United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Casey Lowe	)		
	)		
Filing Date: April 2, 2025	)	Case No.:	FIA-25-0027
	)		FIA-25-0028
	)		

Issued: May 1, 2025

Decision and Order

On April 2 and 8, 2025, Casey Lowe (Appellant) appealed determinations from the Department of Energy's (DOE) Office of Public Information (OPI) and Office of Scientific and Technical Information (OSTI) regarding a fee waiver and expedited processing for Request Nos. OSTI-2025-02676-F and HQ-2025-02675-F, two parts of a single 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. OPI and OSTI determined that Appellant did not meet the requirements for a fee waiver or expedited processing. In this Decision, we deny the appeal.

I. BACKGROUND

On March 27, 2025, Casey Lowe, an attorney, filed a FOIA request on his own behalf but for the benefit of an unnamed client, seeking copies of documents and records:

> [C]ontaining the terms "solar radiation management", "SRM", "stratospheric aerosol injection", "SAI", "tropospheric aerosol(s)", "Tropospheric Aerosol Program", "albido modification", "solar geoengineering", "ionospheric steering", "Aerotoxic Syndrome", "smart dust", "stratospheric seeding", "barium release", or "barium release rocket" created between January 1, 2008, and March 27, 2025.

FOIA Request from Casey Lowe at 2 (March 27, 2025). Appellant stated that "[t]he purpose of this request is to allow requester to review documents referencing or relating to the Government's research and development of geoengineering technology, to the Government's deployment of that technology in the field during geoengineering operations, and to the results of those operations." *Id.* Appellant requested a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), which states that:

> Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

Appellant argued that the requested information was essential for the general public so it can assess its safety, and that the information would contribute to the public's understanding of the Federal Government's geoengineering operations and the potential associated repercussions. *Id.* Appellant also requested expedited processing on the grounds that failure to expedite the request "could reasonably be expected to pose an imminent threat to the health and physical safety of Americans who live in the towns and cities below the skies where the Government's geoengineering projects are executed, including my client's health and physical safety." *Id.* In further support of his expedited processing request, Appellant stated that the information would be:

> [W]idely disseminated utilizing a coordinated social media campaign, and will utilize the resources of several non-profit organizations to disseminate this information through YouTube, X (formerly Twitter), Tik Tok, Facebook, and other online video and social media channels. A press conference will also be organized to disseminate this information via traditional, legacy media channels.

Id. at 2. OPI received the FOIA request and, in addition to accepting DOE jurisdiction for a search, sent it to OSTI for processing as well. Email Chain between Erin Anderson and Alexander Morris at 1 (ended March 27, 2025, 2:32 p.m.).

On April 2, 2025, OSTI sent Appellant a letter acknowledging receipt of his FOIA request and denying his requests for a fee waiver and "Other" requester status. Acknowledgement Letter from Erin Anderson to Casey Lowe (OSTI Acknowledgement) at 1–3 (April 2, 2025). Regarding the fee waiver request, OSTI wrote that GC had determined that there had not been adequate justification to categorize Appellant as "Other," and that Appellant was categorized as a commercial requester, which had the effect of denying the request for a fee waiver. *Id.* at 2. No further explanation was given. Regarding the expedited processing request, OSTI stated, citing the FOIA itself, that Appellant had not shown that there was a compelling need for expedited processing. *Id.*; *see also*, 5 U.S.C. § 552(a)(6)(E)(i)(I) (stating agencies must have rules providing for expedited processing when the requester demonstrates compelling need) *and* 5 U.S.C. § 552(a)(6)(E)(v) (stating that compelling need means "a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 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."). OSTI stated that there is "urgency to inform," a standard that must be satisfied to warrant expedited processing, when "the request concerns a matter of current exigency to the American public," "the consequences of delaying a response would compromise a significant recognized interest," and "the request concerns federal government activity." OSTI Acknowledgement at 3 (*citing Al-Fayed v. C.I.A.*, 254 F. 3d 300, 310 (D.C. Cir. 2001)). OSTI added that the expedited processing request did not adequately address the first two "urgency to inform" factors. OSTI Acknowledgment at 3.

