

processing of earlier requests. Therefore, the FOIA provides that expedited processing is to be offered only when the requester demonstrates a “compelling need,” or when otherwise determined by the agency. 5 U.S.C. § 552(a)(6)(E)(i).

“Compelling need,” as defined in the FOIA, arises in either of two situations. The first is when failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second situation occurs when the requester, who is primarily engaged in disseminating information, has an “urgency to inform” the public about an activity of the federal government. 5 U.S.C. § 552 (a)(6)(E)(v). In order to determine whether a requester has demonstrated an “urgency to inform,” and hence a “compelling need,” courts, at a minimum, must consider three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001); *Wadelton v. Dep’t of State*, 941 F. Supp 2d 120, 133 (D.D.C. 2013).

In the present case, the Appellant contends that its FOIA Request would “shed light on the development and implementation of a new and more severe standard in the intelligence community’s dealings with the media.” Appeal at 2. Further, the Appellant claims that, without expedited processing “the public would go without critical up-to-date information about the performance and decision-making of key government officials during a period when there is an urgent and on-going exchange about federal government activity.” Appeal at 3. As additional support for its arguments, the Appellant has submitted a determination from the Office of Homeland Security in which the Appellant was granted expedited processing for a similar FOIA request made to OHS (OHS FOIA Request) concerning ICD 119. Appeal at 4 (May 21, 2014, Determination Letter from OHS).

After reviewing the Appellant’s arguments, we find that OIR properly denied the Appellant’s request for expedited processing. In determining whether there is a “compelling need” such as to justify granting the Appellant’s FOIA Request for expedited processing, we note that there is no claim that failure to grant such status to the Appellant’s FOIA Request would pose any type of threat to an individual’s health or safety. With regard to the “urgency to inform” three-factor test outlined above, it is beyond dispute that the Appellant has met the third prong of the test “whether the request concerns federal government activity.” However, information relating to implementation of ICD 119, a directive providing guidance with regard to contacts between members of the intelligence community and the media, while potentially important, does not touch on any type of urgent, time-sensitive matter relating to the American public. Further, we see no significantly recognized interest that would be compromised by having the Appellant’s FOIA Request processed by the regular procedures employed by the OIR.

As to the OHS’ determination regarding the expedited processing of a similar FOIA request made by the Appellant, there is no authority that we are aware of that mandates that we follow the OHS’ determination. Significantly, in the OHS’ determination, there is no discussion as to why it found that there was an “urgency to inform” such as to justify its decision to provide expedited processing of the Appellant’s OHS FOIA request. Appeal at 4. Given the nature of the Appellant’s FOIA Request, we do not see it as concerning a matter of exigency to the American

public to warrant expedited processing. *See Al-Fayed*, 254 F.3d at 310. Given this, we find that OIR properly denied the Appellant's request for expedited processing of its FOIA Request.

III. Conclusion

After considering the Appellant's claim, we conclude the request for expedited processing is not appropriate since the legal requirements were not met. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on June 17, 2014, by the Associated Press, Washington Bureau, Case No. FIA-14-0034, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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Director
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