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Via Email to Pyle, Michael T. (USACAN), Michael.T.Pyle@usdoj.gov

February 2, 2026

Re: Request to Meet and Confer Regarding Release 9

Dear Michael,

I write in response to your January 21, 2026 (the “January 21 Letter”) and request a Zoom meet and confer.

Release 9 reflects the same core defects identified throughout this litigation and is directly relevant to the Court’s evaluation of compliance and enforcement of its Production Order and Plaintiff’s Motion for Partial Judgment on the Pleadings and for Declaratory Judgment (ECF No. 45). This case involves an entrenched pattern and practice of noncompliance with FOIA’s timing, determination, expedited processing, and production requirements. The BOP failed to meet the Court ordered September, October, and November, production deadlines and then seems to have attempted to retroactively cure those violations through a December production consisting of nonresponsive, publicly available materials it altered and degraded.

Relevance of Release No. 1 to Plaintiff’s Order to Show Cause and Evidence of BOP’s Ongoing Pattern and Practice of FOIA Noncompliance

With regard to Release No. 1, Plaintiff contends that it is properly considered by the Court in connection with Plaintiff’s pending order to show cause because it is probative of BOP’s continued pattern and practice of withholding in violation of FIOA, including non-release, non-responsive releases, and failure to release documents in their readily reproducible format. *See* Plaintiff’s Motion to Show cause why BOP Should Not Be Held In Contempt (ECF No. 54) and Motion for Partial Judgment on the Pleadings and Declaratory Judgment (ECF No. 45). Release 1 and 9 are records required to be publicly posted to websites under different statutory provisions than the FOIA request provision and therefore not within the scope of the request, and therefore not responsive to the FOIA or the Court's Order (ECF No. 42) “to release **responsive** records to Law.” Release No. 1 illustrates the same defect repeated in Release No. 9, namely the BOP’s reliance on publicly available, nonresponsive materials as a substitute for a reasonable search for records specific to the Dublin closure. Plaintiff identified at least forty four Program Statements in the Ninth Release that are available in complete form on its website but that are not specific to Dublin and its closure. That continuity is relevant to the Court’s assessment of whether subsequent productions complied with the letter and spirit of its Order.

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Release No. 9 Is Relevant to Plaintiff's Pending Order to Show Cause as Evidence of BOP's Ongoing Pattern and Practice of FOIA Violations

In your letter, you assert that disputes concerning the format of Release No. 9 may not be used to support Plaintiff's pending Order to Show cause why BOP Should Not Be Held In Contempt (ECF No. 54). Plaintiff disagrees. Plaintiff's Motion to Show cause why BOP Should Not Be Held In Contempt outlined that Plaintiff raised a claim of pattern and practice of ongoing unlawful withholding, of which BOP's ongoing practices in release 9 and future releases are relevant: "This case does not involve an isolated FOIA violation or one missed deadline. The September and October missed deadlines represent the seventh and eighth missed deadlines in BOP's entrenched, systemic pattern and practice of disregarding FOIA's timing, determination, expedited processing, and formatting requirements; especially where records concern BOP's own misconduct, constitutional violations, and high-profile scandals BOP's filings admit there is great public interest in." (ECF No. 54 at 6.) Additionally, Plaintiff's Pending Motion for Partial Judgment on the Pleadings and Declaratory Judgment (ECF No. 45) outlined that this is a pattern and practice claim where BOP's pattern includes unlawful withholding through failure to make a determination, stonewalling with piecemeal, partial, and unexplained rolling releases to create the illusion of compliance while indicating it will withhold the majority of responsive records over six years while it processes records based on undisclosed search terms and no differently from a non-expedited case. As such, Plaintiff is again filing a Notice of Supplemental Fact alerting the Judge to post-filing productions, so that these relevant facts may be before him for consideration during the Feb. 6, 2026, hearing.

Under FOIA BOP Must Produce the Existing Index as Maintained and May Not Withhold or Alter It

In response to your question of whether BOP is required under FOIA to provide an index: Yes, as an index and document names and explanations already existed on the website, Plaintiff's position continues to remain that FOIA requires agencies to release readily reproducible records in their native format, not to change and degrade them.