Later that day, Appellant filed the first appeal. Appeal 1 from Casey Lowe (April 2, 2025). In the appeal, Appellant first argued that space limitations on the online FOIA submission form limited his ability to "formulate a sufficient argument demonstrating my client's reasonable expectation of

an imminent threat to her health and physical safety or the particular urgency requiring expedited dissemination of the requested information." *Id.* at 1.

Regarding the fee waiver denial, Appellant argued that he was not a commercial requester because disclosure of the requested information was "not primarily in [his] commercial interest." *Id.* He added that he was seeking the information because it was "likely to contribute significantly to the public's understanding of OSTI's role in Government geoengineering activities." *Id.* Appellant stated, "[a]s an attorney, I am primarily engaged in disseminating information to public and private stakeholders including my client, the Court, the media, the public, and other interested parties." *Id.* at 3. He stated that he was partnering with several "content creators," including one with over one million followers on YouTube, to disseminate the requested information to the public and, therefore, the intended audience was "the American public, generally, and my client, specifically." *Id.* He then wrote, "[t]o clarify, the Requester intends to use the records being sought to significantly increase the public's understanding of the risks inherent to OSTI's geoengineering projects, which are 'government activities' by definition." *Id.* Appellant asserted that:

> [T]he requested information has value to my client, and to millions of Americans because it sheds light on an imminent threat to their lives, health, and physical safety . . . . If that information is not disseminated quickly, our air, water, and soil will continue to be poisoned with toxic particulate matter, and chronic illness will continue to increase in our communities.

Id.

Regarding expedited processing, Appellant argued that his client feared for her health and safety due to the geoengineering programs mentioned in the request, citing a study showing aluminum in the Mount Shasta, CA, area drinking water at levels exceeding California's maximum contaminant level. Appeal 1 at 2. He asserted that "[l]ocal authorities in the Mount Shasta area have also taken action on this issue" by opening an investigation and that European scientists had "cautioned their American counterparts that SRM technology was 'speculative', fraught with 'scientific risk', and 'inconsistent with Europe's precautionary principle.'" *Id.* at 3. Appellant further asserted that "my client's reasonable expectation of an imminent threat to her health and physical safety is sincere, reasonable and legitimate based on the facts of this case." *Id.* Relying on this, he argued that "OSTI should grant expedited processing for the subject FOIA request because a reasonable expectation of an imminent threat to the American public's health and physical safety, generally, and my client's health and physical safety, specifically, clearly exists here." *Id.*

On April 3, 2025, Appellant sent OPI a revision of the scope of his request, adding additional search terms. Email from Casey Lowe to Alexander Morris (April 3, 2025). The revision, attached to the email, was addressed to the OSTI FOIA Officer and dated April 2, 2025. *Id.* The updated request added the following keywords to the search request: "solar radiation modification", "albedo modification", "solar climate intervention", and "climate engineering". Supplemental Request from Casey Lowe at 1 (April 3, 2025). He restated his arguments, requests, and rationale from the original request. *Id.* at 1–2.

On April 7, 2025, OPI issued an Interim Determination Letter (OPI Determination) to Appellant informing him that his request for expedited processing was denied. Interim Determination Letter from Alexander Morris to Casey Lowe at 2 (April 7, 2025). OPI stated that Appellant had not established a compelling need for expedited processing because he had not provided materials that established a threat to an individual's life or safety or an alleged activity posing urgency that required expedited processing. *Id.* OPI further stated that Appellant had not addressed whether the request concerned a matter of current exigency to the American public or whether the consequences of delaying a response would compromise a significant recognized interest. *Id.* at 2–3. The letter did not expressly state that the request for a fee waiver was denied but stated that Appellant had been classified as a commercial requester, denying the waiver request in effect if not in words. *Id.* at 2.

