

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

In the Matter of Sierra Club)	
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Filing Date: February 22, 2013)	Case No.: FIA-13-0009
)	
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Issued: March 19, 2013

Decision and Order

On February 22, 2013, Sierra Club (Appellant) filed an Appeal from a determination issued to him by the Office of Information Resources (OIR) of the Department of Energy (DOE) (Request No. HQ-2013-00423-F). In that determination, OIR granted the Appellant’s fee waiver request but denied its expedited processing request in response to the request the Appellant 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. This Appeal, if granted, would require OIR to expedite the processing of the Appellant’s request.

I. Background

On January 22, 2013, the Appellant filed a request with OIR for information regarding a study conducted by NERA Consulting (NERA study). Request Letter dated January 22, 2013, from Appellant to OIR. In that request, the Appellant requested both a fee waiver and expedited processing. *Id.* at 4-8. On January 24, 2013, OIR responded, granting the fee waiver and denying the expedited processing request. Determination Letter dated January 24, 2013, from Alexander Morris, OIR, to Craig Segall, Appellant. On February 22, 2013, the Appellant filed this Appeal of the expedited processing denial. Appeal Letter dated February 22, 2013, from Craig Segall, Appellant to Director, Office of Hearings and Appeals (OHA), DOE.

II. Analysis

Agencies generally process FOIA requests on a “first in, first out” basis, according to the order in which they are received. Granting one requester expedited processing gives that person a preference over previous requesters, by moving his request “up the line” and delaying the processing of earlier requests. Therefore, the FOIA provides that expedited processing is to be offered only when the requester demonstrates a “compelling need,” or when otherwise determined by the agency. 5 U.S.C. § 552(a)(6)(E)(i).

“Compelling need,” as defined in the FOIA, arises in either of two situations. The first is when failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second situation occurs when the requester, who is primarily engaged in disseminating information, has an “urgency to inform” the public about an activity of the federal government. 5 U.S.C. § 552 (a)(6)(E)(v). In order to determine whether a requester has demonstrated an “urgency to inform,” and hence a “compelling need,” courts have considered at least 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 v. C.I.A.*, 254 F.3d.300, 310 (D.C. Cir. 2001).

In the present case, the Appellant contends that its FOIA request concerns a time-sensitive matter because the requested information is required to develop a full analysis of the NERA study. *Id.* at 7. The Appellant continues:

DOE is already about to close the comment period on the NERA study, and will likely begin processing export applications shortly. If the information Sierra Club seeks is to be useful on this front, Sierra Club must be able to share it with the public and policymakers before DOE has already finalized its decisions.

Id.

We do not find this argument compelling. The comment period on the NERA study ended on February 25, 2013, three days after our receipt of the Appeal. With the closing of the comment period, we do not see this request as a matter of exigency to the American public to warrant expedited processing. *See Al-Fayed*, 254 F.3d. at 310. Given this, we find that OIR properly denied the Appellant’s request for expedited processing of its FOIA request.

III. Conclusion

After considering the Appellant’s claim, we conclude the request for expedited processing is not appropriate since the legal requirements were not met. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Sierra Club, Case No. FIA-13-0009, is hereby denied.
- (2) 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

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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: March 19, 2013