

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Timothy Marchman)	
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Filing Date: February 20, 2025)	Case No.: FIA-25-0015
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Issued: March 12, 2025

Decision and Order

On February 20, 2025, Timothy Marchman appealed an Interim Response issued to him from the Department of Energy’s (DOE) Office of Public Information (OPI) regarding Request No. HQ-2025-02132-F, a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In the Interim Response, OPI denied Appellant’s request for expedited processing of his FOIA request. In this Decision, we deny the appeal.

I. BACKGROUND

On February 11, 2025, Appellant filed a FOIA request seeking “[c]opies of all emails, including attachments, sent and received by Luke Farritor from his onboarding through the time this request is processed.” FOIA Request from Timothy Marchman at 2 (Feb. 11, 2025). In the filing, Appellant requested expedited processing:

[O]n the grounds that there is an urgency to inform the public about potential federal government activity that could affect technology policy and governance. The records requested have far reaching implications for data privacy, employee retention, and litigation exposure. Delayed disclosure of these records would compromise the public’s timely understanding of critical government functioning. As a journalist actively reporting on government technology policies and the so-called Department of Government Efficiency, I have a compelling need for expedited access to this information. The requested documents will be made available to the public

Id. On February 19, 2025, OPI sent Appellant an Interim Response denying his request for expedited processing. Interim Response from Alexander C. Morris to Timothy Marchman at 1–2 (Feb. 19, 2025). In support of this decision, OPI wrote that Appellant had not established that there was an imminent threat to the life or safety of an individual that would justify expeditious processing, and that Appellant had not identified an actual or alleged activity that posed a particular urgency that required the dissemination of information in an expedited manner. *Id.* at 2. OPI elaborated that the request did not sufficiently address the first two factors of the D.C. Circuit’s test for “urgency to inform” and “compelling need”: (1) whether the request concerned a matter of

current exigency to the American public, and (2) whether the consequences of delaying a response would compromise a significant recognized interest. *Id.* (citing *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001); *Associated Press v. DOE*, Case No. TFA-0273 (September 11, 2008)).

Appellant timely appealed the Interim Response. Appeal Letter Email from Timothy Marchman to OHA Filings at 1 (Feb. 20, 2025). In the Appeal, he stated that Mr. Farritor’s security clearance status was unknown and that he was recently involved in “the apparently accidental firing of a bunch of NNSA staff who handle nuclear materials.” *Id.* He further argued that this situation is a matter of current exigency to the American public and that the requested records are clearly related to Mr. Farritor’s work at DOE, on which Appellant seeks to disseminate information. *Id.*

II. ANALYSIS

It is well-established that “public awareness of the government’s actions is ‘a structural necessity in a real democracy,’” and that “[t]imely awareness is equally necessary because ‘stale information is of little value.’” *Am. Oversight v. United States Dep’t of State*, 414 F. Supp. 3d 182, 186 (D.D.C. 2019) (citing *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) and *Payne Enters. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988)). Therefore, delays in processing a FOIA request may “‘cause irreparable harm,’ but typically only in ‘rare FOIA cases . . . involving ongoing proceedings of national importance.’” *Brennan Ctr. for Justice at NYU Sch. Of Law v. Dep’t of Commerce*, 498 F. Supp. 3d 87, 101 (D.D.C. Oct. 20, 2020) (quoting *Ctr. for Pub. Integrity v. Dep’t of Def.*, 411 F. Supp. 3d 5, 11–13 (D.D.C. 2019)).

The FOIA requires expedited processing “in cases in which the person requesting the records demonstrates a compelling need and in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). DOE regulations use the FOIA’s language, which states that:

[A] compelling need exists when failure to obtain records expeditiously could reasonably be expected to pose a threat to the life or physical safety of an individual or, when a request is submitted by a person primarily engaged in disseminating information and, with respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about actual or alleged Federal Government activity.

10 C.F.R. § 1004(d)(6); 5 U.S.C. § 552(a)(6)(E)(v). This case concerns the second definition only. Further, DOE does not contest that Appellant is primarily engaged in disseminating information or that the records concern Federal Government activity, and therefore the only matter at issue is whether Appellant has established a compelling need for expedited processing. Interim Response at 2.

