

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 25-4047 (DLF)

JOINT STATUS REPORT

Plaintiff Judicial Watch, Inc. and Defendant U.S. Department of Justice, by counsel and pursuant to the Court's July 1, 2026 minute order, respectfully submit this joint status report:

The parties are filing this report because the status report Defendant filed as "joint" included edits¹ made without Plaintiff's having a chance to review and approve ahead of filing.

As described in earlier status reports, Plaintiff's June 2, 2025 FOIA request seeks three categories of records. The FBI has represented that it has no records responsive to categories 2 and 3, which the parties have addressed in earlier status reports. Accordingly, this report primarily concerns category one only, which seeks all records in a room referenced by then-Deputy Director Dan Bongino in a May 29, 2025 interview. The FBI described the records in this room in the parties' May 14, 2026 joint status report, ECF No. 14. The FBI also asserts that the room is a SCIF, although Deputy Director Bongino did not describe the room as a SCIF in the May 29, 2025 interview.

¹ It is Plaintiff's position that the edits made were substantive because they included more than typographical changes. Plaintiff notes here that Defendant's counsel also affixed the wrong attorney's signature to the filing, which Plaintiff would have caught if Defendant had not filed prior to Plaintiff's approval.

As reported in the FBI May 14, 2026, Joint Status Report (Dkt. No. 14), the parties advised the Court that the FBI had agreed to prioritize the digitization and processing of the “recent files,” which were described in the May 14, 2026, status report (Dkt. No. 14). That status report further advised the Court and Plaintiff that the majority of the files responsive to Item 1 consist of “legacy files,” the majority of which relate to two closed, historical investigations.² The FBI had agreed to prioritize processing the “recent files” records because the FBI believed doing so served judicial economy by allowing the parties to focus on those records that are likely to be of interest to Plaintiff. Accordingly, the FBI proposed that it be permitted to focus its efforts on processing the “recent files” and put the issue of scope for item 1 and the processing of the legacy of files on hold until processing of the “recent files” records were complete.

I. Plaintiff’s Position

It was not until 3:46 p.m. today that the FBI provided Plaintiff with the information required by the Court in its July 1, 2026 minute order. Plaintiff has been very patient, but, more than a year after serving the request, Plaintiff has received very little information about the status of the FBI’s response to category one other than that the room may contain as many as 1.9 million pages of “legacy” and “more recent” files that had not been digitized. Plaintiff finds it deeply troubling that the FBI would maintain such a large trove of apparently non-records managed materials, which obviously impacts not only the response to this FOIA request but other FOIA and

² As described in the May 14, 2026 status report (Dkt. No. 14), the FBI estimates the volume of the “legacy files” records to include approximately 841,500 pages and that it will take 5,184 hours or 216 business days (11 months) to digitize them before conducting an initial review and marking of the records, sending any necessary consultations to OGAs, followed by final processing of the records to incorporate any OGAs recommended withholdings and markings. If the Court denies the FBI’s request to put the processing of these records on hold pending the completion of the “recent files” records, the FBI requests that it be permitted to propose a production schedule, or a briefing schedule, for these records, whichever is applicable.

records requests received by the FBI since the room has been in existence. How has the FBI been searching these records in response to FOIA and other records requests received by the agency? Given the importance of this question and the paucity of information the FBI has provided to date about the room, Plaintiff respectfully requests limited discovery in the form of a Rule 30(b)(6) deposition on the following subjects, among others to be identified:

1. When the room was first used to store records, how it came to be used to store records, who designated it as a storage room for records, whose records were stored there, and who decided what records were to be stored in the room;

2. The security classification level the room is certified to handle, the classification levels certified for open storage, closed storage, or discussions only, and the classification level of the records stored in the room. To the extent the room is a SCIF, when it was first designated as a SCIF, whether there was a SCIF-control officer assigned, whether the room was subject to regular security inspections, and, if so, when such inspections took place;

3. The persons who used the room to store records and who had access to the room, whether the room was limited to specific individuals or individuals with a specific clearance, and whether access logs were maintained;

4. How records were stored in the room, e.g., in file cabinets, safes, boxes, burn bags, etc.;

6. When the room was discovered by Deputy Director Bongino and how he came to discover the room;

7. The FBI's efforts to records-manage the rooms' contents since its existence was disclosed by Deputy Director Bongino;

8. The general subject matters of the “two, closed historical investigations” (the “legacy” files) and the prior Special Counsel investigations (the “recent” files);

9. Whether the records stored in the room were searched in response to other FOIA or records requests; and

10. Whether the records stored in the room are included in other FBI systems of records or indices and/or whether the records were ever entered into any records management or tracking system.

