

EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

----- :

AIMS INSTITUTE, PLLC, et al., :

Plaintiffs, :

vs. : Civil Action:

: 4:22-cv-02396

MERRICK GARLAND, et al., :

Defendants. :

----- :

VIDEO-RECORDED DEPOSITION OF KELLEIGH MILLER

DATE: Thursday, January 5, 2023

TIME: 9:37 a.m.

LOCATION: United States Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314

REPORTED BY: Erick M. Thacker
Reporter, Notary

Veritext Legal Solutions
1250 Eye Street, NW, Suite 350
Washington, D.C. 20005

1 APPEARANCES

2 On behalf of Plaintiffs:

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9 On behalf of Defendants:

10 JIMMY ANTHONY RODRIGUEZ, ESQUIRE

11 Assistant United States Attorney

12 United States Department of Justice

13 Southern District of Texas

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18 ALSO PRESENT:

19 Glenn Gray, Esq., Agency Counsel

20 Ellen Hebert, Video Technician

21

22

Page 2

1 CONTENTS (Continued)

2 EXHIBITS

3 NUMBER	DESCRIPTION	PAGE
4	Deposition-10B 22-00592-F Request Notes DEA000372 - 376	190
5		
6	Deposition-10C 22-00845-F Request Notes DEA000385	207
7	Deposition-15 2021 Annual FOIA Report Raw Data for the Department of Justice	151
8		
9	Deposition-16 FY 2021 Report Raw Data (edited)	151
10		
11	Deposition-17 FY 2022 Raw Data	180
12		
13	Deposition-FOIA 5 U.S. Code 552	30
14		
15	Deposition-OLC FOIA Request from Matthew Zorn dated 1/5/2023	44
16		
17		
18		
19		
20		
21		
22	(*Exhibits attached to transcript.)	

Page 4

1 CONTENTS

2 EXAMINATION BY:	PAGE
3 Counsel for Plaintiffs	7
4 Counsel for Defendants	255
5	
6 EXHIBITS	
7 NUMBER DESCRIPTION PAGE	
8 Deposition-1 Letter dated 1/5/2022 Re: AIMS 13 v. Garland, 22-cv-02396	
9 Deposition-2 Plaintiffs' 30(b)(6) Notice of 53 Deposition of U.S. Department of Justice and U.S. Drug Enforcement Administration	
10	
11 Deposition-3 DEA Freedom of Information and 112 Privacy Act Policy Number 0770	
12 Deposition-4 FSRN meeting agenda, DEA000097 226 - 101	
13	
14 Deposition-6 Department of Justice Chief 239 FOIA Officer Report 2022	
15 Deposition-7 Memorandum from the Attorney 250 General dated 3/15/2022	
16	
17 Deposition-8 Chief FOIA Officer Memo dated 46 1/30/2019	
18 Deposition-9 Letter dated 8/17/2022 from 218 America First Legal	
19	
20 Deposition-10A 22-00585-F Request Notes 126 DEA000370 - 371	
21	
22	

Page 3

1 PROCEEDINGS

2 VIDEO TECHNICIAN: Good morning. We

3 are going on the record at 9:37 a.m. Today is

4 January 5th, 2023. Please note that the

5 microphones are sensitive and may pick up

6 whispering and private conversations. Please

7 mute your phones at this time. Audio and video

8 recording will continue to take place unless all

9 parties agree to go off the record.

10 This is Media Unit No. 1 of the

11 video-recorded deposition of Kelleigh Miller,

12 taken by counsel for the plaintiff in the matter

13 of AIMS Institute, PLLC, et al. v. Merrick

14 Garland, et al., filed in the United States

15 District Court, Southern District of Texas,

16 Houston Division, Civil Action No. 4:22-cv-02396.

17 The location of the deposition is the

18 United States Attorney's Office at 2100 Jamieson

19 Avenue, Alexandria, Virginia 22314.

20 My name is Ellen Hebert, representing

21 Veritext. I am the videographer. The court

22 reporter is Erick Thacker from Veritext.

Page 5

1 If there are any objections to
 2 proceeding, please state them at the time of your
 3 appearance. Counsel and all present will now
 4 state their appearances and affiliations for the
 5 record, beginning with the noticing attorney.
 6 MR. ZORN: Matthew Zorn. I work at
 7 Yetter Coleman LLP. I represent plaintiffs, and
 8 I have no objections.
 9 THE WITNESS: Kelleigh Miller. I'm the
 10 chief FOIA officer for DEA.
 11 MR. RODRIGUEZ: Jimmy Rodriguez from
 12 the U.S. Attorney's Office in the Southern
 13 District of Texas. I'm here on behalf of the
 14 United States of America.
 15 MR. GRAY: Glenn Gray on behalf of DEA,
 16 agency counsel.
 17 VIDEO TECHNICIAN: Thank you. Will the
 18 court reporter please swear in the witness, and
 19 then counsel may proceed.
 20 WHEREUPON,
 21 KELLEIGH MILLER
 22 called as a witness, and having been first duly
 Page 6

1 sworn, was examined and testified as follows:
 2 EXAMINATION BY COUNSEL FOR PLAINTIFFS
 3 BY MR. ZORN
 4 Q Ms. Miller, good morning.
 5 A Good morning.
 6 Q How are you?
 7 A I'm doing well. Thank you.
 8 Q Thank you for preparing for and
 9 attending today's deposition.
 10 Have you been deposed before?
 11 A I have not.
 12 Q So I'm going to go over a few ground
 13 rules. Perhaps the most important is to give
 14 verbal answers to my questions.
 15 Do you understand?
 16 A Yes.
 17 Q If you don't understand anything in my
 18 question, please ask me. Do you understand?
 19 A I do.
 20 Q I would wait after my question for your
 21 counsel who may object to a question. So do you
 22 understand that?
 Page 7

1 A I do.
 2 Q And you are here today not in your
 3 personal capacity. Do you understand that?
 4 A Yes. Correct.
 5 Q You represent the United States
 6 Department of Justice. True?
 7 A Yes.
 8 Q And you are also here on behalf of the
 9 Drug Enforcement Administration --
 10 A Yes.
 11 Q -- correct?
 12 A Correct.
 13 Q Okay. And you don't represent them
 14 sort of in everything, but the notice topics in
 15 today's 30(b)(6) deposition. Is that fair?
 16 A Correct.
 17 Q And you've reviewed that notice, true?
 18 A I have.
 19 Q And you've prepared to testify on the
 20 topics in that notice?
 21 A Yes, I have.
 22 Q And I'll introduce the notice in a
 Page 8

1 moment. But we discussed that you've never been
 2 deposed before?
 3 A I have not.
 4 Q Okay. And did you prepare for today's
 5 deposition?
 6 A I did prepare.
 7 Q How did you prepare for today's
 8 deposition?
 9 A I reviewed the topics that we were
 10 going to discuss today and thought through my
 11 answers and then prepared accordingly for today.
 12 Q Have you reviewed the documents
 13 produced ahead of today's deposition?
 14 A I have.
 15 Q Did you prepare with anyone for today's
 16 deposition?
 17 A I did.
 18 Q And I don't want to know the content of
 19 those conversations, but who did you speak with?
 20 A I prepared with Mr. Rodriguez and
 21 Mr. Gray.
 22 Q Okay. And how long duration-wise did
 Page 9

1 you speak with Mr. Rodriguez?
 2 A I would say a couple of hours.
 3 Q Okay. How long did you speak with
 4 Mr. Gray?
 5 A The same. We were in conversation
 6 together.
 7 Q Okay. Was that an in-person
 8 conversation?
 9 A It was on partially virtual since
 10 Mr. Rodriguez is in Houston.
 11 Q And when was that conversation?
 12 A We had about three conversations over
 13 the course of, I believe, the last three weeks.
 14 Q Okay. If you need to take a break at
 15 any point in this deposition, please just let me
 16 know.
 17 A Will do.
 18 Q Even if I'm in a line of questioning, I
 19 think it's -- if you need a break, just take one.
 20 A Thank you.
 21 Q Is there any health reason or any other
 22 reason that you're aware of that would prevent

Page 10

1 you from testifying truthfully today on behalf
 2 of -- I'm going to say DOJ and DEA, and you
 3 understand what I mean, correct?
 4 A Yes, I do.
 5 Q Okay. So --
 6 A No -- no issue.
 7 Q Okay. So is there anything that you
 8 are aware of that would prevent you from
 9 testifying truthfully on behalf of DEA --
 10 A No.
 11 Q -- and DOJ? Okay.
 12 So -- and as -- as DOJ and DEA, do you
 13 have any understanding of why we are here today?
 14 A I do.
 15 Q Okay. Why are we here today?
 16 A We are here to discuss the pattern and
 17 practice lawsuit that you have filed against the
 18 Department and DEA.
 19 Q Yeah. So -- so I sued DEA, right?
 20 A (Nodding.) Yes.
 21 Q I sued DEA --
 22 A Sorry.

Page 11

1 Q -- in the Southern District of Texas,
 2 right?
 3 A Yes.
 4 Q And there are two other plaintiffs, but
 5 Matthew Zorn is one of those three plaintiffs?
 6 A Yes.
 7 Q And I brought a pattern or practice
 8 claim, true?
 9 A Yes.
 10 Q I would say the -- well, one of the
 11 claims is that the Drug Enforcement
 12 Administration and the Department of Justice have
 13 an unlawful policy or practice of marking
 14 requests as raising unusual circumstances when
 15 they don't.
 16 That's -- that's my allegation, right?
 17 A Understood. Yes.
 18 Q And are you aware that I made an offer
 19 to the agency to settle this case?
 20 A I am aware.
 21 Q Okay. And I made that offer months
 22 ago, right?

Page 12

1 A To my knowledge, yes.
 2 Q And just so the record is clear, I made
 3 an offer to settle my case as Matthew Zorn.
 4 Are you aware of that?
 5 A I am aware of that, yes.
 6 Q And that offer was not accepted. True?
 7 A To my knowledge, it was not accepted.
 8 Q Is there was no counteroffer. Fair?
 9 A There was no counteroffer to my
 10 knowledge.
 11 Q So in some senses, part of the reason
 12 we're here is because the parties have not
 13 settled this case, right?
 14 A Correct.
 15 MR. ZORN: Okay. So I'm going to
 16 introduce as Exhibit 1, if you could pull this up
 17 on the computer.
 18 (Deposition Exhibit Number 1
 19 was marked for identification.)
 20 MR. RODRIGUEZ: And which folder should
 21 I be looking at here?
 22 MR. ZORN: This is a --

Page 13

1 MR. RODRIGUEZ: The marked?
 2 MR. ZORN: This is a marked exhibit.
 3 MR. RODRIGUEZ: Okay.
 4 THE WITNESS: Okay.
 5 BY MR. ZORN
 6 Q And can you confirm for me that there
 7 is a document dated January 5th, 2022, in the top
 8 right?
 9 A Yes.
 10 Q And that's today's date, January 5th,
 11 2022?
 12 A That is not today's date.
 13 Q Sorry. It should be January 5th, 2023.
 14 That is a typo, but I will represent to you that
 15 this is my latest settlement offer --
 16 A Understood.
 17 Q -- Exhibit 1. It's something I wrote
 18 over the past couple days, and I'm introducing it
 19 now as Exhibit 1.
 20 And I was going to have you read the
 21 letter --
 22 A Okay.

Page 14

1 Q -- but I think that's a little
 2 obnoxious, so I'm just going to read the letter.
 3 And just confirm that what I'm reading is correct
 4 on this document.
 5 And I'm just going to start with "Dear
 6 Administrator Milgram."
 7 "Dear Administrator Milgram, After
 8 reviewing DEA's recent December 2022 document
 9 production in this matter, two items are now
 10 clear to me."
 11 Bullet point 1: "First, despite
 12 patently unlawful FOIA policies and practices at
 13 issue in this case, it is evident that, overall,
 14 DEA's FOIA staff has worked diligently on my FOIA
 15 requests."
 16 Bullet point 2: "Second, the merits of
 17 my case remain strong; and in view of my earlier
 18 settlement offer, DEA's decision to litigate this
 19 matter continues to be an enormous waste of
 20 taxpayer money, agency resources, court
 21 resources, and my resources."
 22 Did I read up to that point correctly?

Page 15

1 A Correct.
 2 Q I'm going to continue.
 3 "Let me explain the second point."
 4 "In the fall, I made DEA and DOJ an
 5 offer to dispose of my case. Before the Court
 6 ordered a 30(b)(6) deposition and document
 7 production, I asked for an opportunity to speak
 8 with senior DEA/DOJ officials to raise certain
 9 policy matters/issues/concerns. In exchange, I
 10 offered to drop my case. My offer was contingent
 11 on nothing. I agreed to dismiss this suit no
 12 matter the outcome of those meetings. In
 13 response, I received no counteroffer and no
 14 response to my settlement offer. Just silence."
 15 Did I read those two paragraphs
 16 correctly?
 17 A Yes, you did read them correctly.
 18 Q Next paragraph. And I'll address the
 19 footnote at the end.
 20 Next paragraph: "Surely, my offer was
 21 not unreasonable. It was a sincere gesture I
 22 made in good faith to avoid wasting agency

Page 16

1 resources, including the time of Ms. Miller,
 2 Mr. Rodriguez, and the Court while furthering the
 3 interests of my client base. With increasing
 4 frequency, I appear before this agency and
 5 confront an outdated, unlawful, and often
 6 recalcitrant administrative process. In these
 7 endeavors, I represent groups with serious
 8 grievances but without deep pockets that have to
 9 negotiate with this administrative state:
 10 Researchers, veterans, terminally-ill patients,
 11 start-ups, and so on. I've taken most of these
 12 representations pro bono; many simply want to
 13 legally research or access controlled substances
 14 to save lives. None of them are drug pushers or
 15 culpable actors in the opioid epidemic, for
 16 example. In fact, some are trying to address
 17 substance abuse issues. And in many cases, I
 18 believe the issues could be better addressed with
 19 fewer lawyers, less adversariness, and improved
 20 communication and dialogue from this agency."
 21 Did I read to that point correctly?
 22 A Correct. You did.

Page 17

1 Q Next paragraph: Thus, it is also my
 2 belief that these communities should be heard
 3 directly by the decisionmakers of this agency,
 4 unfiltered by federal bureaucracy and convoluted
 5 administrative processes. If I can deliver for
 6 that -- sorry. Let me start that sentence over.
 7 "If I can deliver that for them here, I
 8 will be satisfied. But if not, I will continue
 9 to use processes provided by law and litigate
 10 cases when the agency disregards the rules to the
 11 detriment of my clients, the public interest, and
 12 public safety.
 13 Did I read that paragraph correctly?
 14 A You did.
 15 Q Thanks.
 16 "After reviewing DEA's production, I
 17 believe the merits of my case to be stronger than
 18 ever. Nonetheless, I hold out hope that the
 19 agency will agree to a more productive and
 20 cost-efficient resolution to my grievances. The
 21 agency's initial reception of my unorthodox yet
 22 highly efficient settlement offer appears to be

Page 18

1 microcosmic of the problems I'm dealing with -- a
 2 reflexive, institutional resistance to the notion
 3 that quite possibly, a different way of doing
 4 things might deliver better results."
 5 Did I read that correctly?
 6 A You did.
 7 Q Next paragraph: My settlement offer
 8 today remains substantially the same as it was
 9 months ago: a meeting with the Administrator so
 10 that some of these less endowed constituencies
 11 can present and be heard directly by leadership,
 12 unfiltered. And since I've now put in
 13 considerably more time and energy into this case
 14 than I did when I made my first settlement offer,
 15 that settlement offer -- sorry -- that settlement
 16 must also include reimbursing some small measure
 17 of the time I've spent litigating this case.
 18 Did I read that correctly?
 19 A You did.
 20 Q "Finally, while I understand the
 21 agency's interest in keeping information elicited
 22 in this case confidential, I do not believe its

Page 19

1 non-disclosure request to be proper. This case
 2 presents at least two matters of public interest,
 3 and multiple mainstream news organizations have
 4 expressed some interest in the FOIA issues. From
 5 a legal standpoint, the non-disclosure request
 6 has no merit. Not only is there no Rule 11 basis
 7 for either party to file material related to DOJ
 8 and DEA's implementation of FOIA under seal, but
 9 there is no justification for a federal agency to
 10 conceal processes it uses to instruct its staff
 11 on how to process FOIA requests. The notion is
 12 antithetical to FOIA itself and the principles
 13 laid down in the Garland Memo."
 14 Did I read that correctly?
 15 A You did.
 16 Q I'll read the last sentence in a
 17 moment, but let's just quickly go in the
 18 footnote, so I can get this in the record.
 19 A Okay.
 20 Q This is footnote 1 back on the page.
 21 "As of December 2022, I also represent
 22 former DEA Special Agent Anthony Armour of DEA's

Page 20

1 Tactical Diversion Squad. DEA fired SA Armour
 2 for using what everyone agrees was publicly held
 3 out to be a CBD-oil product as many in this
 4 country do, Armour used the product to treat his
 5 back pain and to avoid use of more severe pain
 6 killers such as opioids. Unfortunately, the
 7 product he used tested at .35 percent THC -- a
 8 sliver above the .30 legal threshold -- but with
 9 a margin and error of plus and minus .08. Nobody
 10 disputes SA Armour believed he was taking a
 11 product within the legal limits and that only
 12 immediately after his positive drug test did DEA
 13 issue warnings and subsequent remedial guidance
 14 documents to employees on the dangers of using
 15 CBD products which could test high. Under these
 16 circumstances, why DEA middle management deemed
 17 it necessary to discharge an employee working in
 18 tactical diversion in good standing -- and who
 19 unintentionally used a hot CBD product instead of
 20 opioids -- is beyond mystifying. It is a case I
 21 look forward to presenting."
 22 Did I read that correctly?