Appellant appealed the OPI Determination shortly after receiving it. Appeal 2 from Casey Lowe (April 7, 2025). In this appeal, Appellant first argued that space limitations on the online FOIA submission form limited his ability to "formulate a sufficient argument demonstrating *an urgency to inform based on our community's* reasonable expectation of an imminent threat to our health and physical safety or the *compelling need for* expedited dissemination of the requested information." *Id.* at 1 (emphasis added to highlight changes from Appeal 1). This appeal's arguments contained no substantive changes from those in Appeal 1, with the exception of references to Appellant's client being replaced with references to himself and the Mount Shasta, CA, community. *Id.* at 2–4.[1]

Subsequent to filing his appeals, in responses to requests from this office, Appellant clarified that the FOIA request was filed "on my own behalf after further discussion." Email from Casey Lowe to Kristin L. Martin at 1 (April 2, 2025). In his response related to the OSTI appeal, he stated that "all arguments referring to my client's health and physical safety are imputed to me because I live in the same local Mount Shasta community." *Id.* In a separate response related to the OPI appeal, he stated:

> Initially, I made the subject request at the behest of a client. However, that client does not want her name associated with the request. Therefore, the request is due to my own interest in the matter, as well as the general public's interest in the matter, and our local community's interest in the matter.

Email from Casey Lowe to Erin Weinstock at 1 (April 8, 2025). Unless the client is specifically named as the requester in a FOIA request filed by an attorney on the client's behalf, the attorney is considered the requester. *Wetzel v. U.S. Dep't of Veterans Affs.*, 949 F. Supp. 2d 198, 202 (D.D.C. 2013); *Burka v. U.S. HHS*, 142 F.3d 1286, 1290–91 (D.C. Cir. 1998). Accordingly, we consider Mr. Lowe to be the requester in terms of the initial request and these appeals.

II. ANALYSIS

An informed citizenry is a crucial element of a functioning democracy. The FOIA is intended to ensure such a citizenry, which is "needed to check against corruption and to hold the governors

[1] Because the arguments in Appeals 1 and 2 are identical, they will be referred to collectively as "Appeal" for the remainder of this decision.

accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). Typically, requesters must pay reasonable costs pertaining to the search, review, and duplication of records. 5 U.S.C. § 552(a)(4)(A)(ii)(I). Requests are processed on a first in, first out basis. *In the Matter of Citizen Action New Mexico*, OHA Case No. FIA-15-0022 at 2 (May 7, 2015). However, in certain circumstances, fees can be waived, and requests can be expedited. In this case, Appellant has not met his burden to show that such circumstances exist.

A. Requester Fee Categorization

In order to determine whether a fee waiver is warranted, the agency must first determine the requester's category: commercial; educational institution, noncommercial scientific institution, or representative of the news media; or a requester who does not fall within either of the preceding categories. 5 U.S.C. § 552(a)(4)(A)(ii)(I)–(III). A commercial use requester seeks records for "a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is being made." 52 Fed. Reg. 10,017–18 (Mar. 27, 1987). The FOIA does not define the word "commercial," so courts have given the word its ordinary meaning: pertaining to the exchange of goods or services or the making of a profit. *Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Just.*, 58 F.4th 1255, 1263 (D.C. Cir. 2023); *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Courts have found that the legislative history of the FOIA's fee waiver provision "indicates a special solicitude for journalists, along with scholars and public interest groups." *Nat'l Treasury Emps. Union v. Griffin*, 811 F.2d 644, 645–46 (D.C. Cir. 1987). They have acknowledged that while private interests clearly drive journalism, those private interests are advanced almost exclusively by dissemination of news such that "the private benefit from news distribution necessarily rises with any private benefit." *Id.* However, for non-journalists seeking a fee waiver, the balance of public and private benefit is not so clear, and non-journalists must typically submit more detail than journalists in support of their assertions that disclosure of the requested information is not primarily in their commercial interest. *Id.* at 649.

