

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

In the Matter of Sarah Okeson )  
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Filing Date: January 26, 2021 ) Case No.: FIA-21-0004  
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Issued: February 5, 2021

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**Decision and Order**

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On January 26, 2021, Sarah Okeson (Appellant) filed an appeal from a letter issued by the Office of Public Information (OPI) regarding Request No. HQ-2021-00167-F. The letter acknowledged receipt of the Appellant’s Freedom of Information Act (FOIA) request and denied her request for expedited processing for information under 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) regulations codified at 10 C.F.R. Part 1004. The Appellant challenged the decision denying her request for expedited processing. In this decision, we deny the appeal.

**I. BACKGROUND**

On December 1, 2020, the Appellant, a reporter with DCReport.org, “a journalism nonprofit,” seeking information “as part of news gathering,” filed a Request with OPI seeking the following:

[M]emos, reports, assessments and other records at the DOE Office of Intelligence and Counter-Intelligence from Nov. 1, 2016 to the present that concern risks to national security from President Donald J. Trump, including from his actions, or from the actions of his staff and advisors, or from his handling and disclosure of classified information, or his interactions with foreign governments and their representatives, including concerns about possible compromise by foreign interests, or due to financial considerations, or from illicit or illegal sexual behavior, or from psychological conditions, or from outside activities including financial relationships with foreign governments and companies.

FOIA Request from Sarah Okeson at 1 (December 1, 2020).

The Appellant also made a request for expedited processing, stating the request should “be expedited because it is breaking news[,]” and accordingly, the release of this information “is likely to contribute to the public understanding of the operations or activities of government.” *Id.*

On January 5, 2021, OPI issued an Interim Response Letter explaining that, in order to qualify for expedited processing, the individual must “demonstrate a ‘compelling need.’”<sup>1</sup> Interim Determination Letter from Alexander C. Morris to Sarah Okeson at 2 (January 5, 2021). After providing a brief definition of “compelling need,” the letter stated that the Appellant failed to provide a “basis for which a request may be expedited.” *Id.*

On January 26, 2021, the Appellant filed the present Appeal with the DOE’s Office of Hearing’s and Appeals (OHA). The Appellant stated:

I am basing my request for expedited processing on “imminent threat to the life or physical safety of an individual.”

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HQ-2021-00167-F was made on Dec. 1, 2021 about risks to national security from President Donald Trump. About a month later, on Jan. 6, 2021, five people died after riots incited by Trump. The information requested in HQ-2021-00167-F is needed to try to prevent further harm to U.S. citizens and residents.

I am also basing my request on the information being urgently needed. I am a reporter with DCReport.org, a journalism nonprofit founded by two-time Pulitzer winner David Cay Johnston that covered the Trump administration. The information requested in HQ-2021-00167F is needed to more fully understand the impact of Trump’s four years in office.

Appeal Letter Email from Sarah Okeson to OHA Filings at 1 (January 26, 2021).

## II. Analysis

The FOIA requires that documents held by federal agencies generally be released to the public upon request. Accordingly, agencies largely process FOIA requests in the order in which they are received. The FOIA provides for expedited processing “in cases in which the person requesting the records demonstrates a compelling need,” and “in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). The term “compelling need” has been defined in two ways under FOIA: where a failure to expedite the production of the requested documents “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;” or, for those individuals whose primary business is the dissemination of 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)(I), (II).

Courts consider at least three factors when determining whether a requester has demonstrated an urgency to inform:

- (1) whether the request concerns a matter of current exigency to the American public;

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<sup>1</sup> We note that the request to expedite the processing of documents pursuant to FOIA must “be sparingly granted because granting one request effectively forces other FOIA requestors further down the queue[.]” 355 F. Supp.2d at 104.

- (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. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001).

In the Appeal that she filed with OHA, the Appellant stated that she was “basing [her] request for expedited processing on the ‘imminent threat to the life or physical safety of an individual.’” Appeal at 1. In making this request, the Appellant cites the events of January 6, 2021, and the resulting deaths of five individuals, arguing that the requested documents are necessary to “prevent further harm to U.S. citizens and residents.” *Id.* The Appellant’s justification only cites a general threat to the safety of members of the general public. The Appellant fails to allege any imminent harm to any specific subset or group of the citizenry, as is required by 5 U.S.C. § 552(a)(6)(E)(v)(I), which she cites as the basis for her request for expedited processing. Furthermore, it is not apparent to us how the requested documents would prevent such harm. Accordingly, the Appellant has failed to establish the appropriate justification for expedited processing on the basis of imminent threat to the life or safety of an individual.<sup>2</sup> *Treatment Action Group v. FDA*, 2016 U.S. Dist. LEXIS 127877, at 19–23 (D. Conn. 2016).

The Appellant failed to present any arguments concerning expedited processing of her FOIA request on the basis of urgency to inform, and the information at our disposal is insufficient to infer that granting the Appeal on this basis would be justified. While there is no question that compiling records like memos and assessments concerning potential threats to national security is a government function, we cannot agree that the Appellant alleged a matter of exigency in the December 1, 2020, FOIA request. The Appellant asserted that the information she sought constituted “breaking news.” However, simply characterizing information as “breaking news” does not automatically confer the characteristics of an exigent circumstance. More specifically, the Appellant failed to explain how any of this information, let alone information from four years ago, could concern a matter of current urgent need. The Appellant then stated that this information “is likely to contribute to the public understanding of the operations or activities of government.” However, “such a justification would likely sweep almost any FOIA request into the ambit of ‘urgency’ since FOIA requests are regularly designed to elicit information about how the government is performing its work.” *Landmark Legal Foundation v. EPA*, 910 F. Supp. 2d 270, 277 (D.D.C. 2012). The argument in the Appellant’s FOIA request for expedited processing only voiced the well-known and accepted concept that the public has a general interest in its government’s activities, including those of its President and his staff, and that these items remain generally newsworthy.

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<sup>2</sup> The court in *Treatment Action Group v. FDA* noted the paucity of cases addressing requests for expedited processing on the grounds of an imminent threat to the life or physical safety of an individual, and looked to two cases for guidance on the matter, citing *Exner v. F.B.I.*, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978), *aff’d sub nom. Exner v. Fed. Bureau of Investigation*, 612 F.2d 1202 (9th Cir. 1980) and *Cleaver v. Kelley*, 427 F. Supp. 80, 81 (D.D.C. 1976). *Id.* at 20–21. Both cited cases precede the expedited processing provisions at issue; however, the court noted their relevance in identifying threats to the life and safety of an individual. *Id.* at 22. Notably, the cases pertain to “danger faced by one specific individual.” *Id.* at 20.

Appellant's final argument states that the requested information is urgently needed and is necessary to "more fully understand the impact of" the former President's time in office; however, this is simply another restatement of the public's interest in the former administration at large, without the specificity required to properly allege an exigent circumstance warranting the expedited processing of her FOIA request. For the foregoing reasons, we must deny the Appellant's appeal.

### **ORDER**

It is hereby Ordered that the Appeal filed on January 26, 2021 by Sarah Okeson, FIA-21-0004, is denied.

This is a final order of the Department of Energy from which an 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. OIGS 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

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