Page 21

1 A You did.
 2 Q Now let me just read the last sentence
 3 of the letter.
 4 "I urge the agency to reconsider my
 5 good faith offer."
 6 Did I read that correctly?
 7 A You did.
 8 Q And I would here at this deposition
 9 urge the agency to reconsider my offer.
 10 But since we're here and it's a
 11 deposition, I need to ask you questions and you
 12 need to give me answers, so --
 13 MR. RODRIGUEZ: Can I ask for
 14 clarification on your letter?
 15 MR. ZORN: Yes.
 16 MR. RODRIGUEZ: When you state that you
 17 will dismiss the case, to be clear, you're
 18 talking about dismissing your claims, or are you
 19 now authorized to offer a dismissal of the entire
 20 action?
 21 MR. ZORN: I can certainly talk to the
 22 other -- I can talk to the other parties in the

Page 22

1 case. I'm only, I guess, prepared and authorized
 2 at this exact moment to dismiss my case.
 3 MR. RODRIGUEZ: Okay.
 4 MR. ZORN: But I can certainly, during
 5 a break, if that's -- if this is a serious
 6 entertaining of my offer, then we can certainly
 7 look into that.
 8 MR. RODRIGUEZ: And then the other
 9 point of clarification, when we initially
 10 spoke -- we can go off the record if you -- if
 11 you --
 12 MR. ZORN: Yeah. Can we go off the
 13 record?
 14 VIDEO TECHNICIAN: Going off the
 15 record, the time is 9:53 a.m.
 16 (Recess 9:53 a.m. to 9:56 a.m.)
 17 VIDEO TECHNICIAN: Going back on the
 18 record, the time is 9:56 a.m.
 19 BY MR. ZORN
 20 Q Ms. Miller, you -- you introduced
 21 yourself today as DEA's chief FOIA officer,
 22 didn't you?

Page 23

1 A I did.
 2 Q And when did you become the chief FOIA
 3 officer for DEA?
 4 A In March of 2017.
 5 Q Okay. And there was a reorganization
 6 of the FOIA division at DEA at one point,
 7 correct?
 8 A Correct.
 9 Q That was in 2021, correct?
 10 A 2020.
 11 Q 2020?
 12 A Yes.
 13 Q When was it completed?
 14 A So I initiated a request during 2019 to
 15 completely restructure the FOIA unit, and it took
 16 effect October 1 of 2020.
 17 Q Why did you do that?
 18 A I did this because I had recognized
 19 shortly after my arrival in this position that we
 20 were just not structured to be successful, and I
 21 wanted to create specific units to handle certain
 22 types of requests and really better divide the

Page 24

1 overall labor of work in the office.
 2 Q And so how is the DEA FOIA office
 3 structured today?
 4 A So we have three specific subunits, we
 5 call them, one being the intake unit -- subunit,
 6 the second being the processing subunit, and the
 7 third is legal and external affairs subunit.
 8 Q Okay. And how many people work in the
 9 intake unit?
 10 A So I have a lot of staff vacancies
 11 right now. So right now, we have four -- excuse
 12 me -- five staff members assigned to the intake
 13 unit.
 14 Q Okay. Is -- I don't know -- is
 15 Mr. Polk one in the intake unit?
 16 A He is, but he just left DEA.
 17 Q He just left DEA. Well, but he was --
 18 A He was --
 19 Q -- in the intake unit?
 20 And then the processing unit, how many
 21 folks work --
 22 A I have --

Page 25

1 Q -- in the processing unit?
2 A -- four government information
3 specialists assigned to that team right now and a
4 GS-14 unit chief that supervises.
5 Q And what is a government information
6 specialist?
7 A So these are -- these are employees
8 that process FOIA cases. So government
9 information specialist is the title of the
10 majority of the folks in our office.
11 Q Okay. And then legal and external, how
12 many folks work in legal and external?
13 A I have two government information
14 specialists assigned to that team right now, and
15 I have one GS-14 unit chief running that unit.
16 Q And her name is Angela Hertel, right?
17 A Correct.
18 Q And she's been working there for, I
19 guess, a few years, right?
20 A Over -- she's been part of our FOIA
21 office for a little over ten years, I believe.
22 Q Interestingly, she's usually the

Page 26

1 witness that the agency puts up in a FOIA case.
2 This is a privilege for me to be able to have the
3 chief.
4 So -- and so this is -- these are the
5 three units, and then you supervise these three
6 units, correct?
7 A Correct.
8 Q And who do you report to?
9 A So I report to the section chief of the
10 FOIA and information law section at DEA.
11 Q Okay. And who is that?
12 A That is Brooke DuBois.
13 Q Okay. And is that -- is that in a
14 different DOJ component?
15 A No. So we are part of the Office of
16 Chief Counsel, and so the FOIA and information
17 law section is one of the many sections within
18 the Office of Chief Counsel that we report up to.
19 Q So -- so when you say "we" and --
20 because you're here representing DOJ and -- and
21 DEA, so I just want the record to be clear.
22 Are you saying that the DEA FOIA office

Page 27

1 is part of the DOJ chief -- could you just --
2 A Sure.
3 Q -- explain that to me --
4 A I can clarify.
5 Q -- a little bit.
6 A We are --
7 Q Yeah.
8 A -- part of the DEA's Office of Chief
9 Counsel.
10 Q Okay. So you guys are part of the
11 Office of Chief Counsel, but you report to
12 Ms. DuBois, who is at DOJ --
13 A DEA.
14 Q Oh, at --
15 A Yes.
16 Q -- DEA.
17 THE REPORTER: You-all are starting to
18 speak over each other. If you could --
19 THE WITNESS: Sorry.
20 THE REPORTER: -- just wait for the --
21 THE WITNESS: Sorry.
22 THE REPORTER: -- end of the question.

Page 28

1 BY MR. ZORN
2 Q Okay. So -- so you report to
3 Ms. DuBois, who's in the DEA's chief counsel
4 office?
5 A Correct.
6 Q And then Ms. DuBois reports to?
7 A Sandra Stevens, who is the deputy chief
8 of the Office of Chief Counsel at DEA.
9 Q Okay. And Ms. Stevens reports to?
10 A Hallie Hoffman, who is the chief
11 counsel for DEA.
12 Q And I will assume that Ms. Hoffman
13 reports to the administrator, correct?
14 A Correct.
15 Q What are your responsibilities as the
16 chief FOIA officer for DEA?
17 A So my responsibilities are to oversee
18 the overall administration of the FOIA and the
19 Privacy Act at DEA.
20 Q Okay. And -- and the responsibilities
21 that you have are in the FOIA statute, right?
22 A Correct.

Page 29

1 MR. ZORN: And why don't we pull that
2 up. So I'm going to introduce -- I'm going to
3 get creative. I'm going to call this Exhibit
4 FOIA. Let's see.
5 All right. I have introduced into the
6 folder Exhibit capital F-O-I-A.
7 (Deposition Exhibit FOIA
8 was marked for identification.)
9 MR. RODRIGUEZ: Sorry.
10 THE WITNESS: That's okay.
11 BY MR. ZORN
12 Q And can we turn to -- it's page 25 of
13 the document. You can see at the bottom right --
14 well, first, can you confirm for me at least as
15 for the first page that this is 5 U.S. Code
16 section 552?
17 A It is.
18 Q And that's -- that's the FOIA --
19 A Correct.
20 Q -- citation?
21 A Yes.
22 Q And this is from -- I think I got it

Page 30

1 from the Cornell U.S. law U.S. code.
2 Have you ever been to that --
3 A I have been to this. Typically, when I
4 want to look up 552, I will go to the
5 electronic -- or I'm sorry -- the -- I'll just go
6 to the United States code website to get it.
7 Q But it's a statute that -- that DOJ and
8 DEA is -- is familiar with?
9 A Correct.
10 Q Okay. So if you can scroll to page 25,
11 and I want to look at -- on page 25, I want to
12 look at (j)(2). And just tell me when you're
13 there.
14 So it says, "The Chief FOIA Officer of
15 each agency shall, subject to the authority of
16 the head of the agency."
17 I want to stop there. So the chief
18 FOIA officer is --
19 MR. RODRIGUEZ: Could you hold on?
20 MR. ZORN: Yes.
21 MR. RODRIGUEZ: Let me -- let us get to
22 the page --

Page 31

1 MR. ZORN: Sure.
2 MR. RODRIGUEZ: -- here.
3 MR. ZORN: Sure.
4 MR. RODRIGUEZ: Sorry about that.
5 Yeah, we're good now.
6 BY MR. ZORN
7 Q Okay. So the chief -- I'm going to
8 read it again.
9 "The Chief FOIA Officer of each agency
10 shall, subject to the authority of the head of
11 the agency."
12 Did I read (j)(2) correctly?
13 A You did.
14 Q And the chief FOIA officer of DEA is
15 you, Ms. Kelleigh Miller, correct?
16 A Correct.
17 Q And we can agree that the Drug
18 Enforcement Administration is an agency, correct?
19 A It is.
20 Q So in (j)(2), the chief FOIA officer of
21 DEA is you?
22 A Correct.

Page 32

1 Q Okay. And A is "have agency-wide
2 responsibility for efficient and appropriate
3 compliance with this section."
4 As the chief FOIA officer, that is one
5 of your responsibilities, correct?
6 A Correct.
7 Q That's statutory?
8 A Correct.
9 Q B, "monitor implementation of this
10 section throughout the agency and keep the head
11 of the agency, the chief legal officer of the
12 agency, and the Attorney General appropriately
13 informed of the agency's performance in
14 implementing this section."
15 That's one of your responsibilities,
16 correct?
17 A It is.
18 Q And that's because you are the chief
19 FOIA officer of DEA?
20 A Correct.
21 Q Okay. C, "recommend to the head of the
22 agency such" -- and I'll just pause there. That

Page 33

1 in this case is -- is the Honorable Anne Milgram,
2 correct?
3 A Correct.
4 Q "Such adjustments to agency practices,
5 policies, personnel, and funding as may be
6 necessary to improve its implementation of the
7 section."
8 That's something you do, right?
9 A Correct.
10 Q And is it something you do through this
11 chain of command, or do you -- do you actually
12 get to speak to Ms. Milgram?
13 A No. This is done through my chain of
14 command.
15 Q Okay. So you don't get to speak to
16 Ms. Milgram, like -- because I'm having trouble
17 with that, too --
18 A Generally, no.
19 Q -- I would say. Okay.
20 So -- so let's do D.
21 "Review and report to the Attorney
22 General, through the head of the agency, at such

Page 34

1 times and in which formats as the Attorney
2 General may direct, on the agency's performance
3 in implementing this section."
4 And so I'll just make this open-ended.
5 That's something you do, true?
6 A We do that.
7 Q And how does the agency do that?
8 A We accomplish this through our annual
9 reporting through the -- the -- I'm sorry -- the
10 annual FOIA reports and the chief FOIA officer
11 report that we complete every year and we send
12 through our chain of command to the Department of
13 Justice. And then they prepare the DOJ chief
14 office -- chief officer reports and annual FOIA
15 reports that gets submitted to the attorney
16 general.
17 Q And the DOJ chief FOIA officer
18 is Associate Attorney General Vanita Gupta,
19 right?
20 A Could you ask the question again? I'm
21 sorry.
22 Q The DE- -- the DOJ's chief FOIA

Page 35

1 officer, her name is Vanita Gupta, right?
2 A I am forgetting, because I actually
3 deal primarily with Bobby Talebian, who is the
4 chief of the Office of Information Policy, but I
5 forget the name of the DOJ's chief FOIA officer.
6 I don't have any interaction with that
7 individual.
8 Q Okay. So you don't interact with the
9 chief FOIA officer of the Department of Justice,
10 and you, meaning Kelleigh Miller, the chief FOIA
11 officer of DEA, doesn't interact with the chief
12 FOIA officer of DOJ, assuming it is Vanita Gupta?
13 A I do not.
14 Q Okay. You -- you, as in Kelleigh Ms.
15 Miller, does interact with a gentleman named
16 Bobby Talebian, correct?
17 A Bobby Talebian, but primarily his
18 staff. That's the Office of Information Policy.
19 This is essentially the FOIA office for DOJ. We
20 have a lot of interaction with that office, yes.
21 Q Okay. And what -- what types of
22 matters do you discuss with the DOJ?

Page 36

1 A Sure. So the Office of Information
2 Policy, otherwise known as OIP, handles all of
3 the administrative appeals. So any time a
4 requester is unsatisfied with our determination
5 to their FOIA request, they have the right to
6 file an administrative appeal.
7 The department will come back to us and
8 ask us for all the background materials on the
9 request. They may have some questions for us.
10 So we -- we deal with them heavily on the
11 administrative appeal process.
12 We also participate in trainings that
13 OIP conducts throughout the year. We attend
14 various meetings that OIP hosts and things like
15 that.
16 Q Have you attended the Chief FOIA
17 Officers Council?
18 A I have, yes.
19 Q Okay. And that's run by
20 Mr. Talebian --
21 A It is --
22 Q -- true?

Page 37

1 A -- I believe, yes.
 2 Q I've learned more about FOIA than I
 3 ever wanted to know.
 4 So let's just continue here.
 5 So, E, "facilitate public understanding
 6 of the purposes of the statutory exemptions of
 7 this section by including concise descriptions of
 8 the exemptions in both the agency's handbook
 9 issued under subsection (g) and the agency's
 10 annual report on this section, and by providing
 11 an overview, where appropriate, of certain
 12 general categories of agency records to which
 13 those exemptions apply."
 14 Did I read that correctly?
 15 A You did.
 16 Q Okay. And that's -- that's your
 17 responsibility as the chief FOIA officer of DEA,
 18 true?
 19 A It is.
 20 Q Okay. And, F, "offer training to
 21 agency staff regarding their responsibilities."
 22 And you, as the chief FOIA officer,

1 offer training?
 2 A We do.
 3 Q Okay. And I cut off the last three
 4 words of that. I just want the record to be
 5 clear. It says "under this section." I
 6 didn't -- I didn't put that in.
 7 So, G, "serve as the primary agency
 8 liaison with the Office of Government Information
 9 Services and the Office of Information Policy."
 10 Did I read that correctly?
 11 A You did.
 12 Q And when we were talking about OIP,
 13 that's the Office of Information Policy, correct?
 14 A Correct.
 15 Q Okay. And then the final point of this
 16 (j)(2) is H, "designate 1 or more FOIA public
 17 liaisons."
 18 Did I read that correctly?
 19 A You did.
 20 Q And the DEA has a FOIA public liaison,
 21 correct?
 22 A We do.

1 Q And who is that?
 2 A That is Desheila Wallace.
 3 Q Okay. Are you a senior official at
 4 DEA?
 5 A I would -- well, I'm -- I mean, I'm a
 6 section chief, so I would consider it to be a
 7 senior manager.
 8 Q Would you consider yourself to be a
 9 senior official at the -- well, let me say: Does
 10 DEA and -- and/or DOJ consider you to be a senior
 11 official?
 12 A I believe so.
 13 Q Okay. Why?
 14 A I think because of my role as the --
 15 the chief FOIA officer for DEA, because of my
 16 grade level in the government, and my
 17 responsibilities.
 18 Q Okay. Are you a political appointee?
 19 A I am not.
 20 Q Were you -- are you at the assistant
 21 secretary or equivalent level?
 22 A I am not.

