

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

In the Matter of Investigate TV/Gray Media)

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Filing Date: July 24, 2026)

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Case No.: FIA-26-0051

Issued: August 3, 2026

Decision and Order

Investigate TV/Gray Media (Appellant) appeals an Interim Response Letter issued to it from the Department of Energy (DOE), Office of the General Counsel (OGC) concerning Request No. HQ-2026-02118-F, filed 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 its Interim Response Letter, DOE OGC denied the Appellant's request for expedited processing of its FOIA request. As explained below, we deny the appeal.

I. Background

On July 17, 2026, the Appellant submitted a FOIA request to the DOE. FOIA Request from Investigate TV/Gray Media (July 17, 2026). The request sought the following records:

All activation notification, resource lists, Section G notices, compliance reports, and any other records submitted to DOE at AskCR@hq.doe.gov by PJM Interconnection, ERCOT, Duke Energy, or any other grid operator of facility pursuant to the reporting requirements of the following orders: Order No. 202-26-01 (ERCOT, issued January 24, 2026, Winter Storm Fern) Order No. 202-26-06 (PJM, issued January 26, 2026, Winter Storm Fern) Order No. 202-26-07 (Duke energy, issued January 26, 2026, Winter Storm Fern) Order No. 202-26-23 (PJM, issued May 18, 2026, backup generation at data centers and major facilities) Order No. 202-26-33 (PJM, issued June 30, 2026, heat wave –backup generation at data centers) Order No. 202-26-33A (PJM, issued July 3, 2026, extension of Order No. 202-26-33) Order No. 202-26-34 (Duke energy, issues July 2, 2026, heat wave – specified units notwithstanding air quality permit limitations) Order No. 202-26-35 (PJM, issued July 14, 2026, heat wave – backup generation at data centers) . . . This request is limited to records submitted to DOE by the grid operators and facilities named above pursuant to the reporting conditions of each order.

FOIA Request at 2. The Appellant also requested that its FOIA request receive expedited processing. *Id.* at 3. In support of its request for expedited processing, the Appellant wrote:

First, there is an urgent need to inform the public about actual and ongoing federal government activity. DOE Order No. 202-26-35 is active as of the date of this request and does not expire until 11:59 PM EDT on July 21, 2026 – four days from

now. Since May 2026, the federal government has issued at least four separate emergency orders directing data centers and other large industrial facilities to run diesel backup generators as a grid reliability tool. Communities near those facilities have not been notified. No federal or state agency has a system to track in real time whether those generators are running legally or within their permitted operating-hour limits. The records requested would identify, for the first time, which specific facilities were directed to activate generators under each order – information that is directly relevant to ongoing public health and environmental reporting while the most recent emergency conditions remain in effect.

Second, the public health stakes are immediate and documented. Diesel backup generators emit nitrogen oxides, particulate matter, and carbon monoxide. Air quality monitoring data obtained for this investigation shows a significant combustion-signature spike – PM_{2.5} readings more than 17 times baseline, carbon monoxide readings nearly 14 times baseline, with volatile organic compounds flat – at a regulatory-grade monitor in Loudoun County, Virginia, during the period covered by Order No. 202-26-33. Virginia’s own environmental regulator has confirmed on the record that it received zero notifications when generators activated during that event, and that it has no real-time visibility into generator operation. The public has an urgent interest in knowing which facilities contributed to that documented air quality event and whether they operated within their legal limits.

Third, the news value of these records diminishes rapidly. Order No. 202-26-35 expires July 21, 2026. Once the emergency period closes, the story of what happened during this heat event – which facilities ran, for how long, and whether communities were notified – will be substantially harder to report with the immediacy and impact it warrants. The federal government has now invoked FPA section 202(c) to deploy data center backup generators on at least four separate occasions in 2026 alone. Each activation represents a discrete public health event for which no community notification was required or provided. Delay in processing this request will cause the public to lose the opportunity to receive timely information about government actions that directly affected their air quality.

Id.

On July 23, 2026, the DOE OGC issued an Interim Response Letter to the Appellant denying its request for expedited processing. Interim Response Email from DOE to Investigate TV/Gray Media at 1–3 (July 23, 2026). The DOE OGC notified the Appellant that it was not entitled to expedited processing of the request because the Appellant did not establish that the request concerned “a matter of current exigency to the American public,” or that the consequences of a delayed response would “compromise a significant recognized interest,” and therefore it did not demonstrate that there was an urgency to inform the public that entitled the Appellant to expedited processing of its request. *Id.* at 2–3.

On July 24, 2026, the Appellant appealed the DOE OGC’s denial of expedited processing with the DOE’s Office of Hearings and Appeals (OHA). Appeal Letter Email from Investigate TV/Gray Media to OHA (July 24, 2026) (Appeal). In its appeal, the Appellant wrote that “[e]ach DOE

emergency order presents a specific activation window during which specific facilities ran generators for specific durations,” and that the public has “a current and urgent interest in knowing which facilities were directed to run.” Appeal at 1. The Appellant claimed that it had confirmed reports of air pollution resulting from the use of these generators, and that, as time passes, its ability to connect the list of activated diesel backup generators to air quality data and public health outcomes diminishes and “prevents the public from receiving accurate, timely information about federal government actions that directly affected their air quality.” *Id.* at 2. The Appellant also contended that “the question of what happened in states covered by the 2026 DOE orders – is a matter of significant public interest that cannot be fully reported without the activation lists.” *Id.*