Limited discovery regarding certain factual matters is permitted in a FOIA case. *See, e.g., Public Citizen v. FDA*, 997 F. Supp. 56, 72 (D.D.C. 1998) (permitting discovery for “investigating the scope of the agency search for responsive documents, the agency’s indexing procedures, and the like”). Agency indexing procedures in this case are of paramount importance and limited discovery is crucial.

Contrary to Defendant’s statement, the FBI has left unanswered the majority of Plaintiff’s questions about the handling of these records and consistently fails to give any progress updates until ordered by the Court, and even then, at the 11th hour, as today’s filing shows. Plaintiff made narrowing proposals that were denied by Defendant.

I. Defendant’s Position

A. Proposal

In compliance with the Court’s July 2, 2026, Minute Order, the FBI provides the following update:

- The FBI has completed digitization of the “recent files” records. As a result of this effort, the FBI has digitized a total of 949,931 pages.³

³ There is one safe, believed to contain “legacy files,” that is yet to be accessed.

- 14,132 pages were stored as paper records within the file cabinets.
- 935,384 pages were stored on digital media devices throughout the file cabinets
- 415 pages are identified as Special Access Program (SAP) records are prohibited from being digitalized.

As reported in the May 14, 2026, status report (Dkt. No. 14), the FBI previously estimated the volume of the “recent files” to be approximately 112,500 pages. However, during the digitization process, the FBI located multiple data storage devices within the files containing media records that significantly increased the overall volume. As a result, the total volume of “recent files” is 949,931 pages, which exceeds that of the estimated total of legacy files. The FBI’s resources have been focused entirely on the digitization process, and at this time, it is unable to provide a proposed production schedule given the volume involved.

Given the scope of the records for the “recent files,” it will take approximately 158 years to process at a rate of 500 pages a month. The FBI respectfully requests an opportunity to confer with Plaintiffs’ counsel to determine how to best proceed. The FBI will provide a status update to this Court within 30 days that proposes either a production schedule, or a briefing schedule, whichever is appropriate.

B. Defendant’s Response to Plaintiff’s Discovery Request

In this filing, Plaintiff unnecessarily has advanced a variety of substantive arguments. The FBI, however, does not understand the purpose of a joint status report to be to litigate matters; rather, a joint status report should concisely update the Court on the status of a case and alert the Court to matters that may require more complete exploration by the parties or the Court later in the proceedings, and a joint status report can precipitate a schedule for such further proceedings that the Court deems appropriate. The FBI’s portions of this joint status report are prepared with these principles in mind. To the extent that the Court wishes for the parties to engage on the various

points that Plaintiff has advanced herein, the FBI will do so in an appropriate manner pursuant to a schedule that the Court sets, and will not further burden this report or the Court at this time with such discussions before the Court has indicated that they are warranted. And, should the Court be inclined to consider Plaintiff's request for relief at this time, the Court should treat the request as a motion per FRCP 7(b)(1) and afford the FBI the opportunity to respond within the period set forth in Local Rule 7 before deciding the issue.