Appellant challenges OPI's and OSTI's categorization of him as a commercial requester. Appellant made clear that he is the requester, not his client, and that he intends to furnish the responsive records to his client for her use. His client's intended use is irrelevant since she is not the requester; Appellant's purpose is to provide the records to the person who is paying him to obtain them. As Appellant is pursuing this FOIA request in furtherance of his ongoing representation of his client, we find that the requested records further his profit interest and he is properly classified as a commercial requester. However, even if the Appellant was not a commercial requester, his request would not meet the requirements for a fee waiver, as discussed below.

B. Fee Waiver

The FOIA requires agencies to promulgate regulations providing fee schedules for FOIA requests. When the records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media, fees for FOIA requests must be limited to reasonable standard charges for document duplication. 5 U.S.C. § 552(a)(4)(A)(ii)(II). If the records are requested for

commercial use, fees must be limited to "reasonable standard charges for document search, duplication, and review" 5 U.S.C. § 552(a)(4)(A)(ii)(I). If the request falls into a category not described by either of those provisions, fees must be limited to reasonable standard charges for document search and duplication only. The FOIA further states that documents must be furnished at no or further reduced charge if the disclosure of information is not primarily in the requester's commercial interest and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii). It is well-established that "fee waiver requests must be made with 'reasonable specificity,' . . . and contain more than 'conclusory allegations." *In Def. of Animals v. NIH*, 543 F. Supp. 2d 83, 109 (D.D.C. 2008) (internal citations omitted). It is not enough to state an intention to disseminate information; courts require "some showing of one's ability to actually disseminate the information." *Perkins v. U.S. Dep't of Veterans Affs.*, 754 F. Supp. 2d 1, 8 (D.D.C. 2010).

DOE provides the first 100 pages of duplication and first two hours of search time at no cost to non-commercial FOIA requesters. 10 C.F.R. § 1004.9(a)(6)(i). The agency echoes the language of the FOIA, stating that it will furnish documents at reduced or no cost if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in the commercial interest of the requester." 10 C.F.R. § 1004.9(a)(8). The following factors[2] are to be considered in determining if disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government:

> (A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";
>
> (B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
>
> (C) The contribution to an understanding by the general public of the subject likely to result from disclosure; and
>
> (D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

10 C.F.R. § 1004.9(a)(8)(i). The following factors[3] are to be considered in determining if disclosure is not primarily in the requester's commercial interest:

> (A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

[2] This list is not exclusive. 10 C.F.R. 1004.9(a)(8)(i).

[3] This list is not exclusive. 10 C.F.R. 1004.9(a)(8)(ii).

> (B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

10 C.F.R. 1004.9(a)(8)(ii). The requester bears the burden of showing that disclosure of the requested documents is in the public's interest and not primarily in the requester's commercial interest. *Judicial Watch, Inc. v. United States DOJ*, 185 F. Supp. 2d 54, 60 (D.D.C. 2002). Here, the requested records relate to DOE's research and development of geoengineering technologies, indicating that the subject pertains to government operations or activities, satisfying the first prong of the test. We turn our consideration next to the three remaining factors determining whether disclosure is in the public interest, then examine the factors determining whether disclosure is not primarily in Appellant's commercial interest.

