

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 May 1, 2026, Minute Order.

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

Plaintiff’s Position

2. DOE’s position as regards searches, determinations and processing have been unstable and continue to be unstable and shifting. Plaintiff has repeatedly raised this in the past. ECF Nos. 7, 8 and 9.

3. For instance, on November 17, 2025, DOE issued a “final response” and then withdrew it that same day or the next. ECF No. 7 ¶ 10. On November 19, 2025, DOE issued another purported “final response,” releasing 29 almost entirely redacted pages, even though that response stated that DOE had produced 74 pages. *Id.* ¶ 11. On January 15, 2026, DOE signed an amended

determination stating that the November 19 “final response” “should have read” as a “first partial response.”

4. For instance, on April 28, 2026, DOE compounded the confusion by producing an ODNI letter dated April 22, 2026 that was addressed to Jimmy Tobias of MuckRock, referenced Civil Action No. 24-cv-00460, identified ODNI FOIA Case DF-2026-00353, and stated that it responded to DOE Case HQ-2023-01093-F, an entirely different FOIA matter. ECF No. 11, ¶3.

5. DOE’s consultations are also problematic and unclear. For instance, on January 16, 2026, DOE told the Court that its search was complete, that approximately 1,930 responsive pages had been provided to 27 different agencies, and that DOE’s “current estimate for completion” was “about six months.” ECF No. 8 ¶ 7. Six months from January 16 is approximately July 16, 2026. Production is hardly complete and DOE admits it will not be complete until some unspecified date later than at least the latest consultation mentioned below, i.e., some unspecified time after “IC Agency 2” completes its consultation on September 9, 2026.

6. DOE has also yet to reconcile whether there was a 27-agency universe (ECF No. 8 ¶ 7) for purposes of consultation, the handful of consultation actors it names below (IC Agency 2, IC Agency 3, DHS, State, and ODNI) or something else.

7. The consultations are also lengthy. If one assumes that a consult should take less time than actual processing, then presumably a very conservative assumption would be that the consults should proceed at least at the average processing rate prevailing in this district, or approximately 300-500 pages per months.¹ At least insofar as the outstanding consults described by Defendant below, they have already exceeded this.

¹ See e.g., *Middle E. Forum v. U.S. Dep’t of Homeland Sec.* 297 F. Supp. 3d 183, 187 (D.D.C. 2018).

8. FOIA does not allow DOE to convert consultation into an indefinite stay. Consultation is an “unusual circumstance” available only “to the extent reasonably necessary” and must be conducted “with all practicable speed.” 5 U.S.C. § 552(a)(6)(B)(iii).

9. FOIA furthermore makes consultation a permissive and conditional processing tool, not an automatic or mandatory basis to postpone production. Under *McGehee v. CIA* 697 F.2d 1095, 1110 (D.C. Cir. 1983), a referral procedure itself may constitute a withholding if it significantly impairs access or increases delay as Plaintiff asserts directly above; such withholding is improper absent a reasonable explanation.

10. Plaintiff has sought such information, but DOE has not provided it. DOE has for instance refused to identify IC Agency 2 or IC Agency 3; it has not explained when each consultation began; and it has not identified the precise equities requiring consultation.

11. The above would be less problematic if what DOE had processed and produced were not typically entirely redacted or withheld. Plaintiff has reviewed the prior productions and offers the following rough approximations. The November 2025 production was almost entirely redacted, on the order of 95%. The January 2026 production left the scaffolding in place but withheld most of the substantive analysis. The February 2026 production was the most legible of the set, yet even there DOE blacked out the analysis on most pages, leaving the released text dominated by routing fields, classification banners, and reference-list labels rather than substance. The April 2026 production stands apart. On its face it responded to a different requester's FOIA request. It identified roughly 907 pages, released only about two, and withheld the rest, and it left Plaintiff unable to tell what, if anything, in it is responsive to Plaintiff's own request. ECF No. 11 ¶¶ 3, 12.

12. With this backdrop, DOE asks that this Court continue to put off the date on which parties will even begin discussing the justification of these vast withholdings, i.e., the production of a *Vaughn* index.

Defendant's Position

13. 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.

14. 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.

15. 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.

16. 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.

17. On April 28, 2026, DOE issued a fourth interim response to Plaintiff consisting of ODNI's direct Referral letter and a responsive document.

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

DOE has received the following responses from the remaining agencies:

- A. IC Agency 2 has 648 pages remaining to be processed and provided an expected completion date of September 9, 2026.
- B. IC Agency 3 has 429 pages remaining to be processed and provided an updated expected completion date of June 25, 2026.
- C. DHS returned all 220 pages of consult records on or around May 12, 2026.
- D. Department of State has 634 pages remaining to be processed and provided an expected completion date of July 3, 2026.
- E. The Office of the Director of National Intelligence (“ODNI”) returned all consult records on or around April 24, 2026.

19. 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.

20. Pursuant to this Court’s May 28, 2026, Minute Order, the parties are to appear at a hearing on June 17, 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.

Dated: June 15, 2026

Respectfully submitted,

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