



Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Ayyakkannu Manivannan)
)
Filing Date: August 4, 2017) Case Nos.: FIA-17-0025
) FIA-17-0026
)

Issued: AUG 11 2017

Decision and Order

On August 4, 2017, Dr. Ayyakkannu Manivannan (Appellant) appealed two Interim Response Letters issued to him from the Department of Energy’s (DOE) Office of Public Information (OPI) (Request Nos. HQ-2017-01284-F¹, HQ-2017-01439-F). In the Interim Letters, OPI responded to two Requests filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. OPI categorized the Appellant as an “other” requester and denied the Appellant’s requests for fee waivers and expedited processing. The Appellant appealed the denial of the fee waivers, his fee categorization, and the denial of expedited processing. As explained below, we conclude that the denial of the fee waiver and expedited processing was proper, and the Appellant was properly categorized as an “other” requester. Therefore, the Appellant’s requests for fee waivers and expedited processing is denied.

I. Background

The Appellant submitted two separate FOIA Requests on June 19, 2017, and July 17, 2017. FOIA Requests from A. Manivannan (June 19, 2017; July 17, 2017). In both Requests, the Appellant requested fee waivers and expedited processing. *Id.* He additionally indicated that he was an “individual seeking information for personal use and not for commercial use.” *Id.*

The DOE’s National Energy Technology Laboratory responded to the first Request with a Determination Letter on June 26, 2017.² However, the Appellant insisted that a portion of this

¹ While we have already adjudicated the denial of the fee waiver and fee categorization for HQ-2017-01284-F in *Ayyakkannu Manivannan*, Case No. FIA-17-0020 (2017), OPI informed us that it divided this Request into two parts due to the Appellant’s insistence that particular documents originate with a certain office within DOE. Thus, at issue in this appeal is the denial of expedited processing and the segmented portion of HQ-2017-01284-F that OPI analyzed separately at the Appellant’s insistence. *See* Memorandum of Telephone Conversation between OHA and OPI (August 8, 2017).

² The Appellant appealed this Determination Letter, and we adjudicated the matter in *Manivannan*, FIA-17-0020.



FOIA Request be sent to the “Office of Corporate Human Resource Services,” now termed the Office of the Chief Human Capital Officer. *See* Memorandum of Telephone Conversation between OHA and OPI (August 8, 2017). Thus, OPI segmented this Request and responded to it separately with an Interim Response Letter on July 27, 2017. *Id.*; Interim Response Letter, HQ-2017-01284-F (July 27, 2017). OPI also issued an Interim Response Letter with regard to the July 17, 2017, Request on July 27, 2017. Interim Response Letter, HQ-2017-01439-F (July 27, 2017). In both responses, OPI categorized the Appellant as an “other” requester, and it denied his requests for fee waivers. Interim Responses (July 27, 2017). Additionally, OPI informed the Appellant that it estimated that the fees associated with processing the Requests would exceed the amount the Appellant originally agreed to pay; thus, OPI stated that it would provide the Appellant with an estimate of the total fees in separate correspondence. *Id.* Lastly, OPI denied the Appellant’s requests for expedited processing. *Id.* On August 4, 2017, the Appellant appealed the denial of the fee waivers and expedited processing, and he challenged his categorization as an “other” requester. FOIA Appeals (August 4, 2017).

II. Analysis

A. Fee Waiver

The FOIA generally requires that requesters pay fees associated with processing their requests. 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. § 1004.9(a). However, the FOIA provides for a reduction or waiver of fees if a requester can satisfy a two-part test. The requester must show that disclosure of the information: (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (2) is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 10 C.F.R. § 1004.9(a)(8). Additionally, requesters must support their claims with reasonable specificity. *Cause of Action v. FTC*, 799 F.3d 1108, 1117 (D.C. Cir. 2015).

