UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| US RIGHT TO KNOW,<br>Plaintiff,<br>v.<br><br>DEFENSE INTELLIGENCE AGENCY,<br><br>Defendant. | Civil Action No. 24-0982 (TNM) |

**JOINT STATUS REPORT**

Pursuant to the Court's September 18, 2026 Minute Order, Plaintiff US Right to Know ("USRTK") and Defendant Defense Intelligence Agency ("Defendant" or "DIA"), by and through undersigned counsel, hereby submit this Joint Status Report ("JSR") in this action under the Freedom of Information Act ("FOIA").

**Plaintiff's Position**

Plaintiff reports to the Court as follows:

1. Plaintiff respectfully asks the Court to order Defendant to serve its draft *Vaughn* index by December 31, 2026, and its draft declaration or declarations by January 15, 2027. Those are Defendant's own dates. Defendant estimates that it will serve the index by December 31, 2026, and says that its declaration may not be ready until January 15, 2027. Def.'s Position ¶ 3, *infra*. Defendant now declines to commit even to those dates. *Id.* ¶ 6. Plaintiff does not ask the Court to address the form or level of detail of either document. An order is needed because Defendant has missed its commitments in this case, to Plaintiff and to the Court, for more than eighteen months. Its last missed date was for this same index.

2. The pattern began in the first months of production. In March 2025, Defendant told the Court that it had complied with the Court's 350-page production order, counting "419 pages in January." ECF No. 13 at 4. Defendant's own letter shows that it referred all 419 of those pages to another agency and released none of them itself. Letter No. U-25-4008 (Jan. 15, 2025). In April 2025, Defendant's counsel explained that the agency had "conflated the concepts of production and processing" when it agreed to produce 350 pages a month. Hr'g Tr. 2:21–3:2 (Apr. 14, 2025), ECF No. 16. At the same hearing, Defendant estimated the universe of undeduplicated pages at "somewhere in the neighborhood of 30 to 40,000." *Id.* at 5:5–8. After the parties narrowed the request and Defendant completed its responsiveness review, the responsive records totaled 4,187 pages. ECF No. 17 at 1. In May 2025, counsel said of a categorical index of the records, "[w]e strongly suspect it will be feasible." Hr'g Tr. 7:14 (May 9, 2025), ECF No. 20. Defendant later cited "limitations" in providing that index. It produced only a tally of the other agencies involved and the number of records from each. That was not the categorical index the parties had discussed. ECF No. 19 ¶¶ 10, 13, 16. In July 2025, the Court ordered Defendant to process at least 500 pages a month and to make productions on the last day of each month. Minute Order (July 18, 2025). Defendant made no production on July 31 or August 31, 2025. Its next production came on September 30, 2025. ECF No. 19 ¶ 9; Letter No. U-25-4013 (Sept. 30, 2025).

3. The pattern continued in 2026. After Plaintiff reported that processing had fallen far behind the Court's 500-page rate, ECF No. 21 ¶¶ 5–7, the Court ordered Defendant to finish processing by June 16, 2026. Order, ECF No. 22 (Jan. 14, 2026). The Court also directed Defendant's General Counsel to attend the next hearing if Defendant missed that deadline. *Id.* When Defendant moved to extend the deadline, the Court denied the motion. Minute Order (June

10, 2026). At the June 22 hearing, Defendant told the Court that processing was complete. The Court later found that representation "false." ECF No. 28 at 2. That same day, Defendant told Plaintiff that it would promptly address the *Vaughn* index. It did not. ECF No. 27 at 1. In August, Defendant offered October 31, 2026, as its date for a draft index. ECF No. 27 at 6.

4. Defendant has now missed that date too. In September, Defendant repeated the October 31 date to the Court. ECF No. 30 at 5. It added that if it needed more time, "it will advise Plaintiff in advance of that date and work diligently to reach a mutually agreeable and reasonable deadline." *Id.* Defendant did neither. It did not contact Plaintiff before October 31. Plaintiff wrote to Defendant's counsel about the index on November 13, 2026. Defendant's counsel replied on November 15 that he had contacted the agency. Plaintiff first learned of Defendant's new dates from Defendant's draft of this report, which Plaintiff received on November 17.

