

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

In the Matter of John Carlo Manigaulte )  
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 Filing Date: May 26, 2023 ) Case No.: FIA-23-0019  
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Issued: June 6, 2023

**Decision and Order**

John Carlo Manigaulte (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-2023-01005-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 requests for expedited processing of his request and a waiver of fees associated with the processing of his FOIA request. As explained below, we deny the appeal.

**I. Background**

On May 22, 2023, the Appellant submitted a FOIA request seeking records “showing or suggesting that analog digital meters (from as long ago as the mid-1990s) can erroneously record electric energy usage by over-reporting actual energy consumption.” FOIA Request from John Carlo Manigaulte at 2 (May 22, 2023).

In his FOIA request, the Appellant requested “a waiver or reduction of fees” associated with the processing of his request. *Id.* at 2. The Appellant asserted the subject of his request was “the policies and practices of PURA, an electric utility regulatory authority, and Eversource Energy, an electric utility provider,” who have not responded to his questions as to analog meters providing incorrect readings. *Id.* at 2–3. The Appellant also asserted that, as a tenant that uses electricity in his apartment, his primary interest in the records “is in saving indigent disabled persons from suffering a harmful power disconnect when such probable and imminent harm can be averted.” *Id.* at 2–3. Lastly, the Appellant asserted his request was made for “personal use,” and that he had no commercial interest in the requested records. *Id.* at 1–2.

The Appellant also requested expedited processing of his FOIA request. FOIA Request at 3. In support of his request for expedited processing, the Appellant wrote he is an indigent, disabled tenant, who relies upon electricity to live in his apartment. *Id.* The Appellant also wrote that he suffers from a heart condition, and his electric company is threatening to disconnect his power because he cannot afford to pay the bill. *Id.* The Appellant also wrote he suspects his electric bill was high because the meter used to measure his energy consumption was “malfunctioning in an intermittent manner.” *Id.*

On May 25, 2023, the OPI issued an Interim Response Letter to the Appellant denying his requests for a fee waiver and for expedited processing. Interim Response Letter from Alexander C. Morris to John Carlo Manigaulte (May 25, 2023). In its Interim Response, the OPI notified the Appellant that he was not entitled to a waiver of fees 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. The OPI also notified the Appellant that he was not entitled to expedited processing of his request because he did not “provide material that establishes that there is any threat to the life or safety of an individual.” Interim Response Letter at 3.

Also on May 25, 2023, the Appellant filed an appeal with the DOE’s Office of Hearings and Appeals (OHA). Appeal Email from John Carlo Manigaulte to OHA Filings (May 25, 2023). As to his request for a fee waiver, the Appellant indicated he plans to present information from the requested records to a “utility regulatory authority” in his State to help the regulator “eliminate false charges for electricity resulting from defective old meters.” Appeal Email at 2. The Appellant claimed that disclosure of documents revealing that analog meters can produce false readings “will aid government regulatory authorities in regulating the policies and practices of private investor-owned companies that sell electricity to consumers and rely on these old meters for accurate ‘readings.’” *Id.*

The Appellant also indicated he plans to include the information gained from the disclosed records to assist him in his lawsuit against his energy provider related to inadequate meter tests.<sup>1</sup> Appeal Email at 2. The Appellant also claimed he will “immediately inform local news agencies” of the information he obtains, if it confirms his suspicion that analog meters can produce false readings of energy consumption, and if he determines the public would benefit from the ruling on his case. *Id.* at 2–3.