The D.C. Circuit has held that courts must consider at least three factors to determine whether a requestor has demonstrated “urgency to inform,” and thus a compelling need for expedited processing of a FOIA request:

- (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, 254 F.3d at 310. Courts have found that current exigency exists when “the subject matter of the request was central to a pressing issue of the day.” *Wadelton v. Dep’t of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013). Courts have also recognized that the media has a “significant recognized interest beyond the public’s mere ‘right to know,’ in quickly disseminating breaking, general-interest news.” *Gerstein v. CIA*, No. C-06-4643 MMC, 2006 U.S. Dist. LEXIS 89847, *22 (N.D. Cal. Nov. 29, 2006). *See also ACLU of N. Cal. v. United States DOD*, No. C-06-01698 WHA, 2006 U.S. Dist. LEXIS 36888, *23 (N.D. Cal. May 25, 2006) (recognizing “the media’s interest in quickly disseminating breaking, general-interest news”).

In *Gerstein*, the plaintiff was a journalist for the New York Sun who had requested expedited processing of a request for records relating to unauthorized disclosure of certain classified information. *Gerstein*, 2006 U.S. Dist. LEXIS 89847 at 2–3. The court found that the numerous news articles Gerstein submitted as evidence sufficiently showed that the issue to which the requested records pertained was not only newsworthy, but also the subject of an ongoing national debate at the time the request was made, and, therefore, the request concerned a matter of then-current exigency to the American public. *Id.* at 18–19. The court further held that while Gerstein did not expressly contend that delay in processing his requests would compromise a significant recognized interest, he did adequately describe such an interest when he argued that recent statements by lawmakers indicated that they were considering legislation in regard to the issue. *Id.* at 19–20. The court held that a delay in processing could “preclude any meaningful contribution to the ongoing public debate and render any disclosure little more than a historical footnote.” *Id.* at 21. The court further held that the media had a significant recognized interest in “quickly disseminating breaking, general-interest news.” *Id.* at 22. As there was no debate that the request concerned federal government activity, the court found that Gerstein had demonstrated a compelling need for the information sought in his FOIA request and granted his motion for summary judgment on his claims that the denial of expedited processing had violated the FOIA. *Id.* at 23–24.

In *Legal Eagle, LLC v. NSC Records Access & Info. Sec. Mgmt. Directorate*, Civil Action No.: 20-1732 (RC), 2021 U.S. Dist. LEXIS 50637 (D.D.C. 2021), the court noted that Congress made clear that “judicial review of agency denials of requests for expedited processing must be ‘based on the record before the agency at the time of the determination,’ 5 U.S.C. § 552(a)(6)(E)(iii), not on ‘commonly-known information’ that the agency should have considered in addition to the record.” *Legal Eagle*, 2021 U.S. Dist. LEXIS 50637 at 19. Because Legal Eagle had not submitted to the agency evidence, particularly examples of existing media coverage on the issue to which the requested records pertained, to demonstrate a compelling need, expedited processing was properly denied. *Id.* at 19–20.

In the instant case, Appellant argues that the requested records “have far-reaching implications for data privacy, employee retention, and litigation exposure.” Request Letter at 2. He argues that news reports claim that Mr. Farritor was involved in the allegedly accidental firing of several employees involved with nuclear security. Appeal at 1. He further argues that an accidental firing of employees

critical to nuclear security “on its face clearly concerns ‘a matter of current exigency to the American public.’” *Id.* Appellant does not include evidence of media coverage of the events or evidence that there is widespread public interest in the topic.

In deciding this appeal, we cannot consider “commonly-known information” surrounding the events Appellant described. Our consideration is limited to Appellant’s actual submissions. Since the record does not contain evidence of media reporting or national discussion on the issue of Mr. Farritor’s involvement in any allegedly accidental dismissal of critical employees, we are unable to conclude that there is widespread interest in the content of Mr. Farritor’s emails. While the media does have a recognized interest in timely reporting, we cannot find that Appellant has demonstrated a compelling need for expedited processing because there is no basis to find that the records pertain to a matter of current exigency to the American public.

III. ORDER

It is hereby ordered that the Appeal filed on February 20, 2025, by Timothy Marchman, No. FIA-25-0015, 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 one’s right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS, College Park, MD 20740
Web: <https://www.archives.gov/ogis> Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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