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

Re: Request to Meet and Confer Regarding Email Redactions in Rolling Releases 6, 7, 8, and 10

February 2, 2026

Dear Michael,

I write to request a meet and confer regarding the BOP's redaction and withholding of email records across multiple rolling releases, specifically the Sixth, Seventh, Eighth, and Tenth Releases. These releases appear to contain records responsive to Items 1, 8, 6, 7, 13, 22 of Plaintiff's FOIA request. These releases reflect recurring and unresolved defects in BOP's application of FOIA exemptions to email communications.

The releases that include email records show a consistent pattern of excessive redaction, coupled with unsupported reliance on Exemptions 5, 6, 7(C), and 7(E). These issues are directly relevant to the Court's evaluation of compliance with its May 30, 2025, Production Order and to Plaintiff's pending FOIA enforcement motions.

**Pattern of Improper Redaction, Misclassification, and Unsupported Exemption Claims in Email Records Across Rolling Releases**

In the Sixth Release, on June 30, 2025, BOP released email records responsive to Items 1, 8, and 22. That release was late and did not include adequate, record specific justification for the extensive redactions and claims of exemptions applied to the email content.

In the Seventh Release, according to BOP's determination letter, 687 pages of emails were reviewed, 651 pages were deemed nonresponsive. The designation of the overwhelming majority of emails as nonresponsive, without meaningful explanation, is inconsistent with FOIA and prevents Plaintiff from evaluating whether a reasonable search was conducted. BOP did not provide a record specific explanation or sufficient factual detail to justify the extensive redactions and exemption claims applied to the email content

The Eighth Release, dated August 28, 2025, primarily concerned property claims but also included at least one email responsive to Items 1, 8, and 22, specifically an email regarding a request for transfer. 651 pages were deemed nonresponsive without explanation. That email is part of a broader set of communications concerning institutional decision making that remain largely withheld or redacted without adequate justification.

The Tenth Release, dated January 30, 2026, regarding 6, 7 and 13, reflects extensive redaction and withholding of records that include email communications. Of 507 pages reviewed, only 24

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pages were released in full, 314 pages were released in part, and 70 pages were withheld in full. The same pattern of exemption overuse and lack of justification identified in prior releases.

Across these releases, BOP has relied on Exemptions 5, 6, 7(C), and 7(E) to redact or withhold email content. Plaintiff objects to those withholdings for several reasons that warrant discussion at a meet and confer.

### **Improper and Overbroad Reliance on FOIA Exemptions 5, 6, 7(C), and 7(E) to Withhold Email Records**

#### **Exemption 5 Is Unavailable For Some Claimed Custodians and Topics**

Communications involving non-agency actors, self-interested third parties, or individuals advocating positions adverse to legal obligations or court orders do not qualify, particularly under the Supreme Court's reasoning in *Department of the Interior v. Klamath Water Users Protective Association* 532 U.S. 1, 8 (2001). Where communications are undertaken to advance institutional self-protection, minimize liability, suppress adverse findings, or avoid compliance with CCWP court orders, they reflect self-advocacy and defensive positioning, not neutral consultation in service of sound policy making. Under *Klamath*, such communications fall outside Exemption 5's scope even before privilege is considered.

#### **Exemption 5 Is Unavailable Where the Crime–Fraud Exception Applies to Emails Concealing Misconduct or Evading Court Orders**

Exemption 5 incorporates only those privileges that would apply in ordinary civil discovery, and communications undertaken to further or conceal unlawful conduct would not be protected in that context because the crime–fraud exception strips away deliberative process, attorney–client, and work product protections. Although Exemption 5 incorporates certain discovery privileges, including the deliberative process privilege, attorney–client privilege, and attorney work product doctrine, those privileges exist only to protect lawful governmental decision making. They do not extend to communications whose purpose or effect is to facilitate, conceal, or perpetuate unlawful conduct. Some of the emails released do not seem to all reflect policy deliberation or legal strategy, but instead appear to document efforts to manage fallout from known misconduct, and coordinate responses designed to limit accountability. The crime–fraud exception removes the protection of these privileges where communications are used to further wrongdoing, evade legal obligations, or obstruct oversight, even if attorneys are involved and even if the communications would otherwise fall within the formal scope of a recognized privilege. Emails whose purpose or effect was to conceal staff sexual abuse, evade CCWP court orders, obscure unlawful transfers, suppress PREA findings, or perpetuate false or misleading agency narratives

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fall outside the scope of Exemption 5. Communications undertaken to facilitate or cover up unlawful conduct are not privileged, regardless of whether attorneys were involved. Applying the threshold requirements of Exemption 5, many of the email records at issue fail at the outset because they are not properly “inter-agency or intra-agency” deliberations in the sense contemplated by the statute.