With respect to the public-interest prong in the above test, there are two factors to consider in determining whether the disclosure of the information is likely to contribute significantly to public understanding of government operations or activities:³

1. The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government;” and
2. The informative value of the information to be disclosed: Whether disclosure is “likely to contribute significantly to a public understanding” of government operations or activities.

Cause of Action v. FTC, 799 F.3d 1108, 1115. Within the second factor, there are two considerations: (a) the degree to which the “understanding of government activities will be advanced by seeing the information;” and (b) the extent of the “public” that the information is likely to reach. *Id.* “The FOIA does not require the requestor to be able to reach a wide audience.

³ While DOE regulations set forth four factors, *see* 10 C.F.R. § 1004.9(a)(8)(i), the United States Court of Appeals for the District of Columbia has recently revised the factors to be used in determining whether a FOIA requestor is eligible for a fee waiver. *See Cause of Action v. FTC*, 799 F.3d 1108. We follow those factors herein.

Rather...the relevant inquiry is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.” *Id.* (internal quotation marks and citations omitted).

In this matter, OPI found that while the requested information pertains to the operations or activities of the government, the Appellant did not explain how he intends to disclose the information to the public or how the requested records will contribute to a public understanding of government activities. Interim Response Letters at 1 (July 27, 2017). Accordingly, it denied the fee waiver. *Id.*

We begin by examining the public interest prong of the test. With regard to the first factor, it is undisputed that the information the Appellant requested concerns “the operations or activities of the government.” Interim Response Letters at 1 (July 27, 2017).

Turning to the second factor, whether disclosure is “likely to contribute significantly to a public understanding” of government operations or activities, we examine the degree to which the “understanding of government activities will be advanced by seeing the information” and the extent of the public the information will likely reach. *Cause of Action*, 799 F.3d 1108, 1116. “In determining whether disclosure of records will contribute significantly to the public’s understanding of the operation or activities of the government, it is relevant to consider the subject matter of the requests and the ability of the requestor to disseminate information.” *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814 (2d Cir. 1994).

Here, the Appellant requested records falling generally into the following three categories: his employment with DOE, a DOE internal investigation of the Appellant, and a separate criminal matter in which the Appellant was the defendant. FOIA Requests. As justification for his fee waiver request, the Appellant contended that the release of this information will help improve the government and shed light on government procedures. *Id.* Additionally, in his Appeals, the Appellant asserts that he seeks to expose “broken processes, but also those that work reasonably well” in order to “maximize the return on taxpayer investment.” FOIA Appeals at 2.

At the outset, we note that while the requested records pertain solely to the Appellant, it is irrelevant whether the Appellant made the request for his purposes alone. *Cause of Action*, 799 F.3d 1108, 1117. However, he is ineligible for a fee waiver if the information will be to his benefit alone. *Id.* Thus, we focus on the “likely effect of the information disclosure.” *Id.*

While the Appellant makes broad assertions that he intends to “inspire improvement in governmental processes,” and that the requested information “is critical to improvement of governmental processes,” FOIA Appeals at 2, he does not explain how the requested records would add anything new to the public’s understanding of the operations of the federal government. *See id.* at 1117 (articulating that requesters must state their claims with reasonable specificity). We cannot discern on the face of the request how records related to the Appellant’s employment, the internal investigation against him, or records regarding his criminal matter would advance the public’s understanding of government operations and activities. Without any detail or specificity from the Appellant on this matter, we cannot conclude that the information requested would substantially contribute to the public’s understanding of government operations or activities. *See*

Monroe-Bey v. F.B.I., 890 F.Supp.2d 92, 97 (D.D.C. 2012) (“An agency may infer a lack of substantial public interest when a public interest is asserted but not identified with reasonable specificity, and circumstances do not clarify the point of the requests.”).

Further, the Appellant fails to explain how the requested records would benefit anyone but himself. While the Appellant stated that he plans to publish two “journal articles” and one “journal review article,” place the requested records on a “public web site,” create a special issue of “Interface Journal,” and contact “several media and magazines,” FOIA Appeals at 2, he provides no detail regarding who, aside from himself, would have interest in information pertaining solely to him. As such, we cannot conclude that the Appellant “will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.” *Cause of Action*, 799 F.3d 1108, 1116.