Plaintiff continues to seek production of existing records in the form and structure maintained in the ordinary course of business - not new records. "[A]gencies are required to make available for public inspection in an electronic format a "general index" of the FOIA-processed records in subsection (a)(2)" "frequently requested" records. Office of Info. Pol'y, DOJ, Proactive Disclosures (Mar. 14, 2025), https://www.justice.gov/oip/foia-guide/proactive_disclosures/dl?inline Here, BOP produced the frequently requested Program Statements available on the website but not in the native format, not with the metadata intact, and not with the existing index. "Where documents already exist in the requested format in an agency's system and "would require no conversion to a different format to comply with the plaintiff's format request, the records should be plainly 'readily reproducible.'" *Scudder v. CIA*,

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25 F. Supp. 3d 19, 43 (D.D.C. 2014). “When an agency already creates or converts documents in a certain format...requiring that it provide documents in that format to others does not impose an unnecessarily harsh burden, absent specific, compelling evidence as to significant interference or burden.” *TPS, Inc. v. DOD*, 330 F.3d 1191, 1195 (9th Cir. 2003). As Plaintiff’s expert Bui confirms “all of the record elements cited by Plaintiff as ‘lost’ in BOP’s current process (e.g., metadata, email threading, searchability) can be preserved and exported directly from FOIAXpress.” ECF No. 48-2 Bui Decl. at ¶ 6. explains, “Producing multiple documents merged into a single, non-searchable PDF violates widely accepted e-discovery norms . . . because it destroys metadata, impedes the effective use of technology-assisted review, and unfairly shifts the burden and cost of processing to the requester.” *Id.* ¶ 5. These choices amount to a pattern and practice of improper withholding within the meaning of FOIA. *See* ECF No. 47 at 8.

Evidence That BOP Is Altering and Degrading Records in Violation of FOIA, and the Need for Assurances Regarding Future Productions

The pages Plaintiff identified in paragraph 3 of the January 14, 2026, letter where the BOP produced only partial versions, omitted pages, reordered pages, or removed identifying information such as official titles and Program Statement numbers despite those being on its website, were referenced to illustrate BOP’s continuing patten improperly changing and/or altering records, which violates FOIA. Plaintiff raises issues with these documents in order to get confirmation from BOP that these types of changes and/or alterations will not be made in future productions of properly responsive documents.

BOP Failed to Conduct a Reasonable, Good-Faith Search by Substituting Non-Responsive Public Website Materials for Requested Dublin-Specific Records

Plaintiff seeks records responsive to her FOIA request. With respect to Release No. 1, which consisted of non-responsive materials already required to be published under a different statutory provision, Plaintiff has already made clear that she is not seeking publicly available website materials or other records outside the scope of the request.

FOIA requires agencies to conduct a search reasonably calculated to locate records responsive to the request as written and to do so in good faith. *Zemansky v. EPA*, 767 F.2d 569 (9th Cir. 1985); 5 U.S.C. § 552(a)(3)(D). Requests 22 and 24 seek records describing guidance or training concerning Dublin’s closure. These requests are narrowly directed at not yet public materials created, used, or relied upon in connection with the closure, including presentations, communications, and explanatory documents. Instead of producing the records requested, BOP printed and changed a website. This does not reflect a reasonable search concerning the Dublin closure.

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BOP Substituted Public “Reading Room” Materials for a Request-Based Search and Production

In practice, BOP treated Plaintiff’s request under 5 U.S.C. § 552(a)(3) as though it could be satisfied by pointing to or reproducing materials already required to be published under different statutory provisions. Plaintiff’s requests sought non-public, Dublin-specific records, including internal guidance, training, communications, and explanatory materials created, used, or relied upon in connection with the closure of FCI Dublin. Instead of conducting a reasonable search for those non-public records, BOP produced materials that were already publicly available on agency websites and that fall within FOIA’s proactive disclosure regimes under §§ 552(a)(1) or (a)(2), requiring policy or programmatic materials be posted to a website. Those materials neither address the subject matter of Plaintiff’s requests nor reflect any search of systems likely to contain responsive, non-public records. If Plaintiff just wanted already public information, this lawsuit wouldn’t be necessary. We’re not enforcing BOP’s other public-facing FOIA obligations; we’re seeking specific records that are not already made public. This substitution matters because FOIA imposes distinct and non-interchangeable obligations. As courts have 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 in this case. *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); *See* Office of Info. Pol’y, U.S. Dep’t of Just., Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request (Oct. 26, 2022), www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information.