1. Informational value and likely contribution of disclosure

In order to obtain a fee waiver, requesters must state the public's interest in the requested information's disclosure with reasonable specificity. *McClellan*, 835 F.2d at 1285. Agencies may infer a lack of substantial public interest if a public interest is asserted but not identified with reasonable specificity, and the circumstances do not clarify the point of the requests. *Id.*

In *McClellan*, the requester, MESS, requested records pertaining to water pollution at McClellan Air Force Base as well as a waiver of search and copying fees. 835 F.2d at 1283. The requesters stated that they sought to benefit the general public, especially in Sacramento; that they may use the requested information in litigation to ensure that agencies comply with federal law; and that they would ultimately donate the information to a public institution. *Id.* at 1285. The court found that the requesters had not explained with reasonable specificity how disclosure would contribute to public understanding and that their statements were conclusory. *Id.* The court acknowledged that some context could be gleaned from the subject of water pollution and the requester's name, and that information has more potential to contribute to public understanding if it is new and supports public oversight of agency operation, including the effect of an agency's public health policy. *Id.* at 1285–86. However, the court also found that the request would result in only limited public understanding because the request was for "a large volume of information, some of it technical, much of it identified only by broad categories," and because the requester gave no indication of its ability to understand and process the information. *Id.* at 1286. The court ultimately held that the disclosure of the requested information would not significantly contribute to the public understanding of the government. *Id.*

In the instant case, Appellant's assertions of contribution to the public understanding of government are even more vague. The request was for all documents and records containing certain key words. The scope of Appellant's request is so broad that, like the request at issue in *McClellan*, it is likely to yield "broad categories" of information, the connection of which to Appellant's stated public interest of revealing alleged health and safety risks is purely speculative and based on Appellant's conclusory claims of environmental contamination.[4] Moreover, responsive records that

[4] It is not immediately clear whether DOE engages in geoengineering activities. However, whether responsive records are likely to exist is not relevant to the issues of fee waiver or expedited processing.

could contribute to the public's understanding are likely to be highly technical and Appellant provides no evidence that he has the knowledge or experience to interpret such information. Because Appellant has not specifically identified which documents would significantly contribute to the public's understanding of DOE's geoengineering activities or how they would do so, we find that his request fails the second prong of the test.

2. Contribution to understanding via actual dissemination of information

The assessment of the "contribution to an understanding by the general public of the subject likely to result from disclosure" is an assessment of the requester's ability to disseminate the requested information. *Perkins*, 754 F. Supp. 2d at 7. To satisfy this third prong of the test, a requester must demonstrate that he is "able to understand, process, and disseminate the information." *Id.* (citing *McClellan*, 835 F.2d at 1286). As previously stated, Appellant has submitted no evidence that he is able to understand and process any responsive documents that are technical in nature. We examine next Appellant's ability to disseminate information.

In *Perkins*, the requester asserted that he intended to disseminate the requested information to various news, labor, and civil rights organizations and congressional committees. *Perkins*, 754 F. Supp. 2d at 8. The court found this insufficient to demonstrate that the requester could contribute to the public's understanding of the issue by disseminating the requested information. *Id.* It noted that "[m]erely stating one's intention to disseminate information does not satisfy this factor; instead, there must be some showing of one's ability to actually disseminate the information." *Id.* The court was unconvinced that the requester could achieve dissemination through newspapers because the requester had identified only one newspaper by name to which he intended to distribute the information and had not demonstrated any history of publication with the paper or indicated that he had contacts there. *Id.* The court held that statements about membership in labor and civil rights organizations and unsupported assertions that the requester routinely met with congressional delegations to discuss the relevant topic were not sufficient to demonstrate the requester's ability to disseminate information. *Id.* at 8. It characterized the requester's statements that he had presented relevant data to two VA Secretaries, without details about content or context, as "amount[ing] to little more than a statement than plaintiff has 'disseminated such information in the past, and . . . intend[s] to do so in the future.'" *Id.* at 8–9. The court found that the requester's dissemination activities depended on external sources and that he had not shown he had access to these sources. *Id.* at 9. Ultimately, the court held that the requester had not satisfied factor three because he had not "described in reasonably specific and non-conclusory terms his ability to disseminate the requested information." *Id.* at 8.

