EPA production comparison and format memorandum

August 7, 2026 memorandum in August 10 OGIS package

RECORD TYPE

Dated requester analysis

SELECTION AND CONTEXT

Requester-prepared analysis and references at binder-numbered pages 3–5 (PDF pages 9–11). A fresh check confirms 97 numbered PDFs in the March package, 192 in the July package, byte-identical files 1–97, and no searchable text in those numbered PDFs. The broader missing-record assertions and legal references remain the requester’s dated position; this selection does not resolve them or report current agency status.

SOURCE

2026-08-10 - OGIS - EPA FOIA Mediation Request and Supporting Records.pdf

ORIGINAL PDF PAGES

9, 10, 11

SCOPE

Only the following selected pages are included. This copy does not clear or reproduce the complete source binder.

REQUESTER'S PRODUCTION COMPARISON MEMORANDUM

Prepared August 7, 2026

Purpose and status

This memorandum summarizes the comparison supporting Kyle Moring's request for OGIS assistance concerning EPA Region 6 FOIA Requests 2026-EPA-00386 and 2026-EPA-02222. Both administrative appeals were granted and remanded. EPA's July 29, 2026 letter characterizes the latest release as interim and identifies August 26, 2026 as the next target date. The observations below therefore concern records not produced to date, not a completed final response.

Key findings

1. The July package repeats the complete March production. The March package contained 97 numbered one-page PDFs. The July package contains 192 numbered one-page PDFs. Binary SHA-256 comparison confirms that files 1.pdf through 97.pdf in the July package are byte-for-byte identical to files 1.pdf through 97.pdf in the March package. Only files 98.pdf through 192.pdf were added.

2. The added series remains substantially repetitive. The added ED_021440 Bates series repeatedly reproduces complaint emails, requester submissions, and attachments already present in the ED_020053 series. The nominal page count therefore overstates the amount of distinct additional information supplied.

3. The numbered production is raster-only. Direct text extraction from each of the 192 numbered PDFs returned no searchable text. Electronic emails and web-form materials were flattened into one-page image PDFs, separating multi-page records and eliminating ordinary text search and native email functionality.

4. One brief internal EPA routing message was produced twice. Production records ED_020053_00000032 and ED_020053_00000171 contain the same July 1, 2025 email from Angela Hays to Christina Gonzalez, copying Gerardo Acosta: "I have referred this complaint to TDSHS." This corrects any suggestion that the release contained no internal correspondence. The narrower concern is that no substantive internal assessment, enforcement discussion, disposition, or closure discussion was identified.

5. A known Walmart-specific record involving a named custodian was not identified in either release. ErrorTracker matter 129328 concerns Walmart Store 131 and RCRAInfo ID TXR000015057. It was handled by Sandesh Thapa, copied to EPA ErrorTracker and TCEQ, and falls within the date range of Request 2026-EPA-00386. Neither the identifier "129328" nor its distinctive Walmart-specific text appears in the 192-page release. The retained record is Exhibit H.

6. EPA's November 2025 referral of complaint 342053 was not identified in the release. The retained EPA thread documents referral of Walmart Store 131 complaint FY26-342053-3709-CV to TCEQ. TCEQ's own production independently reproduces the EPA referral email and its subsequent internal routing. These records are Exhibits I and J. The identifier "342053" does not appear in the 192 numbered PDFs.

Methodology and limitations

The production comparison used file inventories, SHA-256 hashing, complete text-extraction checks, OCR-assisted term location, and visual review of the key pages reproduced in this binder. OCR was used only as a review aid because the production PDFs contain no text layer. The source PDFs, source Bates numbers, and original pagination remain visible in the exhibits. The complete production ZIP files and a detailed checksum manifest can be supplied if OGIS or EPA requests them.

The absence of a particular category of record does not alone prove that EPA's search was inadequate. The concern presented for mediation is the combination of: two granted appeals; a judicially familiar requirement to search all likely locations; extensive duplication; degraded electronic format; and two specific records whose existence and apparent responsiveness can be demonstrated independently of EPA's interim release.

Issues presented for mediation

- Whether EPA located ErrorTracker 129328, complaint 342053, and their complete threads and attachments;
- Whether EPA considered either record nonresponsive and, if so, why;
- Whether the remand searches covered all named custodians, shared accounts, complaint and referral systems, enforcement repositories, and locations identified by a subject-matter expert;
- Whether future releases can be de-duplicated and organized as complete documents or email families;
- Whether responsive emails are readily reproducible as .msg or .eml files or, alternatively, searchable document-level PDFs preserving metadata and attachment relationships; and
- Whether EPA remains on schedule for its August 26, 2026 release target and anticipated final determinations.

Binder scope. This initial binder includes the complete appeal records and the targeted evidence needed to understand the present dispute. It intentionally omits the complete March and July raw productions because the March production is indexed and excerpted in Exhibit B, the July package repeats all 97 March files, and all raw production files remain available upon request.

FORMAT AUTHORITIES AND PUBLIC EPA EXAMPLES

These references support a request for mediation concerning readily reproducible electronic formats. They are offered as technical and administrative context, not as a claim that every EPA email must automatically be released in native form.

1. Freedom of Information Act

5 U.S.C. 552(a)(3)(B) requires an agency to provide a record in a requested form or format when the record is readily reproducible in that form or format, and directs agencies to make reasonable efforts to maintain reproducible formats.

https://www.law.cornell.edu/uscode/text/5/552

2. EPA FOIA regulation

40 C.F.R. 2.107 states that EPA will honor a requester's specified preference when the record is readily reproducible with reasonable efforts in the requested form or format.

https://www.law.cornell.edu/cfr/text/40/2.107

3. EPA's 2016 Chief FOIA Officer Report

At PDF page 7, EPA reported that FOIAonline releases were provided in native formats such as Word and Excel or in PDF. This confirms that native-format FOIA release has been part of EPA's own public processing history.

https://www.epa.gov/sites/default/files/2016-03/documents/chief_foia_officer_report_2016_final.pdf

4. Public history of EPA FOIA Request EPA-HQ-2013-010366

The public request history documents EPA's transmission of an Outlook .msg file through its FOIA process. This is cited only as evidence of technical capability. No comparably verified public EPA .eml example is asserted here.

https://www.muckrock.com/foi/united-states-of-america-10/travel-expense-reports-for-john-c-beale-6876/

5. OGIS assistance guidance

OGIS may become involved at any point in the administrative process and asks requesters to provide the request, response, appeal, appeal decision, and a concise description of prior efforts to resolve the dispute.

https://www.archives.gov/ogis/mediation-program/request-assistance

Important qualification

Request 2026-EPA-02222 originally stated that PDF was preferred, and Request 2026-EPA-00386 requested electronic copies. The mediation request therefore focuses on the fragmentation and rasterization of digital records and now expressly asks for future emails in native format, or at minimum in searchable document-level PDFs preserving metadata and attachments.