UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US RIGHT TO KNOW, Plaintiff, v. CENTRAL INTELLIGENCE AGENCY, Defendant.	Civil Action No. 25-2144 (TJK)

JOINT STATUS REPORT

Consistent with the Court's Minute Order dated January 15, 2026, Plaintiff US Right to Know ("USRTK") and Defendant Central Intelligence Agency ("CIA") (together "Parties"), by and through undersigned counsel, hereby respectfully submit this Joint Status Report ("JSR").

This is a case under the Freedom of Information Act ("FOIA"). It pertains to Plaintiff's FOIA request made on or about May 24, 2025.

PLAINTIFF'S POSITION

This FOIA request, for the CIA's latest assessment or intelligence report on the origin of the COVID-19 pandemic, as well all related, supporting, referenced, described and attached records, is now over nine months old. Even though Plaintiff requested expedited processing and Defendant acknowledged the need for same (ECF at No. 9 granting Plaintiff's request for expedited processing), Plaintiff has, to date, literally received not one iota of information as regards responsive records in this action. Plaintiff has received no determination regarding its request for records; it has received no estimate of the number of responsive records; it has received no information on what the agency intends to produce or withhold; it has received no production; it has received no information indicating that its expedited request is being processed, as expedited

requests must be "as soon as practicable." *Daily Caller v. U.S. Dep't of State*, 152 F. Supp. 3d 1, 8 (D.D.C. 2015) (quoting 5 U.S.C. § 552(a)(6)(E)(iii)).

These delays are not one-offs. *See e.g.,* ECF at Nos. 5, 8. At each juncture Plaintiff has been told essentially that the "check is in the mail" as regards Defendant's purportedly forthcoming production only to be told at the last minute[1] that it will not arrive after all. *See e.g.,* ECF at No. 7 ("Here, Defendant is proceeding apace, beginning searches for a request that was submitted only a few months ago."); *see e.g.,* ECF at No. 8 ("Defendant anticipates providing an update on the status of the initial search on or before March 5, 2026."); *see e.g., infra* ("Defendant reports that it is continuing to work on its search."). Plaintiff wonders what this "work" comprises – as already mentioned, Plaintiff has yet to see any evidence thereof.

Defendant's attempt *infra* to defend itself by painting Plaintiff's request as garden variety is shameful[2] and its citations easily distinguishable. Specifically, Defendant cites to the irrelevant case of *Cf. Agee v. Cent. Intel. Agency*, 524 F. Supp. 1290, 1294 (D.D.C. 1981) to stand for the proposition that somehow *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n,* 711 F.3d 180, 187 (D.C. Cir. 2013) does not apply to CIA, but that case does nothing more than state the obvious, that an agency, at the summary judgment phase, may support withholdings (rather than failures to issue determinations) based on certain adequately supported exemptions to FOIA. Defendant similarly points to its current processing backlog even though it is blackletter

[1] Prior to at least two of the last JSRs, including this one, Plaintiff has reached out to Defendant well in advance of the due date of the JSR only to be ignored until typically the day that it is due.

[2] Defendant states *infra* that "like all FOIA requesters—wants the information sooner rather than later" while not disputing that Plaintiff, by Defendant's own admission is not "like all FOIA requesters" but rather one that has been acknowledged as deserving of expedited processing. Defendant couples this with its own implied or explicit admission that it has violated its own promise to provide "an update on the status of the initial search on or before March 5, 2026" and then adds to this its own implied or explicit admission that it continues to be in violation of the mandate of issuing a timely "determination" as required under *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n,* 711 F.3d 180, 187 (D.C. Cir. 2013).

law that such backlogs alone are insufficient to justify delays unless the agency simultaneously shows and proves that these are both "unforeseen and remarkable". *Daily Caller News Found.*, 387 F. Supp. 3d 112 at 116, and does so even though "[t]he statute places the burden on the agency, not the FOIA requester, to justify delays in processing." *Jud. Watch, Inc. v. United States Dep't of Homeland Sec.*, 895 F.3d 770, 789 (D.C. Cir. 2018).

