

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.