UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US RIGHT TO KNOW, Plaintiff, v. OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, Defendant.	Civil Action No. 25-2164 (TNM)

JOINT STATUS REPORT

Pursuant to the Court's September 3, 2025, Minute Order, Plaintiff US Right to Know and Defendant Office of the Director for National Intelligence respectfully submit this Joint Status Report.

Plaintiff's Position

On May 24, 2025, Plaintiff made a Freedom of Information Act ("FOIA") request on Defendant. ECF No. 1-2. As described in that request, the records sought pertain to matter of great ongoing public, media and congressional interest, namely the disturbingly still unanswered question of the government's knowledge of the origins of COVID-19, timing of that knowledge, and response to it. Plaintiff at the same time requested expedited processing of its request pursuant to FOIA and Defendant's own expedited processing regulation codified at 32 CFR § 1700.6. Plaintiff supported its request for expedited processing with the required certified statements and evidence showing that Plaintiff is an award-winning member of the "news media," with acknowledged expertise as regards COVID-19 and that there exists "an urgency to inform the public on the topic." Pursuant to Defendant's own regulation, Plaintiff, *inter alia*, showed this "urgency" by appending well over fifty articles published by major news outlets over the prior

three months alone which related to the questions Plaintiff's request seeks to address. Plaintiff furthermore explained how it was able to expertly analyze and then disseminate the records requested. In short, far from being "patently unmeritorious" as asserted without any foundation whatsoever by Defendant *infra*, Plaintiff's request for expedited processing plausibly met every single element of Defendant's own expedited processing regulation.[1]

Defendant acknowledged Plaintiff's FOIA request on May 27, 2025, and at the same time denied Plaintiff's request for expedited processing stating, with nothing more, that "the ODNI standards for expedited processing established in 32 C.F.R. 1700(12) [*sic*] have not been met." ECF at No. 1-3. On July 7, 2025, having received no further information from Defendant, Plaintiff filed a Complaint seeking to compel Defendant to disclose records, on an expedited basis, responsive to Plaintiff's FOIA request. ECF at No. 1. On August 5, 2025, Defendant moved with Plaintiff's consent for an enlargement to respond to Plaintiff's Complaint. ECF at No. 5.

Pursuant to this Court's Minute Order dated September 3, 2025, Plaintiff has reached out to Defendant numerous times over the last two weeks to address the issues identified in that Order. Plaintiff has been able to ascertain that Defendant purports to have finished their search and has located three responsive records comprising approximately twenty-one (21) pages of documents. Plaintiff has also been able to ascertain that Defendant thus will not be seeking an Open America Stay. However, Defendant has been unable or unwilling to provide Plaintiff with a production

[1] "A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. Under this paragraph (h), a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—an urgency that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an 'urgency to inform' the public on the topic. As a matter of administrative discretion, ODNI may waive the formal certification requirement." 32 CFR § 1700.6(j).

schedule or even an estimate thereof. Instead, Defendant has repeatedly asserted that the responsive records are out for "consultation" with other unidentified agencies and that these consultations will essentially take whatever time they take and that a production schedule can only be addressed thereafter.

On common sense grounds, Plaintiff takes issue with Defendant's refusal to provide any estimates whatsoever as to the time needed to complete its consultations over a mere 21 pages of records.[2] Plaintiff further asserts that, on one hand, it has more than adequate grounds supporting its right to expedited processing (something another intelligence agency has very recently acknowledged[3]) which contrary to Defendant's unsubstantiated assertions below is anything but "patently unmeritorious" since at very least[4,5] it met all the elements identified in Defendant's own expedited processing regulation (*see* ECF No. 1-2 and Defendant's own expedited processing regulation *supra* at FN No. 1). On the other hand, Plaintiff further asserts that since Defendant has already completed its search, and because a very small number of pages of records appear to be at issue, judicial economy (and the resources of the parties) would be best served by avoiding, if

[2] Though it is admittedly premature at this very moment, Plaintiff also expresses initial skepticism over the adequacy of Defendant's search for records and as a result would understandably like to move this action along such that the adequacy of that search may be addressed sooner than later.

[3] *See USRTK v Central Intelligence Agency*, Civ.A. No. 25-2307 (CKK), ECF at No. 6 at ¶3 acknowledging fact that the Central Intelligence Agency granted Plaintiff's right to expedited processing in response to another June 9, 2025, FOIA request that also sought records related to the government's knowledge of the origins of COVID-19.

[4] Plaintiff's request for expedited processing is furthermore not "patently unmeritorious" because Defendant has never meaningfully addressed it – perhaps because it cannot – rather it has issued a faux determination thereon. *See FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009) (it is black letter law that that an agency must provide a reasoned explanation for its action); *see also, Citizens for Responsibility & Ethics v. U.S. Dep't of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) ("[s]ince the agency did nothing more than parrot its own regulatory language, and offered no reasoning or analysis, its decision, as in the APA context, is entitled to little deference.").

