

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

In the Matter of: Kashif Shahzad Khan

Filing Date: May 14, 2025

Case No.: FIA-25-0036

Issued: June 12, 2025

Decision and Order

On May 14, 2025, Kashif Shahzad Khan (Appellant) appealed a letter issued to him from the Department of Energy’s (DOE) Western Area Power Administration (WAPA) regarding Request No. WAPA-2025-02854-F, in which WAPA informed Appellant of fees owed before it would process a request Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. WAPA determined that Appellant was an “all other” requester and that the total fees for processing the request would amount to \$6,322.92. The Appellant challenged the amount of the fee and his fee categorization as an “all other” requester. In this Decision, we deny the appeal.

I. BACKGROUND

On April 11, 2025, Appellant, a resident of a South Asian country, filed a FOIA request seeking WAPA records from 2023 and 2024, including:

1. Records that explore the impact of electromagnetic pulse (EMP) threats on WAPA’s transmission infrastructure and any related mitigation strategies under consideration;
2. Documentation of internal discussions or proposals evaluating the use of drone-based inspection and maintenance systems across WAPA’s transmission lines and substations.
3. Any pilot program reports or feasibility studies on integrating blockchain technology for energy transaction validation within WAPA’s grid services;
4. Risk assessment reports or communications from 2022 onward concerning cyber-physical security overlaps—specifically the intersection of physical site vulnerabilities and cybersecurity risks in WAPA facilities; and
5. Any records or memos discussing WAPA’s consideration of future decarbonization mandates at the federal level and how these may affect power marketing strategies or contractual obligations with preference customers.

FOIA Request from Appellant at 2 (April 11, 2025). Appellant identified himself as a scientific requester and requested a fee waiver. *Id.* at 3. Appellant supported his request by stating that the information was “requested in the public interest and will contribute significantly to public understanding of government operations and energy policy,” adding that the requested records involved topics of national importance such as “grid resilience, emerging technologies, cybersecurity, and environmental policy.” *Id.* He stated that the information would be used to “inform the public, foster transparency, and encourage meaningful discussion around the modernization and security of U.S. energy infrastructure,” and that “the questions are focused on issues that directly impact public safety, technological advancement, and environmental responsibility.” *Id.* Appellant asserted that the request was not made for commercial purposes and that he would use the information to enhance civic awareness and “promote government accountability in areas of strategic energy planning and public service.” *Id.*

On April 18, 2025, WAPA sent Appellant an acknowledgment letter placing him in the “commercial requester” fee category and, therefore, denying his request for a fee waiver. Acknowledgment Letter from WAPA FOIA Officer to Appellant at 2 (April 18, 2025). On April 21, 2025, WAPA sent a clarification letter to Appellant, requesting that Appellant explain what he meant by “cyber-physical security overlaps” and “the intersection of physical site vulnerabilities and cybersecurity,” and that he specify the type of communications methods he was requesting. Clarification Letter from WAPA FOIA Officer to Appellant at 2 (April 21, 2025). On April 25, 2025, WAPA withdrew its initial acknowledgment letter, indicating it would issue a new acknowledgment letter reflecting a change to the requester’s fee category. Withdrawal Letter from WAPA to Appellant (April 25, 2025).

On May 5, 2025, WAPA received Appellant’s first response to its clarification letter, which stated:

Regarding FOIA Request **WAPA-2025-02854-F**, I am seeking **risk assessment reports and related communications** from **January 1, 2022, to the present** that address the **intersection of physical security vulnerabilities and cybersecurity risks** at Western Area Power Administration (WAPA) facilities.

To clarify:

- **“Cyber-physical security overlaps”** refers to situations where weaknesses in WAPA’s **physical infrastructure** (e.g., access controls, surveillance systems, physical barriers) may pose or contribute to **cybersecurity threats** (e.g., unauthorized network access via physical intrusion or tampering with digital control systems).
- I am requesting records including:
 - **Formal risk assessments, internal reports, or reviews** that analyze the connection between physical and cyber vulnerabilities at WAPA sites.
 - **Emails, memos, or other internal communications** among WAPA staff or with contractors/vendors that discuss any such overlapping security concerns.

- If applicable, documents involving **cybersecurity incident response plans** that include or mention physical site vulnerabilities.

Email from Appellant to WAPA (May 5, 2025) (emphasis in original). On May 6, WAPA received a second clarification, narrowing the scope of the search for the second element of his initial FOIA request. *Id.* at 1–2. The clarification stated:

This is to provide clarification regarding FOIA request number **WAPA-2025-02854-F**, concerning internal discussions or proposals evaluating the use of drone-based inspection and maintenance systems.

Clarification of Scope:

1. **Date Range:** I am requesting records created or exchanged between **January 1, 2024, and April 30, 2024.**
2. **Subject Focus:** Records related to internal **proposals, discussions, or evaluations** regarding the use of **drone-based inspection and maintenance systems for transmission lines and substations.**
3. **Types of Records Requested:** Please include:
 - **Emails**
 - **Internal memoranda**
 - **Meeting notes**
 - **Draft or final proposals**
 - **Presentation slides**
4. **Geographic or Operational Scope:** This request applies to **all WAPA regional offices** and **all transmission or substation segments**, without limiting to a specific region.

