

VIA CM/ECF

April 3, 2026

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

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

Dear Judge Tse,

This brief is about compliance with the Court's May 2025 Order. Dkt. No. 42. The case is at the disclosure stage. There is no case management order. Discovery has not opened. During regular meet and confers, the parties clarified and defined certain terms. Counsel met and conferred by videoconference in good faith before filing the statement and were unable to resolve the issues described herein.

April 3, 2026

Respectfully submitted

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In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury that all signatories have concurred in the filing of this document.

Plaintiff Victoria Law's Statement

This dispute asks whether a federal agency may disregard a Court order (Dkt. 42) without consequence, not merely during a discrete shutdown period, but through a sustained pattern of noncompliance in the months before and after the Order, including missed deadlines, incomplete productions, and non-responsive productions. BOP granted expedited status on July 10, 2024. More than 632 days into this case, BOP's position remains that a court should not be allowed to adjudicate compliance issues until BOP decides to provide the information necessary for summary judgment at some undefined point years in the future that only it knows. Plaintiff's position is that statutory obligations and court orders must have a meaningful effect. Where an agency fails to comply with clear legal requirements and with this Court's Production Order, the appropriate response is not further delay but judicial accountability. Plaintiff therefore seeks an order imposing appropriate sanctions and structured enforcement measures to ensure compliance.

This Court's inherent authority to enforce orders through contempt applies in FOIA cases. 5 U.S.C. § 552(a)(4)(G). A scheduling order "is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)(*Gestetner Corp. v. Case Equip. Co.*, 108 F.R.D. 138, 141 (D.Me.1985); *See also Olgay v. Soc'y for Env't Graphic Design, Inc.*, 169 F.R.D. 219, 220 (D.D.C. 1996) "The scheduling order that results from this process is intended to serve "as the unalterable road map (absent good cause) for the remainder of the case." ... "Indeed, disregard of the order would undermine the court's ability to control its docket, disrupt the agreed-upon course of litigation, and reward the indolent and the cavalier." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610. BOP has not produced the ordered records; therefore, it failed to make the records "promptly available" and "withheld" them. FOIA does not contemplate a system in which compliance is perpetually deferred and judicial review postponed until the agency unilaterally decides it is ready. Where an agency repeatedly misses court-ordered deadlines, fails to seek relief during a shutdown, promises completion under oath, and then does not complete production, the Court must be able to assess compliance in real time. Otherwise, the statute's guarantee of prompt disclosure and judicial oversight becomes contingent on the agency's own timing decisions rather than the law.

The attached Declaration and exhibits summarize the status of BOP's productions, outstanding obligations, and the parties' agreements and narrowing efforts to date. *See*. Henry Decl., Ex.1, Status of Agreements and Plaintiff's Narrowing; Ex. 2, Categories of Agreements; Ex 3, Missing Information and Productions as of March 2026; Ex. 4, Categories of Records Produced and Withheld; Ex. 5, Categories of Records Produced and Withheld; and Ex. 6, FOIA Release Timelines and Page Counts. BOP has only met 5 production deadlines since it started producing in December 2024 (7 months after the request). Order, BOP missed six consecutive four-week deadlines between January and June 2025, including the complete failure to produce the records in May 2025. *Id.* On May 30, 2025, this Court ordered BOP to process a minimum of 1,000 pages per month, release responsive records on the last day of every month, and timely notify Law if it no responsive records in a given month. After the May Order, BOP continued to miss productions. BOP failed to produce documents for the September 30, 2025 production deadline, which occurred before the October 1, 2025 federal government shutdown. During the shutdown, BOP did not produce records or seek relief from the Court's May 30th Order. BOP did not disclose the DOJ shutdown guidance to the Court, did not follow it, and did not seek a stay or other relief during the shutdown. *See* Dkt. No 54. Plaintiff filed Notices of Supplemental

Evidence (Dkt. Nos. 52, 53, 55) documenting missed productions. The government reopened on November 12, 2025. The BOP has, to date, not sought relief from the May 30 Order. BOP did not issue another production until December 19, 2025, 80 days after the deadline and 37 days after the shutdown. BOP's actions did not change after Plaintiff filed a contempt motion. Dkt. No 54. BOP filed a sworn declaration stating it would "make every effort" (Dkt. No 57 ¶ 8) to complete the missed productions by February 1, 2026, which it has yet to do. On December 19, 2025, BOP issued Release 9, which consisted of publicly available Program Statements Plaintiff does not comply with FOIA's requirements. The January 30, 2026 production was partial, with the remainder produced on February 3, 2026, four days after the deadline and without a court-approved extension. As of March 17 2026, the May, October 2025, and November 2025 productions remain unfulfilled. On February 2nd, 2026, Plaintiff transmitted four letters again raising BOP's noncompliance. These remain unaddressed. BOP's noncompliance raises several violations of this Court's order.

