

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of Neal Dikeman )

Filing Date: February 21, 2025 )

Case No.: FIA-25-0016

Issued: March 12, 2025

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**Decision and Order**

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On February 21, 2025, Neal Dikeman (Appellant) appealed an interim response letter from February 11, 2025, issued by the Department of Energy's (DOE) Office of Public Information (OPI). The letter responded to Request No. HQ-2025-02106-F, a request filed by the Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, as implemented by the DOE in 10 C.F.R. Part 1004. In the letter, DOE denied Appellant's request for expedited processing of his FOIA request. Interim Response Letter from OPI to Neil Dikeman at 1–2 (Feb. 11, 2025). The Appellant appeals that decision. Appeal Letter Email from Neil Dikeman to OHA Filings at 1 (Feb. 21, 2025). In this Decision, we deny the appeal.

**I. Background**

On February 1, 2025, the Appellant submitted the FOIA request to the DOE. The request was as follows:

Any and all documents, memorandums, contracts and agreements along with associated exhibits and financial information of the Loan Programs Office related to the Ivanpah Solar Power Electric Generating System DOE Loan Guarantees c 2010, schedule of payments and amounts made and received by DOE and any and all amendments, communications, memos, analyses, agreements and exhibits related to the 2025 publicly announced Proposed Ivanpah PPA termination by PG&E including any financial analysis on the impact of the Ivanpah DOE Loan Guarantee expected recovery utilized or produced, by, for, or in DOE possession.

FOIA Request at 2. The Appellant also requested expedited processing, saying:

Public interest on the impact of this plant closure and financial impact is timely, announced in Jan 2025, public comment before the California PUC [Public Utility Commission] and the impact on the DOE Loan as one of the largest and earliest and high profile Loan Guarantees, and it is in the public interest to know the impact on the proposed changes for American taxpayers prior to any CPUC approval. Approvals at CPUC are in process now and cannot wait 20 days.

*Id.* at 3.

DOE issued an interim response letter on February 11, 2025. Interim Response Letter at 1. The letter informed the Appellant that DOE was denying his request for expedited processing because the rationale that the Appellant provided “[had] not identified an actual or alleged federal government activity that poses any particular urgency that requires the dissemination of information in an expedited manner.” *Id.* at 2.

The Appellant timely appealed the decision to deny his request for expedited processing on February 21, 2025. Appeal at 1. The Appellant argues that the requested information relates to federal government spending, is time sensitive because of an ongoing California public comment process, and that the outcome of that public comment process impacts federal and public interests. *Id.* Therefore, he says that his request for expedited processing should be granted. *Id.*

## II. Analysis

Agencies must grant expedited processing to FOIA requesters “in cases in which the person requesting the records demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(I). A person may demonstrate a compelling need in one of two ways. First, the person might show that failure to expedite their FOIA request “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” *Id.* § 552(a)(6)(E)(v)(I). Alternatively, the person might show that they are “primarily engaged in disseminating information” and that there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(v)(II). These criteria are applied narrowly to avoid unduly delaying responses to requests that do not qualify for expedited processing and to ensure that meritorious requests for expedited processing can be processed with appropriate haste “because prioritizing all requests would effectively prioritize none.” *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). It is the requestor’s burden to prove that there is a compelling need. *Wadelton v. Dep’t of State*, 941 F.Supp.2d 120, 122 (D.D.C. 2013) (citing *Al Fayed*, 254 F.3d at 305 n. 4).

The Appellant does not contend there is any imminent threat to life or physical safety of an individual, so we consider the second standard. It is undisputed that the Appellant is a member of the news media, and, thus, he is “primarily engaged in disseminating information.” FOIA Request at 1. We must next determine whether the Appellant has shown that there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). To make that determination, we 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*, 254 F.3d at 310. In his request, Appellant claimed, “Public interest on the impact of this plant closure and financial impact is timely” and that “it is in the public interest to know the impact on the proposed changes for American taxpayers prior to any CPUC approval.” FOIA Request at 3. He also stated that “[a]pprovals at CPUC are in process now.” *Id.* On appeal, the Appellant first asserts that the information requested is exigent because “there are hundreds of millions of Federal government spending at stake” and there is “a negotiation involving private parties and state government, for

which a public comment process applies at the state government level in process now, for which the requested information is critical to the public comment and debate and upon whose outcome the federal impact and public interest rests.” Appeal at 1. He further notes that he “cannot write a timely article without this information.” *Id.*

Courts have historically found that something is a “matter of a current exigency to the American public” when it is a “breaking news story of public interest” or “when the subject matter of the request was central to a pressing issue of the day.” *Wadelton*, 941 F.Supp.2d at 123. The Appellant has not brought forward any evidence that there is substantial interest, on the part of the public or the news media, in the information that the Appellant is seeking. *See Al-Fayed*, 245 F.3d at 311 (explaining that Al-Fayed had failed to show that his request was a matter of exigency to the American public because there was no support for his claims in the record); *ACLU v. Dep’t of Justice*, 321 F.Supp.2d 24, 29–30 (explaining that the plaintiff had supported its claim that there was urgency to inform the public and that there was a significant recognized interest at stake by citing several newspaper articles discussing the issue).

We find that the Appellant has not met his burden to show that there is a compelling need in regard to his request. Accordingly, we find his request for expedited processing should not be granted.

### **III. Order**

It is hereby ordered that the Appeal filed on February 21, 2025, by Neal Dikeman, FIA-25-0016, 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. § 522(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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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Poli A. Marmolejos  
Director  
Office of Hearings and Appeals