

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 production dispute brief is regarding FOIA's requirements that an agency produce records in a Readily Reproducible Format (552(a)(3)(B)). The case is at the disclosure stage. There is no case management order. Discovery has not opened. 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

/s/ Caitlin Henry
CAITLIN HENRY
Attorney for Plaintiff

CRAIG H. MISSAKIAN
United States Attorney

/s/ Michael T. Pyle
MICHAEL T. PYLE
Assistant United States Attorney

Attorneys for Defendant

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 brief is about the issue of compliance with FOIA's requirement that agencies produce records in a "readily reproducible format." 5 U.S.C. § 552(a)(3)(B). BOP does not dispute that the requested records are maintained in native, structured formats that preserve metadata, file boundaries, and usability. Instead, it affirmatively chooses to alter those records by merging them into undifferentiated PDFs, stripping metadata, and eliminating the structure in which they are ordinarily maintained. That choice degrades the records and impairs Plaintiff's ability to identify, understand, and review them, thereby increasing the time and cost of processing and this litigation, thus undermining FOIA's purpose of prompt and meaningful access. BOP contends that this issue should be deferred to summary judgment, but that approach would significantly increase inefficiency and burden for both the parties and the Court. If production continues in a degraded format, Plaintiff will be required to review and analyze records in a form that obscures their structure and content, only for the Court to later determine, at summary judgment or after a trial to establish the facts, that the format was improper. At that point, the parties would be forced to revisit the same productions, requiring reprocessing, re-review, re-production, and potentially re-briefing of issues that could have been resolved at the outset. In other words, deferring this issue would not streamline the case, it would multiply the work.

A production order that stops BOP from changing and degrading the format of the records readily reproducible under 5 U.S.C. § 552(a)(3)(B) is necessary to prevent continued format-related deficiencies that impede progress and judicial economy. This threshold, compliance-related issue is appropriate for resolution through a letter brief. The relevant facts are within BOP's control and can be provided now, including how records are maintained, how they are exported, and what burden, if any, is actually associated with producing them in native format. Requiring BOP to provide that information at this stage allows the Court to determine whether the current production method complies with FOIA, without waiting for summary judgment or engaging in unnecessary discovery or trial on format-related facts.

FOIAXpress can export native files. BOP chooses not to. That choice degrades records and slows review. BOP's pattern and practice of failing to produce records in their native format, as Plaintiff requested in her FOIA, violates the statute. *See* 5 U.S.C. § 552(a)(3)(B); *see also Scudder v. CIA*, 25 F. Supp. 3d 19, 43 (D.D.C. 2014). "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.'" Ms. Law requested records "preserved in the native format with metadata." Complaint *Dkt.* No. 1-1. Plaintiff renews her request (*See Dkt.* Nos. 21, 28, 31, 33, 34, 39, 45, 48, 54) for a sanctions-enforceable order that addresses production format.

BOP's failure to transmit readily reproducible records in their native format also constitutes an unlawful withholding and by extension, a failure to make those records promptly available. 5 U.S.C. § 552(a)(6)(E)(iii); 28 C.F.R. §§ 16.5(b), (e). Courts define "withholding" as an action in which the "net effect is to impair the requester's ability to obtain the records or significantly to increase the amount of time [s]he must wait to obtain them." *EPIC v. NSA*, 795 F. Supp. 2d 85 (D.D.C. 2011) "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. United States Department of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003).

BOP does not dispute that it can save each file individually and transmit it in the native format without altering it. Christensen Decl. *Dkt.* 31-2, Decl. ¶7. BOP asserts that it has opted not

to transmit files in their original format because its use of FOIAXpress software allegedly makes it more time-consuming to transmit the original records than to convert them into a single merged PDF. *Id.* BOP's Declaration *Id.* does not provide specific, compelling evidence of how this time estimate was derived or calculated (no time logs, no workload projections, no staff-hour breakdowns). BOP already uses the requested format, so continuing to do so should not be considered an unnecessarily harsh burden absent clear proof, which BOP has not provided. Agencies should not be permitted to design inefficiencies into their workflows and then use those inefficiencies to justify limiting access or shifting the time burden to Plaintiffs, who will lose substantive value in the process. "[I]t would seem anomalous for an agency that is regularly reproducing documents in a particular format as part of its ongoing business to be able to shield itself from similar production under FOIA." *TPS, Inc.*, 330 F.3d at 1195.