Plaintiff requests a deposition “[t]o resolve the significant processing delays in this case, and *to understand the obstacles to digitization and production*[.]”⁴ Plaintiff's discovery request is not to resolve a “factual dispute[.]” *Cole v. Rochford*, 285 F. Supp. 3d 73, 77 (D.D.C. 2018), about “the adequacy of the search[.]” *Weisberg v. U.S. Dep't of Just.*, 627 F.2d 365, 371 (D.C. Cir. 1980). Rather, Plaintiff's discovery request is to survey the decision-making of an agency, which the Supreme Court admonishes. *See United States v. Morgan*, 313 U.S. 409, 422 (1941) (“We have explicitly held in this very litigation that ‘it was not the function of the court to probe the mental processes of the Secretary’. 304 U.S. 1, 18. Just as a judge cannot be subjected to such a scrutiny, *compare Fayerweather v. Ritch*, 195 U.S. 276, 306 (1904), so the integrity of the administrative process must be equally respected. *See Chicago, B. & Q. Ry. v. Babcock*, 204 U.S. 585, 593 (1907). It will bear repeating that although the administrative process has had a different development and pursues somewhat different ways from those of courts, they are to be deemed collaborative instrumentalities of justice and the appropriate independence of each should be respected by the other. *United States v. Morgan*, 307 U.S. 183, 191.”).

⁴ Plaintiff's request for discovery belongs in a motion for limited discovery, not in a joint status report.

The D.C. Circuit has repeatedly made clear that “discovery in a FOIA case is rare” and courts should generally order it only “where there is evidence—either at the affidavit stage or (in rarer cases) before—that the agency acted in bad faith in conducting the search.” *In re Clinton*, 973 F.3d 106, 113 (D.C. Cir. 2020) (internal quotation marks omitted); *see, e.g., Freedom Watch, Inc. v. NSA*, 783 F.3d 1340, 1345–46 (D.C. Cir. 2015) (holding that “the district court had discretion to forgo discovery” absent “evidence to support [an] allegation” of bad faith (cleaned up)); *Goland v. CIA*, 607 F.2d 339, 355 (D.C. Cir. 1978) (holding that “the district court’s grant of summary judgment without discovery was within its discretion” because “plaintiffs ha[d] made no showing of [agency] bad faith”). Discovery is not warranted “when it appears that discovery would only . . . afford [the plaintiff] an opportunity to pursue a bare hope of falling upon something that might impugn the affidavits.” *Military Audit Project v. Casey*, 656 F.2d 724, 751-52 (D.C. Cir. 1981) (affirming discovery denial where plaintiffs failed to raise “substantial questions concerning the substantive content of the [defendants’] affidavits”). And, even where the Circuit has found an agency’s affidavits to be inadequate to support summary judgment, it has held that the appropriate remedy is usually to allow the agency to “submit further affidavits” rather than to order discovery. *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 892 (D.C. Cir. 1995); *see also Shapiro v. Dep’t of Just.*, 40 F.4th 609, 615 (D.C. Cir. 2022) (the district court did not abuse its discretion in denying plaintiff’s request for extensive document productions and depositions of FBI personnel).

In this case, Plaintiff is simply unable to demonstrate bad faith, making discovery inappropriate. Plaintiff has made a request encompassing more than two million pages of documents. While the FBI has attempted to narrow the scope of the FOIA request over the last several months, Plaintiff has not moved one iota on its request. More, Plaintiff claimed the FBI

has refused to answer its questions “in writing” in the last joint status report, *see* ECF No. 18, at 5, but now Plaintiff claims in general that the FBI has refused to answer Plaintiff’s questions. As the FBI stated before, and states now, Plaintiff’s claim is incorrect. The FBI has answered Plaintiff’s questions, and the FBI has attempted to narrow the request, while Plaintiff refuses. There is no indication of bad faith on the part of the FBI, and no factual dispute to grant discovery. As such, the Court should reject Plaintiff’s discovery request.

Dated: July 30, 2026

/s/ Philumina Johanni
 RAMONA RAULA COTCA
 D.C. Bar No. 501159
 PHILUMINA JOHANNI*
 425 Third Street, SW Suite 800
 Washington, DC 20024
 (202) 646-5172
 rcotca@judicialwatch.org
 pjohanni@judicialwatch.org

Counsel for Plaintiffs
**Admitted Pro Hac Vice*

Respectfully submitted,

JEANINE FERRIS PIRRO
 United States Attorney

/s/ Robert J. Morris, II
 ROBERT J. MORRIS, II
 D.C. Bar #1719434
 Assistant United States Attorney
 601 D Street NW
 Washington, DC 20530
 (202) 252-2534
 robert.morris@usdoj.gov
Attorneys for the United States of America