

On February 12, 2026, this Court scheduled a trial for any remaining CBP matters for June 22, 2026. Dkt. 206. On February 19, 2026, this Court set a summary judgment briefing schedule. Dkt. 208.

On March 16, 2026, CBP filed a motion to “stay all deadlines with respect to CBP,” contending that “due to the current lapse in appropriations for the Department of Homeland Security, CBP itself is unable to work on FOIA matters.” Dkt. 209 at ¶ 2. CBP’s request is based solely on the averment of counsel. No declaration is attached, and no evidence whatsoever is cited.

There are several factual and legal issues that undermine CBP’s assertions and the agency’s purported need for a stay in the instant litigation. First, the current lapse in appropriations for the Department of Homeland Security has been in place since February 14, 2026.¹ If a lapse in appropriations prevents CBP from working on FOIA matters, it would have presumably known about its need for a stay at the time the summary judgment schedule was set. Instead, CBP waited to seek a stay until four days before the summary judgment deadline, suggesting the need for a stay is not in fact necessitated by the lapse in appropriations.

Second, nothing in the FOIA statute exempts agencies from processing FOIA requests during partial government shutdowns. The Department of Justice issued guidance disclaiming the existence of such an exemption, writing:

Agencies and requesters alike generally refer to the FOIA’s time limits as “working days.” Logically, then, they may conclude that during a time when FOIA Offices had no choice but to be closed because of the

¹ Department of Homeland Security Appropriations: FY2026 State of Play (2026), available at <https://www.congress.gov/crs-product/R48874>

lapse in funding, those days when employees were furloughed were not “working” days and so should not be counted as part of the FOIA’s response times. However, the FOIA statute only excludes Saturdays, Sundays, and federal holidays from response timelines. Accordingly, and as consistent with agency practice during prior lapses in appropriations, agencies should count as part of their response times for FOIA requests and appeals the twenty-nine days when the government was closed, which excludes all Saturdays, Sundays, and the legal public holidays that occurred during the lapse in appropriations.²

See also Fiduccia v. U.S. Dept. of Justice, 185 F.3d 1035, 1041 (9th Cir. 1999) (“So long as the Freedom of Information Act is the law, we cannot repeal it by a construction that vitiates any practical utility it may have. . . It may be that agency heads, such as the Attorney General in this case, can be forced by the Freedom of Information Act to divert staff from programs they think more valuable to Freedom of Information Act compliance. . . But these policy concerns are legislative, not judicial, and we intimate no views on them. Congress wrote a tough statute on agency delay in FOIA compliance, and recently made it tougher.”); see also *Mississippi v. Turner*, 498 U.S. 1306, 1306–07 (1991) (“[T]he State of Mississippi must choose between hiring more attorneys and taking fewer appeals. Its budget allocations cannot . . . alter this Court’s filing requirements.”) (denying a request for a 30-day extension of time to file a petition for writ of certiorari).

Third, it would be inconsistent with the purpose of FOIA to allow CBP to exempt itself from disclosure requirements at a time when CBP has received a massive

² Office of Information Policy, U.S. Department of Justice, *Calculating FOIA Response Times after the 2025 Government Shutdown*, November 18, 2025, available at <https://www.justice.gov/oip/oip-guidance/calculating-foia-response-times-after-2025-government-shutdown>

influx of funding through the “One Big Beautiful Bill” that insulates it from the lapse in appropriations. Specifically, the bill grants CBP an additional \$46.55 billion, to be used between 2025 and 2029. One Big Beautiful Bill Act § 90001 (2025).³ That funding is not affected by the appropriations lapse.⁴ If CBP has chosen to allocate all of this funding to policing the border and attacking citizens and residents and not to its FOIA obligations, that is a deliberate choice that should not be made at the expense of requesters seeking transparency. Plaintiff is aware of no authority (and Defendant cites none) that an agency can choose to refuse to fund statutorily required functions when funding is readily available.

CONCLUSION

Because CBP fails to put forward any evidence to substantiate its claim that its funding is impacted by the lapse in appropriations, because it waited until the summary judgment deadline to inform the Court that it expected FOIA processing to be affected by the lapse in appropriations, because CBP has a staggering level of funding despite the lapse, and because the FOIA statute makes no exceptions for

³ *Id.* (“In addition to amounts otherwise available, there is appropriated to the Commissioner of U.S. Customs and Border Protection for fiscal year 2025, out of any money in the Treasury not otherwise appropriated, to remain available until September 30, 2029, \$46,550,000,000 for necessary expenses relating to the following elements of the border infrastructure and wall system . . .”).

⁴ U.S. Senate Committee on Appropriations, *BILL SUMMARY: Homeland Security Fiscal Year 2026 Appropriations Bill*, available at https://www.appropriations.senate.gov/imo/media/doc/fy26_homeland_security_conference_bill_summary.pdf (“A lapse in annual appropriations would instead allow ICE and CBP to continue their operations using OBBBA funds—but without any of the constraints imposed by an enacted funding bill . . .”).

compliance at times of appropriations lapses, Plaintiff respectfully urges denial of CBP's motion to stay.

Respectfully submitted,

Jacqueline Stevens

By: s/ Rima Kapitan
Atty No. 6286541
Kapitan Gomaa Law, P.C.
P.O. Box 46503
Chicago, IL 60646
(312) 566-9590
rima@kapitangomaa.com