Here, Appellant asserts that he will disseminate the requested information though a coordinated social media campaign and a press conference designed to disseminate the information "via traditional, legacy media channels." Request at 3. He also asserts that he is partnering with several content creators, one of whom has over 1,000,000 followers on YouTube. Appeal at 3. The content creators he cites are not named, nor are the legacy media organizations that will be the target audience for a press conference. Appellant has not submitted evidence demonstrating a history of disseminating information widely through content creators, social media, legacy media, or any other channel. In this case, the intended dissemination of information is purely speculative and

Appellant has not demonstrated the ability to achieve it. Accordingly, we find that Appellant's request fails the third prong of the test.

3. Significance of the contribution to understanding

In determining whether disclosure of information will likely contribute significantly to public understanding of government operations or activities, courts must determine whether disclosure would enhance by a significant extent the public's understanding of the subject, as compared to its understanding prior to the disclosure. *Votehemp, Inc. v. DEA*, 237 F. Supp. 2d 55, 63 (D.D.C. 2002).

In *Votehemp, Inc.*, the requester sought "all documents relating to hemp policy, including 'all written correspondence, including meeting notes, from DEA interagency meetings.'" *Id.* at 57. It also sought a waiver of all fees over $100.00. The requester stated that:

> Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not in [the requestor's] or another's commercial or business interests.

Id. In its appeal, the requestor made:

> [A]ssertions regarding wanting to reveal "the true concerns of the DEA in its efforts to outlaw industrial hemp oil and seed products . . ." and its intent to use the disclosed documents in responding to assertions DEA Administrator Hutchinson made in a letter sent to members of Congress that contained "misrepresentations of fact" and references to "studies, reports and other factual materials on which the DEA has apparently . . . relied [upon] in promulgating its 'interpretive' proposed rules outlawing seed and oil products."

Id. Requester further stated that disclosure of the requested information would "contribute significantly to public understanding of DEA's operations—specifically, factual and policy reasons underlying DEA's actions with respect to industrial hemp, which reasons have not been set forth anywhere in the public record." *Id.* at 64. The court characterized the assertions as "conclusory allegations that the DEA has ulterior concerns or motives for issuing its Interpretive Rule and speculation about its reliance on 'studies, reports, and other factual material.'" *Id.* at 63–64. It found no reason to believe that "'secret' reports and studies" would be revealed; furthermore, the requester had failed to demonstrate how any such reports would contribute significantly to the public's understanding of DEA operations. *Id.* at 64. The court emphasized that the contribution to the public's understanding must be significant and specifically described and held that the requestor had not satisfied that requirement. *Id.*

In his Appeal, Appellant asserts that the records will significantly increase the public's understanding of the risks inherent to OSTI's and DOE's geoengineering projects. Appeal at 3. He further asserts that the requested information would shed light on an imminent threat to Americans' lives, health, and physical safety and that if the information is not disseminated quickly, "our air,

water, and soil will continue to be poisoned with toxic particulate matter, and chronic illness will continue to increase in our communities." *Id.* In support of these assertions, Appellant cited various articles about "chemtrails," including articles that cast doubt on the involvement of geoengineering in the aluminum levels in his community, an op-ed in the local newspaper asking for an investigation into the cause of the aluminum levels, and a press release by a fiction author regarding "chemtrail" information he found while researching for a young adult novel. *Id.* at 2.

As discussed in the analysis of the second prong of the test, the scope of Appellant's request is so broad that it is likely to yield "broad categories" of information with a purely speculative connection to Appellant's stated public interest of revealing alleged health and safety risks. *See McClellan*, 835 F.2d at 1286. Without knowing what kinds of documents to expect, we also cannot determine how they will increase the public's understanding of DOE's geoengineering activities as compared to what is currently known. His assertions about imminent health threats and toxic particulate matter poisoning are conclusory—the articles he cites in support of his claim question its validity as much as, if not more than, they support it—and are irrelevant as they relate to the question of the public's knowledge before and after dissemination of the requested information. For the foregoing reasons, we find that Appellant has not established that dissemination will significantly contribute to the public's understanding of DOE's geoengineering activities.

