United States Department of Energy Office of Hearings and Appeals

	Decision and Order	
	Issued: May 22, 2023	
Filing Date: May 10, 2023) Case No.:))	FIA-23-0017
In the Matter of Paul Bubbosh Eiling Date: May 10, 2022)) Cose No :	EIA 22 0017
In the Metter of Doul Dubbach	`	

Paul Bubbosh (Appellant) appeals an Interim Response Letter issued to him by the Department of Energy's (DOE) Office of Public Information (OPI) concerning a request (Request No. HQ-2023-00904-F) that he 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. In its Interim Response, the OPI denied the Appellant's request for a waiver of fees associated with the processing of his FOIA request. As explained below, we deny the appeal.

I. Background

On April 27, 2023, the Appellant submitted a FOIA request seeking records from the DOE's Loan Programs Office (LPO) related to its "Title 17 Innovative Clean Energy Loan Guarantee Program." FOIA Request from Paul Bubbosh at 2 (April 27, 2023). Specifically, the Appellant requested "the names of entities that have conducted a 'Pre[-]Application Consultation' with the DOE Loan Program Office for the dates indicated. . . . We are seeking the names of the businesses only." *Id.* at 1. The Appellant also indicated his request was made for a "scholarly or scientific purpose" and requested "a waiver or reduction of fees" associated with the processing of his request. *Id.* at 2.

On May 1, 2023, the OPI issued an Interim Response Letter to the Appellant denying his request for a fee waiver. Interim Response Letter from Alexander C. Morris to Paul Bubbosh (May 1, 2023). In its Interim Response Letter, the OPI notified the Appellant that they denied his request for a fee waiver because he did not demonstrate how he intended to disclose the information to the public, and he did not explain "what information from th[e] request [would] contribute to a public understanding of government activities." *Id.* at 2.

On May 10, 2023, the Appellant filed a timely appeal with the DOE's Office of Hearings and Appeals (OHA). Appeal Letter from Paul Bubbosh to OHA Filings (May 10, 2023). In his appeal, the Appellant asserts he should be granted a waiver of fees because disclosure of the requested records would contribute to the public's understanding of government operations or activities by "allowing the public to know and understand the entities that are seeking loan assistance by the DOE," "identifying how the government interacts with businesses," and "likely result[ing] in potential recommendations for improvement in the process." *Id.* at 2.

II. Analysis

The FOIA generally requires that requesters pay fees associated with processing their requests. 5 U.S.C. § 552(a)(4)(A)(i). However, the FOIA provides for a reduction, or waiver, of fees if a requester can demonstrate 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. Id. § 552(a)(4)(A)(iii).

In analyzing whether a FOIA request is in the public interest, DOE regulations set out several factors that should be considered to determine whether disclosure of the requested information is likely to contribute significantly to public understanding of government operations or activities:

- A. The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";
- B. The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- C. The contribution to an understanding by the general public of the subject likely to result from disclosure; and
- D. The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

10 C.F.R. § 1004.9(a)(8)(i). The burden of satisfying the public interest standard is on the requester, who must justify their entitlement to a waiver in "reasonably specific" and "non-conclusory" terms. *Nat'l Sec. Counselors v. U.S. Dep't of Justice*, 848 F.3d 467, 473 (D.C. Cir. 2017) (internal quotation marks omitted).

A. Factor A

The first factor asks whether the Appellant's request concerns "the operations or activities of government." 10 C.F.R. § 1004.9(a)(8)(i)(A). The DOE does not dispute that the Appellant's request concerns the DOE loan program, which is an operation or activity of government. Interim Response Letter at 2. Therefore, the Appellant has satisfied Factor A.

B. Factor B

_

¹ After reviewing the Appellant's FOIA request, the OPI determined the Appellant did not seek records "for a commercial use" and categorized him as an "educational" requester. Interim Response Letter at 1; 10 C.F.R. § 1004.9(b)(2). The OPI also determined the Appellant did not seek the requested records primarily for his commercial interest. Interim Response Letter at 2. Because OPI already found in Appellant's favor regarding this prong of the waiver test, there is no reason for OHA to address the Appellant's arguments on appeal that his request for records was not primarily in his commercial interest. Appeal Letter at 2–3. Therefore, this decision will not address those arguments.