BOP's claim (*Dkt. 31-2*, Decl. ¶7) that merging over 100 individual PDFs into a single, undifferentiated PDF constitutes a production "in native format" is both inaccurate and misleading. Downloading multiple PDFs and then bundling them into one file is a transformation, not a reproduction. Before BOP changed it, each file had its own metadata, filename, and structure, and was meant to be accessed and understood individually, with logical separation showing where one file begins and ends. Plaintiff previously briefed release 4, in which BOP combined dozens or hundreds of tort claims into a single massive document with no clear delineation between one claim and another.

BOP's pattern and practice of changing records to make them less usable, and stripping metadata, not only fails to comply with industry standards, but violates several of FOIA's provisions, described *supra*. As Plaintiff's expert Bui¹ 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." Bui Decl. *Dkt. 48-2* ¶ 5. The Bui Declaration demonstrates that BOP's current choices in workflows cause the statutory violations (delayed searches, degraded formats, and slow production) which constitute a systemic pattern of noncompliance with FOIA's timing, format, and diligence requirements. BOP's chosen workflow constitutes "calculated ambiguity," changing hundreds of records from the native format maintained in FOIAXpress, and withholding them from Plaintiff by merging them into PDFs, which are new records. *Id. at* ¶ 8. Bui confirms that "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." *Id. at* ¶ 6. The limitation here is a pattern and practice of intentional agency choices, not a technical barrier. *Id. at* ¶ 7.

Since the May 2025 hearing, Plaintiff has further raised these issues with BOP. Recently, on February 2, 2026, Plaintiff transmitted four letters (See Ex. 1 Release 10 Letter re Partial Production, Format, and Exemptions; Ex. 2 – Release 9 Letter re Public Website Substitution and Non-Responsiveness; Ex. 3 – Email Redactions Letter re Releases 6, 7, 8, and 10; Ex. 4 – Tort

¹ At the May 27, 2025 hearing, the Court asked whether Plaintiff could "provide testimony that says that if they use this particular software, that it would not decrease the production rate." (*Dkt. No 44 at 17:23–25*). The Court further stated that it needed more detail before it could opine on the issue and suggested that "technical folks communicate" so that the Court could understand whether native production would actually reduce production speed. (*Id. at 33:7–18*). In response to the Court's instruction, Plaintiff retained a digital forensics and e-discovery expert, Jerry Bui. See *Dkt. No. 48-2* (Bui Declaration); *48-3* (CV).

and Property Claims Letter re Item 11 Search Scope and Exemptions) to BOP, each addressing a distinct category of production and compliance issues, including format issues, and each accompanied by supporting materials requesting written responses by February 6, 2026, proposing a meet and confer by Zoom, and stated that absent resolution, Plaintiff would proceed with a production dispute letter pursuant to the Court's Order. These issues were not resolved in the meet and confer and remain at an impasse.

This issue is neither a technical nor a semantic one. It directly affects the ability of the requester to: identify each individual record; understand the contents and scope of each record; and ensure completeness and accuracy in production. The BOP's production method transforms what should be a clear, organized set of records into a confusing morass—one that obstructs transparency and FOIA. It shifts the statutory burden and time to Plaintiff and her counsel, resulting in many additional hours and work in an attempt to manually parse, separate, and reconstruct. All while the agency's Declaration acknowledged that it is maintained as separate files in the ordinary course of business. Plaintiff does not request that BOP create new records. Plaintiff requests an order that BOP transmit the record in its original file and format, as maintained in the ordinary course of business and, where relevant, already preserved for other litigation, including *California Coal. for Women Prisoners v. United States*, No. 4:23-CV-4155-YGR (N.D. Cal. 2023), and *M.R. v. Fed. Corr. Inst. Dublin*, No. 4:22-cv-05137 (N.D. Cal. filed 2022). Ordering BOP to provide the relevant facts and produce records in a readily reproducible format now promotes efficiency, preserves judicial resources, and ensures that the case proceeds on a proper and usable record from the outset.