1 Q Okay. Who at DEA is at the assistant
 2 secretary or equivalent level?
 3 A I would consider that to be our SES
 4 personnel.
 5 Q Okay.
 6 A Senior executives.
 7 Q And who are those?
 8 A Those are generally the individuals
 9 that run the divisions at DEA.
 10 Q Okay. And can you -- can you name them
 11 for me?
 12 A I mean, I can give you titles probably
 13 better. Like the chief of the intelligence
 14 division, the chief of operations, the chief
 15 counsel.
 16 Q Okay.
 17 A Our special agents in charge in the
 18 field, perhaps.
 19 Q So did it ever occur to you that you're
 20 being underpaid?
 21 A No.
 22 Q Can we look at (j)(1)? It's right

1 above (j)(2).
2 Can you read (j)(1)?
3 A Would you like me to read (j)(1)?
4 Q Yes. Yes, please.
5 A "Each agency shall designate a Chief
6 FOIA Officer who shall be a senior official of
7 each agency (at the Assistant Secretary or
8 equivalent level)."
9 Q You're the chief FOIA officer of DEA,
10 true?
11 A Correct.
12 Q You are not at the assistant secretary
13 or equivalent level, are you?
14 A I am --
15 MR. RODRIGUEZ: Objection. Calls for
16 legal conclusion.
17 You can still answer.
18 THE WITNESS: I am not.
19 BY MR. ZORN
20 Q Okay. So let's -- let's assume -- with
21 your counsel's objection, let's assume you're
22 correct. Then DEA currently has a chief FOIA

Page 42

1 officer that is contrary to what this says, true,
2 under the assumption that your prior answer is
3 correct, that you are not the assistant secretary
4 or equivalent level?
5 A True.
6 Q Okay. And, in fact, there's an Office
7 of Legal Counsel opinion on this.
8 Have you ever read it?
9 A I have not.
10 Q Well, the Department of Justice has
11 read it, right?
12 A I am unsure.
13 Q Because the office of -- do you know
14 what the Office of Legal Counsel is?
15 A Yes.
16 Q Okay. So what is the Office of Legal
17 Counsel?
18 A Meaning the Office of Legal Counsel at
19 DOJ or -- or DEA? Maybe I misunderstood. I'm
20 sorry.
21 Q The DOJ Office of Legal Counsel, are
22 you familiar with that?

Page 43

1 And it's a little bit beyond the scope
2 of the -- the topics, so if -- I'm not going to
3 suggest that you're unprepared, but just for
4 foundation, do you know what the Office of Legal
5 Counsel at the Department of Justice is?
6 A Maybe I do not.
7 Q Okay. So do you know what an OLC
8 opinion is?
9 A No.
10 Q Okay. Well -- so you don't know about
11 an OLC opinion by a person named Paul Colborn?
12 A I am not familiar with that, no.
13 Q Okay. Well, I'm going to do something
14 very unorthodox.
15 You represent -- you're here today on
16 behalf of the Department of Justice, correct?
17 A Yes.
18 Q Okay. And I'm going to give you a FOIA
19 request here for that OLC opinion.
20 (Deposition Exhibit OLC
21 was marked for identification.)
22 MR. RODRIGUEZ: I object to the extent

Page 44

1 that she's here to provide testimony on the
2 topics that you've designated. She's not here as
3 a representative of the Department of Justice at
4 large.
5 MR. ZORN: Fair enough. I'm going
6 to -- I'm going to -- I'll submit -- after the
7 deposition, I'll submit it normally.
8 BY MR. ZORN
9 Q But -- but could you just read my
10 request out there?
11 A "I hereby request the OLC document
12 containing the opinion/agency conclusion about 5
13 USC 552(j)(2)," signed Matthew Zorn.
14 Q Oh, sorry. It should be (j)(1). Let
15 me -- let me --
16 A Okay.
17 Q -- correct this exhibit. Okay. I'm
18 not going to make you reread this.
19 A Okay.
20 MR. ZORN: Okay. So -- but let's --
21 let's move to a different exhibit. I'm going to
22 introduce Exhibit 8.

Page 45

<p>1 memo, and Exhibit 2, which is the statute. 2 MR. ZORN: So I -- there should be an 3 Exhibit 2 - 30(b)(6) depo notice.pdf -- 4 MR. GRAY: Refresh the -- 5 MR. ZORN: -- uploaded. If you -- you 6 have to refresh -- 7 MR. RODRIGUEZ: Okay. 8 MR. ZORN: -- and it's -- it's -- I 9 kind of pre-titled some of them, and I'm 10 switching around the order. So the confusion is 11 my -- 12 MR. RODRIGUEZ: Now we have it. 13 THE WITNESS: Okay. 14 MR. RODRIGUEZ: So I needed to refresh 15 the folder. 16 MR. ZORN: I needed to title these 17 things better, so multiple -- all right. 18 BY MR. ZORN 19 Q So we have 30(b)(6). This is 9:32 a.m. 20 And just let me know when you have it up. 21 A We do. 22 Q Okay. So do you see that this is a</p> <p style="text-align: right;">Page 54</p>	<p>1 fair? 2 A Correct. 3 Q The second is "The description of DEA's 4 FOIA processing office, including its location, 5 its general contents, and the employees working 6 in the FOIA processing office." 7 Did I read that correctly? 8 A You did. 9 Q And earlier we -- since -- since -- 10 since we're on the topic, earlier, we spoke about 11 the structure of the DEA FOIA office, didn't we? 12 A We did. 13 Q And we said -- and you testified that 14 there was an intake office, and then there was a 15 processing office, and those two were different. 16 A We have three units, so I oversee three 17 units, one being the intake subunit, the 18 processing subunit, and the legal and external 19 affairs subunit -- 20 Q All right. 21 A -- that make up the FOIA Privacy Act 22 unit at DEA.</p> <p style="text-align: right;">Page 56</p>
<p>1 notice of deposition 30(b)(6) to the U.S. 2 Department of Justice and U.S. Drug Enforcement 3 Administration? 4 A Yes. 5 Q And at the top of the page, you see 6 there's a blue header; is that correct? The very 7 top of the page. 8 A Yes. 9 Q All right. And let's go to page 3 of 10 the document and just confirm for me that it says 11 Exhibit A at the -- towards the top of the page. 12 A It does. 13 Q Okay. And then if we go to page 4, 14 you'll see there's a list of 30(b)(6) topics for 15 DOJ and DEA. Do you see that? 16 A I do. 17 Q And these are the topics that you are 18 prepared for and are prepared to testify today on 19 behalf of DOJ and DEA, true? 20 A Correct. 21 Q And the first topic, A1, is "The 22 structure and operation of DEA FOIA office,"</p> <p style="text-align: right;">Page 55</p>	<p>1 Q And I actually want to skip around 2 here. I'm just curious. Who makes the unusual 3 circumstances determination? 4 A Generally, the intake unit. 5 Q Okay. And what is that determination 6 based on? 7 A So at DEA, we will invoke unusual 8 circumstances any time we have to search for 9 records that are outside of our office, meaning 10 we do not have possession of all of DEA's 11 records. 12 We have many offices throughout 13 headquarters, the field. We have offices in 14 about 90 foreign countries. So we do not have 15 access to all of those records in my own office. 16 We have to rely on the record custodians to 17 retrieve those records for us. 18 Q So by office in your answer, you mean 19 the FOIA office? 20 A The FOIA office. 21 Q So any time a record that is requested 22 in a FOIA request that is not in the FOIA office</p> <p style="text-align: right;">Page 57</p>

1 presents the unusual circumstances exception?
 2 A Correct.
 3 Q And we'll get into the documents in a
 4 moment, but what percentage of requests raise
 5 unusual circumstances at the Drug Enforcement
 6 Administration?
 7 A So we do not track the actual
 8 percentage. However, the data that reflects how
 9 often we invoke unusual circumstances is captured
 10 in the annual FOIA reports that are available on
 11 the OIP -- the Department of Justice Office of
 12 Information Policy website.
 13 There is a column there where you can
 14 see 20 or 30 days. 30 days indicates that we
 15 have invoked unusual circumstances for those
 16 cases for that particular fiscal year.
 17 Q Is a complex request always going to
 18 raise unusual circumstances?
 19 A So the definition of complex and simple
 20 is different than unusual circumstances.
 21 While there may be a close proxy there,
 22 complex and -- you know, to -- I would -- the

Page 58

1 uses, you know, the paper-based filing systems
 2 that our offices all over the United States, you
 3 know, utilize.
 4 So we -- when we receive a FOIA
 5 request, oftentimes, we are searching for paper
 6 and electronic records. We simply don't have
 7 access to all that.
 8 Now, if for some reason I did have
 9 access to a record because maybe that record has
 10 been requested by another individual previously,
 11 we would have access. I would not be invoking
 12 unusual circumstances because I already have
 13 access. I'm just going to review it and release
 14 it again, if that makes sense.
 15 Q So the office has access to records
 16 that have been previously requested?
 17 A Correct.
 18 Q And if those records get requested a
 19 third time, then they have to get posted
 20 publicly?
 21 A We are supposed to post them, correct.
 22 Q So really the only time that I can tell

Page 60

1 best way I can put this is that we define a
 2 complex case by any time that we feel it's going
 3 to take us more than a month to process records.
 4 The reason for that is, the records may involve a
 5 high volume. If we have hundreds of pages or
 6 thousands of pages for review, we're not going to
 7 be able to produce it within 30 days. So
 8 anything that takes us longer than 30 days, we
 9 deem that to be complex.
 10 Q Now, when you say in the FOIA office,
 11 are you talking about, like, physically, like,
 12 sitting in the FOIA office?
 13 A Yes. So I may need you to clarify,
 14 though, what you're asking me.
 15 Q Like, I'm curious about, like,
 16 electronic documents. So, like, you know --
 17 like -- well, I don't know. What do you mean --
 18 A Sure.
 19 Q -- by in the FOIA -- like, when is
 20 something located in the FOIA office?
 21 A Sure. So in my office, we do not have
 22 access to the hundreds of IT systems that DEA

Page 59

1 that a record's going to be located in the FOIA
 2 office and not made available to the public is
 3 the second time that document is requested?
 4 A I'm -- I'm sorry. I'm not following
 5 that one. You may have to ask the question
 6 again.
 7 Q Well, you've testified -- and correct
 8 me if I'm wrong. You've testified that the FOIA
 9 office doesn't have access to basically DEA writ
 10 large documents, true?
 11 A That is true.
 12 Q In fact, it has access to surprisingly
 13 few documents, fair?
 14 A We do not have access to the majority
 15 of records that are requested by the public. We
 16 have to rely on the owners, the offices that own
 17 those records to retrieve them for us, to provide
 18 them to us so that we can process them and
 19 release them to a requester.
 20 Q Well, when you say own the records,
 21 well, how does one part of DEA own a record that
 22 the other part of -- like where does this concept

Page 61

1 of ownership come from?
 2 A So we have, for example, I believe
 3 somewhere around 150 different IT systems in DEA
 4 that hold records. If you work, let's say, in
 5 the Office of Diversion, you may have your own
 6 record systems. We are not experts in how those
 7 systems operate, or we would not even have the
 8 knowledge on how to obtain access to the records
 9 that are in those systems. There are hundreds of
 10 systems.
 11 So we have to again rely on the subject
 12 matter experts in DEA from the, you know,
 13 hundreds of offices that we have to locate what
 14 we're asking for. We send them a copy of the
 15 FOIA request and a search memo, and -- and we ask
 16 them to provide the material to us, responsive
 17 material to us.
 18 Q And that's not unusual, is it?
 19 A No. We do this every day.
 20 Q Right. So those aren't unusual
 21 circumstances. Those are the -- almost always
 22 the circumstances?

1 A -- personnel size, like --
 2 Q And I --
 3 A -- personnel --
 4 Q And just to be clear, sensitive to
 5 national security, I don't want to know, like,
 6 the location or anything. I just want to know,
 7 like, how big is it physically.
 8 A I don't know that I know the answer to
 9 how large it is, but I can tell you that right
 10 now, in terms of staff size, I have 18 employees.
 11 So there are 18 employees including myself right
 12 now. We have a large number of staff vacancies
 13 right now. I currently have 20 vacancies that
 14 I'm trying to get filled.
 15 Q Okay. And -- and to be clear, those
 16 employees, they have, like, physical, like,
 17 office locations, cubicles? Like, what is it
 18 that they --
 19 A Cubicles, or pods, as we call them.
 20 Q And they don't actually, like, keep
 21 stacks of, like, records in their offices, do
 22 they?

1 A Well --
 2 MR. RODRIGUEZ: Objection. Calls for
 3 legal conclusion, but you can answer.
 4 THE WITNESS: The only time we're going
 5 to assert unusual circumstances is if I have to
 6 go outside of my office, meaning I do not have
 7 access in my own records system.
 8 I utilize one system. It's called
 9 FOIAXpress. This houses everything from start to
 10 finish of every FOIA case. If I don't have
 11 access to those records in that system, I then
 12 have to go to the record custodian or the
 13 division that owns the material to get it.
 14 BY MR. ZORN
 15 Q And the only way you would have access
 16 to that record in FOIAXpress is if you've gotten
 17 that record previously?
 18 A That exact request and exact timeline
 19 previously.
 20 Q How physically big is your office?
 21 A Are you talking about like --
 22 Q I --

1 A No.
 2 Q So when you -- so the records in the
 3 FOIA office are almost exclusively the records in
 4 FOIAXpress, fair?
 5 A Correct.
 6 Q And I'm not trying to repeat, but I
 7 just -- the only time a record is in the FOIA
 8 office if it is in FOIAXpress, right?
 9 A Correct.
 10 Q And the only time a record is in
 11 FOIAXpress is if it's been previously requested?
 12 A Correct.
 13 Q And that's because the DEA FOIA office
 14 doesn't have access to any of the other systems
 15 in which DEA keeps documents, fair?
 16 A That is correct.
 17 Q Okay. Does -- you know, by any chance,
 18 do you know why the DEA FOIA office doesn't have
 19 access to these other systems?
 20 A I don't know if I can answer the
 21 question as to why, but I can tell you again, we
 22 are not the subject matter experts in all the

1 various things that DEA does.
 2 So if I had to, for example, go to the
 3 Office of Diversion to pull material -- I mean,
 4 we would have to become experts in all the
 5 various offices, their records systems. You
 6 know, we'd have to have a thorough understanding
 7 of the content of those records. That is just
 8 not feasible with a staff of 18. We -- we are
 9 struggling as it is to keep up with the sheer
 10 volume of FOIA requests that come to DEA, so we
 11 again have to really rely on the subject matter
 12 experts to provide what we are asking them to
 13 provide, you know, the material responsive to
 14 these FOIA requests.
 15 Q Would it -- would it help if the FOIA
 16 office were allocated more money?
 17 A Right now, what we need is staff. We
 18 need to fill our vacancies. I think our budget
 19 is fairly adequate. However, we are struggling
 20 right now with the lack of personnel resources.
 21 Q Well, everyone, DEA's hiring, so -- but
 22 back -- back to this. Okay.

Page 66

1 the DEA Museum.
 2 Q Never been to the museum. Don't know
 3 what's in there.
 4 So -- so -- hold on. So -- okay. So
 5 Stacey -- what was --
 6 A Strayer.
 7 Q Strayer. And do you know where this
 8 understanding of unusual circumstances came from?
 9 A Well, it is captured in the DOJ FOIA
 10 regulations, which can be found at 28 -- excuse
 11 me -- 28 CFR part 16. It defines unusual
 12 circumstances.
 13 Q How does it define unusual
 14 circumstances?
 15 A There are three prongs to this. The
 16 first prong is the one that we primarily invoke
 17 at DEA, which is any time that we need to search
 18 for records that are physically outside of our
 19 own office, we would invoke unusual
 20 circumstances.
 21 For example, we have offices all over
 22 the country are, 200 and -- 239 offices across

Page 68

1 So this understanding of unusual
 2 circumstances, was that in place when you became
 3 the chief FOIA officer --
 4 A Yes.
 5 Q -- in 2017?
 6 A Yes.
 7 Q And who was the chief before you?
 8 A It was a gentleman by the name of
 9 Stacey Strayer.
 10 Q All right. And how long have you been
 11 working in DEA FOIA?
 12 A In FOIA, since 2017.
 13 Q Didn't you work in records before that?
 14 A So -- yes. I used to be the section
 15 chief over FOIA, records management and
 16 investigative records.
 17 After I had been in this role for two
 18 years, I had -- I wrote a proposal asking upper
 19 management to split our section. I wanted to
 20 basically turn FOIA into a section with three
 21 units, which we did. And we hired someone else
 22 to run records, investigative records, and now

Page 67

1 the United States that are part of 23 field
 2 divisions. We don't have access to their
 3 records. We have to rely on the owners to
 4 provide the material to us. So we primarily
 5 invoke it for the first prong.
 6 There are two other prongs, one being
 7 any time that we have to consult with other
 8 agencies that may have equities in the documents.
 9 That also would qualify under the unusual
 10 circumstances.
 11 Q Well, so -- and I want to break down
 12 your answer there because -- and you've read the
 13 FOIA statute, right?
 14 A Yes.
 15 Q It uses the word "establishments,"
 16 right?
 17 A Uh-huh.
 18 Q Like establishments separate from the
 19 office processing the request?
 20 A Yes.
 21 Q And it talks about field offices as
 22 well. So --

Page 69

1 A Yes.
2 Q -- different physical locations
3 elsewhere in the country, that -- let's put that
4 into one bucket. Do you follow me?
5 A Yes.
6 Q But as I understand what you're --
7 where -- where is -- like what building is the
8 DEA FOIA office in?
9 A We're part of DEA headquarters in
10 Arlington, Virginia.
11 Q Okay. And there other DEA divisions
12 that are physically in headquarters, right?
13 A That is correct.
14 Q And the way I understand what you're
15 saying is that the agency interprets unusual
16 circumstances to mean -- across the hallway is
17 unusual circumstances if that's not the DEA FOIA
18 office; is that fair?
19 A Yes.
20 Q Okay. So if I had a -- if I took my
21 outline here and walked across the hallway and
22 put it in someone else's office and that person

Page 70

1 worked in some other division, we're now in --
2 in -- we're now outside the FOIA office, right?
3 A Uh-huh. Correct.
4 Q Okay. And that's like 10 feet away.
5 A Correct.
6 Q Is that fair?
7 A Correct.
8 Q Okay. So this is a game of inches,
9 right?
10 MR. RODRIGUEZ: Objection.
11 Argumentative.
12 MR. ZORN: Okay.
13 MR. RODRIGUEZ: You can answer.
14 MR. ZORN: No. I withdraw the
15 question.
16 BY MR. ZORN
17 Q You -- any -- any time you venture --
18 no matter how far outside the FOIA office one is,
19 whether cyberspace or physically, if you are
20 outside the FOIA office but in the same building,
21 you're -- the unusual circumstances applies,
22 according to the agency?