5. Defendant's explanation does not account for the delay. Defendant now says that it has only one subject matter expert to prepare the index. Defendant did not mention this constraint in August or September, when it chose the October 31 date. Defendant has also told the Court that its processing relied on subject matter experts in the "directorates/offices which have responsibility for that information." ECF No. 19 ¶ 14; ECF No. 21 ¶ 16. And Defendant's letters state that it withheld records "while considering the foreseeable harm standard." *E.g.,* Letter No. U-26-4012 (Apr. 30, 2026); Letter No. U-26-4014 (June 16, 2026). The analysis the index must describe should therefore already exist. The volume Defendant cites is also largely of its own making. Of the 369 documents Defendant decided itself, it withheld 212 in part and 147 in full, and released 10 in full. *See* Def.'s Interim Resp. Letters (Jan. 15, 2025, through June 16, 2026).

6. An order holding an agency to a date for its *Vaughn* index is a familiar step. Courts in this district have entered such orders when the agency did not meet a date it had promised. *Lisee v. CIA*, 741 F. Supp. 988, 990 (D.D.C. 1990) (ordering index within 20 days where, "[o]ver three months later the defendant CIA still has not filed the promised *Vaughn* index"). They have also done so in the ordinary course of managing a case. *See History Assocs. Inc. v. FDIC*, No. 24-cv-1857 (ACR), Minute Order (D.D.C. Sept. 18, 2024) (ordering agency, after a pre-motion conference, to provide a *Vaughn* index on the disputed records within thirty days).

7. Plaintiff recognizes that the Court declined in September to enter the orders Plaintiff then proposed. The Court found them "unnecessarily intrusive into a coordinate branch of government," "[g]iven that Defendant has now complied with the Court's order directing it to complete processing." Minute Order (Sept. 18, 2026). Since then, Defendant has missed the one date it set for itself, as it has missed others before. That pattern is why an order is now warranted. Plaintiff asks only that Defendant be held to the dates it proposes today. Defendant's position suggests that Plaintiff sought more than that before. It says the Court held that managing "the form of the draft *Vaughn* index or its level of detail" would be intrusive. In September, Plaintiff asked for a fixed date, a stated scope, and an index compliant with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), supported by a declaration. It expressly did not ask the Court "to manage the index's form or level of detail." ECF No. 30 at 2–3.

8. Plaintiff raises one question of scope now, as it did in September, so that it does not become a reason for further delay later. *See* ECF No. 30 at 2–4. The index should address every withholding Defendant made. Defendant promises a "complete" index. Def.'s Position ¶ 5, *infra*. That includes the redactions Defendant applied to records before referring them to other

agencies. Defendant remains responsible for those records. An agency that receives a FOIA request for records in its possession "must take responsibility for processing the request," and "cannot simply refuse to act on the ground that the documents originated elsewhere." *McGehee v. CIA*, 697 F.2d 1095, 1110 (D.C. Cir.), *vacated in part on other grounds on reh'g*, 711 F.2d 1076 (D.C. Cir. 1983). This Court's jurisdiction likewise reaches records that an agency has referred elsewhere for direct response. *Paisley v. CIA*, 712 F.2d 686, 691 (D.C. Cir. 1983), *vacated in part on other grounds*, 724 F.2d 201 (D.C. Cir. 1984). No other agency will defend Defendant's own redactions. The Office of the Director of National Intelligence, for example, reported that "DIA information" was withheld under Exemptions 1, 3, 4, 5, and 6 in the records Defendant referred to it. Letter from ODNI (Sept. 3, 2026). In August, Defendant told the Court that it could not complete "its *Vaughn* index on the totality of the records" until the other agencies had finished. ECF No. 27 at 6. In September, Defendant reported that they had finished by September 5, 2026. ECF No. 30 at 5. It reports the same thing here. The condition Defendant itself set for a complete index has been met for more than two months. Under FOIA, "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(4)(B).