Please provide the requisite information.

Email from Appellant to WAPA (May 6, 2025) (emphasis in original).

WAPA sent a new acknowledgement letter to Appellant on May 13, 2025, which categorized him as an “all other” requester entitled to two free hours of search time and responsible for further search fees as allowed by the FOIA. Acknowledgment Letter 2 from WAPA to Appellant at 2 (May 13, 2025). The letter stated that WAPA estimated the total search would take about 114 hours and provided the following fee estimate:

- (1) Employee at \$44.42 for 15 hours search time = \$44.42 x 16% administrative cost = \$772.91
- (2) Employee at \$47.38 for 10.5 hours search time = \$47.38 x 16% administrative cost = \$541.04
- (3) Employee at \$47.07 for 80 hours search time = \$47.07 x 16% administrative cost = \$4,368.10
- (4) Employee at \$69.44 for 8 hours search time = \$69.44 x 16% administrative cost = \$644.40

(5) Employee at \$79.84 for 0.5 hours search time = \$79.84 x 16% administrative cost = \$46.31

Id. at 4. WAPA estimated that the total search fee would be \$6,322.92 and requested that an advance deposit for the full amount be made before it conducted the search. *Id.* at 3. WAPA also wrote, “[i]f you wish to reformulate your request to lower the estimated fees, you may contact [WAPA] . . . to discuss this option.” *Id.* at 4.

On May 14, 2025, Appellant filed the instant appeal, arguing that the estimated fee was unreasonable, that he was improperly categorized as “all other” given that his use of the information is in the public interest and will be published on social media and public platforms, and that he should be entitled to a waiver of search fees because the requested information regarded “a matter of significant public interest given increasing concerns over grid reliability and infrastructure modernization.” Appeal from Appellant to OHA Director at 1–2 (May 14, 2025). Appellant argued that the estimated search time was high based on the scope and date parameters of his request. *Id.* at 1. He further argued that WAPA had not provided him with an opportunity to narrow his request to avoid high search costs. *Id.* at 2. He requested that WAPA be ordered to waive the search fees or that he be provided with a breakdown of the fees for each segment of the request and an opportunity to work with WAPA to narrow the scope of the request. *Id.*

In response to the appeal, WAPA provided the following information to OHA regarding the expected search time:

WAPA . . . uses three different databases for different kinds of compliance reports. One database can be searched with relative ease from a universal search bar that can access all files in nested folders using natural language search terms. The other two databases do not have this function. One database requires extensive search parameters to be manually entered for each search. The other does not have a search function and can be narrowed by site location only. This site has also been updated recently, so much of the information is now stored in an archival site that requires authorization for access. There does not appear to be a way to search the last database or its archive by keyword, so a manual review is required. The documents found via keyword search from the first two databases must be manually reviewed for responsiveness to the request as the [topics] provided by the requester are broad and may return unresponsive results. WAPA stated that this is one of the broadest requests it has ever received and that the scope covers nearly all of WAPA’s mission.

Summary of Teams Meeting Between WAPA and OHA at 1 (June 2, 2025).

II. ANALYSIS

The FOIA allows agencies to charge requesters reasonable fees for search time, review time, and duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(I). However, courts have long recognized Congress’s intent to prevent agencies from using high fees to discourage FOIA requests. *Nat’l Treasury Emps. Union v. Griffin*, 811 F.2d 644, 650 (D.C. Cir. 1987) (*citing* S. Rep. No. 854, 93d Cong., 2d Sess.

11-12 (1974)). The FOIA provides fee waivers “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.” 5 U.S.C. § 552(a)(4)(A)(iii).

A. Fee Categorization

In order to determine what fee may be charged, 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); 10 C.F.R. § 1004.9(b)(1–4). The FOIA defines a representative of the news media as:

[A]ny person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

5 U.S.C. § 552(a)(4)(A)(ii); 10 C.F.R. § 1004.2(m).

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); 10 C.F.R. § 1004.9(b)(2–3). 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); 10 C.F.R. § 1004.9(b)(1). If the requester falls into a category not described by either of those provisions, *i.e.* “all other” requesters, fees must be limited to reasonable standard charges for document search and duplication only. 5 U.S.C. § 552(a)(4)(A)(ii)(III); 10 C.F.R. § 1004.9(b)(4).

Here, Appellant identified himself as a scientific requester in his initial request but provided no information about the institution he was associated with or the type of scientific research he was doing. In his appeal, Appellant appears to identify himself as a representative of the news media but does not identify any outlet in which he intends to publish. He argues that he will disseminate the information via social media but does not specify which outlets nor how many people his content typically reaches. Simply put, Appellant has offered no evidence or even factual assertions

in support of his claim to be a scientific or news media requester. Accordingly, the appeal of Appellant's fee categorization is denied.