Page 71

1 A It would apply. And if I could share
2 one more example.
3 Q Sure.
4 A We have some offices that are part of
5 headquarters that are not physically located in
6 the same buildings as the FOIA office. They are
7 located in other parts of Virginia.
8 For example, our Information Technology
9 Division. If I get a FOIA request specifically
10 for e-mail records, I cannot access anyone's
11 e-mail records. I have to rely on the
12 Information Technology Division to do that
13 search. They are physically located outside of
14 headquarters in another part of Virginia. They
15 are the office that would provide those
16 responsive materials to us.
17 Q Is that the Morrissette building?
18 A No. That's -- that's actually our
19 mailing address. So that's -- that's not
20 where -- that's not our physical address.
21 Q But that's a building that you're
22 referring to in Northern Virginia?

Page 72

1 A It is a building in Northern Virginia.
2 Q Right. That's like 30 minutes away
3 from headquarters --
4 A Uh-huh.
5 Q -- or less, right?
6 A But that is not where the Information
7 Technology Division is located --
8 Q Okay. Well --
9 A -- no.
10 Q -- we don't need to get into --
11 A Right.
12 Q -- specifically where it is, but it's
13 in the same state, though, right?
14 A In the same state.
15 Q So -- but obtaining those records from
16 the IT Division is -- is done over the Internet,
17 true?
18 A It is done through an electronic means.
19 Q So no one's physically going down and
20 like, picking up, like, a box of records or even
21 a USB drive, right?
22 A Not for e-mail records, no.

Page 73

1 Q Okay. So it's really, you know -- and
 2 maybe you can't answer this -- but it's not any
 3 more or less convenient than if it were in the
 4 same building, because it's transmitted the same
 5 way, right?
 6 A The process would be the same if they
 7 were physically located inside of our -- meaning
 8 a part of headquarters in Arlington.
 9 Q Right. So would you say that -- that
 10 invoking the unusual circumstances would be
 11 necessary to process a request that was
 12 electronically transmitted outside versus one
 13 that would be electronically processed inside?
 14 A Correct.
 15 Q There's no, like, additional cost or
 16 time based on where the documents are located if
 17 the transfer is going to be electronic; is that
 18 fair?
 19 A That's fair.
 20 Q But there is -- there is an access
 21 concern, and that's kind of what you've been
 22 testifying about, right? Like you personally --

Page 74

1 sorry. Let me -- let me just -- I'll just strike
 2 all that, and let me reask the question.
 3 Like you, Ms. Miller, can't access
 4 those records, right?
 5 A Correct.
 6 Q You need to reach out to another
 7 division within DEA to get access to the records,
 8 right?
 9 A Correct.
 10 Q And that necessarily takes additional
 11 time, right?
 12 A It takes time. It does.
 13 Q So there is a -- and you did not create
 14 that process, did you?
 15 A The search process?
 16 Q Well, just even the way this is
 17 structured. Like, that was in place when you got
 18 there.
 19 A That was in place when I arrived.
 20 Q Right. So -- and so that wasn't like a
 21 design choice that Ms. Kelleigh Miller made about
 22 the way DEA keeps its records, right?

Page 75

1 A No, it was not.
 2 Q And maybe it just grew over time; fair?
 3 A I just want to make sure I'm following
 4 the line of questioning here.
 5 So if we're talking about the vast --
 6 like the sheer volume of record systems that are
 7 out there, yes, we do -- we do not -- I did not
 8 create that, right?
 9 Q Right.
 10 A But, again, I don't -- we do not -- the
 11 FOIA office does not have access to the material
 12 that is in all of those 150-plus systems.
 13 Q So do you happen to know when DEA
 14 adopted this interpretation of unusual
 15 circumstances?
 16 A We have been following this for --
 17 again, we follow the DOJ FOIA regulations. All
 18 of the components under DOJ are following the
 19 same regulations.
 20 So our interpretation and OIP's
 21 interpretation of the statute is that if we have
 22 to -- if we do not have access to the records, we

Page 76

1 have to go, you know, physically outside of our
 2 office to gain access to those records, we would
 3 invoke unusual circumstances.
 4 Q So this is not a DEA policy. It is a
 5 Department of Justice --
 6 A Department-wide.
 7 Q Okay. So this is -- the entire
 8 Department of Justice, it is its position that if
 9 a record is outside the FOIA office that unusual
 10 circumstances applies?
 11 A Correct.
 12 Q That's -- the United States Department
 13 of Justice is taking that -- that position under
 14 oath today in this -- this room?
 15 A We have consulted with OIP on this
 16 issue, and their position is that, yes, if it is
 17 outside of our own office -- again, we don't have
 18 access to the material. We have to rely on
 19 offices across DEA -- that unusual circumstances
 20 does apply.
 21 Q And, again, I'm not suggesting that
 22 anyone at DEA intentionally structured the office

Page 77

1 BY MR. ZORN
 2 Q Okay. So -- so forgetting about how --
 3 how records are filed and just talking about
 4 records that have already been filed in these
 5 administrative proceedings, you say that those
 6 are kept in the ALJ offices; true?
 7 A Yes.
 8 Q And how does the public access those
 9 records?
 10 A They would have to file a FOIA request.
 11 Q And the only way a public -- a member
 12 of the public can get access to those records is
 13 by filing a FOIA request; true?
 14 A Yes, with the exception of things like
 15 the -- any decision or order by the
 16 administrative law judge is posted on DEA.gov, so
 17 that information is accessible to the public, but
 18 anything beyond that, we would -- they would have
 19 to submit a FOIA request to DEA for --
 20 Q So --
 21 A -- access.
 22 Q And we've established that these FOIA

Page 86

1 will help my client -- I don't know -- escape
 2 charges from the DEA.
 3 Do you -- do you follow me?
 4 A Yes.
 5 Q Okay. I can't get those records any
 6 other way except through FOIA, right?
 7 A That is correct.
 8 Q But the likelihood I'm going to get
 9 that record before the hearing is slim, right?
 10 A Depending on, again, the volume and the
 11 complexity and what's being asked, I mean, it
 12 probably would be difficult to produce in 30
 13 days.
 14 Q In fact, it's almost -- are you
 15 familiar with how these administrative hearings
 16 work? If you're not, then --
 17 A I'm not an expert in this, no.
 18 Q Okay. Well, let's assume from a
 19 hypothetical that the administrative law judge
 20 requires each side to declare their evidence
 21 within 90 days of the hearing.
 22 Do you follow me?

Page 88

1 requests -- that -- that request would
 2 necessarily raise unusual circumstances, true?
 3 A It would.
 4 Q So we're talking about more than 30
 5 days to deliver that request?
 6 A Yes.
 7 Q So I want to -- I want to kind of
 8 construct a hypothetical, and I'm going to ask if
 9 you follow me. I -- I represent client A.
 10 Do you follow me?
 11 A Uh-huh.
 12 Q I'm in a --
 13 A Yes.
 14 Q -- DEA administrative proceeding.
 15 Do you follow me?
 16 A Yes.
 17 Q The administrative law judge sets a
 18 timed hearing three months from now.
 19 Do you follow me?
 20 A Yes.
 21 Q And I believe that there is a useful
 22 record in a prior administrative proceeding that

Page 87

1 A Uh-huh.
 2 Q So now we're talking a month and a half
 3 of getting -- getting records that I believe are
 4 going to exculpate my client.
 5 Do you follow my hypothetical?
 6 A Yes.
 7 Q There's -- there's almost no way that I
 8 can get any of those records from the ALJ's
 9 office, is there?
 10 A Not directly from the ALJ's office, no.
 11 Q No. And if I ask -- well, so I'd have
 12 to file a FOIA request with your office?
 13 A Yes.
 14 Q Your office is going to say there are
 15 unusual circumstances; true?
 16 A Uh-huh. Yes.
 17 Q And it's going to take more than 90
 18 days for me to get those records; true?
 19 A Yes. I would say it's definitely going
 20 to take more than 30 days.
 21 Q Okay. And you're going to -- if I'm
 22 representing a client that isn't the news media

Page 89

1 was -- I gave this presentation publicly. So
 2 there's no reason for me to at that point, right,
 3 review and determine do I need to place
 4 exemptions. We released everything to you in
 5 full.
 6 Q Right. And so I'm saying, wouldn't
 7 that same process apply to documents filed
 8 publicly in an administrative proceeding?
 9 A Generally, yes, but, again, we'd have
 10 to identify -- we have to be able to identify
 11 which records have been publicly filed.
 12 Q And there's no -- there's no way to
 13 identify that?
 14 A It's part of the -- it's part of the
 15 review process, yes.
 16 Q And that's because the administrative
 17 law judge's office doesn't put any, like, marker
 18 on the documents, right?
 19 A I can't say a marker, but we probably
 20 would be having a conversation with them about
 21 which records were publicly filed. That would be
 22 part of that review process.

Page 94

1 Q Has anyone ever just -- and you may not
 2 know this, but just in your personal knowledge,
 3 if Jimmy will give me the latitude, I mean, has
 4 anyone ever discussed, like, this issue with them
 5 of, like, the records that they keep in making
 6 filings, like, straightforward to request since
 7 the only way to get them is through FOIA?
 8 A Again, I'm not sure I'm following the
 9 question. I'm sorry.
 10 Q Well, it sounds like that the reason --
 11 and just correct me if I'm wrong -- the reason
 12 that your office needs to review these documents
 13 is because you can't look at the document on its
 14 face and determine if it was a public filing,
 15 right?
 16 A That is generally true, right. We need
 17 to rely on the -- again, the experts, the subject
 18 matter experts to tell us, has this been publicly
 19 filed.
 20 Q Right. And so I noticed in the
 21 notes -- and that's one of the documents I have
 22 selected today -- but you spoke to Ms. Cotter,

Page 95

1 who's a judicial law clerk for ALJ Wallbaum,
 2 correct?
 3 A I spoke to Cotter?
 4 Q Sorry. Some FOIA -- the FOIA staff
 5 spoke to Ms. Cotter in response to one of my
 6 requests to discuss psilocybin, and she is a
 7 judicial law clerk in the ALJ's office for
 8 Ms. Wallbaum. If you don't recall now, we'll get
 9 the document out --
 10 A Yeah, I don't recall.
 11 Q -- and it will be -- it will be better
 12 to do it that way.
 13 But -- but more generally, your office
 14 will interface with the ALJ's office --
 15 A Yes.
 16 Q -- and then ask them if these were
 17 public or not. Is that a fair --
 18 A That is correct.
 19 Q And that's just -- if they had
 20 something on the document that said this was
 21 filed, you wouldn't need to do that --
 22 A Correct.

Page 96

1 Q -- would you? Okay.
 2 So -- well, that answers that. Okay.
 3 So -- and there's no -- there's no
 4 electronic filing system that you're aware of for
 5 the DEA administrative proceedings, are there --
 6 is there?
 7 A I am not intimately familiar with their
 8 system, but I know they have an electronic system
 9 that they utilize that's fairly new, and they
 10 also maintain a large number of records at the
 11 Federal Records Center.
 12 So, oftentimes, when we're sending FOIA
 13 requests to their office, they have to pull those
 14 from the Federal Records Center for us, the paper
 15 files.
 16 Q Okay. And -- but are you aware of --
 17 there's no, like, electronic -- when you're
 18 talking about getting records, you're asking them
 19 to collect the records for you, right?
 20 A Correct.
 21 Q There's no way for you to log into any
 22 system and get the records for yourself, right?

Page 97

1 A That is correct.
 2 Q And is there any -- any office within
 3 DEA that -- that -- that -- where you can just
 4 log in to some document system and get the
 5 documents for yourself?
 6 A We can in one circumstance, and this
 7 generally has to do with our investigative
 8 matters, which is somewhat sensitive, so I won't
 9 give a lot of detail. But my staff does have
 10 access to those, and we can generally handle
 11 certain types of requests for investigative
 12 matters quicker.
 13 Q Right. But there's no system where --
 14 well, okay. Let me -- let me then take a step
 15 back.
 16 Who -- when a FOIA request comes in and
 17 you need to go to another office -- do you follow
 18 me?
 19 A Yes.
 20 Q You reach out to that office. Is
 21 that --
 22 A We send them what we call a search memo
 Page 98

1 along with a copy of the request letter, and
 2 sometimes we, you know, even specifically tell
 3 them what we're looking for.
 4 Q Right. And then that office is the
 5 office that does the search for responsiveness.
 6 Is that fair?
 7 A Correct.
 8 Q Like, the FOIA office isn't the one
 9 that actually determines the initial set of what
 10 records are responsive?
 11 A Generally, no.
 12 Q So if I wanted Theresa Carbonaro's
 13 e-mails -- do you follow me?
 14 A Yes.
 15 Q Theresa Carbonaro's going to be the one
 16 searching her own e-mails, right?
 17 A Potentially, yes, but we will go to
 18 the -- generally, we will go to the office of --
 19 I'm sorry -- it's the Information Systems
 20 Division -- to have them do the e-mail search
 21 because we believe that the search would be more
 22 accurate if we let the IT experts do it.
 Page 99

1 Q And potentially more complete, right?
 2 A Correct.
 3 Q In fact, you know, is there -- is there
 4 any agency mechanism to check to see if a
 5 records -- a custodian of records accurately gave
 6 you the -- the right set of records?
 7 A Well, this is exactly why my preference
 8 has been to go to the Information Technology
 9 Division. I do not -- as of now, I don't rely on
 10 the individual to pull their own records. I
 11 don't believe that it's -- it's as accurate.
 12 Q Yeah. And has that actually been the
 13 FOIA office's experience that it sometimes isn't
 14 accurate?
 15 A That has -- we have had some -- some
 16 issues, minor issues in the past with this.
 17 Q Has there ever -- I'm getting a little
 18 far afield here, but has there ever been an
 19 instance where the records were omitted without
 20 cause?
 21 A So I cannot think of a specific
 22 instance of this, but, again, I think if we allow
 Page 100

1 a tool, an IT tool to do the work for us, it will
 2 be much more accurate than letting a human do it.
 3 Q Okay. But right now there is some --
 4 still some human element to this collection
 5 process, correct?
 6 A For things that are outside of e-mail.
 7 Q Okay. Where was I?
 8 MR. RODRIGUEZ: I think we were done.
 9 MR. ZORN: I'm learning -- I'm learning
 10 so much here. I was looking -- okay.
 11 BY MR. ZORN
 12 Q So -- so, you know, I do want to look
 13 here at Topic 3C. I believe A and B have been
 14 covered.
 15 A Pardon me.
 16 Q No, it's all good.
 17 A I just dropped something. I'll get it.
 18 MR. RODRIGUEZ: So I have a hard copy
 19 of the notice, and I'm going to let the witness
 20 look at it. I think it's just --
 21 MR. ZORN: I have no objection to that.
 22 THE WITNESS: Thank you.
 Page 101

1 BY MR. ZORN
2 Q So the percentage or proportion of FOIA
3 requests that were marked by DEA as raising
4 unusual circumstances in 2020, 2021 and 2022,
5 we're going to pull up the document, the FY
6 documents that were produced, but I just want to
7 be clear about my thinking in this, which is --
8 so complex is not necessarily unusual
9 circumstances?
10 A Close proxy, but not necessarily,
11 because, again, these definitions are very
12 different.
13 Q Okay. And let's just skip to D, then,
14 which is -- so the only time a request isn't
15 going to raise unusual circumstances is when that
16 document is in the FOIAExpress?
17 A That's one example, and then we have
18 other types of requests.
19 Like if we already know upon receipt of
20 the request that we would not have access to
21 that, or maybe a member of the public is asking
22 for records that DEA simply does not maintain --

Page 102

1 that's one example -- we're not going to assert
2 unusual circumstances. We're simply going to try
3 to cut a letter and get it out to the requester
4 as fast as possible to inform them that we don't
5 have -- you know, we don't maintain records on
6 this topic.
7 Q And I've asked this question, but I
8 think I want to drill down on it. So when is the
9 unusual circumstances determination made?
10 A When? It's made -- so when a request
11 comes in through our intake unit -- intake
12 handles that -- you know, that -- the beginning,
13 basically, the initial process of reviewing a
14 request, determining that, you know, we're ready
15 to move forward with a search.
16 So they're -- if they determine that we
17 have to go outside of our own office -- we don't
18 have access to those records in our system -- we
19 then -- they will invoke the unusual
20 circumstances.
21 So they send an acknowledgment e-mail
22 to the requester, and within that acknowledgment,

Page 103

1 they will tell them that we are invoking unusual
2 circumstances, and they tell them why, because we
3 have to go outside of our own office.
4 Q And it's a -- it's a totally binary
5 determination in the sense that if it's one
6 document somewhere else, it's the same as 100
7 documents somewhere else, right? The --
8 A Yes.
9 Q The actual burden of -- of what's being
10 requested is not evaluated except where the
11 documents are, right?
12 A Could you ask that again? I'm sorry.
13 I want to make sure I'm following.
14 Q Okay. So the -- the -- it's -- it
15 doesn't -- the agency doesn't evaluate how
16 burdensome it would be to produce records or,
17 frankly, even just make a determination as to
18 whether it will produce records. The only
19 determination is: Where are the records?
20 A No, that is not accurate. I think that
21 we do -- we do consider how burdensome a request
22 is.