Issue 1: Failure to Complete the October and November Productions. The Order required BOP to produce responsive records monthly. BOP has yet to produce the ordered October 31, 2025 and November 28, 2025 releases.

Issue 2: Failure to Meet Ordered Deadlines. The Court ordered production by the last day of the month. On December 2, 2025, in a sworn declaration (ECF No. 57), BOP stated it would "make every effort to make up the processing missed September through November 2025, by February 1, 2026." BOP missed the September 30, 2025 deadline by 80 days, has failed to produce any records for the October and November 2025 deadlines (as of this filing, they are respectively more than 154 and 126 days late) and partially missed the January 30, 2026, deadline by four days.

Issue 3: Unlawful Withholding – Non-Responsiveness Production of responsive records is not optional under either FOIA or the Court's Order. Almost 50% of the pages that BOP released are non-responsive to the underlying request. The record demonstrates that BOP has reviewed substantial volumes of material and designated large portions as non-responsive without producing them, while also releasing significant quantities of records that Plaintiff has identified as non-responsive. This reflects a mismatch between what Plaintiff asked for and BOP's methodology. Plaintiff's exhibits show both the volume of records withheld as "non-responsive" after review and separately, the volume of produced records that do not correspond to the request, underscoring deficiencies. See Exhibits 4, 5, and 6. A process that yields large amounts of irrelevant material on both ends, over-inclusion in production and over-exclusion in review, is not consistent with a reasonable or compliant search. Plaintiff has consistently asked for records about the time period of the 2024 closure and transfer, and has not, as BOP claims, "after-the-fact" changed her position. She has consistently sought information necessary to evaluate responsiveness and to narrow requests appropriately, including custodians, systems, search terms, and date ranges, which BOP has refused to provide (other than for email). The Court's Order contemplates the possibility that a properly targeted search may yield no responsive records in a given batch, but it does not authorize an untargeted or overbroad search that repeatedly generates large volumes of non-responsive material. The issue here is not that some non-responsive documents were encountered during review, it is that the search itself is producing and withholding large quantities of irrelevant material, while BOP withholds the information necessary to assess or correct that problem. The provision allowing notice of zero responsive records does not excuse a deficient search, and it does not permit BOP to substitute volume of review for compliance with its obligation to produce responsive records.

Plaintiff's digital forensics and e-discovery expert, Jerry Bui opined that BOP's current choices in workflows cause a systemic pattern of noncompliance with the Order. *See Dkt. No. 48-2* (Bui Declaration) Bui notes BOP continues its production method choices, which undermine the capabilities of the FOIAXpress software, leading to withholdings. Bui explains that BOP's chosen process has not resulted in it conducting an efficient or compliant search: "If BOP reviewers had to go through 1,000 pages but found 500+ pages to be 'non-responsive,' that strongly suggests that the initial search terms or criteria pulled in a lot of irrelevant material . . . A response rate as low as 50% indicates an inefficient review process." *Id. at* ¶ 35. BOP's "current workflow employed by BOP . . . is archaic and backwards, more akin to practices from 15–20 years ago than to modern e-discovery standards, despite having powerful tools at its disposal. This is not a limitation of the tools themselves, but a workflow choice." *Id. at* ¶ 29(b).

