



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

July 11, 2025

BY ECF

Honorable Arun Subramanian
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Robert F. Kennedy Human Rights et al. v. U.S. Dep't of Homeland Security et al.*,
25 Civ. 4349 (AS)

Dear Judge Subramanian:

I write respectfully pursuant to the Court's July 7, 2025 order, ECF No. 40, to explain why, in this case, processing of records of the Office for Civil Rights and Civil Liberties (CRCL) of the Department of Homeland Security (DHS) should proceed at a rate of 750 pages per month.

Background. This case concerns FOIA requests made by plaintiffs to several DHS components. Among other things, plaintiffs sought various records from CRCL related to two memoranda CRCL issued in 2020 and 2022. *See* Complaint Ex. 2 at 5-6, ECF No. 1-2. As explained by the accompanying declaration of Catrina M. Pavlik-Keenan, Deputy Chief FOIA Officer for DHS's Privacy Office ("Pavlik-Keenan Decl."), CRCL located 6157 potentially responsive pages. *Id.* ¶ 18.

Processing rate. DHS respectfully requests that the Court adopt its proposal to process 750 pages of these CRCL records per month. As Ms. Pavlik-Keenan explains, this is the maximum feasible rate to which the agency can commit given its current resources and the constraints of other pending FOIA requests and litigation. This proposed rate also compares favorably with other processing rates ordered by courts in this district in other FOIA matters.¹

¹ Because FOIA requests vary widely, and agencies may experience significantly different FOIA burdens over time, a comparison to other cases cannot demonstrate what is practicable for this request at this time. Nonetheless, the proposal of 750 pages per month is higher than some court-ordered productions in recent years, and within the mainstream of agency processing. *See, e.g., Haitian Bridge All. v. DHS*, No. 22 Civ. 8344 (ER), 2024 WL 476304, at *11 (S.D.N.Y. Feb. 7, 2024) (approving proposed processing rates of 500, 750, and 400 pages per month from CBP, ICE, and DHS respectively); *Adhikaar v. Dep't of State*, No. 19 Civ. 5881 (GHW) (S.D.N.Y. 2019), Dkt. No. 41 (ordering processing at a rate of 400 pages per month); *Rolling Stone LLC v. DOJ*, No. 23-CV-10741, 2024 WL 3862521, at *3 (S.D.N.Y. Aug. 19, 2024) (describing 500 pages per month as "fairly standard"). Moreover, courts recognize that a single request, however important, should not overwhelm other requests. *See Nat'l Sec. Counselors v. DOJ*, 848 F.3d 467, 471 (D.C. Cir. 2017) (approving FBI policy of processing individual FOIA requests in 500-page increments because this "provides more pages to more requestors, avoiding situations in which a few, large queue requests monopolize finite processing resources" (quotation marks omitted)).

The law. FOIA imposes no specific timetable or rate for processing records. An agency that has received a FOIA request is generally required to “determine within 20 [working] days” what steps it will take in response, and “immediately notify” the requester of its determination and reasons, and the right to appeal. 5 U.S.C. §§ 552(a)(6)(A)(i); 552(a)(6)(A)(i)(I)-(III). But FOIA’s 20-working-day time period does not create a deadline for production—instead, a requester is simply deemed to have constructively exhausted administrative remedies if an agency does not take the specified actions within 20 days, and thus may sue. *Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 189-90 (D.C. Cir. 2013); 5 U.S.C. § 552(a)(6)(C)(i). No other provision in FOIA creates a specific timeframe for the release of records. *See* 5 U.S.C. §§ 552(a)(3)(A) (an agency shall make records responsive to a proper request “promptly available”), (a)(6)(C)(i) (same for litigated cases).