Page 104

1 And I'll -- just to share an example,
2 we use what we call multi-track processing. So
3 let's say we've invoked unusual circumstances.
4 We've collected the records. We will designate
5 requests based on, basically, three categories,
6 whether it's simple, complex or expedited. So if
7 something has been granted expedited treatment,
8 we have to prioritize those. We're generally
9 working to get these requests completed first,
10 right?
11 Q Sure.
12 A Requests are generally handled in a
13 first-in, first-out basis based on the queue that
14 we've placed them in, but simple requests, I
15 mean, I do not want to have a one or two-page
16 response sitting in a queue for a year, right?
17 That is not helpful to the public.
18 So we have set up particular buckets or
19 queues, if you will, so that the management team
20 and I can keep eyes on these and we can get these
21 out faster. So even if we had to invoke unusual
22 circumstances and I get two pages back from the

Page 105

1 field, it's going in a queue so that I know I
 2 need to get these out. These are -- these are
 3 small cases. We don't want to be hanging on to
 4 those.
 5 Q So two pages from the field, that's
 6 unusual circumstances?
 7 A It would be, because, again, we don't
 8 have access to the system the material is housed,
 9 and we need to rely on them to provide it to us
 10 for processing.
 11 Q And we can agree that the unusual
 12 circumstances determination isn't about searching
 13 or collecting records. It's about whether or not
 14 the agency will produce records, right?
 15 A I don't think that's accurate, no.
 16 Q Well, there's -- there's -- there are
 17 different parts of the FOIA process. There's the
 18 determination at the beginning of whether or not
 19 the agency is going to search and collect
 20 records, right?
 21 A So that would happen at the intake
 22 stage.

1 that in consultation with the OIP that -- when
 2 DEA invokes unusual circumstances.
 3 I understand you -- you strongly
 4 disagree whether that's appropriate under the
 5 statute, but I think that we're --
 6 MR. ZORN: Well, I'm --
 7 MR. RODRIGUEZ: I don't want -- I don't
 8 want you to try to get her to concede a legal
 9 point.
 10 MR. ZORN: I'm not asking a legal
 11 question here. I'm trying to use the statute to
 12 illustrate what exactly is being deferred when
 13 the unusual circumstances is being invoked.
 14 BY MR. ZORN
 15 Q And, like, it's the -- it's like a
 16 determination on the FOIA request, right? It's
 17 not the actual production of records.
 18 In other words --
 19 A It's not the actual production. It's
 20 simply the fact that I have to go search for
 21 those records --
 22 Q Right.

1 Q Right.
 2 A We receive a request. The staff has
 3 reviewed the request thoroughly, and they
 4 determine it's time to conduct a search. So we
 5 send a search memo out to whichever office would
 6 own the material being requested.
 7 Q Right.
 8 A And that's the first process -- the
 9 first step.
 10 Q Right. And -- but -- but -- sorry.
 11 I'm cutting you off. That's rude.
 12 A No, you're fine.
 13 Q Okay. I just -- I want to go to, like,
 14 in the statute what the unusual circumstance
 15 is -- and I don't know what if you want to pull
 16 the statute up. That was -- it was, what,
 17 Exhibit FOIA?
 18 A Uh-huh.
 19 MR. RODRIGUEZ: I'm going to object
 20 probably that you're asking for a legal
 21 conclusion. I think we've established what the
 22 DEA's practice is and that she's testified

1 A -- outside of my own office. Once
 2 those records are collected, it then moves on to
 3 a different unit.
 4 The processing unit is now reviewing
 5 for responsiveness, determining what's
 6 releasable, you know, to the requester under the
 7 FOIA, placing redactions on records. So that's
 8 what that team does.
 9 But intake is doing the initial -- you
 10 know, they're the ones that are invoking unusual
 11 circumstances, if that's what you're asking.
 12 Q Yeah, and -- but I'm saying what --
 13 what is the -- what timeline here is getting
 14 extended?
 15 It's not like -- the agency, whether
 16 unusual circumstances apply or not, can frankly
 17 take its time reviewing records and producing
 18 records. What's being extended when the
 19 exception is invoked is the determination on,
 20 okay, here's how much you need to pay me to get
 21 me to search -- sorry -- to get me to review
 22 these records, right?

1 A This is the DEA's FOIA and Privacy Act
2 policy, internal policy.
3 Q So this is -- this is an internal
4 policy of DEA, true?
5 A Yes.
6 Q Okay. And at the top of the first
7 page, it says: This document and its contents
8 are the property of the Drug Enforcement
9 Administration and may not be disseminated
10 outside DEA (or if loaned outside of DEA, further
11 disseminated) without the express written
12 permission of the Office of Chief FOIA counsel.
13 Did I read that correctly?
14 A My -- the last little bit there, Office
15 of Chief Counsel, yes. Yeah.
16 Q And so what's -- what's the purpose
17 of -- well, let me take a step back.
18 Is this the complete document, or is
19 this a chapter in a larger document?
20 A This is a policy that can be found in
21 our administrative manual. So it's a -- it's a
22 subsection, if you will, of the admin manual.

Page 114

1 A Yes.
2 Q Do you know where this document is
3 published?
4 A When?
5 Q Where?
6 A Oh, where. I'm sorry. This is
7 published in the administrative manual, which is
8 accessible to all agency staff.
9 Q Okay. Is it accessible to the public?
10 A It is not.
11 Q Okay. And you're familiar with the
12 FOIA statute, aren't you?
13 A Yes.
14 Q Should this be accessible to the
15 public?
16 A It should be, and it is definitely part
17 of our list of priorities and things that we
18 would like to get published.
19 Due to the lack of resources I have
20 right now and our primary focus being just able
21 to fulfill FOIA requests, we've had struggle
22 getting policies and other things posted, but it

Page 116

1 Q Okay. And have you read that admin
2 manual before?
3 A Yes.
4 Q Okay. And is this header across the
5 entire manual?
6 A It's across all manuals --
7 Q Okay.
8 A -- in DEA.
9 Q Okay. And are those manuals that
10 instruct staff members on how to carry out their
11 jobs and duties?
12 A That is correct.
13 Q Okay. And you would agree that this
14 portion of the manual relates to FOIA requests
15 and processing of FOIA requests, correct?
16 A That is correct.
17 Q And, inherently, a FOIA request is
18 responding to a request made by a member of the
19 public, true?
20 A True.
21 Q And so responding to FOIA requests
22 affect the public, right?

Page 115

1 is definitely a goal of ours.
2 Q Okay. So disseminating this particular
3 chapter outside of DEA shouldn't raise any agency
4 concerns, right?
5 A In my opinion, it should not.
6 Q Okay. Because it's not a confidential
7 document because the FOIA presumably makes it
8 public, right?
9 A If this were to be requested by the
10 public, we would produce it. Second to that,
11 like I mentioned, my goal would be to eventually
12 publish this and other administrative policies
13 online.
14 Q And that would be a simple request now.
15 Because of my litigation, it's in the FOIAXpress
16 database, right?
17 A Are you saying if I were to get a
18 request for this right now, I would consider it
19 simple?
20 Q Yes.
21 A So how we define simple and complex,
22 again, right --

Page 117

1 Q And let me qualify this by -- like if
2 you discussed with, like, an attorney, I don't
3 want to run into privilege issues. I'm really
4 more talking about, like, chief FOIA officer
5 counsel type discussions. So --
6 A Yes.
7 Q -- like, has this ever been discussed
8 in, like, meetings sort of at DOJ?
9 A If you're talking about the definition
10 of unusual circumstances, yes, I have discussed
11 this with an attorney at OIP.
12 Q And I don't -- I can't ask you about
13 the contents of those discussions, so I won't,
14 but you have -- this has been discussed?
15 A It has been discussed.
16 Q Was it -- and now I'm just asking when.
17 Was it discussed before or after I filed this
18 lawsuit?
19 A After.
20 Q Okay. And so you have been in touch
21 with OIP since I filed this lawsuit?
22 A Yes, I have.

Page 122

1 Q Okay. And so OIP is aware of this
2 lawsuit?
3 A I have informed them that -- I'm trying
4 to remember how the conversation started.
5 I was -- I went to them to get clarity
6 on the definition of unusual circumstances. I
7 wanted to make sure that our interpretation was
8 the department's interpretation. So that was
9 the -- so I reached out to them, obviously, after
10 the lawsuit was filed to get clarification on
11 this.
12 Q Oh, so, I mean, you're here
13 representing the Department of Justice, and the
14 Office of Information Policy has confirmed that
15 this is the Department of Justice --
16 A Yes.
17 Q -- policy?
18 And by "this," I mean the
19 interpretation --
20 A The --
21 Q -- we've been discussing of unusual
22 circumstances.

Page 123

1 A Yes. Their interpretation is the same
2 as mine.
3 Q Okay. Let's move on to something else.
4 MR. RODRIGUEZ: And to be clear so -- I
5 think it will head off maybe any future issue.
6 It was a communication with an attorney at OIP,
7 and so we would consider the details of the
8 communication to be privileged. I just didn't
9 want you to turn around and ask me like, where is
10 that? It exists.
11 MR. ZORN: Yeah.
12 MR. RODRIGUEZ: It was via e-mail, or
13 at least I've seen an e-mail.
14 MR. ZORN: I think it's -- I think it's
15 privileged, so I'm not --
16 MR. RODRIGUEZ: Okay.
17 MR. ZORN: From what I've heard, it
18 sounds --
19 MR. RODRIGUEZ: Yeah. There's no
20 issue.
21 MR. ZORN: -- sounds privileged, and
22 I'm not -- I'm not going to go into the contents

Page 124

1 of it. There might be some argument under FOIA
2 that it isn't, but I'm not -- I'm not going to go
3 there.
4 BY MR. ZORN
5 Q Okay. Why don't -- why don't we talk a
6 little bit about fees. I'm interested in how
7 fees are calculated.
8 So I'll start with that, which is just
9 an open ended: How are fees calculated?
10 A We, like I mentioned earlier, do not
11 charge search fees any longer. It's very rare
12 for us to charge search fees due to the statutory
13 time limits.
14 Review fees, however, are charged only
15 to commercial use requesters. So when we receive
16 a request and we've determined that it is, in
17 fact, commercial use, we will continue to -- we
18 will do the search, collect the records.
19 Once the records come back, we -- the
20 staff has a little calculation that we file to
21 determine how long the review time is going to
22 take, you know, what the labor hours are going to

Page 125

1 be, and then we follow the fee provision that's
 2 in the DOJ FOIA regulations, which says that we
 3 charge \$40 per hour.
 4 MR. ZORN: Okay. And so I've
 5 introduced an exhibit. It's annotated, and
 6 it's -- it should be in the folder as 10A.
 7 THE WITNESS: Okay.
 8 MR. ZORN: And we can pull this up.
 9 (Deposition Exhibit Number 10A
 10 was marked for identification.)
 11 BY MR. ZORN
 12 Q When you have this up, just let me
 13 know.
 14 A Yes, I do.
 15 Q So this is -- and there's highlighting
 16 on the page, and I just want to be clear for the
 17 record. It wasn't produced to me with the
 18 highlighting. That's highlighting I've done to
 19 help us sort of be clear on the questioning.
 20 But at the top, it's "22-00585-F
 21 Request Notes."
 22 Is that -- did I read that correctly?

1 how we're calculating review fees, because I had
 2 noticed some variability between teams in how the
 3 staff and supervisors were calculating what they
 4 believed, you know, in good faith, was -- how
 5 long it was going to take them to complete a
 6 review. So I wanted to standardize this.
 7 So we drafted an SOP, and I had several
 8 meetings with the unit chiefs to sit down -- we
 9 sat down in a room and worked together in
 10 determining how long on average does it take you
 11 to review a page, place redactions on a page, and
 12 we came up with seven minutes on average.
 13 Q And what's an SOP?
 14 A I'm sorry. Standard operating
 15 procedures.
 16 Q Okay.
 17 A So we wanted to put a guidance document
 18 together for the office in an effort to
 19 standardize this process and be more transparent
 20 and be consistent in how we're calculating review
 21 fees.
 22 Q And -- and is that -- was that

1 A Yes.
 2 Q And is it a fair characterization to
 3 say that these are internal DEA request notes
 4 from a request that I filed?
 5 A Correct.
 6 Q Okay. And looking at the first page,
 7 I've highlighted that there's 2,190 pages of
 8 potentially responsive records.
 9 Did I --
 10 A Correct.
 11 Q Okay. And then -- and this isn't
 12 highlighted, but it's on the next line -- seven
 13 minutes per page for review.
 14 Is that the standard agency seven
 15 minutes per page?
 16 A That is what our office has -- uses,
 17 yes, for the determination of the review time.
 18 Q Where did that number come from?
 19 A So that number came from a series of --
 20 let me back up.
 21 During 20- -- early 2022, I determined
 22 there was a need to standardize this process in

1 produced --
 2 A Yes.
 3 Q -- the SOP?
 4 A It was.
 5 Q Okay. Was it titled standard
 6 operating -- did I miss it?
 7 A It was, and it was titled "Calculating
 8 of Review Fees."
 9 Q Okay. So the seven minutes comes from
 10 just -- was there any, like -- who -- was it --
 11 how was seven minutes arrived at? Just a guess
 12 of what the average time was?
 13 A It was myself and three other managers,
 14 yes, that sat together and talked through this
 15 SOP, and we came up with, on average, that we
 16 believe it takes us about seven minutes to
 17 process a page, meaning I'm reviewing a page, I'm
 18 using a tool to place redactions, place codes on
 19 the document. It's about seven minutes per page.
 20 Q Okay. And then -- and you're not --
 21 so -- so the estimate's not based on what -- how
 22 long it would take to actually read a page. It's

1 just --
 2 A Oh, it's reading as well, yeah. I'm
 3 reading the page, and I'm placing redactions on
 4 protected information and asserting the exemption
 5 code, placing the exemption code on the document.
 6 That's all part of the --
 7 Q And so I'm still kind of at a loss. So
 8 how -- you guys just agreed on seven minutes? I
 9 don't --
 10 A Yes.
 11 Q Was there any -- did you kind of like
 12 do any experiments or --
 13 A We did not do an experiment, per se,
 14 no. This was a conversation over several
 15 meetings, you know, in putting this SOP together,
 16 and just from our -- our experience and years of
 17 practice in this area, we came up with the seven
 18 minutes.
 19 Q Because the difference between seven
 20 minutes and six minutes is a lot -- it's a lot of
 21 money when you multiply it by a lot of pages.
 22 A And, again, that's why, you know, it is

Page 130

1 an estimate. You know, this -- this fee, it's an
 2 estimate. So we estimate that it takes, on
 3 average, seven minutes.
 4 Q And three -- so three people came up
 5 with this?
 6 A I think four of us. There were --
 7 Q Four.
 8 A -- four of us.
 9 Q Okay. And so there are multiple layers
 10 of review as well, true?
 11 A Generally, it's two. So it would be
 12 the individual in our office that we assign to
 13 process the case. Then when that individual is
 14 finished with the case, it moves up to a manager
 15 for review.
 16 So we are assessing the review fee for
 17 both the professional administrative staff's time
 18 and the supervisor time.
 19 Q Okay. And -- and looking at the
 20 document here, the management review time is
 21 estimated to be 20 percent less than the -- than
 22 the initial reviewer's time; is that fair?