Issue 3.1 BOP Releases Non-Responsive Records Release 11 release consists of non-responsive housing unit logs from 2023. It is unclear how these logs were determined to be responsive to requests concerning Dublin's 2024 closure. Plaintiff has repeatedly requested disclosure of search scope and methodology in order to evaluate responsiveness and to propose narrowing where appropriate. A release of wholly unresponsive records violates the Court's which states that BOP is ordered "to release responsive records to Law . . ." (ECF No. 42 at 1). Plaintiff's Complaint and FOIA request identified the relevant timeframe from the outset, focusing on the period surrounding the closure of FCI Dublin and the transfer of incarcerated individuals, and provided detailed context through hundreds of citations to investigative reporting, legislative activity, and ongoing oversight concerning those events. Having repeatedly failed to respond to Plaintiff's inquiries regarding its methodology, BOP cannot now attribute its own overbroad or untargeted search results to Plaintiff. The issue is not a late-stage change in scope, but BOP's failure to align its search with the clearly articulated subject matter and timeframe of the request. **Issue 3.2 BOP Shared Non-Responsive Public Websites Instead of Producing .** Release 9 consisted of materials already publicly available on government websites, as required by a different statutory provision (§§ 552(a)(1) or (a)(2)) than the one under which Plaintiff made her request (5 U.S.C. § 552(a)(3)). Plaintiff already objected to this practice when BOP did this in Release 1. As explained in Plaintiff's February 2, 2026 letter regarding Release 9. This substitution matters because FOIA imposes distinct and non-interchangeable disclosure obligations. As courts have repeatedly recognized, §§ 552(a)(1), (a)(2), and (a)(3) establish three independent disclosure regimes, two of which operate entirely apart from the request-based process at issue here. *See Campaign for Accountability v. DOJ.*, 155 F.4th 724, 730 (D.C. Cir. 2025); *See Campaign for Accountability v. U.S. Dep't of Just.*, 278 F. Supp. 3d 303, 307–08 (D.D.C. 2017); *See Citizens for Resp. & Ethics in Washington v. United States Dep't of Just.*, 846 F.3d 1235, 1240–41 (D.C. Cir. 2017). Plaintiff's FOIA requests sought non-public, Dublin-specific records, such as internal guidance, training materials, communications, and closure-related documentation, not publicly posted policy manuals or reading-room materials. BOP's choice to produce records under the wrong provision of FOIA violates this Court's order.

Plaintiff is Entitled to An Order Plaintiff respectfully requests that the Court: (1) require BOP to file, by a date certain, a sworn declaration from a knowledgeable official (or require an in person appearance) explaining: (a) a detailed explanation of the steps taken to comply with the Order, (b) the actions taken to mitigate delay, and (c) whether any internal reallocation of staff, resources, or priorities occurred to comply with the Order; (2) as to the scope of search and determination, require: (a) identification of all custodians, offices, and systems searched, (b) the search terms used and date ranges applied, (c) whether the search is

complete, (d) number of responsive records located, and (e) number of pages responsive to the request; (3) as to the scope of production and withholding, require: (a) the scope and categories of records BOP will produce, (b) the scope and categories of records BOP intends to withhold, (c) the exemptions invoked for records it will withhold, (d) the number of pages it will withhold in whole or in part, (e) the number of pages remaining to be processed, and (f) the number and type of records remaining outstanding; (4) require: (a) the date certain by which each monthly production will be completed, and (b) an updated estimated completion date consistent with 5 U.S.C. § 552(a)(7)(B)(ii); (5) require that BOP shall submit monthly compliance reports, supported by a declaration detailing: (a) files and custodians searched during the reporting period, (b) total pages reviewed and produced, (c) pages withheld, deemed non-responsive, or duplicative, and (d) pages outstanding, and (e) that any incomplete, late, or duplicative submission shall not be deemed compliant; (6) in the event that BOP continues its pattern and practice of noncompliance, the Court schedule monthly compliance hearings at which a designated BOP official with authority over FOIA processing shall appear and provide sworn testimony regarding: (a) the agency's compliance efforts, (b) the reasons for any delays, and (c) the projected timeline for completion; (7) award attorney's fees under 5 U.S.C. § 552(a)(4)(E) for litigation necessary to secure compliance with the Court's Order; (8) indicate that continued pattern and practice may result in additional remedial measures within the Court's inherent enforcement authority, including contempt; and (9) note that DOJ guidance instructed agencies to seek relief from court-ordered deadlines during a lapse in appropriations, did not disclose that guidance, and that BOP did not seek such relief during the shutdown or since.

Defendant BOP's Statement:

Plaintiff argues that BOP has not met its obligations under the Court's Discovery Order requiring BOP to process 1,000 pages per month. ECF No. 42. Plaintiff overreaches in her requested relief; the issue for the Court is whether BOP has missed releases of records that should be made up. If so, the Court should give BOP several months to make up for the missed releases.

Issue 1: The Court Held That it Was Impossible for BOP to Make Releases in October and November. The Court denied Plaintiff's motion to hold BOP in contempt for missing the releases of September, October and November 2025. As the Court held, "[i]t is undisputed the federal government was shut down during that period. Dkt. 54 at 2; dkt. 57 ¶¶ 3–7. BOP staff were furloughed, dkt. 57 ¶¶ 3–7, rendering compliance impossible." ECF No. 66. Plaintiff ignores this order, arguing as if the Court had not denied her motion to hold BOP in contempt.