The deliberative process privilege protects candid discussion aimed at improving agency decision making, not discussions designed to cover up staff sexual abuse, obscure unlawful transfers, suppress PREA findings, retaliate against complainants, or evade judicial directives. Communications that memorialize strategies to delay compliance, manipulate administrative records, mischaracterize facts, or present misleading narratives to courts or oversight bodies are not “deliberative” in any legitimate sense. They are instrumental to misconduct, and the privilege cannot be used to launder unlawful behavior through internal paperwork.

The same analysis applies to attorney–client and work product claims. While Exemption 5 incorporates these privileges as they exist in civil discovery, neither privilege survives where legal advice or attorney involvement is used to further unlawful objectives. Emails reflecting counsel’s participation in concealing violations, coordinating noncompliance with court orders, or structuring responses to avoid disclosure obligations fall squarely within the crime–fraud exception. The relevant inquiry is not whether an attorney was copied or whether litigation was anticipated, but whether the communications were “in furtherance of” wrongdoing. Where the purpose or effect of the communications was to obstruct lawful oversight or perpetuate violations, they would not be “routinely” protected in civil discovery and therefore cannot be withheld under Exemption 5. FOIA does not permit agencies to withhold records simply because they pass through attorneys or are labeled deliberative when their substance reveals implementation, damage control, or evasion of legal obligations rather than genuine policy formulation.

**Exemption 6 Does Not Protect the Identities of BOP Staff or Routine Administrative Email Communications and the Public Interest Outweighs Other Interests**

Exemption 6 does not apply to the identities of BOP staff acting in their official capacities or to email content documenting routine administrative decision making. Privacy interests are diminished where records concern alleged misconduct, retaliation, violations of court orders, or matters of substantial public concern. Exemption 6 protects against disclosure of intimate or embarrassing personal details, not against accountability for official actions taken by government employees. As briefed in other correspondence since December 2024, the public interest decisively outweighs any asserted privacy interest under Exemption 6 because the identities of Bureau of Prisons staff acting in their official capacities, and email communications

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documenting routine administrative decision making, do not implicate the type of intimate or personal information the exemption was designed to protect. Exemption 6 is narrowly limited to shielding individuals from the unnecessary disclosure of personal details that would cause embarrassment or stigma, not from scrutiny of how government employees perform their official duties. Courts have consistently held that when records concern alleged misconduct, retaliation, violations of court orders, or other matters of substantial public concern, any residual privacy interest is diminished and must give way to FOIA's core purpose of accountability. Disclosure of staff identities and administrative emails here would shed light on how the BOP exercised authority, complied or failed to comply with judicial directives, and managed transfers, grievances, and related institutional decisions during a period of extraordinary public scrutiny. The public has a strong interest in understanding who made these decisions, how they were implemented, and whether they reflected lawful and good faith administration or contributed to systemic failures. Shielding such information would not protect personal privacy in the sense contemplated by Exemption 6, but would instead insulate official conduct from oversight, contrary to FOIA's mandate that exemptions be narrowly construed and that transparency prevail where disclosure illuminates what the government is doing.

**Exemption 7(C) Does Not Apply Because the Email Records Were Not Compiled for Law Enforcement Purposes and the Public Interest Outweighs Other Interests**

BOP's invocation of Exemption 7 email context suffers from the same foundational defect across multiple categories of redacted records, namely the failure to establish that the records were in fact compiled for law enforcement purposes as required by the threshold of 5 U.S.C. § 552(b)(7). The emails at issue appear to concern routine administrative functions, including staff communications about transfers, grievances, property handling, medical issues, compliance with court orders, and internal responses to inquiries and judicial oversight arising out of the Dublin scandal.