FOIA does permit certain requests to be prioritized above others; this is referred to as “expedited processing.” 5 U.S.C. § 552(a)(6)(E). To qualify for expedited processing, a requester must show either a “compelling need” (a term defined by the statute) or other criteria an agency provides for by regulation. *See* 5 U.S.C. § 552(a)(6)(E)(i). But, as explained in the legislative history to the 1996 FOIA amendments that created FOIA’s expedited processing provision, “[n]o specific number of days for compliance is imposed by the bill, since, depending on the complexity of the request, the time needed for compliance may vary.” S. Rep. No. 104-272, at 17 (1996). Even for expedited processing, moreover, “[t]he goal is not to get the request . . . processed within a specific time frame, but to give the request priority for processing more quickly than otherwise would occur.” *Id.* An expedited request thus moves “to the front of the agency’s processing queue.” *Documented NY v. Dep’t of State*, No. 20 Civ. 1946 (AJN), 2021 WL 4226239, at *2 (S.D.N.Y. Sept. 16, 2021) (quotation marks omitted).

Expedited processing means processing “as soon as practicable,” 5 U.S.C. § 552(a)(6)(E)(iii), a standard that incorporates factors such as how many expedited FOIA requests the agency is already processing, the volume of requested materials, the demands of agency review, and competing obligations of the same agency staffers. *Documented*, 2021 WL 4226239 at *2; *Brennan Ctr. for Justice at New York Univ. Sch. of Law v. Dep’t of State*, 300 F. Supp. 3d 540, 548 (S.D.N.Y. 2018) (evaluating what is “practicable” based on evidence from the agency about its general processing capabilities, other FOIA requests, and any national security concerns that limit processing speed); *Colbert v. FBI*, No. 16-CV-1790 (DLF), 2018 WL 6299966, at *3 (D.D.C. Sept. 3, 2018) (considering “the size and compelling need of the request compared to others, as well as the effect of the request on the [agency’s] ability to review other FOIA requests”).

Expedited processing requirements in this case. It is the requester’s burden to show an entitlement to expedited processing, *see Nat’l Day Laborer Org. Network v. ICE*, 236 F. Supp. 3d 810, 816 (S.D.N.Y. 2017), and the parties’ opening briefs are being filed simultaneously. DHS thus respectfully reserves its rights to respond to plaintiffs’ submissions, and does not concede that expedited processing is merited. We note here that DHS regulations provide four specific standards for expedited processing. 6 C.F.R. § 5.5(e)(1).

DHS’s proposal. Assuming for the sake of argument that the CRCL request does qualify for expedited processing, plaintiffs’ proposed rate (which, based on discussions with counsel, we

understand is 2000 pages per month) is not “practicable.” Instead, as DHS explains, the greatest rate that CRCL can currently provide without putting at risk other court-ordered processing obligations is 750 pages per month.

As DHS explains, DHS-FOIA—the component processing the CRCL request—has received just over 100,000 FOIA requests during this financial year, and has processed just over 58,000, with a backlog of 42,853 requests. Pavlik-Keenan Decl. ¶ 14. DHS-FOIA generally processes requests in the order they are received, and tries to ensure that no single request or category of request occupies disproportionate staff time. *Id.* ¶ 15. Devoting too much time to any single request or type of request would significantly delay other requests. *Id.*

DHS-FOIA currently employs 38 full-time processors. *Id.* ¶ 16. Six of these requesters handle litigation matters exclusively, and each of them can typically process approximately 1750 pages per month. *Id.* This totals approximately 10,500 pages per month of processing capacity for litigation requests; however, DHS-FOIA is handling 122 separate litigation matters at this time. *Id.* “Processing” means reviewing potentially responsive records for responsiveness and any applicable FOIA exemptions, so that a requester receives responsive, non-exempt material. *Id.* The proposed rate for this case of 750 pages per month represents about 7.1% of DHS-FOIA’s total litigation staff time.

DHS-FOIA’s resources have recently been significantly constrained. DHS-FOIA has taken on FOIA matters from other DHS offices as part of an overall realignment designed to streamline the Department’s FOIA activities. *Id.* ¶ 10. Most significant for this case, CRCL’s own FOIA staff were placed on administrative leave in March, and DHS-FOIA was assigned FOIA matters previously handled by CRCL’s FOIA staff. *Id.* ¶¶ 10-11. In addition, DHS-FOIA has seen a substantial increase in workload without a corresponding increase in staff allocation, and has lost five full-time FOIA staff in the last several months. *Id.* ¶ 14. DHS-FOIA is currently exploring options to increase FOIA processing capacity by reassigning or hiring new staff (including, if necessary, by seeking applicable exceptions to general limitations on hiring), streamlining its internal processes, or taking advantage of technology. *Id.* ¶ 17. For example, DHS-FOIA plans to hire as many as six new FOIA analysts, though this will take some time given the need to find qualified staff and the necessary clearance process. *Id.*