Even if Defendant had not granted expedited processing (ECF at No. 9), the absence of any response at all, let alone one compliant with FOIA,[3] would leave Defendant with the burden of showing it is exercising due diligence in processing Plaintiff's request – none of Defendant's arguments are to the contrary The Court thus has the obligation of holding Defendant to this standard. "The statute places the burden on the agency, not the FOIA requester, to justify delays in processing." *Jud. Watch, Inc.,* 895 F.3d 770 at 789, and "the Court must insure [*sic*] that due diligence is used and that the plaintiff is given sufficient attention." *Dacosta v. U.S. Dep't of Just.*, 782 F. Supp. 147, 148–49 (D.D.C. 1992). Here Defendant has shown nothing indicating that it has complied with any of FOIA's mandate let alone where that mandate is taken, as it must be here, in the context of a grant of expedited processing. It is Defendant's burden to show that it is complying with its grant of expedited processing so as not to render such a grant a dead letter. *Elec. Priv. Info. Ctr. v. Dep't of Just.*, 416 F. Supp. 2d 30, 40 (D.D.C. 2006) ("Because Congress imposed a burden on agencies to account for any delay in the processing of standard FOIA requests, it stands to reason that an agency may also be held to account for delays in expedited processing."); *see also Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Just.*, No. CIV. 05-2078(EGS), 2006 WL 1518964, at *4 (D.D.C. June 1, 2006) (granting plaintiff limited discovery because "[i]n sum,

[3] *See Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n,* 711 F.3d 180, 187 (D.C. Cir. 2013) (barring "exceptional circumstances" within 30 days "the agency must actually gather the responsive documents and determine which it will produce and which it will withhold.").

the Court is not persuaded that plaintiff's requests, which were granted expedited processing, were handled in such a manner, nor was the plaintiff advised of the progress of its requests in a time sensitive manner.").

Plaintiff therefore respectfully requests that this Court order Defendant, no later than 30 days, to provide Plaintiff with a detailed estimate of the number of records (and pages therein) that are responsive to its request and further order parties to confer and submit an expedited production schedule for the responsive records so identified. Plaintiff further requests that this Court require the parties to update the Court again with another JSR by or before April 7, 2026.

DEFENDANT'S POSITION

Defendant reports that it is continuing to work on its search. While Defendant understand that Plaintiff—like all FOIA requesters—wants the information sooner rather than later, Plaintiff has failed to establish that Defendant is slow-walking his request, as it implies. As Plaintiff's quotations show, Defendant has explained that its searches are ongoing. Until searches are complete, estimating processing time is not possible. Plaintiff's impression that it is being misled about an imminent production is entirely self-created.

Plaintiff misunderstands the appropriate FOIA deadlines. Defendant agreed to expedited processing, which obligates Defendant to "process [records] as soon as practicable"—not by a date that Plaintiff expects. 5 U.S.C. § 552(a)(6)(E)(iii). Plaintiff quotes *Citizens for Responsibility & Ethics in Washington v. Federal Election Commission,* 711 F.3d 180, 187 (D.C. Cir. 2013), to argue that Defendant had the obligation to "actually gather the responsive documents and determine which it will produce and which it will withhold" within thirty days of receiving the request. But, Plaintiff fails to understand that a failure to meet that deadline does not mean production on a requester's preferred timetable. Rather, "[i]f the agency does not adhere to FOIA's

explicit timelines, the "penalty" is that the agency cannot rely on the administrative exhaustion requirement to keep cases from getting into court." *Id.* at 189. Plaintiff now is in court and the agency is not relying on administrative exhaustion.

Defendant is an agency that frequently is tasked with protecting classified information and its processes therefore must be rigorous. *Cf. Agee v. Cent. Intel. Agency*, 524 F. Supp. 1290, 1294 (D.D.C. 1981) (noting that CIA has a "special statutory exemption" to FOIA production). It should come as no surprise that the CIA's searches may be slower than Plaintiff would like. Indeed, CIA reported that, for fiscal year 2025, its median and average number of days for requests granted expedited processing—like this one—is 516.5 days after receipt. *See Central Intelligence Agency Freedom of Information Act Annual Report: Fiscal Year 2025* at 11–12, CIA, https://www.cia.gov/readingroom/docs/CIA_FY2025_FOIA_Annual_Report-DOJ.pdf.

Finally, Plaintiff offers no reason to believe thirty days is an appropriate timeline to complete the search and provide the number of potentially responsive documents.

Defendant respectfully proposes that the Court order the parties to file a joint status report on Tuesday, May 5, 2026, and every sixty days thereafter.

Dated: March 5, 2026

Respectfully submitted,

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