United States Department of Energy
Office of Hearings and Appeals

In the Matter of Andrea Woodruff	)	
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Filing Date: August 26, 2022	)	Case No.: FIA-22-0026
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Issued: September 2, 2022

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Decision and Order

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On August 26, 2022, Andrea Woodruff ("Appellant") filed an appeal from an Interim Response issued by the Department of Energy's ("DOE") Office of Science ("SC"), to the Appellant's Freedom of Information Act ("FOIA") request, FOIA Request No. CH-2022-01219. In its Interim Response, the DOE SC acknowledged receipt of the Appellant's FOIA request and denied her request for expedited processing, under 5 U.S.C. § 552, as implemented by DOE regulations codified at 10 C.F.R. Part 1004. The Appellant now challenges the DOE SC's denial of her request for expedited processing. In this decision, we deny the appeal.

I. Background

On August 5, 2022, the Appellant submitted a FOIA request to the DOE SC, seeking the following records:

> I would like to have all records on the creating of a Lyme disease vaccine and if it was connected to Lymerix including John Dunn from Brookhaven. I would like to know about his research and any other person connected to creating the Lyme disease vaccine at that facility or any other.

FOIA Request from Andrea Woodruff at 1 (August 5, 2022).

The Appellant also requested expedited processing of her FOIA request and provided the following justification:

> I can't walk well most day[s] or use my right hand even with a massive amount of medication. Sometimes, I am better except for the nerve damage. Most of the time to raise my children, I just feel pain with every movement. All medications have failed except for a few things that get me by. I'm triggered very badly at the moment. Typically, strep triggers molecularly mimicry with me since I took Lymerix annually since 1999. I suspect this version of covid may be triggering it now. The sore throat with covid or may people missing strep. I don't know, but I

> know this has affected more joints, bones, and tendons worse than I have experienced in 23 years. Plus, I'm curious what all the steps were to maim and kill so many. I sold Lymerix for GSK. The write ups on it are false. 1.4mm doses were not sold. It was 50-300k doses, maybe. I don't know how many were used. The law requires distributed doses[,] not injected doses and that is what the safety profile is created from. These chimeras made especially when given in combination with other recombinant proteins are problematic. I know we had a signal when we sold to the only group we gave both Lymerix and Hep B. We sold both to first responders and they ended up harmed as well. My guess is that it would not be coded Lyme disease vaccine injury as that code doesn't exist. My guess it would be coded as some type of rheumatological disease or stroke.

FOIA Request at 2.

On August 25, 2022, the DOE SC issued an Interim Response Email to the Appellant, confirming receipt of the request, and denying the Appellant's request for expedited processing. Interim Response Email from Miriam Bartos to Andrea Woodruff at 2-3 (August 25, 2022).[1] In its Interim Response Email, the DOE SC concluded the Appellant gave "personal reasons for wanting the information," but did not "state a reason for rush/expedited processing in your request that meets the above 'imminent threat' or 'urgency to inform the public' criteria." *Id.*

On August 26, 2022, the Appellant filed an appeal with the DOE's Office of Hearings and Appeals ("OHA"). Appeal Email from Andrea Woodruff to OHA Filings (August 25, 2022). In the appeal, the Appellant asserts she is entitled to expedited processing of her FOIA request because she needs to "understand how Lymerix or any Lyme Disease vaccine that led to the creation of Lymerix has affected my health. I have already had a stroke due to repeated cytokine storms. I have difficulty walking due to massive joint swelling. I have bone swelling as well as tendons ripping. I have failed with all autoimmune treatments. I need information quickly…I more than need as there is an imminent threat to life and physical safety of myself…I worked for [GlaxoSmithKline] and sold this product. I know how damaging it was and continues to be. I want to know if you are currently following the victims of this product. Is it another Tuskegee Trial?" Appeal Email.

II. Analysis

Under the FOIA, agencies generally process requests in the order they are received and must respond to a request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i); 10 C.F.R. § 1004.5(d)(1) and (6). However, a requester that is granted "expedited processing" receives a preference over other requests before the agency, and is entitled to have their request processed "as soon as practicable." 10 C.F.R. § 1004.5(d)(6). The FOIA provides that expedited processing should be granted only in cases where a "compelling need" for the records exist and "in other cases determined by the agency." 5 U.S.C. § 552(a)(6)(E)(i); 10 C.F.R. § 1004(d)(6). A "compelling need" means either "that a failure to obtain requested records on an expedited basis . . . could reasonably be expected to pose an imminent threat to the life or physical safety of an individual"

[1] Although the DOE SC confirmed receipt of the Appellant's FOIA request, it found the request for records was not "proper" because it did not "reasonably describe the records sought," and the DOE SC could not locate records with a reasonable amount of effort. Interim Response Email at 1-2; 5 U.S.C. § 552(a)(3)(A); 10 C.F.R. § 1004.4(b). The DOE SC gave the Appellant until October 7, 2022, to reformulate her request for records. Interim Response Email at 3.

or "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity."[2] 5 U.S.C. § 552(a)(6)(E)(v)(I)-(II); 10 C.F.R. § 1004.5(d)(6).

I find the Appellant did not submit sufficient information to support she is entitled to expedited processing of her FOIA request. In analyzing whether an "imminent threat" to life or physical safety exists, there must be a connection between the information contained in the requested records and the alleged threat to be prevented. *In the Matter Ayyakkannu Manivannan*, OHA Case No. FIA-17-0025, FIA-17-0026 at 5 (2017). The Appellant does not identify what harm would result from the DOE SC's failure to produce the requested records in an expeditious manner. The Appellant states she has taken Lymerix since 1999, and suffers from a variety of chronic medical conditions. FOIA Request at 2; Appeal Email. But, there is no information supporting that the Appellant will suffer from an immediate physical harm, that she will be unable to obtain necessary medical treatment, or that there is a threat her chronic symptoms will worsen to the extent of endangering her life, if she is not provided the requested records concerning the vaccine on an expedited basis. *See In the Matter of Gregory Kucera*, OHA Case No. FIA-20-0009 at 2 (2019). (Appellant's request for expedited processing not granted where Appellant presented "no situation that would propose a new, time-sensitive threat that could be construed as 'immediate'").

Furthermore, the Appellant's claim that there are other "victims" of the vaccine, who "ended up harmed," such as "first responders," is insufficient because she did not identify a threat to a specific individual and expedited processing cannot be granted based upon a threat to the safety of the general public. FOIA Request at 2; *see In the Matter of Sarah Okeson*, OHA Case No. FIA-21-0004 at 3.

Accordingly, the Appellant has not established a compelling need for the requested records, and she is not entitled to expedited processing of her FOIA request.

III. Order

It is hereby ordered that the appeal filed by Andrea Woodruff on August 26, 2022, Case No. FIA-22-0026, is denied.

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.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration

[2] In the appeal, the Appellant does not allege she is "a person primarily engaged in disseminating information" or that an urgency exists "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

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