Page 131

1 A Correct.
 2 Q Why are there two levels of review?
 3 A So our subordinate staff does the
 4 majority of the processing. We have to -- it has
 5 to be reviewed by a manager before we can
 6 authorize release to the public, right?
 7 Oftentimes, the managers, when they're
 8 doing final review, myself included, are making
 9 slight adjustments to those records. Obviously,
 10 if it's a lot of adjustments, it's going back to
 11 the processor to finalize.
 12 But, generally, a manager is tweaking
 13 redactions, making sure that this has been
 14 properly processed, that the redaction codes are
 15 proper. If -- if something was incorrectly
 16 redacted, we're lifting redactions. So the
 17 manager is doing review work and also sometimes
 18 minor corrections.
 19 Q And why is the manager 20 percent?
 20 A Because we're not doing the full
 21 processing that the subordinate staff is doing,
 22 right? We're not going -- we're not placing

Page 132

1 redactions on the entire document. That's
 2 already been done.
 3 When it gets to our level, we're just
 4 going through the document, reading every page,
 5 making sure that the redactions are correct, and
 6 making adjustments if need be.
 7 Q If a manager has to review everything,
 8 why even have the initial review?
 9 A Because we would then have to place all
 10 the redactions, all the exemption codes. It is a
 11 lot of work. So we have subordinate staff to do
 12 that initial processing for us. We're just final
 13 review. We're just making sure that it's been
 14 properly redacted and it's ready for release to
 15 the public.
 16 Q But you're charging for -- the agency
 17 charges \$40 per hour of -- of both the initial
 18 review and the manager review?
 19 A That is correct.
 20 Q And the purpose of the initial review
 21 is to save that 20 percent that's going to happen
 22 with the manager review; is that fair?

Page 133

1 we call stop the clock.
 2 So if a request is not perfected,
 3 meaning there's an issue with the request and we
 4 have to go back to requester, we stop the clock
 5 because we don't want that counting towards
 6 the -- you know, the statutory deadlines. And
 7 once, again, we've perfected the request, we --
 8 we basically turn the clock back on, if you will.
 9 Q Okay. Then to track, we've discussed
 10 that?
 11 A Uh-huh.
 12 Q And so there are three tracks, right?
 13 There's -- there's complex, expedited and simple?
 14 A Correct.
 15 Q Okay. What is the expedited track?
 16 A Expedited track is any time a requester
 17 requests expedited treatment and because they
 18 feel there is a compelling need for the
 19 information sought.
 20 So there is some criteria, obviously,
 21 that has to be met in order to meet the
 22 compelling needs standard. One example would be

Page 162

1 maybe an inmate on death row has asked for
 2 records on themselves, and, you know, we would
 3 grant expedited treatment in that scenario.
 4 Q Okay. And who makes the determination
 5 to grant expedited treatment?
 6 A Generally, our intake unit.
 7 Q Okay. And is -- is a journalist making
 8 a request for information -- is that given
 9 expedited treatment?
 10 A They would -- we would consider the
 11 request. If they ask for expedited treatment, of
 12 course, we would consider the request. It's --
 13 it's incumbent upon the requester to basically
 14 tell us which standard under expedited treatment
 15 they feel that they meet.
 16 Q Okay. And, otherwise, the requests are
 17 prioritized on a first-in, first-out type basis?
 18 A Generally, yes.
 19 Q So we're looking at the spreadsheet.
 20 We looked at this April 2018 request.
 21 That is -- that is still being
 22 processed, so there's -- there's more than four

Page 163

1 years' worth of FOIA requests ahead of anything
 2 that gets filed now?
 3 A I'm sorry. I want to make sure I'm not
 4 losing track of the question here. So I've moved
 5 away. I'm at the -- I'm now at the top row.
 6 Are you asking about a specific --
 7 Q I'm just --
 8 A -- entry or no? Just generally --
 9 Q No, just --
 10 A -- you're asking --
 11 Q -- generally. We did look -- we looked
 12 at an entry, right, that was unfulfilled from
 13 April of 2018, true?
 14 A Yes.
 15 Q And DEA processes FOIA requests on a
 16 first-in, first-out type basis?
 17 A Uh-huh.
 18 Q Fair?
 19 A Yes.
 20 Q And that one is still being reviewed,
 21 presumably, true?
 22 A The one that we looked at had to do

Page 164

1 with antitrust, so if -- but if you're asking
 2 about a DEA request that's from 2018 that's still
 3 open, I mean, we definitely have some requests
 4 from 2018, 2019, that are open.
 5 Q Okay. And so -- so -- well, I'm
 6 looking -- I'm looking now at the -- I don't know
 7 if it was antitrust. I mean, 18-00710 is -- I
 8 have it as a DEA request.
 9 A Okay. Sorry. We moved away from the
 10 line that you were asking about. That's why
 11 we're back at the top now.
 12 Q Yeah. Sorry.
 13 A I think it was, what, 17 --
 14 Q Yeah. If you get to the 116166 area,
 15 yeah, we have a number of requests from 2018 that
 16 are -- are empty.
 17 And I'll -- when you tell me when
 18 you're there, I'll give you a precise question
 19 and answer.
 20 A Could you kindly give me the number
 21 again?
 22 Q Sure. It's the Excel row 16167.

Page 165

1 A Actually, just give me a minute. Just
 2 looking for the data. I'm trying to get this not
 3 to move so fast.
 4 MR. RODRIGUEZ: Yeah. My --
 5 THE WITNESS: It's difficult.
 6 MR. RODRIGUEZ: The interface --
 7 THE WITNESS: I'm sorry.
 8 MR. RODRIGUEZ: -- is very jumpy on my
 9 pad. I don't usually use that. And I brought a
 10 mouse --
 11 THE WITNESS: That's okay.
 12 MR. RODRIGUEZ: -- but for whatever
 13 reason, it's not working.
 14 THE WITNESS: 161 --
 15 MR. ZORN: 16167.
 16 THE WITNESS: 67. All right. I'm
 17 almost there. There we go. All right.
 18 BY MR. ZORN
 19 Q So this is a DEA request?
 20 A Correct.
 21 Q It is 18-00710. True?
 22 A Yes.

1 these requests in line, right?
 2 A Typically, yes. But having said that,
 3 I have set up a number of queues in the office to
 4 try to flag or keep eyes on things that are
 5 simple.
 6 So if I have a request from 2018 and
 7 it's two pages, we shouldn't have that, right?
 8 We want to make sure that we're getting requests
 9 out that are simple quicker. And by doing so,
 10 we've actually reduced our simple case processing
 11 time about 52 percent in the last two years.
 12 Complex is definitely far more
 13 challenging, and it's because it involves
 14 hundreds, sometimes thousands of pages of records
 15 to review, and, again, we have a very small team
 16 to process this. So we do have a backlog.
 17 Q And so anyone who makes -- well, what's
 18 the threshold between simple and complex
 19 page-wise?
 20 A Approximately 20 pages. So we said
 21 anything that's 20 pages and less, we dump into
 22 one particular queue. That just really helps the

1 Q And it's a FOIA request, dash F?
 2 A Yes.
 3 Q Okay. And -- and just moving to the
 4 right, it's opened May 2018 and perfected that
 5 same day, right?
 6 A Yes.
 7 Q And it's still open, right?
 8 A It's still open.
 9 Q And with your screen there, you know,
 10 looking down the page, you can see there are --
 11 A Yes.
 12 Q -- like almost a dozen requests from
 13 2018 that are still open.
 14 A Correct.
 15 Q And they're complex, so the volume is
 16 probably more than -- than -- than a simple
 17 request?
 18 A Right.
 19 Q And these are all still open?
 20 A Yes.
 21 Q And so in the first-in, first-out
 22 system, unless a request is expedited, it's after

1 management team keep eyes on those so we can work
 2 together to close them faster.
 3 Q So -- and are requests ever batched
 4 together?
 5 So if I make two requests for two
 6 documents, will that be treated -- would that be
 7 treated -- let's say the documents I request are
 8 ten apiece. Do you follow me?
 9 A Okay.
 10 Q Well, actually, no. 15 apiece.
 11 A Okay.
 12 Q If I were to batch that together, there
 13 would be 30 pages, and that would be complex,
 14 right?
 15 A So -- but you -- well, you have filed
 16 them as two separate requests, and they were --
 17 Q I filed --
 18 A -- 15 pages each, so we would -- when
 19 we're done with the processing, we would put
 20 those into one of the simple queues I spoke of.
 21 That way, again, we're keeping eyes on those, and
 22 we're trying to get them out faster to you.

1 MR. ZORN: Yeah.
 2 THE WITNESS: Thank you.
 3 BY MR. ZORN
 4 Q Okay. So -- and the agency doesn't
 5 have a benchmark sort of aiming to have a certain
 6 percentage of simple versus complex, does it?
 7 A No. And I guess I'm struggling with
 8 this because, like, I don't know how we can get
 9 around a case that is legitimately -- it's
 10 complex.
 11 If I am -- if my staff has to process
 12 hundreds, sometimes thousands of pages, the only
 13 workaround to reduce that -- the size of that
 14 case would be to have a conversation with the
 15 requester and see if we could narrow scope.
 16 Q I follow you, and you're talking about
 17 thousands of pages, but I guess what -- what I'm
 18 kind of getting at is -- okay. And you've said
 19 it's not a hard and fast rule, and I accept that.
 20 But if the threshold for what sort of
 21 crosses into complex or simple were raised, you
 22 know, potentially, there would be a different

Page 186

1 alignment of sort of requests in the simple
 2 bucket versus the complex bucket, because, I
 3 mean, we can agree that there are some documents,
 4 just single individual documents that are more
 5 than 20 pages, right?
 6 A Yes.
 7 Q And if someone -- there's no way to
 8 narrow a request that's -- you know, even if I --
 9 if I were to request the DEA staff manual -- we
 10 were looking at that earlier.
 11 A Right.
 12 Q And that's a big document, isn't it?
 13 A Uh-huh.
 14 Q And let's say I narrowed my request to
 15 like three chapters, right?
 16 A Uh-huh.
 17 Q I'm already over 20 pages. Do you
 18 follow me?
 19 A I do.
 20 Q But that's not really a complex
 21 request, is it?
 22 A It's not. Again, it would be based on

Page 187

1 the number of pages, the length of time it's
 2 going to take us to process.
 3 You know, low staffing numbers also
 4 impact this, right? It just -- the ability to
 5 produce something quickly nowadays with such
 6 limited resources is difficult.
 7 Q So -- well, how does the staffing
 8 affect the complexity of a request?
 9 A So if a case -- if we deem a case
 10 complex -- again, it's generally due to the size
 11 of the case, and I only have 16 staff members in
 12 total to work on these cases -- earlier I said
 13 18. I'm taking myself out of this and our
 14 secretary. Okay. So legitimately people to do
 15 FOIA processing work, 16 people.
 16 So if we've deemed a request complex
 17 because it's -- the volume is high, I mean, I
 18 have 16 staff members to work on those cases. We
 19 received 16 -- over 1,600 requests just in 2022,
 20 16 people to work on all of that, with the
 21 majority being complex.
 22 Q So -- so a simple request is -- so,

Page 188

1 really, the difference between simple and
 2 complex, as I understand it, is just the amount
 3 of time it's going to take to respond, fair?
 4 A Yes.
 5 Q Okay. And --
 6 A If we feel we can produce it in 30 days
 7 or less, we categorize it as simple.
 8 Q Okay. And it might still raise unusual
 9 circumstances, but it could be simple, right?
 10 A Let me walk this through in my head.
 11 Yes, that is true. If I have to search another
 12 field office and what comes back is two pages and
 13 I'm able to get it out in ten days, we would deem
 14 that as simple.
 15 Q But if you can get it out that quickly,
 16 it's not really necessary to have extra time to
 17 be able to complete that request, right?
 18 A Well, the reason, again, why we would
 19 have to invoke the extra time is we have to go
 20 outside of the FOIA office. Sometimes we have to
 21 go to another state to get the records, right?
 22 So we don't have access. That's why

Page 189

1 pronounce her last name. This is the -- a
 2 couple -- it's the bottom of page 4 out of 5,
 3 just if you can tell me when --
 4 A Okay.
 5 Q -- you're there.
 6 A Let's see. Page 4. Yes, I'm there.
 7 Q And "Check with SC."
 8 What's "SC"?
 9 A Section chief. She's speaking of me.
 10 Q "If these still apply because case is
 11 past 30 days," right?
 12 A Uh-huh.
 13 Q And -- and the fees here that
 14 wouldn't -- would not be due are the search fees,
 15 right?
 16 A We would not have -- you're right. We
 17 would not charge search fees for this case or --
 18 Q Because --
 19 A -- any case, really, nowadays because
 20 of the amendment. The change in 2016, like I
 21 said, really limited our ability to charge search
 22 fees.

Page 194

1 Q But it doesn't limit the ability to
 2 charge review fee or processing fees?
 3 A There isn't a processing fee, per se,
 4 but it's review and duplication. Duplication, we
 5 don't charge, either --
 6 Q Right.
 7 A -- because the days of Xeroxing records
 8 is really over. It's all electronically done.
 9 Q And it says -- and there were draft
 10 letters and e-mails from the share drive.
 11 And, actually, let's turn back down to
 12 yours, because you say, "Drafts need to be
 13 closely reviewed under (B)(5).
 14 Do you see that?
 15 A I need to see -- which page is that on?
 16 Page 4? I'm sorry.
 17 Q Sorry. Now we're back on page 5. This
 18 is back --
 19 A Okay.
 20 Q -- on -- on your comment. It's a
 21 May 10th, 2022, 2:27 p.m. comment.
 22 A Yes.

Page 195

1 Q And it says, "Drafts need to be closely
 2 reviewed under (B)(5)."
 3 It's the last sentence. Now, (B)(5) is
 4 the deliberative process privilege, true?
 5 A Yes.
 6 Q And generally speaking, draft agency
 7 documents are -- are almost always going to be a
 8 deliberative process?
 9 A Yes. Anything that's pre-decisional
 10 or -- yes.
 11 Q Now, if a document, on its face, the
 12 first page is pre-decisional or deliberative
 13 process -- do you follow me?
 14 A Yes.
 15 Q Would the DEA end up charging for
 16 reviewing the rest of the document?
 17 A If the entire document has been
 18 deemed -- meaning the entire document is
 19 pre-decisional, we're withholding it in full.
 20 Q Yeah. I mean, hypothetically, let's
 21 say we have like a draft, like what you're -- in
 22 your comment, you talk of drafts, and it doesn't

Page 196

1 really go beyond that. But just say draft.
 2 Okay?
 3 A Uh-huh.
 4 Q A draft letter.
 5 A Yes.
 6 Q The reviewer looks at it. It's a draft
 7 letter. It's a (B)(5) withholding.
 8 When DEA goes to calculate the review
 9 time, is that -- you know, is that sort of
 10 calculated -- like line by line is reviewed of a
 11 (B)(5) withholding?
 12 A So you have to keep in mind that the
 13 review has not been done yet. When the -- when
 14 the fee is calculated, we are simply looking at
 15 how many pages do we have that we're going to --
 16 you know, have to review and process, meaning
 17 review -- read the document, determine what is
 18 exempt, place (B)(5) exemptions on. That hasn't
 19 occurred yet. That comes later, right?
 20 Q Understood. But what I'm -- where I'm
 21 going with this is the seven-minute-a-page
 22 estimate is sort of predicated on the notion that

Page 197

1 every single page is going to be read, reviewed,
 2 redacted. In practice, that never happens when
 3 there's withholdings like the one I'm describing
 4 now, right?
 5 A I mean, if you're telling me one --
 6 you're talking about one page, two pages that
 7 we're going to exempt in full under (B)(5). We
 8 still have to -- there's a -- we have to read the
 9 document and place the redaction on the document.
 10 Q Well, if the -- well, first -- wait.
 11 So a (B)(5) withholding is, like, produced as
 12 just like a big black box?
 13 A We basically have to mark the document
 14 in a manner that it's very clear that it's being
 15 withheld in full under (B)(5). We have to do
 16 that in the event that we're appealed or sued by
 17 a requester.
 18 We want -- at the administrative level,
 19 we want it to be very clear about our
 20 decision-making in these withholdings, so, yes,
 21 there is a redaction -- a blanket redaction, if
 22 you will, placed on the document.

1 Q And that takes seven minutes to put
 2 that on?
 3 A Not on a single page, no.
 4 Q Okay. But -- and you're talking about
 5 like a one to two-page document, but, you know,
 6 if you have like a 20-page draft memo, then it's
 7 just all 20 pages. Fair?
 8 A Yes. We would place the blanket, and
 9 it should apply to all pages.
 10 Q And it's not going to take seven
 11 minutes to go through and read those documents
 12 line by line because they're being withheld,
 13 right?
 14 A Right.
 15 Q And so when DEA produces its fee
 16 estimate that needs to be paid up front, right,
 17 that's effectively a max -- that's a maximal --
 18 that's like the most -- assuming DEA went through
 19 and reviewed every single page and it was -- and
 20 assuming seven minutes a page is an accurate
 21 reflection, like, this is the most that you're
 22 going to have to pay, right?

