

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

In the Matter of: Gregory Kucera )  
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Filing Date: November 18, 2019 ) Case No.: FIA-20-0009  
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Issued: November 26, 2019

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**Decision and Order**  
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On November 20, 2019, Gregory Kucera (Appellant) appealed an Interim Response issued to him from the Department of Energy’s (DOE) Office of Public Information (OPI) regarding Request No. HQ-2020-00167-F. In that response, OPI responded, in part, to a 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. Appellant had requested expedited processing of his FOIA request, which OPI denied. In this Decision, we deny the appeal.

**I. BACKGROUND**

Appellant made a FOIA request for all investigations that had been done on his person regarding a complaint to the Office of the Inspector General. Interim Response at 1 (Nov. 15, 2019). In his request, Appellant requested expedited processing and provided the following justification:

I have filed a federal case related to being used for neurological radiological or sonic attacks. I am seeking to have the items, devices, and radiological scanning technology identified and destroyed. I am seeking that this information be used such that I and the privacy violation or my privacy act complaint can be timely resolved.

*Id.* On November 15, 2019, OPI sent Appellant an Interim Response letter confirming receipt of the request and denying the request for expedited processing. OPI stated that it denied expedited processing because Appellant had failed to provide a justification sufficient to meet the criteria for expedited processing. Appellant timely filed an appeal, stating “I am appealing ALL the privacy information available to LANL, and/or possibly Sandia that are being used for LETHAL FORCE MULTIPLIER TACTICS as previously stated in 5 cases previously.” Appeal at 1 (Nov. 18, 2019). Appellant later confirmed that he was appealing the denial of expedited processing. Memorandum of Telephone Call Between Gregory Kucera (Appellant) and Kristin L. Martin, OHA (Nov. 19, 2019).

**II. ANALYSIS**

The FOIA provides for expedited processing where the requester presents a compelling need for such. 5 U.S.C. § 552(a)(6)(E)(i). “Compelling need” exists where failure to receive records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or where the request is made by an entity primarily engaged in information dissemination presents an urgent need to inform the public concerning actual or alleged Federal Government activity. 5 U.S.C. § 552(a)(6)(E)(v). Appellant claims that he is facing an immediate physical threat “as a result of several biological and/or biochemical agents that are and/or have saturated his nervous system beginning after an [sic] hospitalization in 2005.” Appeal at 1; Kucera Court Filing at 2. Assuming *arguendo* that this is true, he would have lived with his condition for 14 years and presents no situation that would propose a new, time-sensitive threat that could be construed as “immediate.” Furthermore, Appellant failed to claim in his justification for expedited processing that he was under a threat of any kind. Where a requester does not demonstrate a compelling need for expedited processing as defined by the FOIA, agencies are not required to provide expedited processing, and review of denials is based on the record before the agency at the time the decision was made. *Nat'l Day Laborer Org. Network v. United States Immigration & Customs Enft*, 236 F. Supp. 3d 810, 815 (S.D.N.Y. 2017); *Al-Fayed v. CIA*, 254 F.3d 300, 307 n.7 (D.C. Cir. 2001). Based on the justification provided to OPI in Appellant’s request, I find that no evidence of compelling need for expedited processing was presented.

### **III. ORDER**

It is hereby ordered that the Appeal filed on November 18, 2019, by Gregory Kucera, No. FIA-20-0009, 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](mailto: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