9. Plaintiff does not oppose Defendant's request for a further joint status report on or by January 22, 2027. Plaintiff asks that the Court direct the parties, in that report, to propose a schedule for summary judgment or to report any other resolution they have reached. That is what the Court asked of the parties at the June 22, 2026 status conference, when they "were directed to meet and confer and work on a proposed briefing schedule." Minute Entry (June 22, 2026).

**Defendant's Position**

Defendant reports to the Court as follows:

1. On August 7, 2026, the Court entered an order directing "that DIA shall either produce to Plaintiff or withhold all documents by September 7, 2026" which "includes records that have been sent to other agencies for referral or consultation[.]" ECF No. 28 at 2.

2. Since the Court's August 7, 2026 Order, Defendant contacted the other government agencies that were sent documents via direct referral and response to Plaintiff. By September 5, 2026, all the other government agencies responded directly to Plaintiff, or DIA sent their responses on their records to Plaintiff, per their request. *See* Sept. 16, 2026 Joint Status Report at 5 (ECF No. 30). This Court has since recognized that Defendant "has now complied with the Court's order directing it to complete processing[.]" Sept. 18, 2026 Minute Order.

3. DIA previously estimated that it would be able to provide a draft *Vaughn* index to Plaintiff by October 31, 2026, and that "[i]f DIA requires additional time past that date, it will advise Plaintiff in advance of that date and work diligently to reach a mutually agreeable and reasonable deadline for exchanging the draft *Vaughn* index." ECF No. 30 at 5. DIA now confirms that due to the hundreds of documents at issue, and due to current limited staff of only one subject matter expert (SME) who is able to work on providing Plaintiff with the detailed written descriptions of those hundreds of documents and a description of the foreseeable harm that will occur if they should be released, while doing so in addition to working on her many other job duties, DIA now estimates that it will have the *Vaughn* index completed and exchanged with Plaintiff by December 31, 2026. DIA is attempting to have the draft *Vaughn* declaration also completed and exchanged with Plaintiff by December 31, 2026, although it is possible that due to limited staff and the impending holiday season, prescheduled and approved use-or-lose annual leave for Agency officials and counsel up through January 9, 2027, as well as competing

motion deadlines in other cases for Agency counsel through January 5, 2027, the draft *Vaughn* declaration will not be ready to be exchanged with Plaintiff until January 15, 2027.

4. After the draft *Vaughn* index and declaration have been shared with Plaintiff, Defendant will meet and confer with Plaintiff and assess whether any remaining disputes can be narrowed or resolved, and if not, propose a briefing schedule for summary judgment.

5. DIA maintains that it is not necessary for the Court to involve itself in managing the form of the draft *Vaughn* index or its level of detail as Plaintiff previously requested, and which the Court held would be "unnecessarily intrusive into a coordinate branch of government." Sept. 18, 2026 Minute order. DIA is working to provide Plaintiff with a complete and detailed draft *Vaughn* and declaration so as to enable the parties to have substantiate meet and confer, and attempt to resolve any outstanding issues.

6. While Plaintiff requests that the Court order Defendant to provide a draft *Vaughn* index by December 31, 2026, and a draft declaration by January 15, 2027, Defendant does not believe that an order is necessary under the circumstances described above. DIA is, and has been, diligently working to provide Plaintiff with the *Vaughn* by the stated dates. DIA will endeavor to exchange the draft *Vaughn* index and declaration by the above-mentioned dates, but due to constraints as described above, cannot guaranteed that the index and declaration will be exchanged by those dates.

7. Defendant respectfully requests that the Court order the parties to file an updated joint status report on or by January 22, 2027, which should afford sufficient time for Defendant to exchange the draft *Vaughn* index and declaration with Plaintiff, for counsel for the parties to meet and confer, and then evaluate next steps.

Dated: November 17, 2026

Respectfully submitted,

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