

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US RIGHT TO KNOW,

Plaintiff,

v.

DEFENSE INTELLIGENCE AGENCY,

Defendant.

Civil Action No. 24-0982 (TNM)

JOINT STATUS REPORT

Pursuant to the Court’s Minute Order of July 18, 2025, Plaintiff US Right to Know (“USRTK”) and Defendant Defense Intelligence Agency (“Defendant” or “the Agency”) (collectively the “Parties”), through counsel, provide this update as to Defendant’s processing in this action brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

Procedural History

1. This action began on April 5, 2024. ECF No. 1. The request at issue seeks records that may shed light on the origins of COVID-19.

2. Following a status conference held nearly a year ago on September 25, 2024, this Court issued a Minute Order in which it ordered Defendant to “produce” 350 pages per month beginning on January 15, 2025, and further ordered the Parties to submit joint status reports every other month beginning on January 31, 2025.

3. On March 31, 2025, in accordance with this Court’s Minute Order dated September 25, 2024, the Parties submitted a joint status report. ECF at No. 13. In that report, Plaintiff, *inter alia*, informed the Court that, in Plaintiff’s view, Defendant’s production, while initially more or less compliant, was deteriorating in quality (due to extensive but unsupported redactions and/or

withholdings) and that Defendant had also fallen behind¹ on an already lower than average production rate that Defendant itself had previously proposed at the status conference before this Court on September 25, 2024. Plaintiff further stated that Defendant was refusing to provide Plaintiff with the total number of de-duplicated pages responsive to Plaintiff's request. In its Minute Order dated April 2, 2025, this Court then ordered the Parties to appear before it for a status conference on April 14, 2025. The Parties did so.

4. At the status conference on April 14, 2025, Defendant stated that as many as 40,000 pages of records might be responsive to Plaintiff's requests but could not say with certitude. Hearing Tr. 5:8, April 14, 2025. Owing to the large number of potentially responsive records, a number that included documents originating outside of the Intelligence Community,² this Court then ordered the parties to meet and confer in person and attempt to narrow or refine Plaintiff's requests and to report back to the Court for another conference on May 9, 2025.

5. The Parties conferred extensively by phone on April 29, 2025, and again in person on May 1, 2025, and reached an agreement on a path forward. Specifically, Defendant requested, and Plaintiff agreed, that subject to this Court's subsequent approval, Defendant would be allowed to pause production for a period of two months so that it could most efficiently complete its "responsiveness review" of the records being sought rather than concurrently working on the "responsiveness review" and processing records for actual production. Plaintiff furthermore agreed to allow Defendant to deem non-responsive any records originating outside of the

¹ In a Declaration, ECF at No. 14-1, filed almost immediately before the April 14, 2025 status conference, Defendant denied that it had failed to meet its "production" rate of 350 pages per month, explaining that when it had previously suggested that production rate (which this Court then endorsed over Plaintiff's objections) that it had misspoken and actually meant a "processing" rate. As a result, Defendant argued that since it had "processed" 374 pages of records by March 15, 2025, while releasing 207 pages of those, it was compliant with the Court's Order.

² See ECF at No. 17 comprising the Parties' joint status report dated July 11, 2025, at 1 where Defendant states that after completing its "responsiveness review" 4,187 pages of responsive records were actually identified.

Intelligence Community. In return for Plaintiff's concessions, Defendant agreed to provide Plaintiff with a de-duplicated responsive page count and to make best efforts to provide Plaintiff with a "categorical" subject matter index (as opposed to a *Vaughn* index) of the responsive records.

6. On May 9, 2025, the Parties appeared again before this Court to report the above agreement which this Court then endorsed in a Minute Order dated May 9, 2025. This Court further ordered that the Parties submit a joint status report on July 11, 2025, which the Parties did. (ECF No. 17).

7. In their joint status report dated July 11, 2025 (ECF at No. 17) Defendant disclosed that ultimately only 4,187 pages of records rather than 30,000-40,000 pages were responsive to Plaintiff's request.

8. This Court then issued a Minute Order on July 11, 2025, requiring Defendant to process at least 500 pages of records per month and to make productions on the last day of each month of any pages that have been fully processed. This Court further ordered that joint status reports be submitted every 60 days beginning on September 12, 2025.

