

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. RIGHT TO KNOW,

Plaintiff,

v.

U.S. DEPARTMENT OF ENERGY,

Defendant.

Civil Action No. 25-2308 (TNM)

JOINT STATUS REPORT

Plaintiff U.S. Right to Know and Defendant U.S. Department of Energy (“DOE”), through counsel, respectfully submit this Joint Status Report (“JSR”) pursuant to this Court’s March 3, 2026, Minute Order.

1. This is a Freedom of Information Act (“FOIA”) case stemming from a June 2, 2025 request for records related to the Department of Energy’s assessment of the origins of the COVID-19 pandemic. Plaintiff filed a complaint on July 18, 2025, and DOE answered on September 8, 2025.

Plaintiff’s Position:

2. Defendant’s production continues to be unnecessarily confusing. *See infra* at No. 3. This and prior and black box redactions of virtually all of some of the records produced arguably result in improper and unlawful withholdings under FOIA.¹ *See also* ECF at Nos. 7-9.

¹ *Roseberry-Andrews v. Dep’t of Homeland Sec.*, 299 F. Supp. 3d 9, 19 (D.D.C. 2018) (“FOIA also requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). The court has an affirmative duty to ensure that this requirement is satisfied, even if it must do so *sua sponte*.”).

3. More specifically, Defendant's most recent and alleged production dated April 28, 2026 (*see infra* at No. 12) was addressed to a completely unrelated party ("Jimmy Tobias") and a completely unrelated action,² Civ. Act. No. 1:24-cv-00460. This April 28, 2026, production identifies 907 pages of records presumably responsive to this unrelated third party FOIA request. Adding to the confusion the most recent production, comprising just 2 pages of records produced and approximately 905 pages of records withheld, appears to be the result of a consultation between the DOE to the ODNI. Plaintiff has no idea which or how many of these allegedly responsive records are responsive to Plaintiff's own FOIA request.

4. Additionally, Defendant's discretionary "consultations" have not been explained or justified and in some instances introduce substantial delays in the processing of Plaintiff's FOIA request. *See e.g., infra* at No. 11(1) resulting in delays until September 9, 2026, as regards 648 pages of responsive records.

5. Plaintiff has requested but did not receive further information on these consultations. For instance, Plaintiff has requested that DOE identify what it calls "IC Agency 2" and "IC Agency 3" *infra*, but DOE has not provided this. DOE has not explained why its discretionary consultations are needed or justified as it lawfully must.³

² After cobbling together pieces of information from the forwarded letter Plaintiff believes that the completely unrelated action referenced in the forwarded production is *Tobias v. Department of Energy*, Civ. Act. No. 1:24-cv-00460.

³ *See Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1118 (D.C. Cir. 2007) ("Similarly, *McGehee's* admonition that the agency receiving the initial request 'cannot simply refuse to act on the ground that the documents originated elsewhere,' *id.* at 1110, indeed imposes a duty on that agency, but the agency may acquit itself through a referral, provided the referral does not lead to improper withholding under the *McGehee* test.").

6. Plaintiff respectfully proposes that this Court requires Parties to submit another JSR in four weeks' time, or by or before June 1, 2026, such that Parties and this Court may evaluate the full record, to date, in this action at the hearing this Court has previously scheduled for June 18, 2026. *See* Minute Order dated March 3, 2026.

Defendant's Position:

7. On November 19, 2025, DOE issued a first partial response to Plaintiff, releasing in part eleven (11) records, consisting of twenty-nine (29) pages and making certain withholdings under applicable FOIA exemptions.

8. On January 8, 2026, DOE issued a second interim response to Plaintiff, releasing in part twenty-eight (28) records consisting of 338 pages and making certain withholdings under applicable FOIA exemptions.

9. In the parties' second status report, filed on January 16, 2026 (ECF No. 8), DOE reported anticipating at least two more productions consisting of records in DOE's possession and records that are out for consultation with and referred to other agencies. Approximately 1,930 pages of responsive records were provided to 27 different agencies. DOE reported it anticipated six months completion time.

10. On February 9, 2026, DOE issued a third interim response to Plaintiff, releasing in part fifty-two (52) records consisting of 186 pages and making certain withholdings under applicable FOIA exemptions.

11. DOE reports that the remaining responsive records are out for consultation to other agencies. DOE is following up on a monthly basis with the consulting agencies and endeavors to provide responsive records returned from consultation as soon as practical.

DOE has received the following responses from the remaining agencies:

1. IC Agency 2 has 648 pages remaining to be processed and provided an expected completion date of September 9, 2026.
 2. IC Agency 3 has 429 pages remaining to be processed and provided an expected completion date of early May 2026.
 3. The Department of Homeland Security has 220 pages remaining to be processed. However, from February 14, 2026 to April 30, 2026, DHS's FOIA program was not operating due to a lapse in appropriations. Thus no definitive response has been received.
 4. The Department of State has 634 pages remaining to be processed and provided an expected completion date of July 3, 2026.
12. On April 28, 2026, DOE issued a fourth interim response to Plaintiff consisting of the Office of the Director of National Intelligence's direct Referral letter and a responsive document.
13. Defendant asserts that it would be appropriate to continue to defer questions regarding the need for a *Vaughn* index or briefing schedule until all responsive documents are produced.
14. Defendant will work with Plaintiff to provide responses to follow-up questions posed April 30, 2026. *See supra* at No. 3 (April 28, 2026 production), No. 4 and No. 5.
15. Pursuant to this Court's March 3, 2026, Minute Order, the parties are to appear at a hearing on June 18, 2026. Assistant United States Attorney David Shea Bettwy is on parental leave and is expected to return June 2, 2026. Defendant respectfully proposes that the parties submit another joint status report at a date to be determined at the upcoming hearing to inform this Court regarding the status and next steps given that 30 days from May 1, 2026 is June 1, 2026 which is before the upcoming hearing date.

Dated: May 1, 2026
Washington, DC

Respectfully submitted,

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