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August 19, 2015

Via Certified Mail

Melanie Ann Pustay
Director of Office of Information Policy
Sean R. O'Neill
Chief, Administrative Appeals Staff
Office of Information Policy
United States Department of Justice, Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530

RE: FBI Request No 1203982-001/ DOJ OIP Appeal AP-2013-01397 (Jeffrey Epstein)

Dear Ms. Pustay and Mr. O'Neill:

On March 29, 2013, the OIP determined that the FBI could not rely on 5 U.S.C. § 552(b)(7)(A) as a basis to withhold all records of past investigations regarding Mr. Epstein's prior FBI FOIA request. On April 25, 2013, the FBI reopened the above-numbered FOIA request and stated that it had started its processing and searching for responsive records. On June 24, 2013, the FBI was informed that Mr. Epstein would pay the costs of copying. At present, 27 ½ months after the FBI started to process Mr. Epstein's FOIA request, Mr. Epstein has received just two "batches," the first numbering 372 pages (including redactions) that was produced on December 16, 2014, and the second "batch" numbering 336 pages that was produced 5 ½ months later on May 29, 2015, out of a file that exceeds 12,000 pages. The processing of a third "batch" of documents will not begin until, at earliest, October, 2015, see *infra*. At this pace, the FBI will not complete the processing Mr. Epstein's file until 2025. A citizen should not have to wait over a decade for an agency to meet its FOIA obligations. As documented below – and within the May 1, 2015, and August 13, 2015, letters to Mr. [REDACTED], FBI FOIPA Public Liaison Officer, each of which are attached – the FBI has declined to meet its statutory obligations in providing Freedom of Information Act mandated disclosures relating to the above-numbered request without unreasonable delay. Accordingly, I appeal to the OIP to require the FBI to comply with its March 29, 2013, determination in a reasonably prompt manner.

I spoke with Mr. ██████ by telephone on August 12, 2015, and inquired as to when I could expect a third interim production. He informed me that the FBI reviewer assigned to the Epstein file had not commenced the processing of any additional materials in the 2 ½ months following the May 29 production and, further, that any such review was not currently scheduled and would not begin until, *at earliest*, October 2015. Given the lengthy delays due which include second level FOIA reviews conducted in Southern Florida by either the USAO or FBI, it predictably will take, *at the very minimum*, 5 ½ months from the prior production in May until a third “batch” would be provided (not the 60–90 days I had repeatedly been told was the ordinary delay between separate 500 page productions on large files such as Mr. Epstein’s). *At this pace – a production of fewer than 500 pages out of the still unprocessed 11,000 pages each 5 ½ months – the remaining 22 “batches” will not be produced for ten more years.* Mr. ██████ also advised that the reviewer assigned to the request was processing other files and that, in essence, other than communicating with me (which Mr. ██████ has done on a regular basis), he could not suggest a way to expedite the pace other than by my advising Mr. Epstein to relinquish his FOIA rights to the review of his entire file.

The FBI response to the above-numbered FOIA request has been utterly incompatible with the language of the FOIA, which states that “[u]pon any determination by an agency to comply with a request for records, *the records shall be made promptly available* to such person making such request,” 5 U.S.C. § 552(a)(6)(C)(i)(emphasis added), and with court opinions defining the FOIA “basic policy” as focusing on “citizens’ right to be informed about ‘what their government is up to,’” *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989). Additionally, the FBI’s delays in this matter violate the policy of President Obama, announced on January 21, 2009, which directed each agency to “act promptly” and make “timely disclosures of information.” Even further, the Attorney General in a Memorandum for the Heads of Executive Departments and Agencies dated March 19, 2009, stressed that FOIA “professionals should be mindful of their obligation to work ‘in a spirit of cooperation’ with FOIA requesters,” that “unnecessary bureaucratic hurdles have no place in the ‘new era of open Government,’” and that “*timely disclosure of information is an essential component of transparency [and] long delays should not be viewed as an inevitable and insurmountable consequence of high demand.*” (emphasis added). The pace of disclosure where Mr. Epstein has received less than 1,000 of over 12,000 pages in the over 28 months since the OIP required the FBI to process his FOIA request is in stark conflict with the mandates of both the President and the Attorney General. More is required than for Mr. Epstein to simply wait, year after year, for the FBI to comply with its FOIA obligations.*

* In a recent opinion, *Clemente v. FBI*, 71 F.Supp.3d 262 (D.D.C. 2014), Judge Hogan found that the “FBI is not ‘deluged with [a] volume of requests . . . vastly in excess of that anticipated by Congress,’” that the “FBI has not shown exceptional circumstance or sufficient progress in reducing its backlog to warrant an *Open America* stay,” and that although the plaintiff’s request “that the FBI process 5,000 pages a month is higher than the rate would be in an ordinary case, . . . the FBI has successfully processed documents at that rate in other cases.” Mr. Epstein acknowledges the differences between his case and that of plaintiff Clemente, however, an agreement that his file be processed at even 10% of the 5,000 pages a month ordered in the Clemente case would speed up the production of his FOIA file by many multiples given that Mr.

I would request that you intervene in this matter and require that the FBI agree to a procedure that expedites the production of the 12,000 page file. I would also request a conference with you and/or with the specific individuals who will be responsible for discharging the FBI's FOIA responsibilities as to the pending Epstein request for FOIA materials so that I can be assured that the FBI will be discharging its legal obligations without continued unlawful and inexplicable delay.

Yours truly,



Martin G. Weinberg

cc: James A. Baker
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Epstein, after 28 months, has received just over 700 pages of redacted documents out of a file of over 12,000 pages.