1 A Yes. And that's why it's called a fee
 2 estimate. So if we -- if we overcharged or
 3 overestimated, we would owe money back to the
 4 requester in the end.
 5 Q What if someone can't afford the
 6 estimate? Is there any -- any way to --
 7 A Unfortunately -- and, again, this only
 8 applies to commercial use requesters -- you know,
 9 we -- there are fees that have to be paid for
 10 this -- for the process.
 11 And when you're talking, again,
 12 thousands and thousands of pages for review,
 13 unfortunately, with the lack of resources, I
 14 don't have the ability to just waive the fees
 15 there.
 16 Q Well, how do you determine if someone's
 17 a commercial use requester?
 18 A So we would take a look at what is
 19 submitted in the request letter, and if we
 20 determine that there is a commercial trade or
 21 profit interest in the records sought, we would
 22 determine that it's commercial use.

1 Q And does it -- does DEA make the
 2 determination that it's predominantly a
 3 commercial use or just any -- any commercial use?
 4 A I'm sorry. I don't know that I'm
 5 following the question.
 6 Q Well, something could have a commercial
 7 use, but also a non-commercial use. Is that --
 8 is that fair?
 9 A Potentially, yes.
 10 Q So -- and is -- is it the agency's
 11 position that in deciding who to charge fees, its
 12 based on if there's any commercial use of the --
 13 A It's based --
 14 Q -- records?
 15 A -- on information that's provided by
 16 the requester. So it has to be clear to us that
 17 there's a commercial use. Again, it's really on
 18 the requester to tell us -- you know, if they
 19 feel they're not a commercial use requestor, they
 20 need to articulate that so we can review it.
 21 Q So -- and -- and I think there are sort
 22 of contrasting examples in the record here

1 submitted publicly. What would have been the
 2 basis to not release their names on the document?
 3 A So, generally, we do not release the
 4 names of DEA employees on any document unless
 5 that document has already been made publicly
 6 available. So we protect -- there is a privacy
 7 concern, and so we generally -- excuse me -- we
 8 redact those under FOIA exemptions (B)(6) and
 9 (7)(C).
 10 In this circumstance, I didn't -- I did
 11 not believe we were going to withhold their
 12 names, but as a courtesy to them, I picked up the
 13 phone and I just made sure there were no
 14 concerns. And I, you know, had the conversation
 15 about it was -- this document, I understand, has
 16 already been released in full, you know, just
 17 wanted to make sure they had no concerns. But we
 18 did not withhold their names.
 19 Q So -- so what is the (B)(6) exemption?
 20 A This -- oh, excuse me. This is --
 21 protects -- it's a personal privacy exemption, so
 22 names -- you know, we redact the names of all of
 Page 210

1 our employees under that exemption with the
 2 exception of SES personnel. So SES names, we do
 3 not redact.
 4 Q So is that a -- is that a policy of
 5 the --
 6 A This is actually a DOJ policy --
 7 Q It's --
 8 A -- that we follow.
 9 Q It's not even written down, right?
 10 A It's -- it was captured in a memo that
 11 OIP put out a couple of years ago about
 12 protecting the names of certain agency, you know,
 13 staff, and so we've been following those
 14 guidelines ever since.
 15 Q Do you know where I can find that OIP
 16 memo?
 17 A If it's not on their website, you might
 18 have to file a FOIA request. I apologize to say.
 19 I don't know if that is actually publicly
 20 available.
 21 Q And if it weren't publicly available,
 22 that would be another FOIA violation of the day,
 Page 211

1 right?
 2 A In what regard? I'm sorry.
 3 Q Well, the FOIA requires that -- that --
 4 MR. RODRIGUEZ: Objection. Calls for
 5 legal conclusion.
 6 BY MR. ZORN
 7 Q Yeah. FOIA requires that -- that
 8 substantive statements of policy be -- be made
 9 affirmatively available, right?
 10 A It does.
 11 Q And so that that -- what you've
 12 described sounds like a substantive policy that
 13 the agencies are following, right?
 14 A Yes.
 15 Q And just to be clear about the
 16 implication of this policy, would that apply to,
 17 like, an e-mail?
 18 A It would apply to e-mails. It would
 19 apply to all records.
 20 Q So it's -- and, you know, if you need
 21 to pull up the statute, then that's fine, but I
 22 just want to read Exemption 6.
 Page 212

1 It's the position of the United States
 2 Department of Justice that names are personnel
 3 and medical files and similar files, the
 4 disclosure of which would constitute a clearly
 5 unwarranted invasion of personal privacy; is that
 6 right?
 7 A That is --
 8 MR. RODRIGUEZ: Objection. Calls for
 9 legal conclusion.
 10 You can try to answer.
 11 THE WITNESS: That is correct.
 12 BY MR. ZORN
 13 Q And as a matter of policy, names are
 14 being redacted because it's the Department of
 15 Justice's contention that those are personnel
 16 files?
 17 A They're personnel, medical or other
 18 files, which basically means it could be any
 19 file. So for us, a lot of our records are law
 20 enforcement sensitive, and we want to protect the
 21 names of our agents, our intel analysts, so on
 22 and so forth. We do believe that they have a
 Page 213

1 privacy right.
 2 Q Well -- and to be fair, there's a
 3 completely different exemption for law
 4 enforcement officers, right?
 5 A We use the combination of (B)(6) and
 6 (7)(C) to protect their names, yes.
 7 Q But Theresa Carbonaro is not a -- she
 8 wasn't -- she isn't and wasn't law enforcement?
 9 A She is a pharmacologist, as far as I
 10 know, but we still, depending on the type of
 11 document, would protect her name under (B)(6) and
 12 (7)(C).
 13 Q Which --
 14 A Not in this circumstance.
 15 Q So -- but -- and 7 is records or
 16 information compiled for law enforcement
 17 purposes?
 18 A Uh-huh.
 19 Q But only to the extent the production
 20 of such law enforcement records or information --
 21 and then getting down to C -- could reasonably be
 22 expected to constitute an unwarranted invasion of
 Page 214

1 personal privacy; is that fair?
 2 A That is correct.
 3 Q Now, when a person is serving as a
 4 government servant, what expectation of personal
 5 privacy is there?
 6 A So, again, if -- in the -- this has
 7 been the policy across the department. If --
 8 generally, employees that are not at the SES
 9 level, we don't consider to be public facing at
 10 the same level, and so they have a right to
 11 privacy, and we want to protect the names of
 12 those employees.
 13 Obviously, they work in very
 14 sensitive -- sensitive matters for the DEA, and
 15 so our general practice is to redact their names
 16 below SES level.
 17 Q Okay. So -- but -- and we can
 18 certainly agree that there are many, many
 19 individuals at DEA who do very sensitive law
 20 enforcement tasks.
 21 We can agree on that, right?
 22 A Yes.
 Page 215

1 Q But we can also agree that not everyone
 2 at DEA is working on law enforcement or sensitive
 3 tasks with respect to everything that they do; is
 4 that fair?
 5 A That is fair.
 6 Q Okay. And, you know, for example, a
 7 pharmacologist is not performing law enforcement
 8 functions in everything that he or she does; is
 9 that fair?
 10 A Fair.
 11 Q But it is the agency's policy, per the
 12 Department of Justice, not -- not -- this is not
 13 DEA policy. This is DOJ policy.
 14 Do you follow me?
 15 A Uh-huh.
 16 Q That -- that that person's name needs
 17 to be redacted regardless of the function they're
 18 performing?
 19 A That is correct.
 20 Q And do you know when this policy
 21 started?
 22 A I want to say it was sometime during
 Page 216

1 2019.
 2 Q Do you know who created the policy?
 3 A This was captured in a memo that was
 4 issued from the former director of Office of
 5 Information Policy.
 6 Q And what's that person's name?
 7 A Melanie Pustay.
 8 Q Okay. And was that signed off on by
 9 Ms. -- this would have been during the Trump
 10 administration, right?
 11 A Yes.
 12 Q And who was -- do you know who the DOJ
 13 chief FOIA officer was in 2019?
 14 A That I do not.
 15 Q Okay. So we're getting a little far
 16 field. So let me --
 17 MR. RODRIGUEZ: Yeah. And we'll go off
 18 the record?
 19 MR. ZORN: Yeah.
 20 (Brief off-the-record discussion.)
 21 MR. ZORN: Okay. So there's no
 22 question pending, so why don't I introduce
 Page 217

1 draft up what we call a search memo. We would
 2 send the memo along with a request letter to our
 3 point of contact that sits in the office of --
 4 the Information Technology Division.
 5 We would have them -- they reach out to
 6 another unit within that division to actually
 7 conduct this -- the e-mail search. They use a
 8 particular tool called Intelta to capture these
 9 responsive e-mails.
 10 And then once the search is done -- we
 11 give the offices five days to complete a search.
 12 So once we get those records or we're notified
 13 that the records are ready, my team will go into
 14 that Intelta site and take -- take the e-mails and
 15 load them into our own case management system,
 16 FOIAXpress, to begin processing.
 17 Q So -- and what -- do you have any
 18 conception of what percentage of FOIA requests
 19 are for e-mails?
 20 A I do not have the percentage, no. I
 21 wouldn't be able to tell you off the top of my
 22 head.

1 Q And so is it your understanding -- and
 2 maybe you don't know, but -- but that there is a
 3 centralized server with DEA e-mails?
 4 A Probably. I don't know exactly how
 5 it's all kept. You know, I'm not -- I admit I'm
 6 not an IT expert, so --
 7 Q Okay. And I'm not saying it is or
 8 isn't the case, but let's just assume there is a
 9 single server that has all DEA e-mails or some
 10 database that allows a centralized repository.
 11 Do you follow me?
 12 A Yes.
 13 Q It's still the position of DEA and DOJ,
 14 for that matter, that because that server isn't
 15 in the FOIA office, unusual circumstances
 16 every -- every time?
 17 A Correct. And the unit that runs the
 18 e-mails -- does the e-mail searches for us sits
 19 in another city in Virginia. They're not located
 20 in our headquarters buildings in Arlington where
 21 the FOIA office is located.
 22 Q Could -- is it possible -- I mean, it

1 might not be a fair question, but is there any
 2 specialized training required to operate this --
 3 this other system?
 4 A For Intelta, there was. I had to take
 5 my team out to the office where -- I had to take
 6 them to that part of Virginia where the
 7 intelligence -- I'm sorry -- the Information
 8 Systems Division sits to train them how to use
 9 the tool to pull those e-mails and bring them
 10 into our case management system.
 11 And there was an SOP written on this,
 12 and so, yes, there was some training for my staff
 13 in how to utilize that system.
 14 Q And -- wait. So the staff knows how to
 15 use -- the FOIA staff --
 16 A So --
 17 Q -- knows how to use --
 18 A -- let me --
 19 Q -- that system?
 20 A -- clarify. So the experts -- the
 21 subject matter experts that sit in our IT
 22 division are the ones that actually do the search

1 for the e-mails, and they load them into a tool
 2 called Intelta. Once that process is done, they
 3 notify my team it's complete, and then we have to
 4 log into Intelta to pull those responsive records
 5 out.
 6 So they're not searching for records,
 7 my team. They're basically retrieving the
 8 material that's already been placed into Intelta
 9 for them, if that makes sense.
 10 Q And the accessing Intelta by the FOIA
 11 staff is done remotely, right?
 12 A It's -- right. It's done in Arlington
 13 where we sit, right.
 14 Q And then you're saying that this IT
 15 staff is in some other -- and we don't want to
 16 talk about the location --
 17 A Sure.
 18 Q -- but we're just saying it's some
 19 other location, right?
 20 A Correct.
 21 Q Does this process change at all if,
 22 instead, the FOIA office were on the third floor

1 and the IT office is on the first floor?
 2 A No. It would be the same process.
 3 Q So it's unusual circumstances -- well,
 4 if it were the first and third floor, it would
 5 still be unusual circumstance, right?
 6 A It would be, again, because we just
 7 simply don't have access to the e-mail records.
 8 We don't have access to the tool to retrieve
 9 employees' e-mail records. We have to rely on
 10 someone else to do that for us.
 11 Q Well, now, retrieving e-mail records is
 12 a -- it's certainly a function to search and
 13 produce for FOIA purposes, right?
 14 A Yes.
 15 Q I imagine a congressional subpoena
 16 might be another instance where e-mails had to be
 17 searched and produced?
 18 A Uh-huh. Yes.
 19 Q Are you aware of any other reason that
 20 the agency would search and produce e-mail
 21 records other than to respond to a FOIA request
 22 or subpoena?

Page 234

1 know, let's say they get a request to collect all
 2 the e-mails belonging to so and so, that there's
 3 a good chance that that's because of a FOIA
 4 request.
 5 MR. RODRIGUEZ: Objection. Foundation.
 6 THE WITNESS: Yes, it could be. Yes.
 7 BY MR. ZORN
 8 Q Okay. And there are other
 9 circumstances in which that -- that employee
 10 might be searching for and producing e-mails,
 11 fair?
 12 A Yes.
 13 Q Like I said, a court subpoena or even
 14 in this case, we had requests for production.
 15 This wasn't a FOIA request, fair?
 16 A Fair.
 17 Q But a FOIA request is one of the
 18 situations?
 19 A Yes.
 20 Q Okay. And, in fact, it's not an
 21 uncommon situation?
 22 A It's not uncommon.

Page 236

1 A I mean, I can't speak to that. I can
 2 only speak to my functions in FOIA.
 3 Q It seems to me that a large part of the
 4 job of -- of -- if not the predominant part of
 5 the job of searching this in Intela or --
 6 sorry -- even gathering the e-mails is FOIA, like
 7 that -- would you agree?
 8 A Could you rephrase that question? I'm
 9 sorry.
 10 Q This particular function that we've
 11 been discussing of collecting e-mails to produce,
 12 it seems to me that a major reason one would do
 13 that is to respond to a FOIA request.
 14 MR. RODRIGUEZ: Objection. Foundation.
 15 You can try to answer.
 16 THE WITNESS: It -- I mean, it
 17 represents a percentage, yes, of all FOIA
 18 requests I receive per year. I wouldn't say
 19 every request requires us to pull e-mails.
 20 BY MR. ZORN
 21 Q And do -- well, no, and I'm talking
 22 sort of from the IT side of things, which is, you

Page 235

1 Q In fact, I would venture to say that
 2 happens multiple times a month that your office
 3 is asking for e-mails to respond to FOIA
 4 requests, right?
 5 A Yes.
 6 Q What about on a weekly basis? How many
 7 times a week?
 8 A So, again, I don't have those
 9 statistics to tell you, I mean, and it varies
 10 week to week.
 11 Q And you know -- you know the folks over
 12 there by their names. I'm not going to ask them,
 13 but you do know them --
 14 A I do.
 15 Q -- right?
 16 Because you -- you interface with them
 17 fairly regularly, right?
 18 A We do.
 19 Q Okay. And, in fact, you've met these
 20 people, right?
 21 A I have.
 22 Q They don't work in your office, but you

Page 237

1 and the IT office is on the first floor?
 2 A No. It would be the same process.
 3 Q So it's unusual circumstances -- well,
 4 if it were the first and third floor, it would
 5 still be unusual circumstance, right?
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 7 simply don't have access to the e-mail records.
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Page 234

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Page 235

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Page 236

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 10 week to week.
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 12 there by their names. I'm not going to ask them,
 13 but you do know them --
 14 A I do.
 15 Q -- right?
 16 Because you -- you interface with them
 17 fairly regularly, right?
 18 A We do.
 19 Q Okay. And, in fact, you've met these
 20 people, right?
 21 A I have.
 22 Q They don't work in your office, but you

Page 237

1 work closely with them, right?
 2 A Yes.
 3 Q Okay. Okay. Fair enough. Let's see.
 4 Let me -- let me move -- so let's just move back
 5 to this exhibit.
 6 There -- I highlighted this AINS
 7 Manual. What is the AINS Manual?
 8 A So AINS is the company that owns the
 9 case management system that we use, FOIAXpress.
 10 Q Okay. And then there's "Third Party
 11 Checklist" in all caps.
 12 What is that?
 13 A So the team put together a checklist.
 14 And I admit I don't have the particulars
 15 memorized, you know, on that checklist, but,
 16 again, these guidance documents were created to
 17 help them walk through the process of how you
 18 handle certain types of FOIA requests related to
 19 third-party individuals.
 20 MR. ZORN: Okay. All right. I think
 21 we're done with that exhibit. And let's move
 22 to -- I think this is Exhibit 6 now.