Under principles of statutory construction, Congress is presumed to have acted intentionally when it uses different language in different subsections of the same statute. FOIA’s structure reflects this intent. Sections 552(a)(1), 552(a)(2), and 552(a)(3) impose distinct obligations using distinct verbs, scopes, and triggering mechanisms. Subsections (a)(1) and (a)(2) require agencies to publish or proactively make certain categories of records (such as BOP Program Statements) available to the public without any request on a website “reading room.” By contrast, subsection (a)(3) governs the agency’s distinct obligation at issue in this case, to search for and produce records “upon request.” As outlined above, courts have repeatedly recognized that FOIA establishes three independent disclosure regimes, two of which operate entirely apart from the request-based process. Congress did not intend agencies to satisfy their obligations under (a)(3) by pointing to “reading room” materials required to be publicly posted under (a)(1) or (a)(2). Rather, (a)(3) governs independent duty to conduct a reasonable search and produce materials responsive to a request, such as Ms. Law’s request. Reading subsections (a)(1) and (a)(2) as satisfying subsection (a)(3) would violate the canon against surplusage by rendering subsection

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(a)(3) largely redundant and collapse FOIA's carefully structured disclosure scheme, and render the statute's distinct provisions superfluous. Congress's separate command that agencies produce "all other records" upon request would serve no independent function. Courts must, where possible, give effect to every provision of a statute, not interpret one subsection in a manner that swallows another. Records that are already publicly available and that do not address the subject matter of the request do not satisfy FOIA and do not constitute compliance with a court ordered production obligation.

In short, Plaintiff's requests are for non-public records. As such, public records should not have been processed and counted as part of a monthly processing as ordered by Judge Tse (ECF No. 42).

BOP's Production Improperly Shifts the Burden of Reconstruction to Plaintiff in Violation of FOIA and the Duty of Good Faith

BOP forced Plaintiff to expend substantial time and resources reconstructing the Release, cross-referencing documents against public sources, and creating independent materials simply to understand what it produced. This burden shifting is inconsistent with FOIA and further evidences BOP's lack of good faith. This approach causes concrete informational harm by delaying access to usable records, wasting significant attorney and judicial time, and increasing costs that could be avoided entirely through good faith compliance at this stage rather than after further litigation.

Demands

Plaintiff demands that BOP immediately take the following corrective actions to cure its ongoing noncompliance with FOIA and the Court's orders.

1. Conduct a new, reasonable search for records responsive to FOIA Request Nos. 22 and 24 as written. That search must be designed in good faith to locate nonpublic records concerning the closure of FCI Dublin and related transfers, and must include appropriate custodians, systems, and search terms reasonably calculated to uncover responsive materials. BOP may not rely on prior searches that failed to locate Dublin-specific records.
2. To the extent BOP contends that a prior search satisfied its September and December production obligations, BOP must re-run that search in full and disclose precisely how it was conducted, as the results to date demonstrate that the search was inadequate.
3. BOP must not attempt to satisfy the Order, or any future production obligation, by producing or pointing to records disclosed under 5 U.S.C. § 552(a)(1) or § 552(a)(2), including public websites, reading room materials, or Program Statements already

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required to be published by statute. Such materials are non-responsive to Plaintiff's request and do not satisfy FOIA's (a)(3) request based disclosure obligations.

4. BOP must produce all responsive records, past, current, and future, in native format as they are maintained in the ordinary course of business, without alteration, omission, reordering, or degradation of file structure.
5. BOP must identify all instances in which records have been withheld, partially withheld, altered, reformatted, or otherwise modified, and must state the specific legal basis for each withholding or alteration.
6. BOP must provide a sworn declaration from a knowledgeable official describing in detail the steps taken to ensure compliance with FOIA, this demand, and the Court's May 30, 2025 Order (ECF No. 42), including but not limited to the custodians searched, the systems queried, the search terms used, and the methods employed to preserve record integrity.

Next Steps

Given the positions BOP has taken in the January 21 Letter and throughout the litigation, it appears that we are at an impasse with regard to Production 9. While Plaintiff remains willing to discuss the disputed issues as outlined herein in attempts to narrow the dispute, we intend to proceed with preparing and filing a production dispute letter per the Order (ECF No. 42). Should BOP be willing to address Plaintiff's concerns or disagree that we are at an impasse, please let me know please, by no later than February 6, 2026, provide availability of dates and times for a Monday, Tuesday, or Friday. I have attached a draft of an agenda for the meeting. Otherwise, we will provide you with our portion of a joint production letter dispute by Wednesday, February 11, and expect that you will provide your portion by Wednesday, February 18, for a joint filing on that date.

Sincerely,
Caitlin Kelly Henry, Esq.
Attorney For Plaintiff Victoria Law

Enc:
Draft Agenda