B. Fee Waiver

As an initial matter, I find that, while WAPA's second acknowledgement letter does not explicitly address the fee waiver request, its charging of fees is an implicit denial of the request and, therefore, the issue is ripe for review on appeal. Turning to the substance of the issue, the FOIA states that documents must be furnished at no or further reduced charge, referred to as a fee waiver, 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); 10 C.F.R. § 1004.9(a)(8). 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). Courts have also acknowledged that while private interests clearly drive journalism, those private interests are advanced almost exclusively by dissemination of news such that "the public benefit from news distribution necessarily rises with any private benefit." *Nat'l Treasury Emps. Union*, 811 F.2d at 649. 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.*

The following factors¹ 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.

¹ This list is not exclusive. 10 C.F.R. § 1004.9(a)(8)(i).

10 C.F.R. § 1004.9(a)(8)(i). 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). In this case, there is no dispute that disclosure is not primarily in the commercial interest of the Appellant, so the relevant question is whether disclosure is in the public interest. There is similarly no dispute that the requested records concern government activity.

In order to obtain a fee waiver, requesters must state the public's interest in the requested information's disclosure with reasonable specificity. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). 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.* 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. A requester must demonstrate that he is "able to understand, process, and disseminate the information" and must describe "in reasonably specific and non-conclusory terms his ability to disseminate the requested information." *Id.* at 7–8 (citing *McClellan*, 835 F.2d at 1286). This often includes describing a track record of publication in media outlets. *Id.* 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). Again, requesters must specifically describe why the contribution would be significant. *Id.* at 64.

Regarding factor (B), Appellant does not state specifically why the information he requested is in the public interest beyond a vague nod to public oversight and understanding. While these interests are important, it is not clear how the documents requested promote those interests. Moreover, there is no evidence that Appellant is able to understand and process the large volume of documents, many of them technical in nature, that he has requested. Appellant does not state how the documents he has requested will inform the public about "grid reliability and infrastructure modernization," but rather gives only a conclusory statement that they will, which does not satisfy the legal standard for factor (B). *See McClellan*, 835 F.2d at 1285–86 (finding that the requester's assertions of public interest lacked specificity 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 did not demonstrate an ability to understand and process such a broad, technical set of documents). Regarding factor (C), Appellant argues that he publishes information on social media and public platforms but does not identify any media outlet in which he intends to publish or has published in the past. He does not specify which social media platforms he uses nor how many people his content typically reaches. Regarding factor (D), Appellant again lacks specificity in his description of the significance of the information's contribution to the public understanding. He does not explain why these particular documents are important.

I find that Appellant's fee waiver justification in his FOIA request and his arguments on appeal are conclusory and non-specific. Therefore, I cannot find that the factors weigh in favor of a fee waiver and, therefore, his appeal of WAPA's decision not to grant a fee waiver is denied.

C. Amount of Fees

The reasonability of fees is a largely factual determination arising from the circumstances and requirements of the search. An appeal of a fee amount must be accompanied by evidence that the amount is unreasonable. *Nat'l Treasury Emps. Union*, 811 F.2d at 650. In *Nat'l Treasury Emps. Union*, the court stated that the high estimated fee amount, about \$8,000.00 for three searches, on its face raised a question about the reasonableness of the search. *Id.* However, the agency provided information that several independent searches would need to be performed because the files were not centrally located. *Id.* The court found the justification reasonable and held that the agency's "invitation to [the union] to reformulate its request to reduce the cost (to which the union apparently made no response) suggests agency cooperation, rather than obstruction." *Id.*

In the instant case, WAPA has submitted evidence that the records responsive to Appellant's request are not centrally located. It has detailed the method of the search, showing that the search capabilities for two of the databases that much be searched are unsophisticated and not designed in a way that makes finding documents via keyword search easy or quick. Moreover, the scope of the entire request—all five parts, not just the revision to part two mentioned in the appeal—covers WAPA's activities rather comprehensively, resulting in a wide-ranging search of presumably thousands of documents. Before the documents can be reviewed for releasability, they must first be reviewed to determine whether they are even responsive. The request is quite broad in part because it focuses on topics without specifying keywords to be searched. For example, a search for documents regarding "the intersection of physical security vulnerabilities and cybersecurity risks" cannot be performed by using the key phrases "physical security vulnerabilities" and "cybersecurity risks," nor can it be done by searching for both simultaneously. Rather, a complete search would seek to find documents that address these issues without specifying the topic. A risk assessment may describe a specific physical security vulnerability without using those words. Similarly, a report may include the words "cybersecurity risks" but have nothing to do with the intersection of those risks with a physical security vulnerability. The broad nature of the request, focusing on subject matter rather than specific keywords, necessitates a manual review for responsiveness. While the initial price tag WAPA identified is certainly high enough to raise facial concerns about reasonableness, I find that the agency has adequately justified the search time estimate. Moreover, WAPA offered to work with Appellant to refine the scope of his request to reduce search time. There is no evidence that Appellant has engaged WAPA in an effort to refine the scope. For the foregoing reasons, I find that WAPA's fee estimate was reasonable.

III. ORDER

It is hereby ordered that the Appeal filed on May 14, 2025, by Kashif Shahzad Khan, No. FIA-25-0036, 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