

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.¹ *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
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Web: ogis.archives.gov Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769
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