4. Existence of commercial interest and comparison to the value of public disclosure

When considering the existence and magnitude of a requester's commercial interest, the agency is entitled to consider any commercial interest of the requester or the person on whose behalf the requester is acting. *Votehemp*, 237 F. Supp. 2d at 64–65. For the same reasons described in our consideration of Appellant's categorization as a commercial requester, we find that he has a commercial interest in the disclosure of the requested information. His acquisition of the information is part of the work he is paid to perform and he has not indicated that he will use it personally; rather, he has framed himself as a middleman obtaining and passing along the requested information, a process in which he is commercially involved. We turn now to the weighing of public benefit against Appellant's commercial interest.

In *National Treasury Employees Union*, the requester sought a fee waiver in relation to its request for information about U.S. Customs Service employees who had received awards and bonuses as well as all complaint letters filed against the Customs Service and all travel vouchers for certain regions within a specified time frame. *National Treasury Employees Union*, 811 F.2d at 645–46. The requester argued that the award and bonus information related to potentially improper personnel practices, that the travel vouchers request was related to union claims of obstruction and waste of taxpayer funds, and that the complaint letters related to a quota system in which employees received points for discovering undeclared items. *Id.* at 647. The court held that even if these issues were of public concern, they did not warrant a fee waiver for all of the requested documents because not all responsive documents would be related to the issues the requester raised. *Id.* It found the relationship between the requested information and the public benefit to be "at best tenuous." *Id.* at 647–48.

In *American Federation of Government Employees* (AFGE), the requester sought to inspect office files and correspondence from the Census Bureau's management and staff, including memoranda

recommending promotions for employees, which it believed would confirm its suspicions that the Bureau had engaged in illegal promotion practices. *Am. Fed'n of Gov't Emps., Loc. 2782 v. U.S. Dep't of Commerce*, 632 F. Supp. 1272, 1278 (D.D.C. 1986). When asked to pay $3,650.00 prior to a search being conducted, AFGE refused to pay and requested a fee waiver. *Id.* at 1275, 1278. The court held that while "society undoubtedly has an interest in discovering and subjecting unlawful agency action to public scrutiny, [] the Union's allegations of malfeasance here are too ephemeral at the moment to warrant such a search at public expense without further reason to suppose that the corruption suspected will be found." *Id.* at 1278.

As previously stated, Appellant's request is broad and will likely include responsive documents that have little, if anything, to do with DOE geoengineering activities. Appellant has not asserted that responsive documents that do not discuss DOE's geoengineering activities have any public benefit at all. Moreover, the public benefit of any documents discussing those activities is predicated on the notion that DOE geoengineering activities are poisoning the environment and depositing toxic particulates in communities. Weighed against Appellant's commercial interest in procuring information as part of his job duties, we find, like the court in *AFGE*, that while the public has an interest in finding out about potential health hazards in its communities, Appellant's allegations of malfeasance are too speculative to warrant search, review, and duplication at the public's expense.

For the foregoing reasons, we find that Appellant has not satisfied his burden to show that disclosure of the requested documents is in the public interest and not primarily in his commercial interest. Accordingly, we find that OPI and OSTI properly denied his request for a fee waiver.

C. Expedited Processing

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 mirror the FOIA's language, which states that the term "compelling need" means:

> (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) 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.

5 U.S.C. § 552(a)(6)(E)(v). *See also* 10 C.F.R. § 1004.5(d)(6).[5] The categories for compelling need are intended to be narrowly applied. *Al-Fayed*, 254 F.3d at 310.