Given all of these circumstances and limitations, DHS explains that 750 pages per month is the maximum practicable processing rate for the requested CRCL records at this time. *Id.* ¶ 19. DHS believes that any higher rate would require the Department to redirect its finite and already thinly stretched resources at the expense of other FOIA cases, most of which were filed before this one. *Id.* DHS-FOIA would have to reassign staff from other matters, which would halt or dramatically reduce its ability to process those other cases. *Id.* Processing at a greater rate would also create a risk that DHS-FOIA would be unable to comply with other existing court-ordered processing schedules already in place. *Id.* Processing at a greater rate would cause significant and long-lasting delays to DHS-FOIA’s processing of other, first-in-time requests. *Id.* However, Ms. Pavlik-Keenan also notes that if, during processing, it becomes clear that a higher rate is feasible, DHS-FOIA will promptly notify the parties, and is willing to revisit the rate if feasible. *Id.*

We thank the Court for its attention to this matter.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT F. KENNEDY HUMAN RIGHTS,
NATIONAL IMMIGRATION PROJECT, and
AMERICAN CIVIL LIBERTIES UNION OF
LOUISIANA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, et al.

Defendants.

Civil Action No. 25-4349 (AS)

DECLARATION OF CATRINA M. PAVLIK-KEENAN

I. Introduction

I, Catrina M. Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Chief Freedom of Information Act (“FOIA”) Officer for the Privacy Office of the U.S. Department of Homeland Security (“DHS” or the “Department”). I have held my current position since July 4, 2021. Prior to holding this position, I was the U.S. Immigration and Customs Enforcement FOIA Officer from December 18, 2006, until July 3, 2021. Prior to holding that position, I worked for approximately four years in the FOIA office at the Transportation Security Administration (“TSA”), first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director. Prior to working at TSA, I worked for approximately nine years as a FOIA Analyst at the Department of Transportation, holding positions at the Federal Highway Administration, Office of Pipeline Safety, and Office of the Secretary from 1993 to 2002. In total, I have 30 years of experience processing FOIA requests.

2. I make this declaration in support of Defendant DHS's Brief to the Court regarding the proposed processing rate in the above-captioned case for records gathered from DHS's Office for Civil Rights and Civil Liberties ("DHS-CRCL"). Specifically, this declaration seeks to provide the Court with additional information to explain why it is not practicable for DHS's FOIA Division ("DHS-FOIA") to process more than 750 pages per month in connection with this case. The statements contained in this declaration are based upon my personal knowledge and information provided to me by other DHS Headquarters ("DHS-HQ") employees in the course of my official duties.

3. Through the exercise of my official duties, I am familiar with DHS-CRCL's receipt and initial handling of the FOIA request dated January 27, 2025 (the "FOIA request"), submitted by Plaintiffs, and the steps taken to respond to the FOIA request.

4. This declaration provides a description of the DHS-HQ Privacy Office ("DHS-PRIV"), its staff, the search for potentially responsive records, and the reasons for Defendant DHS's position on its proposed processing rate in this case.

II. DHS-PRIV'S STANDARD PROCEDURE FOR INITIATING SEARCHES IN RESPONSE TO FOIA REQUESTS

5. DHS-FOIA sits within DHS-PRIV, which in turn is located within DHS-HQ.

6. Section 5.1(c) of DHS's FOIA regulations provides that "DHS has a decentralized system for processing FOIA requests, with each component handling requests for its records." 6 C.F.R. § 5.1(c). Accordingly, and except for the Cybersecurity and Infrastructure Security Agency ("CISA"), DHS-PRIV typically does not respond to or process FOIA requests on behalf of other operational DHS components outside of DHS headquarters.

7. The DHS FOIA regulations, at 6 C.F.R. Part 5, Subpart A, set out the steps for a FOIA requester to submit a FOIA request to DHS-HQ Offices as well as all DHS components. The DHS FOIA regulations also describe how DHS handles referrals to other agencies and to other DHS components.