Plaintiff's Position

9. While this Court endorsed the Parties' agreement to pause production between May 9, 2025, and July 9, 2025 (Minute Order dated May 9, 2025), production was to resume after the two-month pause. Specifically, pursuant to this Court's Minute Order dated July 18, 2025, Defendant should have processed at least another 500 pages of records by or before July 31, 2025, and another 500 pages by or before August 31, 2025, and furthermore produced to Plaintiff any records that were "fully processed" on each of those dates. Defendants have violated that Order because Plaintiff has received no production whatsoever since April 15, 2025, and has not even received notice of how many records, if any, have been processed since then. Plaintiff has also yet

to receive any “categorical index” as agreed in principle by the Parties at their conference on May 1, 2025, and as memorialized before this Court on May 9, 2025. *See* Hearing Tr. 7:10-14, May 9, 2025.

10. While Plaintiff believes that during their two conferences Defendant had agreed to provide a categorical index, at the Hearing on May 9, 2025, Defendant conditioned this stating that “The only question will be, if for some reason it turns out to be infeasible, which we don’t think it will be infeasible -- we are not 100 percent certain that it will be.” *Id.* With respect to the “index” that Plaintiff received (*see infra* at ¶13), Plaintiff respectfully states that this is not the “index” that it expected or that the Parties discussed at the hearing on May 9, 2025, or otherwise.

11. As regards Defendants implied assertion *infra* at ¶ 14 that intra-agency consultations are an explanation for its failure to comply with this Court’s Order, although an agency is certainly free to consult with another agency before producing records responsive to a FOIA request, 5 U.S.C. § 552(a)(6)(B)(iii)(III), this Court has held that it is a violation of FOIA for an agency to use “consultation” to impair substantive FOIA rights. *Smith v. Exec. Office for United States Attys.*, 69 F. Supp. 3d 228, 232 (D.D.C. 2014) (consultation cannot serve as a defense when “its net effect is significantly to impair the requester's ability to obtain the records or significantly to increase the amount of time he must wait to obtain them.”). Plaintiff respectfully submits that Defendant began raising the issue of these inter-agency consultations well over five months³ ago, that this action is now nearly 18 months old, and that the time for using such excuses must and should end.

12. Plaintiff therefore respectfully requests that this Court at least order Defendant to promptly make up for its past deficiencies in processing and/or producing records to Plaintiff and

³ *See e.g.* Declaration of Defendant at ECF No. 14-1, raising the issue of “consultations”. In practice Defendant raised this issue well prior to formalizing it in the declaration just referenced.

do so by or before September 30, 2025. Because of Defendant's failure to timely process and produce records, Plaintiff furthermore and respectfully requests that this Court implement monthly joint status reports going forward or, in the alternative, schedule a hearing such that Plaintiff may address the fact that nearly eighteen months after this action began Defendant has barely produced more than one quarter of the records at issue in this action.

Defendant's Position

13. Defendant has completed its responsiveness review of all potentially responsive records that were located. Defendant further analyzed them to provide Plaintiff with an index itemizing: (1) the number of other agencies with which Defendant will be interacting on the processing of the records, and (2) the number of records Defendant has identified as containing information that originated from each of those agencies. The Agency is currently processing the relevant records and expects to provide Plaintiff with the next interim production of those responsive records by the end of September 2025. The Agency anticipates that this next production will consist primarily of records containing Defense Intelligence Agency-originated information.

14. To accomplish the document processing at issue here, the Agency must (a) task out relevant records for subject matter expert review and response internally to the directorates/offices which have responsibility for that information; (b) apply subject matter expert responses received to the Agency-only originated records; (c) apply Agency subject matter expert responses to the agency's information within other government agency records, and then send out those other government agency records with Agency subject matter expert exemptions on Agency information applied to the owning other government agency for direct referral; (d) apply Agency subject matter expert responses to Agency information within Agency-originated records, and then send out those

Agency-originated records to other government agencies that own certain information within those records for consultation.

15. The Agency in the process of contacting the twenty other agencies identified to send them documents for consultation or referral. Specifically, the Agency is sending records to obtain release recommendations for the information originating from them that is embedded in the Agency's documents. For those records that did not originate with the Agency, it is sending records that include its release recommendations for its own information contained within, for the outside agencies' release determinations and then direct response of the records to Plaintiff.

16. Upon review since the May 9, 2025 hearing, Defendant has identified limitations in providing a detailed categorical index in light of classification restrictions and non-attribution requirements.

* * *

17. Defendant respectfully requests that the Court order the parties to file an updated joint status report apprising the Court of the progress of Defendant's processing within 60 days, consistent with the Court's Minute Order of July 18, 2025.

Dated: September 12, 2025

/s/Nathaniel M. Lindzen

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