

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

In the Matter of The American Sextant)

Filing Date: July 20, 2026)

Case No.: FIA-26-0049

FIA-26-0050

Issued: July 27, 2026

Decision and Order

On July 20, 2026,¹ The American Sextant (Appellant) appealed two interim response letters² dated July 10, 2026, issued by the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA). The letters responded to Request No. FOIA 26-00531-PV (Material Control FOIA) and Request No. FOIA 26-00532-PV (Physical Security FOIA), requests filed by Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In the letters, NNSA denied Appellant’s request for expedited processing of both of his FOIA requests. Material Control FOIA Interim Response Letter from NNSA to The American Sextant at 2 (July 10, 2026); Physical Security Interim Response Letter from NNSA to The American Sextant at 2 (July 10, 2026). Appellant appeals those decisions. Material Control “Unusual Circumstances” FOIA Appeal from The American Sextant to OHA Filings at 1 (July 18, 2026); Material Control “Expedited Processing” FOIA Appeal from The American Sextant to OHA Filings at 1 (July 18, 2026); Physical Security FOIA Appeal from The American Sextant to OHA Filings at 1 (July 18, 2026). In this Decision, we deny the appeals.

I. Background

On July 1, 2026, Appellant submitted two FOIA requests to the NNSA, asking for records related to the “Material Control and Accounting Framework for Surplus Plutonium Utilization Program (SPUP) Inventory at Federal Custody Locations and During Transition to Private Companies” and the “Physical Security Transition Plan and Custody Framework for Surplus Plutonium Utilization Program (SPUP) Material Transfer from Federal Weapons Complex to Private Companies.” Material Control FOIA Interim Response Letter at 1 (July 10, 2026); Physical Security FOIA Interim Response Letter at 1 (July 10, 2026). Both requests specifically ask for records about plutonium at Los Alamos National Laboratory, the Pantex Plant, and the Savannah River Site.

¹ The Appeal was emailed to DOE’s Office of Hearings and Appeals (OHA) on Saturday, July 18, 2026. Appeal Letter Email at 1. OHA considers filings made on non-business days to have been made on the next business day, in this case, July 20, 2026.

² On July 18, 2026, Appellant sent OHA three emails purporting to be three different appeals of two separate interim response letters. The issues in these appeals are fundamentally similar, and we discuss all three appeals in this decision.

Material Control FOIA Interim Response Letter at 1; Physical Security FOIA Interim Response Letter at 1. Appellant also requested expedited processing in both requests, saying:

There is an urgent need to inform the public about actual or alleged federal government activity. The SPUP recipient selection was announced May 26, 2026. No public accounting framework for the material transfer has been disclosed. Senator Edward J. Markey has raised formal oversight concerns regarding the SPUP in letters to the President dated September 10 and September 23, 2025, and following the May 26, 2026, selection announcement.

Material Control FOIA Interim Response Letter at 2.

I request expedited processing on the basis that there is an urgent need to inform the public about actual or alleged federal government activity. The SPUP recipient selection was announced May 26, 2026. The physical security framework governing this transfer has not been publicly disclosed. These matters are the subject of active congressional oversight and ongoing public reporting.

Physical Security FOIA Interim Response Letter at 2.

DOE issued two interim response letters on July 10, 2026. Material Control FOIA Interim Response Letter at 1; Physical Security FOIA Interim Response Letter at 1. The letters informed Appellant that DOE was denying his request for expedited processing because the rationale that Appellant provided “[did] not adequately address the basis for which a request may be expedited,” and he “[had] not identified an actual or alleged activity that poses any particular urgency that requires the dissemination of information in an expedited manner.” Material Control FOIA Interim Response Letter at 2; Physical Security FOIA Interim Response Letter at 2.

Appellant timely appealed the decision to deny his requests for expedited processing on July 20, 2026. Material Control “Unusual Circumstances” FOIA Appeal at 1; Material Control “Expedited Processing” FOIA Appeal at 1; Physical Security FOIA Appeal at 1. Appellant argues that his request concerns a matter of current exigency to the American public because the records requested are related to an “ongoing process” and there has been “[n]o public disclosure” of the framework after the SPUP announcement. Material Control “Expedited Processing” FOIA Appeal at 2. He also contends that a delay in receiving records will prevent oversight. *Id.* Next, he claims that the records responsive to his request would not require collecting records from various NNSA sites, so the unusual circumstances determination that the NNSA FOIA Officer made is inappropriate. Material Control “Unusual Circumstances” FOIA Appeal at 1; Physical Security FOIA Appeal at 1.

II. Analysis

A. Expedited Processing

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).

As to the first test, Appellant does not assert that failure to expedite his FOIA request would result in “an imminent threat to the life or physical safety of an individual.” Therefore, we move to the second method of demonstrating a compelling need.

It is clear from the record that Appellant is a member of the news media, and, thus, he is “primarily engaged in disseminating information.” Material Control “Expedited Processing” FOIA Appeal at 3. We must next determine whether 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.

Courts have historically found that a “matter is 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. While Appellant has asserted that one Senator is interested in the issue he has raised, he 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 Appellant is seeking in his request. *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 (D.D.C. 2004) (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). Consequently, he has not demonstrated that there is an urgency to inform the public. *See Wadelton*, 941 F.Supp.2d at 123–24 (finding that when a FOIA requester could not show their request was a matter of current exigency, there was no urgency to inform the public). While Appellant did not explicitly appeal the denial of his expedited processing request related to his Physical Security FOIA request, we note that the above analysis applies to that request as well.

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

B. Unusual Circumstances

An appeal may be made to OHA following the denial of a request for records, a determination that there are no documents responsive to a FOIA request, when a request for expedited processing is denied, or when a request for a waiver of fees has been denied. 10 C.F.R. § 1004.8(a). A determination that unusual circumstances apply to the processing of a FOIA request does not constitute any of the enumerated grounds for an appeal and thus OHA has no jurisdiction to consider an appeal from such a determination. *See EverNu Technology, LLC*, OHA Case No. TFA-0243 (2008) (indicating that OHA does not have jurisdiction to consider appeals related to whether DOE has complied with timelines for processing FOIA requests). Accordingly, we will not address this aspect of Appellant's appeals.

III. Order

It is hereby ordered that the Appeals filed on July 20, 2026, by The American Sextant, FIA-26-0049 and FIA-26-0050, are 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:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov
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