Page 238

1 policies with respect to FOIA at the Department
 2 of Justice that are Department of Justice
 3 policies that all of these decentralized
 4 components all follow?
 5 A Correct.
 6 Q Okay. And we've discussed one of
 7 those, which is this unusual circumstances
 8 policy, right?
 9 A Yes. That's part of the FOIA
 10 regulations, the department's FOIA regulations.
 11 Q The department's FOIA regulations?
 12 A Correct.
 13 Q And that's how it views the statute?
 14 A Correct.
 15 Q Okay. And so looking now at page 3.
 16 And -- and so you see "FOIA Leadership," but
 17 we're not -- we don't need to talk about the
 18 chief FOIA officer anymore. I think we got that.
 19 I just want to look at the last line of
 20 that, which is that "Associate Attorney General
 21 Vanita Gupta, the third-ranking official at the
 22 Department of Justice, serves as the Department's

Page 240

1 (Deposition Exhibit Number 6
 2 was marked for identification.)
 3 BY MR. ZORN
 4 Q Just let me know when you have it up.
 5 A Yes, we have it up.
 6 Q Okay. So -- and I've annotated this
 7 document as well, but looking at the first page,
 8 this is the Department of Justice Chief FOIA
 9 Officer Report; is that correct?
 10 A Yes, it is.
 11 Q Okay. And just turning to the second
 12 page, I highlighted "Decentralized Nature of FOIA
 13 Processing at Department of Justice."
 14 Did I read that correctly?
 15 A You did.
 16 Q And that -- that's just describing what
 17 I -- what we discussed earlier about there are
 18 separate FOIA offices for each component, and
 19 they all process FOIA requests separately; is --
 20 A Correct.
 21 Q -- that right? Okay.
 22 But there are -- there are agency-wide

Page 239

1 Chief FOIA Officer."
 2 Did I read that correctly?
 3 A You did.
 4 Q And -- and you've never spoken to
 5 Ms. Gupta?
 6 A No.
 7 Q Has she -- has she spoken to DEA about
 8 FOIA, like, outside of your presence to your
 9 knowledge?
 10 A No.
 11 Q Do you know if she's spoken to any of
 12 the components about FOIA?
 13 A I don't have any knowledge of that,
 14 unfortunately.
 15 Q Okay. And this document says that she
 16 is the Department of Justice's chief FOIA
 17 officer, correct?
 18 A Correct.
 19 Q And we went through the statute
 20 discussing the responsibilities of the chief FOIA
 21 officer, right?
 22 A Yes.

Page 241

1 Q And that describes you as well as her,
2 correct?
3 A Yes.
4 Q And all of those responsibilities are
5 her responsibilities as well, right?
6 A For the department, yes.
7 Q And including the department's
8 compliance with -- with the FOIA statute; is --
9 A Yes.
10 Q -- that fair? Okay.
11 And so -- and, you know, we don't need
12 to -- the first -- first line in the next
13 paragraph is, you know -- we see the training,
14 and we see 552(j), and we see, "A proper
15 understanding of the FOIA, including the correct
16 application of the statute's provisions, is the
17 first step towards any successful FOIA
18 operation."
19 Did I read that sentence correctly?
20 A Yes, you did.
21 Q And that's the Department of Justice in
22 this document saying that a proper understanding

Page 242

1 of the FOIA, including the correct application of
2 the statutes provision, is the first step towards
3 any successful FOIA operation?
4 A Correct.
5 Q Okay. And -- and -- and the federal
6 office that's responsible for encouraging
7 government-wide compliance with FOIA is OIP,
8 right?
9 A Correct.
10 Q And we discussed what OIP is earlier,
11 right?
12 A Correct.
13 Q OIP is one of the components of the
14 Department of Justice, right?
15 A Yes.
16 Q And OIP is responsible, according to
17 this, for the entire federal government's
18 compliance with FOIA, as far as supervising it,
19 right?
20 A Correct. For the department, though,
21 for the Department of Justice.
22 Q Well, no, this is saying that the --

Page 243

1 that the federal office responsible for
2 encouraging government-wide compliance with the
3 FOIA, so --
4 A Yes.
5 Q So what --
6 A Okay.
7 Q So what this is saying is that the
8 Department of Justice's Office of Information
9 Policy is setting policy for the entire
10 federal -- or is -- is encouraging government
11 compliance -- I don't want to misstate what this
12 is saying.
13 A Yes.
14 Q It's encouraging government compliance
15 with the Freedom of Information Act. That's --
16 that's what OIP is doing, among other things?
17 A Correct. But they set the regulations
18 for just the Department of Justice. Other
19 federal agencies have their own FOIA regulations,
20 if that makes sense.
21 Q Right. And that does make sense,
22 but -- but the Office of Information Policy is

Page 244

1 ensuring compliance with, and we can all agree
2 that all government agencies are working off the
3 same statute?
4 A Uh-huh.
5 Q Different regulations, same statute,
6 right?
7 A Correct.
8 Q And the authority for the unusual
9 circumstances regulation is the statute?
10 A The statute.
11 Q Yeah. So I want to just go to page 6
12 quickly. And just for the record, I've found
13 this to be kind of very educational today, and
14 I've learned a lot and, frankly, gained some
15 appreciation for the work that the FOIA
16 department does.
17 And my question -- I've highlighted
18 this with respect to ATF about sort of
19 stakeholder engagement, frequent FOIA litigants.
20 And I'm not going to read it, but, you know --
21 and it says these efforts have improved
22 relationship with the requester community

Page 245

1 overall.
 2 And are you aware of anything that
 3 either DO -- DOJ kind of writ large or DEA has --
 4 has done to try to engage the stakeholder
 5 community and to maybe improve relationships?
 6 A Yes. So I can speak for my office --
 7 and, again, we have a very small staff right now,
 8 but we have done a lot of work in engaging with
 9 requesters to talk about their request to try to
 10 work with them.
 11 Sometimes we're -- we actually will
 12 reach out just to have a conversation about the
 13 possibility of narrowing the scope, because we
 14 try to be as transparent as possible. We're very
 15 open, and we tell requesters we have -- you know,
 16 we're operating with a small staff. We have a
 17 very large backlog, but we'd like to move forward
 18 with your request. Would you consider maybe
 19 narrowing the scope or the topics? And then that
 20 will generally help us get the records out to the
 21 requester community quicker.
 22 So we've done a lot of work in the

Page 246

1 space. Particularly our intake unit is doing a
 2 lot of that outreach, as well as our unit chiefs.
 3 You know, we're picking up the phone. We're
 4 talking to requesters, seeing how we can work
 5 with them, seeing if we can negotiate on certain
 6 types of requests.
 7 Q Okay. And then looking at page 14
 8 here, go to -- it's right before the "Requester
 9 Services" and the "FOIA Public Liaison."
 10 A 14, page 14?
 11 Q Yeah.
 12 A Okay.
 13 Q Page 14. I mean, we see, "For
 14 instance" -- and this is the highlighted text, so
 15 this is the second sentence of the -- that
 16 paragraph.
 17 "For instance, the DEA's Chief FOIA
 18 officer" -- that's you?
 19 A Correct.
 20 Q -- "along with the FOIA Unit Chiefs,
 21 conducted a self-assessment of the FOIA Program
 22 and made several changes to increase efficiency

Page 247

1 of internal procedures."
 2 Let me just stop there. Well, let me
 3 keep -- keep going.
 4 "This included the updating templates
 5 and several DEA SOPs to assist FOIA staff carry
 6 out routine operations, such as processing
 7 certain types of record. In addition, the DEA
 8 Chief FOIA Officer, FOIA Unit Chiefs, and Office
 9 of Chief Counsel attorneys met to review and
 10 discuss complex records, which allowed the team
 11 to formulate plans of action to address difficult
 12 requests."
 13 My first question is: So -- so there's
 14 a self-assessment of the FOIA program. Is that
 15 like done in writing somewhere?
 16 A It is. There's actually a template
 17 that the Department of Justice OIP developed that
 18 we've used twice to evaluate, you know, all areas
 19 of the FOIA administration to see how we're
 20 doing. And we've used that document to actually
 21 create goals for the year and things that we'd
 22 like to improve or tighten up in our business

Page 248

1 processes.
 2 Q Okay. And what are some of the
 3 improvements or the efficiencies that this
 4 paragraph is referring to that you implemented?
 5 A Sure. So one of the very first ones
 6 was completely restructuring the office to be
 7 successful, in my opinion. When I arrived in
 8 2017, I didn't feel like we were structured for
 9 success, so we changed that.
 10 The other thing that we changed is we
 11 created some new positions. We have what we call
 12 an expert government information specialist
 13 position now. That's a GS-14 position. I have
 14 four of them. They're all vacant right now. I'm
 15 trying to hire and fill that role, because I want
 16 to be able to delegate final signature authority.
 17 So we were doing that with one of the
 18 13s that we had. We were granting them final
 19 review and signature authority, again in an
 20 effort to really tackle our backlog issues.
 21 We've changed a lot of our templates,
 22 so we have many request letter templates for the

Page 249

1 various types of requests that we handle. This
 2 is again --
 3 (Brief interruption.)
 4 We've done a lot of work to basically
 5 give our staff all the resources that they need
 6 to be effective and efficient in their job. So
 7 those are just some of the top ones.
 8 The other thing is appeals. We worked
 9 heavily to see what we could do to reduce appeal
 10 rate, and that effort's been going on since 2018.
 11 And so we've reduced -- basically, by changing
 12 internal process and procedures, have been able
 13 to reduce the number of appeals filed to the
 14 department by 67 percent in the last three years.
 15 MR. ZORN: Okay. I'm going to
 16 introduce my last exhibit, and then we'll be
 17 done. And this is Exhibit 7.
 18 (Deposition Exhibit Number 7
 19 was marked for identification.)
 20 THE WITNESS: I'm here.
 21 BY MR. ZORN
 22 Q And have you seen this Exhibit 7

Page 250

1 before?
 2 A I have.
 3 Q Do you know what Exhibit 7 is?
 4 A Yes.
 5 Q What is Exhibit 7?
 6 A This is a memo that was written by the
 7 attorney general, Merrick Garland, in early --
 8 early 2022 -- I think it was March -- that talks
 9 about the Freedom of Information Act and
 10 expectations of federal agencies in complying
 11 with the act.
 12 Q And is it fair to describe this as a
 13 Department of Justice priority?
 14 A Yes.
 15 Q And since March 2022 -- well, do you
 16 know what Sunshine Week is?
 17 A Yes.
 18 Q And this came out during 2022, Sunshine
 19 Week, right?
 20 A It did.
 21 Q And since the publication of this memo,
 22 what -- what has the DOJ FOIA staff -- I'm not

Page 251

1 talking about DEA now -- the DOJ FOIA staff done
 2 to promote the principles set forth in this memo?
 3 A So, again, I think it would be
 4 difficult for me to talk about what the
 5 department has done with regard to this memo. I
 6 can certainly articulate what we have done.
 7 The department shared this memo with
 8 us, and they have communicated with us on certain
 9 parts of this memo to make sure that we are doing
 10 certain things. But beyond that, I really can't
 11 articulate specifically what they've done on each
 12 aspect of this memo.
 13 Q Well, who at the department has worked
 14 with DEA on implementing the principles or
 15 guidelines in the memo?
 16 A We had -- his name is Patrick Austin.
 17 I communicated with earlier, maybe around May of
 18 2022, with regard to one aspect of this memo.
 19 And, in fact, I -- we implemented a
 20 change, and it has to do with (A)(4), the
 21 foreseeable harm standard. We made sure that all
 22 of our determination letters contained language

Page 252

1 that basically told the requester that we
 2 consider the foreseeable harm standard when
 3 reviewing records and applying exemptions. That
 4 language was not necessarily in the letter in
 5 this manner previously, so we adjust -- we made
 6 that adjustment.
 7 Q And -- and -- okay. So that was --
 8 that was getting to my next question, which was:
 9 What has the DEA done to -- has DEA done anything
 10 since March 2022, specifically in light of
 11 this -- this memo, to update --
 12 A Yes.
 13 Q -- its processes or determinations or
 14 whatnot?
 15 A Yes. So beyond (A)(4), with regard to
 16 removing barriers to access and reducing FOIA
 17 request backlogs, C, we are doing a lot of work
 18 in the space to try to figure out how we are
 19 going to aggressively tackle our backlog going
 20 forward. We have a growing backlog. Again, it's
 21 due to staff shortages. I am delegating
 22 signature authority on certain types of cases

Page 253


1 right now to two GS-13s that are helping us move
 2 certain cases forward.
 3 I've also made a change -- it's here
 4 on -- it has to do with -- one of the points in
 5 here talks about making records more accessible
 6 to first-party requesters. So, for example --
 7 and I made a change this year.
 8 Looking for ways that we would release
 9 material outside of the FOIA, that is very
 10 difficult for DEA because the vast majority of
 11 our records are highly sensitive, right, but
 12 there is a type of record that I felt fell into
 13 this category, and that has to do with former
 14 agents or task force officers that request access
 15 to their training records for the time that they
 16 worked at DEA. I felt that that should not be
 17 FOIA function. It's going to get caught, likely,
 18 in our backlog. We've got to find a way to
 19 release that quicker.
 20 So I had a conversation with the Office
 21 of Training, and we are now allowing them to make
 22 those releases. So that is being handled outside
 Page 254

1 the FOIA process, and that is one of the bullets
 2 here. I can point out the number if you'd like.
 3 Q And I'm just kind of musing on the
 4 record here, but what about -- making the
 5 administrative proceeding -- proceeding records
 6 available on some sort of online platform would
 7 probably take -- take some of the weight off your
 8 shoulders as well, right?
 9 A I mean, that is certainly a
 10 conversation I'd be willing to entertain with the
 11 administrative law judge office. As of right
 12 now, the only information that is publicly
 13 available, like I said, is their final decisions
 14 and orders online. That's all on DEA.gov, but
 15 that is something that we could take into
 16 consideration.
 17 MR. ZORN: I'm going to pass the
 18 witness. I have no further questions.
 19 MR. RODRIGUEZ: I just have a very few.
 20 EXAMINATION BY COUNSEL FOR DEFENDANTS
 21 BY MR. RODRIGUEZ
 22 Q Ms. Miller, do you remember talking
 Page 255

1 earlier with Mr. Zorn about -- about fees?
 2 A Yes, I do.
 3 Q And in particular when the DEA
 4 estimates the amount of fees that are owed and
 5 that the requester has to pay prior to the DEA
 6 processing the request?
 7 A Yes.
 8 Q Does the requester -- if they disagree
 9 with the DEA's estimate, do they have an
 10 opportunity to appeal that?
 11 A They do.
 12 Q And as part of that appeal, can they
 13 also challenge their categorization as, say, a
 14 commercial requester?
 15 A They can.
 16 MR. RODRIGUEZ: For the record, the
 17 witness would like an opportunity to review and
 18 sign the transcript. And I have no further
 19 questions.
 20 MR. ZORN: I have no -- no further,
 21 either.
 22 VIDEO TECHNICIAN: We are off the
 Page 256

1 record at 15:49 p.m. This concludes today's
 2 testimony of Kelleigh Miller. The total number
 3 of media units used was eight and will be
 4 retained by Veritext.
 5 (Whereupon, at 3:49 p.m., the
 6 deposition of KELLEIGH MILLER
 7 was concluded.)
 8 * * * * *
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 Page 257

1 CERTIFICATE OF NOTARY PUBLIC
 2 I, ERICK M. THACKER, the officer before whom
 3 the foregoing deposition was taken, do hereby
 4 certify that the witness whose testimony appears
 5 in the foregoing deposition was duly sworn by me;
 6 that the testimony of said witness was taken by
 7 me in stenotype and thereafter reduced to
 8 typewriting under my direction; that said
 9 deposition is a true record of the testimony
 10 given by said witness; that I am neither counsel
 11 for, related to, nor employed by any of the
 12 parties to the action in which this deposition
 13 was taken; and, further, that I am not a relative
 14 or employee of any counsel or attorney employed
 15 by the parties hereto, nor financially or
 16 otherwise interested in the outcome of this
 17 action.


 ERICK M. THACKER
 Notary Public in and for the
 District of Columbia

My commission expires:
 June 30, 2024

Page 258

1 jimmy.rodriguez2@usdoj.gov
 2 January 19, 2023
 3 RE: AIMS Institute, PLLC, Et Al. v. Garland, Merrick, Et Al.
 4 DEPOSITION OF: Kelleigh Miller 5645328
 5 The above-referenced witness transcript is
 6 available for read and sign.
 7 Within the applicable timeframe, the witness
 8 should read the testimony to verify its accuracy. If
 9 there are any changes, the witness should note those
 10 on the attached Errata Sheet.
 11 The witness should sign and notarize the
 12 attached Errata pages and return to Veritext at
 13 errata-bx@veritext.com.
 14 According to applicable rules or agreements, if
 15 the witness fails to do so within the time allotted,
 16 a certified copy of the transcript may be used as if
 17 signed.

Yours,
 Veritext Legal Solutions

Page 260

1 AIMS Institute, PLLC, Et Al. v. Garland, Merrick, Et Al.
 2 Kelleigh Miller 5645328

ACKNOWLEDGEMENT OF DEPONENT

3 I, Kelleigh Miller, do hereby declare that I
 4 have read the foregoing transcript, I have made any
 5 corrections, additions, or changes I deemed necessary as
 6 noted above to be appended hereto, and that the same is
 7 a true, correct and complete transcript of the testimony
 8 given by me.

9 _____
 10
 11 _____
 12 Kelleigh Miller Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
 15 _____ DAY OF _____, 20____
 16
 17 _____
 18
 19 NOTARY PUBLIC

Page 259

1 AIMS Institute, PLLC, et al. vs. Merrick Garland,
 et al.
 2 Kelleigh Miller (#5645328)

ERRATA SHEET

3
 4 PAGE ___ LINE ___ CHANGE _____
 5 _____
 6 REASON _____
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 22 KELLEIGH MILLER Date

Page 261