Exemption 7(C) is inapplicable because BOP has not established that the email records were compiled for law enforcement purposes. Many of the emails concern administrative functions such as transfers, grievances, property handling, and compliance with court orders. Administrative emails do not become law enforcement records merely because they arise in a correctional context or later relate to allegations of misconduct. Where, as here, emails reflect internal management, oversight, damage control, or compliance discussions, rather than investigations into specific violations of law that could result in civil or criminal sanctions, as set forth in Plaintiff's prior correspondence dating back to December 2024, courts have repeatedly held that such records fall on the administrative oversight side of the line and do not satisfy Exemption 7's threshold requirement. BOP's categorical reliance on Exemption 7 to shield these

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communications improperly collapses the distinction between law enforcement activity and routine agency administration that FOIA doctrine expressly requires agencies to maintain.

As set forth in Plaintiff's prior correspondence dating back to December 2024, the public interest overwhelmingly outweighs any asserted privacy interest. The public interest here is exceptionally strong and independently defeats any claimed privacy interest under Exemption 7(C). The email records at issue concern how the Bureau of Prisons administered transfers, processed grievances, handled property, and complied with or failed to comply with court orders during a period of documented institutional failure and intense public scrutiny. Disclosure would shed light on how government officials exercised authority, whether they followed lawful procedures, and whether misconduct, retaliation, or evasion of judicial oversight occurred. Courts have repeatedly held that where records illuminate potential government wrongdoing, failures of oversight, or the implementation of court-ordered remedies, the public interest lies at the core of FOIA's purpose. Any residual privacy interest in the identities of government employees acting in their official capacities is diminished when weighed against the public's right to understand what the government was doing, who made key decisions, and how those decisions affected incarcerated people and compliance with judicial mandates. Because these emails would meaningfully contribute to public understanding of agency operations and accountability, the public interest outweighs any asserted privacy concern even if Exemption 7(C) were otherwise applicable, which it is not.

#### **Exemption 7(E) Cannot Be Used to Conceal Misconduct or Violations of Court Orders**

Exemption 7(E) cannot be used to shield procedures or practices that themselves constitute misconduct, retaliation, violations of court orders, or fraudulent or abusive processes. FOIA does not permit agencies to conceal improper conduct by characterizing it as a protected technique or procedure.

#### **Readily Reproducible Email Records Must Be Produced in Native Format Rather Than Degraded PDF Files**

FOIA requires agencies to produce records in any form or format requested if the records are readily reproducible in that form or format. Emails are inherently electronic records maintained with associated metadata, attachments, and threading information, and they are readily reproducible in native format. By converting email records into flattened PDF files, BOP degrades the records, strips metadata, obscures email threading and attachments, and prevents efficient review of responsiveness, completeness, and exemption claims. This practice unlawfully shifts the burden of reconstruction to the requester and frustrates FOIA's core

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transparency mandate. Where, as here, emails are maintained and processed electronically in agency systems, FOIA does not permit the agency to alter their form absent a specific showing that native production is not readily reproducible. Producing emails in native format is necessary to preserve context, enable segregation analysis, and allow Plaintiff to evaluate whether records have been improperly withheld or altered in violation of FOIA and the Court's Order.

**Demand for Meet and Confer and Notice of Next Steps to Enforce Compliance**

BOP's approach improperly shifts the burden of compliance onto Plaintiff, resulting in unnecessary expenditure of time and resources, increased attorneys' fees, and inefficiencies that will ultimately require reprocessing of the same records after further litigation.

Plaintiff requests a prompt meet and confer to address the foregoing issues, including the legal basis for the claimed exemptions, the categorization of emails as nonresponsive, and the steps BOP will take to cure these deficiencies and reprocess the email records in compliance with FOIA and the Court's Order.

Please provide your availability by February 6, 2026, for a Zoom meet and confer on a Monday, Tuesday, or Friday. Absent a productive meet and confer and a clear plan to cure the defects described above, Plaintiff will raise these issues in her portion of a joint production dispute letter and, if necessary, in further enforcement proceedings.

Sincerely,

Caitlin Kelly Henry, Esq.  
Attorney for Plaintiff Victoria Law

Enc: Draft Agenda