Factor B asks whether the disclosure is likely to contribute to an "understanding of government operations or activities" to be deemed in the public interest. 10 C.F.R. § 1004.9(a)(8)(i)(B). In analyzing this factor, "the subject matter" of the request, and whether the requested information is in the public domain and is otherwise common knowledge among the public, is important. *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814–15 (2d Cir. R. 1994). The Appellant asserts that the information in the requested records would allow the public "to know and understand the entities that are seeking loan assistance by the DOE LPO." Appeal Letter at 2. The names of businesses seeking consultations from the DOE may contribute to the public's understanding of the types of businesses seeking loans from this DOE program. In addition, the names of businesses that have sought consultations with the DOE LPO do not appear to be publicly available. Therefore, the Appellant has satisfied Factor B.

C. Factor C

Factor C asks whether the requested documents would contribute to the general public's understanding of the subject matter. 10 C.F.R. § 1004.9(a)(8)(i)(C). To satisfy this factor, the requester must establish they have the intention and ability to "disseminate the disclosed records to a reasonably broad audience of persons interested in the subject." *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116 (D.C. Cir. 2015) (quoting *Carney*, 19 F.3d at 815); *In the Matter of Faye Vlieger*, TFA-0250 (2008).

The Appellant has not demonstrated there is a reasonably broad audience interested in the names of business seeking consultations with the DOE LPO. In his appeal, the Appellant claims his university has students training to work with businesses modeling greenhouse gas emissions, but he did not indicate how many students are interested in the information he requested. Appeal Letter at 2. The Appellant also claims that he seeks to provide "potential DOE LPO applicants" with educational information about the process, but he failed to indicate the number of potential applicants he believes exist among the public. *Id.* at 2.

The Appellant has not demonstrated he intends, and is able, to disseminate the information he obtains from the records to the public. The Appellant asserts he hopes to identify potential issues with the DOE LPO's process, "[b]y disclosing this information," but he did not indicate whether he would disclose this information to the public or how he would do so. *Id.* The Appellant does not indicate whether he intends to publish the information in a journal or on a website, for example. The Appellant's appeal falls short of establishing, with sufficient specificity, that a "reasonably broad audience" exists for the information he seeks and that he will disseminate the information to the public. *Cause of Action*, 799 F.3d at 1116. Therefore, I find the Appellant has not satisfied Factor C.

D. Factor D

Factor D asks whether the requested information would contribute "significantly" to public understanding of government operations or activities to support a finding that a request is in the public interest. 10 C.F.R. § 1004.9(a)(8)(i)(D). In evaluating this factor, courts have considered whether the FOIA requester seeks information primarily for their own benefit. *Cause of Action v. F.T.C.*, 961 F. Supp. 2d 145, 159 (D. D.C. 2013). In his appeal, the Appellant asserts that he seeks to "evaluate and study the process of some of these entities as they navigate the process" and that

he "hopes to better identify any potential issues with the process, and perhaps recommend improvements" to the DOE's loan program. Appeal Letter at 2. The Appellant's statements suggest he is seeking information from the requested records for his own benefit, to assist him with his own scholarly research and, as noted above, the Appellant did not indicate his intention or ability to disseminate the information to the public. Therefore, we find the Appellant has not satisfied Factor D.

Based on our consideration of the foregoing factors, we find the Appellant has not demonstrated that he intends, and is able, to disseminate the information obtained from the records with a reasonably broad audience. We also find the Appellant did not demonstrate that disclosure of the requested records would significantly contribute to the public's understanding of DOE operations or activities. Therefore, we find he is not entitled to a waiver of fees associated with the processing of his FOIA request.

III. Order

It is hereby ordered that the appeal filed by Paul Bubbosh on May 10, 2023, Case No. FIA-23-0017, 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 the right to pursue litigation. OGIS 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: ogis.archives.gov Email: ogis@nara.gov

Telephone: 202-741-5770 Fax: 202-741-5769

Toll-free: 1-877-684-6448

Poli A. Marmolejos Director Office of Hearings and Appeals