Defendant BOP's Statement:

BOP does not believe this issue is appropriate for a letter brief, and suggests this issue be litigated in the summary judgment briefing scheduled to begin in September in both parties' proposed case management plans. The two cases cited by Plaintiff -- *Scudder v. CIA*, 25 F. Supp. 3d 19, 43 (D.D.C. 2014) and *TPS, Inc. v. United States Department of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003) – are summary judgment cases. Plaintiff's other case, *EPIC v. NSA*, 795 F. Supp. 2d 85 (D.D.C. 2011) addresses withholding in the context of an agency referral to another agency and is not relevant here as it does not address the native format issue. Plaintiff's letter brief presents this as a legal issue, but the cases that address this issue are focused on particular agency records and the arguments and evidence about particular records. Summary judgment on this issue would allow the Court to decide this important issue with a full evidentiary and legal record.

Plaintiff has not provided any legal authority supporting her argument that it she entitled to have each record produced separately or that it is entitled to metadata, and that should be enough to deny this letter brief. BOP contends that it is under no legal obligation to arrange Plaintiff's releases by releasing individual records as Plaintiff requested. FOIA does not require agencies to "organize documents to facilitate FOIA responses." *Shapiro v. U.S. Dep't of Justice*, 37 F. Supp. 3d 7, 20 (D.D.C. 2014) (quoting *Goulding v. IRS*, No. 97-5628, 1998 WL 325202, at *5 (N.D. Ill. June 8, 1998)); *Prison Legal News v. Lappin*, 780 F. Supp. 2d 29, 45–46 (D.D.C. 2011) (court agreed with the government it had "no responsibility under the FOIA to organize the responsive records in any particular manner or provide explanatory material to accompany the responsive records.") Nor is such a requirement imposed by the "form or format" provision of E-FOIA. In *Sai v. Transp. Sec. Admin.*, 466 F.Supp.3d 35, 48-49 (D.D.C. 2020), the Court held that a request for an agency to produce individual files of records was inconsistent with the case law holding that FOIA does not require an agency to arrange responsive records in a particular order. The Court reasoned that "[i]mposing such a duty for electronic records would dramatically

expand the demands that FOIA imposes on federal agencies with no indication that Congress intended to make such a fundamental change to the law or that it intended to impose an organization requirement that does not exist for paper records.” *Id.* at 48. The Court reasoned that with paper records FOIA does not require an agency to staple together each separate record, and did not “see any meaningful distinction between this hypothetical request for staples and Plaintiff’s request for discrete PDFs. Both requests go the organization of the records sought, which as the Court explained, is not covered by the FOIA.” *Id.* The Court granted summary judgment with respect to this issue in favor of the agency, holding that an agency is not required to release individual PDF files. There is also authority that BOP does not need to release documents with metadata. See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 241 F. Supp. 3d 14, 23 n.4 (D.D.C. 2017) (“[T]he metadata in the . . . emails [found in the custodian’s nongovernment email account] does not in itself make each email unique [under the FOIA] as compared to the forwarded reproduction of the email in [his government email] account.”) (citing *Covad Commc’ns Co. v. Revonet, Inc.*, 267 F.R.D. 14, 20 (D.D.C. 2010) (“In the absence of some reason to believe that the metadata will yield an answer that the hard copy will not, production of the information in native format [] is not necessary.”)); *Citizens for Resp. & Ethics in Wash. v. DOJ*, No. 18-007, 2020 WL 2735570, at *3-4 (D.D.C. May 26, 2020) (confirming that agency appropriately “defined each single email and each single text as ‘a record,’ “[that is to say] select emails and texts within the [entire email or text] thread[,]” while rejecting plaintiff’s argument that “a record must constitute only ‘the full native form in which it is maintained by the agency’” and noting that plaintiff’s definition of a record “is [not] found within the [FOIA] statute”); see also *Forsham v. Harris*, 445 U.S. 169, 185 (1980) (“The Freedom of Information Act deals with ‘agency records,’ not information in the abstract.”). E-FOIA—which was passed in light of the growing use of electronic records, Pub. L. No. 104- 231, § 2(a)(5), 110 Stat. 3048, 3048—does not require anything more. E-FOIA was not intended to expand the coverage of FOIA to allow requesters to obtain abstract information about electronic records in addition to the records themselves. Instead, it merely “clarifie[d] existing practice by making the [FOIA] statute explicit” that “[r]ecords which are subject to the FOIA shall be available under the FOIA when the records are maintained in electronic format.” H.R. Rep. No. 104-795, at 18 (1996). To affect this clarification, Congress provided that the term “record” includes “any information that would be an agency record subject to the requirements of [FOIA] when maintained by an agency in any format, including an electronic format.” 5 U.S.C. § 552(f)(2)(A). The new provision did “not broaden the concept of agency record,” and “matter not previously subject to FOIA . . . [was] not made subject to FOIA.” H.R. Rep. No. 104-795 at 19–20.

