is consumed inefficiently on one request
9 (delaying others), instead of optimizing the workflow to speed up the reduction of the backlog
10 for all requesters. In summary, BOP’s production methodology falls well outside the range of
11 what is considered reasonably efficient or standard in 2025 for handling a collection of this size
12 and nature.
13
14

15 38. Note: While BOP has not raised handwritten documents as an impediment to production, counsel
16 for Plaintiff proactively flagged this issue. I include it here to preempt potential
17 counterarguments and note that such records could reduce review throughput.
18

19 **IV. BOP “Zero-Sum” Staffing Resources and Preservation Requirements**

20 39. **Zero-Sum Staffing Resources:** The BOP frames its document production capabilities in a
21 "zero-sum" manner, arguing that any resources the court orders them to use to expedite the
22 current case would be directly taken away from other requesters, thereby negatively impacting
23 their backlog. This implies that if the court mandates a faster pace for this specific case, it would
24 negatively impact everybody else in the backlog. However, improving BOP's document review
25 and production processes to meet modern standards would actually benefit all requesters by
26 making the entire process faster and reducing the overall backlog, rather than creating a zero-
27
28

1 sum trade-off. This "zero-sum" mentality likely stems from BOP's focus on human labor rather
2 than leveraging the technology enhancements available to them, such as default features in
3 FOIAXpress, which could increase efficiency and allow them to handle more requests.

4 40. If BOP were to adopt modern, verifiable standards for document review and production,
5 leveraging the technology enhancement perspective that their system offers rather than relying
6 solely on a human labor perspective—employing antiquated workflows—it would help everyone
7 and speed up the backlog. Implementing efficient practices would lead to greater overall
8 productivity, benefiting all requesters and alleviating the perceived burden.

9
10 41. **Preservation of data and reuse of evidence:** I understand that the Bureau of Prisons is
11 obligated to preserve discoverable evidence in other relevant cases, such as *California Coalition*
12 *for Women Prisoners v. United States of America Federal Bureau of Prisons* and *M.R. v. Federal*
13 *Correctional Institution "FCI" Dublin*. This obligation likely results in the retention of certain
14 records at the level required for discovery, including email communications that overlap with the
15 categories of records requested in this matter.

16
17 42. This means these records should exist in their native format with metadata, including
18 creation/modify dates and hash values, as well as email family and thread links, sequential
19 context, and proper file types. When an agency already creates or converts documents in a
20 certain format, providing them in that format does not impose an "unnecessarily harsh burden,"
21 especially absent specific, compelling evidence of significant interference. Reusing data that has
22 already been reviewed and maintained for other litigation purposes is a huge time-saving
23 technique, as it avoids the need to recreate or degrade these records for FOIA productions.

24
25 43. Producing records in batch, non-searchable PDFs, which strips metadata, destroys document
26 boundaries, and impedes efficient review, is inconsistent with e-discovery norms and shifts costs
27 to the requester. Notably, BOP's FOIAXpress system, which integrates Casepoint's discovery
28

1 stack, is technically capable of preserving all cited lost record elements, including full metadata,
2 email threading, and searchability, and can export them directly in industry-standard formats like
3 native, TIFF+text, or searchable PDF with DAT/CSV load files. Therefore, leveraging existing
4 preservation efforts and producing records in their already-discoverable format would streamline
5 the FOIA process for all requesters, rather than diverting resources in a "zero-sum" trade-off.
6

7 44. In private sector consulting, reusing data that has already been reviewed for the exact same
8 issues, as is the case with records retained for discovery in other litigations such as the CCWP
9 and M.R. cases, is recognized as a huge time-saving technique. This practice significantly
10 reduces time and money by avoiding redundant review and processing. This implies that these
11 pre-existing records, already subject to discovery retention orders, should be readily reproducible
12 without unnecessary conversion or degradation of format.
13

14 **V. Conclusion**

15 45. In closing, based on my decades of experience in digital forensics and e-discovery, it is my
16 professional opinion that the Bureau of Prisons possesses the technical capabilities—via
17 FOIAXpress and its integrated tools—to conduct efficient, high-fidelity document reviews that
18 meet or exceed modern standards for pace, format, and transparency. The current production
19 practices fall well short of those capabilities, not for lack of technical means, but due to choices
20 in workflow that needlessly hinder responsiveness and burden requesters. I respectfully submit
21 this declaration to assist the Court in evaluating whether the agency’s current approach aligns
22 with its obligations under applicable legal and technical standards, and I urge consideration of
23 solutions that leverage available tools to enhance fairness, efficiency, and accountability in FOIA
24 compliance.
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I reserve the right to amend or supplement these opinions if additional information becomes available.

DATED: September 9, 2025

Signature: /s/
Jerry Bui, Founder & CEO
Right Forensics LLC