1. Imminent threat

The word "imminent" as it relates to threats and danger means immediate and real. *Brown v. Battle Creek Police Dep't*, 844 F.3d 556, 567 (6th Cir. 2016) (citing *Imminent Danger*, BLACK'S LAW DICTIONARY (10th ed. 2014)). OHA has found that a requester did not demonstrate an imminent threat to life or safety where the requested information concerned past safety incidents and current safety conditions at a nuclear waste storage site. *In the Matter of Citizen Action New Mexico and Concerned Citizens for Nuclear Safety*, OHA Case No. FIA-16-0060 at 6 (Jan. 11, 2017).[6] The alleged current safety conditions included radioactive contamination, inadequate ventilation for workers, and unresolved mining and safety health citations; in support of these allegations, the requester cited to DOE reports that had identified vulnerabilities at the facility and areas for management attention. *Id.* at 4, 6. OHA held that to the extent that safety deficiencies had been identified, the dangers were speculative, not immediate and real. *Id.* at 6.

Appellant alleges an immediate threat to the health and physical safety of his client and persons who live in locations where DOE is conducting geoengineering activities due to environmental contamination with toxic particulate matter. Appeal at 3. As stated above, Appellant has not demonstrated that this contamination is occurring or that DOE's activities have contributed to it. Moreover, the alleged harms are speculative as Appellant has not identified any individual who has been sickened by DOE geoengineering activities or even by high aluminum levels in his local water supply. Accordingly, we find that Appellant has not demonstrated that a delay in disclosure would pose an immediate threat to the life or physical safety of an individual and that OPI and OSTI properly denied the request for expedited processing on these grounds.

2. Urgency to inform

Courts have long held that for a requester to be engaged primarily in information dissemination, the dissemination "must be *the* main activity of the requester–though it need not be his/her/its sole occupation." *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012) (emphasis in original) (citing *Am. Civil Liberties Union of N. Cal. v. Dep't of Justice*, No. 04-4447 PJH, 2005 U.S. Dist. LEXIS 3763 *24–25 (N.D. Cal. Mar. 11, 2005)). Requesters engaged in litigation and information dissemination are typically found not to be primarily engaged in information dissemination. *See, e.g., id.* Indeed, while media organizations and newspapers qualify as being

[5] Because agencies are not permitted to change the definition of "compelling need," we interpret the phrase "pose a threat" in the DOE regulation to mean "pose an imminent threat." *See Heritage Found. v. CIA*, 2025 U.S. Dist. LEXIS 26373, *10 (D.D.C.).

[6] OHA opinions are available at www.energy.gov/OHA.

engaged primarily in information dissemination, "other types of organizations have been held not to qualify, unless information dissemination is also their main activity, and not merely incidental to other activities that are their actual, core purpose." *Allied Progress v. Consumer Fin. Prot. Bureau*, 2017 U.S. Dist. LEXIS 67889, *10–*11; *see also, Nat'l Day Laborer Org. Network v. U.S. Immigr. & Customs Enf't*, 236 F. Supp. 3d 810, 817 (S.D.N.Y. 2017).

Appellant claims that he is primarily engaged in disseminating information to his client, the public, and private stakeholders. Appeal at 3. In support of this claim, he states that his skillset as an attorney "also includes extracting, analyzing, and distributing information to interested parties." *Id.* While communication is an essential skill for most attorneys, it would be quite rare for information dissemination to be an attorney's primary activity. For example, in this case, Appellant repeatedly refers to his client, for whom he provides legal representation. He is also engaged in the practice of law, as evidenced by this very appeal. He has presented no evidence of his information dissemination activities. Because he has, however, presented evidence that he engages in the practice of law and representation of clients, which is the expected primary activity of an attorney, we cannot find that his primary activity is the dissemination of information. For the reasons previously stated regarding the speculative nature of his allegations of threats of imminent harm from toxic particulates, we also find that he has not demonstrated an urgency to inform the public about DOE's geoengineering activities. For these reasons, we find that OPI and OSTI properly denied Appellant's request for expedited processing.

III. ORDER

It is hereby ordered that the Appeal filed on April 2, 2025, by Casey Lowe, Case Nos. FIA-25-0027 and FIA-25-0028, 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

Poli A. Marmolejos
Director
Office of Hearings and Appeals