

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

In the Matter of: Al-Monitor, Inc.)	
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Filing Date: December 17, 2019)	Case No.: FIA-20-0014
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Issued: January 23, 2020

Decision and Order

On December 17, 2019, Al-Monitor, Inc. (Appellant) appealed a Determination Letter issued to it from the Department of Energy’s (DOE) Office of Public Information (OPI) regarding Request No. HQ-2020-00231-F. In that determination, OPI responded to a request for expedited processing of a records 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. OPI denied the request for expedited processing. The Appellant challenged the denial. In this Decision, we deny the appeal.

I. BACKGROUND

On November 26, 2019, Appellant submitted a FOIA request to DOE, seeking:

All records including (but not limited to) meeting notes, agendas, electronic records, informational material, lists of attendees, letters, emails, facsimiles, transcripts, briefing books, notes, minutes, readouts, and follow-up conversation notes related to a meeting that took place on Nov. 24, 2019 with Matthew Zais (Principal Deputy Assistant Secretary for the Office of International Affairs at the Energy Department), Victoria Coates (Deputy National Security Advisor for Middle Eastern and North African Affairs), Richard Norland (US Ambassador to Libya), General Steven de Milliano (USAFRICOM Deputy Director for Strategy, Engagement, and Programs Brigadier) and Khalifa Haftar (also frequently spelled Hifter) in attendance. Please also include records shared by other agencies with Mr. Zais and the Department of Energy. The time range of this search is Sept. 1, 2019 to the date of the search.

DOE Ex. 1, FOIA Request Acknowledgment Letter at 1 (Dec. 2, 2019). Appellant also requested a waiver of fees, which was granted, and expedited processing, which was denied. Determination Letter at 1–3 (Dec. 3, 2019). OPI denied the request for expedited processing because it determined

that Appellant had not shown that the request concerned a matter of current exigency to the American public, and that Appellant had not shown that the consequences of delaying a response would result in the compromise of a significant recognized interest. Appellant filed a timely appeal, arguing that both current exigency and compromise of a significant recognized interest had been demonstrated. Appeal at 3–6 (Dec. 17, 2019).

II. ANALYSIS

Agencies generally process FOIA requests on a “first in, first out” basis, according to the order in which they are received. 10 C.F.R. § 1004.5(d)(6). Granting one requester expedited processing gives that requester preference over previous requesters by moving their request “up in the line,” which results in a delay in the processing of earlier requests. As such, 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” is defined in two ways. First, compelling need exists where 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.” 5 U.S.C. § 552(a)(6)(E)(v)(I). Compelling need may also exist “with respect to a request made by a person primarily engaged in disseminating information,” where there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Appellant argues that the second definition of compelling need was met. The parties agree that Appellant, as a U.S.-based news publication focusing on the Middle East and North Africa, is a person primarily engaged in disseminating information, in the context of the FOIA. Appeal at 1; Determination Letter at 2. They also agree that the request concerned actual Federal Government Activity. Appeal at 2–3; Determination Letter at 2. Accordingly, we turn our attention to the question of urgency.

In determining whether a requester has demonstrated an “urgency to inform,” courts consider the following factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would result in the compromise of a significant recognized interest; and (3) whether the request concerns federal government activity. *ACLU v. United States DOJ*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004). As neither party disputes that the Appellant’s request concerns federal government activity, we focus on the first two factors.

Current exigency exists when the request relates to 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). News reports may indicate current exigency to the American public, though they are not sufficient on their own unless they refer to the exact subjects of the FOIA request. *ACLU of N. Cal. v. DOJ*, No. C 04-4447 PJH, 2005 U.S. Dist. LEXIS 3763, at *36 (N.D. Cal. Mar. 11, 2005). Furthermore, current exigency rarely exists where the matter is of interest to a niche community; typically the matter must be of “genuine widespread public concern.” *Wadelton v. Dep’t of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013).

In the instant case, the Appellant cites several stories in the national news media relating to the rise of General Hifter in Libya, including coverage of the November 24, 2019, meeting. Appeal *passim*. Appellant also cites to the Libya Stabilization Act, legislation pending since October 11, 2019, to show risk that a significant recognized interest may be compromised by a delay in processing. *Id.* at 4–5. The Act’s purpose is to “clarify United States policy toward Libya, advance a diplomatic solution to the conflict in Libya, and support the people of Libya.” Libya Stabilization Act, H.R.

4644, 116th Cong. (1st Sess. 2019). Finally, Appellant cites to social media posts by official DOE accounts that tie the substance of the meeting, an end to hostilities in Libya,¹ to the purpose of the Libya Stabilization Act and DOE's mission. Appeal at 5–6.

While the subject of the meeting is no doubt of genuine interest to members of the foreign policy community, particularly those working in North African politics, it is difficult to characterize that genuine interest as “widespread.” In *Protect Democracy Project v. Dep't of Defense*, 263 F. Supp. 3d 293 (D.D.C. 2017), a requester sought records related to the President's legal authority to order a 2017 military strike. *Id.* at 296–97. The court found that the legality question, as well as the decision to undertake the strike, was “critical” and “of the utmost importance to the public.” *Id.* at 299. The request was made the day after the military strike occurred and already the subject of the President's legal authority was in the headlines of some of the most prominent news outlets in the country. *Id.* at 296, 299. The weight of the question, combined with the flood of media coverage, convinced the court that the request's subject was “central to a pressing issue of the day.” *Id.* at 299–300 (citing *Wadelton v. Dep't of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013)).

In contrast, the subject of the instant request, General Hifter's meeting with U.S. officials, has a tangential connection with the subject matter of the Libya Stabilization Act. While the meeting may be a matter of interest for those with a connection to the issue, Appellant has not shown that there is sufficient, widespread, general interest to the greater American public. The particulars of a meeting between sub-cabinet level officials and a foreign factional leader do not rise to the same level of general interest as weighty topics such as the legality of presidential orders for military action. Far from a flood of media coverage, Libyan issues comprise a mere trickle into the larger stream of foreign policy and world events coverage. Furthermore, Appellant has not shown that processing this request in accordance with the standard processing procedures would compromise a significant recognized interest. Though it may provide interesting context, we cannot discern what value the meeting's details could add to the debate on U.S. policy toward Libya, much less the harm the debate would sustain if that information was delayed.

Accordingly, for the foregoing reasons, we find that the Appellant has not demonstrated an “urgency to inform” sufficient to warrant expedited processing.

III. ORDER

It is hereby ordered that the Appeal filed on December 17, 2019, by Al-Monitor, Inc., No. FIA-20-0014, 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:

¹ See Appeal at 3, n. 7.

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
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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