II. Analysis

Under the FOIA, agencies generally process requests in the order they are received and must respond to a request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i); 10 C.F.R. § 1004.5(d)(1), (6). However, a requester that is granted “expedited processing” receives a preference over other requests before the agency and is entitled to have his or her request processed “as soon as practicable.” 10 C.F.R. § 1004.5(d)(6). The FOIA provides that expedited processing should be granted only in cases where a “compelling need” for the records exists and “in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i); 10 C.F.R. § 1004.5(d)(6). A “compelling need” exists when either “a failure to obtain requested records on an expedited basis . . . 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, [there is an] urgency to inform the public concerning actual or alleged Federal Government activity.”¹ 5 U.S.C. § 552(a)(6)(E)(v)(I)–(II); 10 C.F.R. § 1004.5(d)(6). A FOIA requester bears the burden of demonstrating that a “compelling need” exists, entitling him or her to expedited processing. 5 U.S.C. § 552(a)(6)(E)(i); *Al-Fayed v. CIA*, 254 F.3d 300, 303, 310 (D.C. Cir. 2001).

To determine whether a FOIA requester has demonstrated an urgency to inform the public concerning federal government activity, courts 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. The “urgency to inform” standard is to be narrowly applied. *Id.* In its Interim Response, the DOE OGC did not dispute that the Appellant is primarily engaged in disseminating information and that the Appellant’s FOIA request concerns federal government activity. Interim Response at 2. Therefore, we will limit our analysis to the exigency of the subject matter of the Appellant’s FOIA request, and whether standard processing of its FOIA request would compromise a significant recognized interest.

After reviewing the Appellant’s FOIA request and appeal, we find that the request does not concern a matter of current exigency. Courts have found sufficient exigency to support expedited processing of a FOIA request where there is “genuine widespread public concern” about the subject of the FOIA request, or a current unfolding news story about the topic. *Energy Policy Advocates v. U.S. Dep’t of the Interior*, U.S. Dist. LEXIS 180480, at *11 (D.D.C. Sep. 22, 2021); *see also Wadeldon v. Dep’t of State*, 941 F. Supp.2d 120, 123 (D.D.C. 2013). “Courts often look to objective markers like the volume of news articles and media reports to discern whether there

¹ Because the Appellant does not invoke the first definition of “compelling need” as a basis for its expedited processing request, we do not consider whether its failure to obtain the requested records on an expedited could pose an imminent threat to the life or physical safety of an individual.

is a current exigency.” *Democracy Forward Found. v. OMB*, 780 F. Supp. 3d 61, 73 (D.D.C. 2025). The Appellant claimed that the requested records contain information that is relevant to its “ongoing public health and environmental reporting” on the issue. FOIA Request at 3. But the Appellant’s need for the requested records to support its own reporting on the public health consequences of running diesel generators does not, in itself, support that the issue is currently newsworthy. The Appellant did not cite to any news articles, or other forms of media coverage, to show that there is any media interest in the subject matter of these records, or the records themselves. Therefore, the Appellant has not demonstrated that its request concerns a matter of current exigency to the American public.

Furthermore, the Appellant has not shown that standard processing of its FOIA request would compromise a significant recognized interest. Courts that have found that delay would compromise a significant recognized interest when a requester identified “an imminent event, after which . . . the utility of the records would be lessened or lost.” *Democracy Forward* at 74; *see also Ctr. for Pub. Integrity v. United States Dep’t of Def*, 411 F. Supp. 3d 5, 12 (D.D.C. 2019) (Plaintiff adequately demonstrated that the value of the information would be lessened or lost absent expedited processing because “congressional hearings and any potential congressional action were ‘imminent’”). FOIA requesters have been required to identify “a specific end point” of some process, “such as a legislative vote, impeachment proceeding, national census, court case, or the like,” after which the records will become stale and be of little value to inform the public. *Org. of Am. Historians v. OMB*, No. 1:26-cv-01281, 2026 U.S. Dist. LEXIS 119595, at *7 (D.D.C. 2026) (citing *CREW v. DOGE*, 769 F. Supp. 3d 8, 19 (D.D.C. 2025)).

The Appellant asserts that the requested records will identify the facilities that the DOE directed to operate diesel generators. FOIA Request at 3; Appeal at 1. The Appellant also contends that one of the DOE emergency orders ordered activation of diesel generators from July 17, 2026, until July 21, 2026, and that the DOE issued “at least four separate emergency orders” since May 2026. FOIA Request at 3. The Appellant asserts that the value of the records lies in their ability to compare the location of the facilities to public health information, and the “impact” their reporting may have on their readers. *Id.* The Appellant has not shown how the information contained in the records themselves, the location of the facilities, will become stale and unable to be used in its reporting, if not received on an expedited basis. In addition, all but one of the orders the Appellant cited in its request, Order No. 202-26-35, had expired at the time it submitted its FOIA request, and even Order No. 202-26-35 had expired at the time the Appellant filed its appeal. FOIA Request at 2. That the Appellant seeks expedited processing for records related to expired orders weakens its claims that the records will lose their value after the orders expire. FOIA Request at 3; Appeal at 2. Therefore, the Appellant has not established that a significant interest will be compromised by its failure to receive expedited processing of this FOIA request.

The Appellant has failed to establish that there is an urgency to inform the public about the subject matter of its FOIA request, or that the failure to receive the requested records on an expedited basis will compromise a significant recognized interest. Therefore, the Appellant has not met its burden of establishing a compelling need for the requested records, and its request is not entitled to expedited processing.

III. Order

It is hereby ordered that the appeal filed by Investigate TV/Gray Media on July 24, 2026, Case No. FIA-26-0051, 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 the 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: ogis.archives.gov Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769
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