



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

VIA Electronic Mail

January 28, 2026

Barry J. Pollack, Esq.
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NACDL v. BOP, 18-cv-02399 (DDC)

Dear Mr. Pollack:

This correspondence and disclosure arise from District Court Judge Jia M. Cobb's November 20, 2025, Memorandum Opinion and Order issued in National Association of Criminal Defense Lawyers v. Federal Bureau of Prisons, et. al., 18-cv-02399 (DDC).

In its order, the court granted the government's motion for summary judgment as to the applicability of 5 U.S.C. § 552(b)(5)'s deliberative process privilege, except insofar as it was invoked to withhold CRM records, 3, 4, and 22. The court granted the plaintiff's motion for summary judgment regarding Exemption 5 withholdings applied to CRM records 3 and 4. It denied, without prejudice, the government's and plaintiff's motions for summary judgment regarding the applicability of Exemption 5 to CRM 22, and invited the government to supplement the record to further justify the applicability of the exemption to that document.

Pursuant to the court's order, CRM reprocessed CRM 3 and 4, withdrawing Exemption 5 as a basis for withholding the documents in full. Moreover, in lieu of supplementing the record, CRM reprocessed CRM 22, and it is similarly withdrawing its assertion of Exemption 5 as a basis for withholding this document in full. CRM is producing each of these documents herein, with limited redactions made to protect the personal privacy interests of third parties identified in the documents. (See 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties, and 5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.)

As required by Office of Information Policy (OIP) guidance, I am noting that Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison at the (202) 616-0307 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Although your request is the subject of litigation, I am required by statute to inform you that if you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, OIP, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Mark Herrington

FOR
Christina Butler
Chief
FOIA/PA Unit

Attachments

cc: AUSA Sian Jones
U.S. Attorney's Office for the District of Columbia