As the Appellant has not shown that the disclosure of the requested records is “likely to contribute significantly to a public understanding” of government operations or activities and that there is a segment of the public interested in the information, the Appellant has failed to satisfy the public interest prong of the fee waiver analysis. Because the Appellant must satisfy the two prongs in order to qualify for a fee waiver, we will not reach the commercial interest prong. Accordingly, OPI acted properly in denying the fee waiver.

B. Fee Categorization

In addition to challenging the denial of the fee waiver, the Appellant challenges OPI’s determination that he is categorized as an “other” requester. FOIA Appeals. On Appeal, the Appellant asserts that he is an “educational or non-commercial scientific institution” requester. *Id.* To support this assertion, the Appellant contends that he is an adjunct professor with a university, and other professors are “supporting [his] efforts.” *Id.*

The FOIA provides for three categories of requesters: (1) commercial use requesters; (2) educational institutions, non-commercial scientific institutions, and representatives of the news media; and (3) all requesters who do not fall within either of the preceding two categories (all others). *See* 5 U.S.C. § 552(a)(4)(A)(ii). An “educational institution” is defined as a “preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.” Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,014 (Mar. 27, 1987). A “non-commercial scientific institution” refers to a “non-commercial” institution that is “operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.” *Id.* at 10,018. In order to qualify for the educational or non-commercial scientific institution category, a requester must be able to show that the request serves a scholarly research goal of the institution, rather than the requester’s individual or personal goal. *Id.*

In his two FOIA Requests, the Appellant indicated that he was an “individual seeking information for personal use and not for commercial use.” FOIA Requests. It was not until he filed his Appeals that the Appellant asserted that he should have been categorized as an “educational or non-

commercial scientific institution” requester. FOIA Appeals. While the Appellant may work for or be involved with a qualifying educational or non-commercial scientific institution, there is nothing in the record to indicate that the Appellant seeks the requested records to serve a “scholarly research goal of the institution.” 52 Fed. Reg. at 10,014. Accordingly, we determine that the Appellant cannot be categorized as an educational or non-commercial scientific institution. As such, we conclude that he was properly categorized by OPI as an “other” requester.

C. Expedited Processing

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 that 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); *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).

The Appellant believes that his Requests merit expedited processing under the imminent threat or physical safety criterion of the FOIA’s expedited processing provision. He contends that expedited processing is the “only way to reduce [his] stress and medications to avoid the constant damage to [his] life.” FOIA Appeals at 3. We must reject his argument. At the outset, we conclude that the Appellant has failed to adequately develop a nexus between the information contained in the requested records and the purported imminent threat. *Cf. Lawyers Comm. for Civil Rights of the San Francisco Bay Area v. U.S. Dep’t of Treasury*, No. 07-2590, 2009 WL 2905963, at *2 (N.D. Cal. Sept. 8, 2009) (denying expedited processing because the plaintiff “failed to adequately develop the arguments and authority in support of such a request”). Furthermore, the harm the Appellant contends is present here, the worsening of his psychological condition, is not “imminent.” The Appellant himself recognizes this, stating that the “psychological stress...could eventually be a threat.” *Id.* A harm that “could eventually be a threat” is not an “imminent” threat. Additionally, the Appellant acknowledges that he is under the care of a psychiatrist, further reducing the likelihood of any imminent threat. Thus, we must conclude that the Appellant has not established sufficient grounds to justify expedited processing of his Requests under the FOIA.

III. Conclusion

Based on the foregoing, we determine that OPI properly denied the Appellant’s Requests for fee waivers and expedited processing, and properly categorized him as an “other” requester.

It Is Therefore Ordered That the Appeals filed on August 4, 2017, by Ayyakkannu Manivannan, Case Nos. FIA-17-0025 and FIA-17-0026, are hereby 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.

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