BOP previously explained why, as a factual matter, the issue is one that cannot be addressed the way Plaintiff wants for an order covering all documents regardless of type. See Declaration of Kara Christenson, ECF No. 33-4, ¶ 7. BOP states that 568 pages of records released on December 20, 2024, was provided in native format, as these documents were downloaded from PDFs from the National Archives website. Christenson Dec. ¶7. While BOP’s second release did include print outs from various databases which were released together, the cover letter identified the applicable redaction codes; the redactions were clearly marked on each page containing redactions, and it was easy to see which record was which. *Id.* The second release was also made in native format, as the Sentry database results automatically convert to PDFs upon downloading so results cannot be produced in any other manner. *Id.* As to the production of property claims, to manage all aspects of every administrative tort claim, including property claims, received BOP utilizes a case management database known as Content Manager-

Administrative Tort (CM-AT). *Id.* When a tort claim is received by BOP, it is entered into CM-AT, which is the official BOP system of record for all tort claims received. *Id.* Any and all documents related to the tort claim, including the tort claim itself and attachments, investigation documentation, recommendations and final response letter to the claimant, are scanned into CM-ATC in pdf format and maintained therein. *Id.* To retrieve an entire tort claim packet, the case documents are downloaded as a .zip file. *Id.* When the documents contained in the .zip file are extracted, they extract as a pdf file. *Id.* To download each item individually from CM-AT, then upload each item individually into FOIAXpress, process the records, and download them individually from FOIAXpress for production would take an unreasonable amount of time. *Id.* In addition, the first page of each tort claim package is a letter acknowledging BOP's receipt of the claim. *Id.* The acknowledgement letter identifies specifically the date the claim was received. *Id.* Even though claims have varying numbers of pages of documents, every claim has an acknowledgement letter containing a received date. *Id.* To determine the first page of the next claim, simply identifying the received date allows Plaintiff to differentiate one claim from another. *Id.* When responsive records are located and uploaded into the FOIAXpress database for processing, the system automatically combines documents into one large file, even if each document was initially uploaded individually. *Id.* The only way to ensure individuality of records is to create a folder in the database for each document and upload the document to its respective folder one at a time. *Id.* Even if an individual folder was created for each document, the only way to ensure separation of each document for production is to also download and save it individually. *Id.* To be clear, different categories of responsive records are separated into individual folders in the database for organization. *Id.* However, creating separate folders, downloading and saving separate folders for each and every individual record would increase processing time tenfold." *Id.*

Nothing in Mr. Bui's declaration can rebut any of this. His opinions are based on versions of FOIAXpress that BOP does not have, and BOP does not have the funds to buy new software packages for FOIA processing or use the other tools that Mr. Bui is familiar with that private parties can use. More importantly, Plaintiff's reliance on expert testimony is all the more reason this issue should be decided in the motions for summary judgment to be heard beginning in September.