Issue 2: BOP Has Not Missed Release Deadlines Aside from the Government Shut Down and Furlough of all BOP FOIA Staff. Plaintiff cites the declaration (ECF No. 57) that the Court cited in denying Plaintiff's motion to hold BOP in contempt where BOP stated it would "make every effort to make up the processing missed September through November 2025, by February 1, 2026." Plaintiff cannot rely on that declaration to turn it into a Court order that BOP can be sanctioned for a failure to comply. In December, BOP released 2000 pages of records to cover the missed September release. Plaintiff should be more understanding with the resource limitations that BOP faces. Plaintiff cannot identify any prejudice from BOP releasing half of a release on January 30, 2026, and the rest two business days later on February 3, 2026.

Issue 3: Alleged Release of Non-Responsive Documents. It is unclear what Plaintiff is complaining about in this issue. If Plaintiff is claiming that BOP has released non-responsive records, that is not true. Each cover letter accompanying a release highlights the FOIA request

categories that the documents are responsive to. As discussed below, Plaintiff after-the-fact seems to have decided that it needs to narrow the requests because she decided that some documents requested by the FOIA request are not useful to Plaintiff. If Plaintiff is contending that BOP is not always releasing 1000 pages per month because of non-responsive documents found during the processing of 1000 pages per month, the Court's order contemplated that there might be a month when there were no documents to be released because all of the documents processed were not responsive. See ECF No. 42 ("In the event that BOP processes a minimum of 1,000 pages during a month and finds nothing to produce, BOP must timely notify Law.") Finally, Plaintiff's reliance on Jerry Bui's declaration is misplaced. Mr. Bui does not disclose he has any experience with FOIA cases, with the resource limitations of BOP, and he does not know about the FOIAXpress package that BOP uses to process records. The Court's order recognizes that BOP will find non-responsive documents when it process documents. The more Plaintiff works with BOP to narrow the requests, BOP believes the parties can focus on responsive documents.

Issue 3.1 Release 11 Was Proper. Release 11 included 1000 pages of housing unit logs. These records are highly responsive to Plaintiff's FOIA request; in particular, Request Nos. 18, 19, 20 and 21 of the FOIA request seeking information regarding (a) when inmates were transferred and where, (b) uses of force, (c) records indicating who was working where and when, and (d) investigations and discipline issued. At the meeting held by the parties on March 20, 2026, Plaintiff for the first time stated that she did not want records from 2023, but instated wanted to narrow the request to a period in 2024. Plaintiff is the one who served an incredibly broad FOIA request, and she cannot complain when BOP releases records responsive to numerous requests. Plaintiff complains that BOP did not disclose the systems searched, custodians queried, search terms used or date range applied. BOP has no obligation to provide this information. See *NLRB v. Sears, Robuck & Co*, 421 U.S. 132, 162 (1975) ("insofar as the order of the court below requires the agency to create explanatory material, it is baseless. Nor is the agency required to identify, after the fact, those pre-existing documents which contain the 'circumstances of the case' to which the opinion may have referred, and which are not identified by the party seeking disclosure."); *Citizens Progressive All. v. U.S. Bureau of Indian Affs.*, 241 F.Supp 2d 1342,1365 (D.M.N 2002) ("Defendants may be required to disclose material pursuant to FOIA, but Defendants are not required to either create new records or explain any records produced."). There is no violation of the Court's Order for Release 11.

Issue 3.2 BOP Released Public Documents Because Plaintiff Requested Them in Her FOIA Request. This letter brief is supposed to be about alleged violations of the Court's Order. ECF 42. Plaintiff cannot argue about Release 1, which was made prior to the Court's order and thus could not have been a violation of the Court's order. As noted in a December 19, 2025 letter to Plaintiff about the Ninth Release, BOP stated that the 2021 pages of documents were responsive to Request Nos. 22 and 24 in Plaintiff's FOIA request, regarding guidance or training records concerning closure and transfer of the Dublin prison. In meet and confer, Defendant's counsel asked Plaintiff's counsel if she had any case holding it was improper to release publicly available documents to a Plaintiff who requests these documents in her FOIA request. Plaintiff has never provided any such authority. Again, Plaintiff asked for these documents in the FOIA request and then complains about the release when she got what she asked for. There can be no violation of the Court's order in this context.