8. As noted, DHS has a decentralized system for processing FOIA requests, which means that most DHS components are independently responsible for handling and processing requests for their records. 6 C.F.R. § 5.1(c). DHS was formed in 2003 from 22 previously disparate domestic agencies into one decentralized agency with 180,000 employees, with the goal of protecting the nation against threats to the homeland. Due to its large, decentralized nature, DHS does not possess an all-inclusive database that captures federal records for the entire Department. A list of DHS components and offices is located online to aid in providing more information to requesters: <https://www.dhs.gov/operational-and-support-components>. A list of DHS FOIA Offices is also located online: <https://www.dhs.gov/foia-contact-information>.

III. DHS-FOIA and DHS-CRCL Realignment

9. As the Deputy Chief FOIA Officer for DHS-PRIV, I act as DHS's principal point of contact and agency representative on FOIA-related matters for DHS-HQ and all the DHS components. My official duties and responsibilities include the implementation of consistent FOIA management across DHS in collaboration with DHS components. In accordance with this responsibility, I maintain expert knowledge of the DHS FOIA regulations and routinely provide regulatory and policy guidance, technical advice, and assistance across the Department on all FOIA-related matters.

10. In February 2025, DHS Chief Privacy Officer and DHS Chief FOIA Officer Roman Jankowski issued guidance notifying DHS-HQ that in order to streamline FOIA activities, DHS-FOIA would assume responsibility for all FOIA work that was being handled by offices located at DHS-HQ. DHS-FOIA would thus serve as the only FOIA office for DHS-HQ. Accordingly, the management and operations of the FOIA office located within DHS-CRCL ("CRCL-FOIA") would be transferred to DHS-FOIA by March 31, 2025. Shortly thereafter, CRCL-FOIA began to migrate its FOIA operations to DHS-FOIA. CRCL-FOIA had two full time employees facilitate the migration process to ensure DHS-FOIA could handle the processing of CRCL-FOIA requests and accompany litigation.

11. On March 21, 2025, the majority of DHS-CRCL employees, including those working in CRCL-FOIA, were notified that they would be placed on administrative leave until their final date of employment of May 23, 2025. Because the majority of all DHS-CRCL employees were placed on administrative leave, DHS-HQ has experienced significant challenges with completing FOIA tasks on behalf of DHS-CRCL, including identifying appropriate custodians, conducting searches, identifying and retrieving responsive records, and ensuring timely productions. Furthermore, DHS-FOIA had not completed the HQ-FOIA realignment process before these CRCL employees had been notified of CRCL's realignment, and therefore experienced additional system access and file location issues related to CRCL-FOIA's work (although to be clear, DHS-FOIA was able to locate the relevant CRCL files for this request). The Department is beginning to staff the DHS-CRCL office consistent with plans for executing statutory functions. However, the management and operations previously conducted by CRCL-FOIA will remain with DHS-FOIA.

12. DHS-FOIA receives and processes FOIA requests currently for the following DHS-HQ Offices: Office of the Executive Secretary, Management Directorate, Office of Strategy, Policy, and Plans, Office of Operations Coordination, Office of Partnership and Engagement, Privacy Office, CRCL, Center for Prevention Programs and Partnerships, Office of the General Counsel, Office of Legislative Affairs, Office of Public Affairs, Office of the Citizenship and Immigration Services Ombudsman, Office of the Immigration Detention Ombudsman, Office of the Secretary, Office of Biometric Identity Management ("OBIM"), Federal Protection Service ("FPS"), Science and Technology Directorate ("S&T"), and the Office of Intelligence and Analysis ("I&A"). Additionally, as indicated in the paragraph above, DHS-FOIA, in accordance with an internal agreement, receives and processes FOIA requests for the operational component Cybersecurity and Infrastructure Security Agency ("CISA").

13. Of the offices mentioned in the previous paragraph, CRCL, FPS, and I&A were components that previously had independent FOIA offices. In March 2025, the FOIA responsibilities for these offices were reassigned to DHS-FOIA. Those responsibilities occurred

without the reassignment of the staff from those three offices (although DHS-FOIA has received employees via a detail assignment to assist with processing I&A records).

