

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

In the Matter of Ramin A. Skibba )  
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Filing Date: January 18, 2017 ) Case No.: FIA-17-0002  
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Issued: February 6, 2017

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**Decision and Order**

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On January 18, 2017, Ramin A. Skibba (Appellant) filed an Appeal from a Freedom of Information Act (FOIA) determination issued by the Department of Energy’s (DOE) Office of Public Information (OPI) (HQ-2017-00305-F). In that determination, OPI denied the Appellant’s request for expedited processing of his request for information filed under the FOIA, 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require OPI to expedite the processing of the Appellant’s FOIA request.

**I. Background**

On December 19, 2016, the Appellant, a freelance “representative of news media,” filed an expedited request with OPI for a copy of “documents provided by the Department of Energy to the transition team of the President-Elect Donald J. Trump between November 9, 2016 and December 16, 2016.” FOIA Request from Ramin A. Skibba (December 19, 2016). On January 3, 2017, OPI issued an interim response finding that the Appellant’s request did not satisfy the requirements for expedited processing. Interim Response Email from Alexander C. Morris, OPI, to Ramin A. Skibba (January 3, 2017). On January 18, 2017, the Appellant appealed the expedited processing denial. Appeal Letter Email from Ramin A. Skibba to OHA Filings (January 14, 2017).<sup>1</sup>

**II. Analysis**

Generally, agencies 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

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<sup>1</sup> Since January 14, 2017, fell on a Saturday, OHA did not receive the Appeal until January 17, 2017. OHA did not receive a copy of the Interim Response and, therefore, the Appeal was not perfected until January 18, 2017.

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); *see also* 10 C.F.R. § 1004.5(d)(6).

“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. 5 U.S.C. § 552(a)(6)(E)(v)(I). 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)(II). In order to determine whether a requester has demonstrated an “urgency to inform,” courts, at a minimum, must 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 v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001).

As an initial matter, we note that the Appellant has not claimed that a failure to expedite the processing of his FOIA request would pose any type of threat to an individual’s life or physical safety. The Appellant must therefore demonstrate an “urgency to inform” the public about an activity of the federal government. In his initial request, the Appellant stated that the public is interested in the transition of power between presidential administrations, and the documents he requested would significantly contribute to the public’s understanding of government and DOE operations during the transition. FOIA Request at 2. In his Appeal, the Appellant states that he is particularly interested in receiving documents related to scientific research and climate research because the public is following the cabinet hearings, and the DOE nominee Governor Rick Perry previously questioned climate science and the necessity for the DOE. Appeal Letter. The Appellant argues that it is therefore “pressing to report on any new developments and news,” which the Appellant “would assess based on” his review of the requested documents. *Id.*

In its Interim Response, OPI stated that the Appellant failed to identify “an actual or alleged activity that poses any particular urgency that requires the dissemination of information in an expedited manner.” Interim Response at 2. OPI therefore determined that the Appellant “did not sufficiently address factors one or two” of the “compelling need” test. *Id.*

Although the Appellant’s FOIA request clearly concerns federal government activity, it fails to satisfy the first two factors of the three-factor “urgency to inform” test outlined above. First, the Appellant fails to establish that the request concerns a matter of current exigency to the American public. A typical scenario in which courts have found exigency is when a FOIA request involves “an ongoing public controversy associated with a specific time frame.” *Long v. Dep’t of Homeland Sec.*, 436 F. Supp. 2d 38, 43 (D.D.C. 2006); *see also* *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29-30 (D.D.C. 2004) (granting expedited processing where information would assist in debate on renewal of expiring provisions in the Patriot Act). Moreover, “[t]he case law makes it clear that only public interest in the specific subject of a FOIA request is sufficient to weigh in favor of expedited treatment.” *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 355 F. Supp. 2d 98, 102 (D.D.C. 2004). Here, the Appellant only references the public’s general interest in cabinet hearings, the DOE, and the transition of presidential administrations. Consequently, the Appellant fails to

establish the existence of an ongoing public controversy or that the public has a specific interest in any information the DOE provided to then President-Elect Donald J. Trump's transition team.<sup>2</sup>

Regarding the second factor, the Appellant fails to establish that the consequences of delaying a response would compromise a significant recognized interest. The Appellant does not cite to any significant interest that would be compromised if the DOE released the requested documents in normal course. We therefore find that OPI properly denied the Appellant's request for expedited processing on the basis of an "urgency to inform."

### **III. Conclusion**

For the reasons above, we have determined that OPI appropriately denied the Appellant's request for expedited processing.

It Is Therefore Ordered That:

- (1) The Appeal filed by Ramin A. Skibba, Case No. FIA-17-0002, 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 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:

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Telephone: 202-741-5770  
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Toll-free: 1-877-684-6448

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: February 6, 2017

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<sup>2</sup> On January 20, 2017, Donald J. Trump became the 45th President of the United States.