[5] As mentioned previously, not only has Plaintiff plausibly met each element of Defendant's own expedited processing regulations but at least one other of its recent and similar requests has been granted expedited processing by the CIA.

possible, a briefing schedule for a preliminary injunction seeking to enforce Plaintiff's right to expedited processing.

Plaintiff therefore respectfully requests that this Court order Defendant to, within two months, complete its consultations and release responsive records and/or a *Vaughn* index addressing withholdings and redactions, if any. Plaintiff respectfully further requests that this Court order parties to submit another joint status report in two months' time in which they set a briefing schedule for dispositive motions if any are still required. In further support of this Plaintiff states that it is well within the authority of this Court to craft solutions that are in the interest of judicial economy[6] and that this Court has also 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."). In the alternative, if this Court is unwilling to order what Defendant calls "extraordinary relief," Plaintiff simply requests that this Court order parties to submit another joint status report in one month's time such that if no further information has been provided to Plaintiff regarding the consultations, Plaintiff can timely raise this issue or, if need be, seek to enforce its asserted right to expedited processing.

[6] *See e.g., In re Use of a Cell-Site Simulator to Locate a Cellular Device Associated with One Cellular Tel. Pursuant to Rule 41*, 531 F. Supp. 3d 1, 5 (D.D.C. 2021) ("Judges have the obligation to manage their dockets and conserve limited time and resources because 'judicial economy plays a paramount role in trying to maintain an orderly, effective, administration of justice'").

Defendant's Position

On July 7, 2025, Plaintiff filed a Complaint seeking to compel Defendant to disclose records responsive to Plaintiff's Freedom of Information Act ("FOIA") request.

Defendant reports that it has finished the search and located three potentially responsive records. All three records require consultation with other government agencies. Therefore, Defendant cannot estimate a response date for the three records at this time. Accordingly, at this time, it is too early to determine whether a *Vaughn* index will be required or whether any dispositive motions may be brought. A motion for an *Open America* stay is unlikely in this case.

Above, Plaintiff demands that it receive the records by a date certain, along with a complete *Vaughn* index, essentially seeking all the relief that it would receive if it brought its threatened and patently unmeritorious motion for a preliminary injunction. That extraordinary relief would be wholly unwarranted here. *See, e.g.*, *Heritage Found. v. Dep't of State*, Civ. A. No. 24-2862 (TJK), 2024 WL 4607501, at *1 (D.D.C. Oct. 29, 2024) ("In the FOIA context, to obtain production by a date certain, a plaintiff must show that the records sought are so central or highly relevant to—or essential to the integrity of—an event like an election that they will lose significant value if disclosed afterward.").

Here, as Plaintiff notes, Defendant denied expedited processing with respect to the request at issue, consistent with the Central Intelligence Agency's decision with respect to a materially similar FOIA request. *See* Jt. Status Rep. at 2 n.1, *US Right to Know v. CIA*, Civ. A. No. 25-2144 (TJK) (D.D.C. Sept. 12, 2025), ECF No. 7 (acknowledging that same plaintiff's request for expedited processing was denied).

Nevertheless, as noted above, Defendant has made substantial progress on a request that was submitted only a few months ago by identifying the potentially responsive records and sending

them for consultation. Plaintiff implies, without any basis, that the consultation is impairing its rights. Consultations with other government agencies are appropriate and "typical[]," as explained by 32 C.F.R. § 1700.5. Plaintiff's demand is especially inappropriate because Defendant does not—and cannot—control the pace of the other government agency's review of the pages at issue. Moreover, Plaintiff should not be surprised that, because it made requests to the Office of the Director of National Intelligence, that the documents at issue require more scrutiny than records found in response to many other FOIA requests. The public interest requires that Defendant and the other government agencies be given appropriate time to review the records. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 439 (2019) ("FOIA expressly recognizes that important interests are served by its exemptions, and those exemptions are as much a part of FOIA's purposes and policies as the statute's disclosure requirement." (cleaned up)).

Plaintiff also argues that its request should skip the line ahead of others because few pages are at issue, but there is no requirement that the other government agencies organize their queues to process the requests with the fewest pages first. Plaintiff's self-serving recommendation would mean that requests for numerous pages would functionally never reach the head of the line and be processed. *See Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605, 615-16 (D.C. Cir. 1976) (to ensure fairness amongst requesters, courts should not enable plaintiffs to "gain[] access to Government records ahead of prior applicants for information" unless "a genuine need and reason for urgency" is shown by the plaintiff, for "Congress intended to guarantee access to Government agency documents on an equal and fair basis").

Defendant respectfully requests the Court order the parties to submit a further joint status report by Tuesday, December 2, 2025, and every ninety days thereafter, to apprise the Court as to the status of Defendant's response.

Dated: October 2, 2025

/s/ Nathaniel M. Lindzen

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