14. Accordingly, DHS-FOIA has seen a substantial increase in workload without the corresponding increase in staff allocation. In fact, DHS-FOIA has lost five full time FOIA analysts who elected to take early retirement. In FY25, to date, DHS-PRIV has received 100,273 FOIA requests, of which 58,042 requests have been processed. The current backlog is approximately 42,853 FOIA requests. DHS-FOIA also took on a total of 797 additional FOIA requests as a result of realignment, including 119 from DHS-CRCL.

15. DHS-FOIA generally processes requests on a first-in, first-out basis. In other words, requests are placed in queues and are generally processed in the order that they were received, unless they are determined to be eligible for expedited processing or are subject to a court order. DHS-FOIA has always tried to apply its limited processing resources fairly to requests by ensuring that no single request takes up disproportionate staff time. Devoting too much time to any single request, or type of request, would mean that other requests are significantly delayed.

16. DHS-FOIA currently employs 38 full-time FOIA analysts. On average, each FOIA analyst is assigned to handle between 200-500 routine FOIA requests and 42 complex FOIA requests. The FOIA request in this case is considered complex (based on factors such as the various types of records and the number of responsive records). Additionally, DHS-FOIA is the defendant in 122 cases in federal FOIA litigation. Currently, DHS-FOIA's litigation team includes 6 full time analysts (of the 38) that help process records for cases in litigation, including coordinating litigation consultations to other agencies and making releases to plaintiffs; in addition, these employees coordinate FOIA appeals for DHS-HQ and are also responsible for providing training, handling proactive disclosures to DHS's FOIA reading room, and other assigned special projects. With regard to processing records, on average, each analyst on the DHS-FOIA litigation team processes approximately 1,750 pages per month across all of the FOIA litigation cases with active productions. By "process," I mean that a reviewer first determines if pages are responsive to the request, and then reviews them for applicable FOIA exemptions, so that only responsive, non-

exempt information is produced to requesters. DHS-FOIA's litigation staff are currently processing approximately 10,500 pages per month. The proposed rate of 750 pages per month in this matter thus represents approximately 7.1% of DHS-FOIA's litigation staff time.

17. DHS-FOIA is currently exploring options to increase FOIA processing capacity by reassigning or hiring new staff (including, if necessary, by seeking applicable exceptions to general limitations on hiring), streamlining its internal processes, or taking advantage of technology. For instance, DHS-FOIA is currently working with our contract support vendor to acquire up to six (6) new FOIA analysts. This will take some time as the current vendor will need to find qualified staff and then they will need to go through the government clearance process.

18. On January 27, 2025, CRCL-FOIA received a FOIA request from Plaintiffs. CRCL staff, prior to the realignment, conducted a search of CRCL's records and identified 973 potentially responsive records consisting of 6157 pages.

19. Given these circumstances and current resource limitations, DHS-FOIA has limited ability to process more than seven hundred fifty (750) pages a month for this matter. In my judgment, a monthly processing rate greater than 750 pages will substantially burden the office to the detriment of other litigations and other requests. Specifically, processing at a greater rate—such as Plaintiffs' proposal to process 2000 pages each month—is not “practicable” because it would require the Department to redirect its finite and already thinly stretched resources at the expense of other FOIA cases, most of which were filed before this one. DHS-FOIA would have to reassign staff from the cases to which they are currently assigned to this case, which would halt or dramatically reduce the Department's ability to process those other cases). Processing at a greater rate would also create a risk that DHS-FOIA would be unable to comply with existing court-ordered processing schedules already in place. Processing at a greater rate would cause significant and long-lasting delays to DHS-FOIA's processing of other, first-in-time requests. If during the course of processing it becomes clear that a higher rate is practicable, DHS-FOIA will promptly notify the parties, and is willing to revisit this rate if it is feasible.

20. Under penalty of perjury, pursuant to 28 U.S.C. § 1746, I declare the foregoing is true and correct to the best of my knowledge and belief.

Signed this 11th day of July 2025,

CATRINA M. PAVLIK-KEENAN