As to his request for expedited processing, the Appellant asserted that “there are very serious consequences when electric companies shut off the power to indigent (and especially indigent disabled) persons.” Appeal Email at 3. The Appellant provided a scenario of “indigent apartment dwellers” using lit candles as “standard nighttime lightning” because they cannot afford the batteries needed to use flashlights, and explained that this presents fire hazard. Appeal Email at 3. The Appellant asserted that “[s]ubstantially delaying the production and release of information regarding the accuracy of (old) analog meters puts at risk all who are over-charged for electricity, especially those who are living on a fixed income or who are so poor that they are being threatened with a power disconnection.” *Id.*

In his appeal, the Appellant included an excerpt from a medical journal discussing the health risks to older persons experiencing “heat stress” during environmental heat waves. Appeal Email at 4–6. The Appellant also attached three documents to his appeal: an abstract of an article from a medical journal discussing the effects of climate change and heat waves on the elderly; an article describing an experiment that found some electronic meters gave readings that were higher than the actual amount of energy consumed; and a pamphlet from the National Consumer Law Center

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<sup>1</sup> The Appellant attached a copy of a Notice of Electronic Filing of an Affidavit of Service filed in U.S. District Court, District of Connecticut, on May 18, 2023.

discussing the health risks caused by termination of utility services to seriously ill customers. Appeal Email at 1.

## II. Analysis

### A. The Appellant's Request for 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). 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.<sup>2</sup> *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 in determining 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).

#### 1. 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). In its Interim Response Letter, the DOE OPI stated the information the Appellant requested “pertains to an operation or activity of the government.” Interim Response Letter at 1. However, after reviewing the Appellant's submission, he did not, in

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<sup>2</sup> In his FOIA request, the Appellant indicated that his request for records was for “personal use and not for commercial use.” FOIA Request at 2–3. In its Interim Response, the OPI determined the Appellant did not seek records “for a commercial use” and categorized him as an “other” requester. Interim Response Letter at 1; 10 C.F.R. § 1004.9(b)(4). Because the OPI found in the Appellant's favor on this question, we will not address this prong of the public interest requirement in this decision.

his FOIA request or appeal, identify how the requested documents would reveal anything about government operations or activities. FOIA Request at 1–3; Appeal Email at 1–6. Therefore, the Appellant has not satisfied Factor A.

## **2. Factor B**

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’s FOIA request concerns the accuracy of analog meters and whether the DOE has records suggesting that analog meters can “give false readings that are higher than [a person’s] actual energy consumption.” FOIA Request at 2–3; Appeal Email at 2. There is no information suggesting that the records requested by the Appellant are in the public domain. Nonetheless, it is not clear how the accuracy rate of analog meters would aid the public in understanding the operations or activities of government. Therefore, the Appellant has not satisfied Factor B.

## **3. 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 asserts that he plans to use the disclosed information to assist him in a lawsuit he filed against his energy provider, and that he will only inform the public if he determines they could benefit from a court’s ruling on his lawsuit. Appeal Email at 2–3. The Appellant’s claim suggests the Appellant will not disseminate information to the public if the disclosed documents do not contain the information he expects or if he does not receive a favorable ruling in his lawsuit. The Appellant also fails to indicate how he would disseminate the information to the public.

The Appellant also asserts that if the disclosed records confirm his suspicion, that analog meters can produce false readings, he will “immediately inform local news agencies” of the disclosure. Appeal Email at 2–3. The Appellant cannot establish an entitlement to a fee waiver by relying upon his hope that an unspecified third party may decide to carry his burden of disseminating the information to the public. The Appellant did not indicate whether a local news agency would actually share the information they received from the Appellant, or if the news agency did disseminate the information, whether they would reach a reasonably broad audience among the public. Therefore, the Appellant has not satisfied Factor C.

## **4. 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). As stated above, the Appellant has not demonstrated how the disclosure of records related to whether analog meters erroneously measure energy consumption would contribute to the public’s understanding of the operations or activities of government. The Appellant seeks information from the requested records for his own benefit, to serve as research to support his lawsuit against his energy provider, rather than inform the public’s understanding of the operations or activities of government. Appeal Email at 2. Therefore, the Appellant has not satisfied Factor D.

Based on our consideration of the foregoing factors, we find the Appellant’s FOIA request does not concern the operations or activities of government, the Appellant has not sufficiently established that disclosure of the records is likely to contribute to an understanding an operation or activity of government, and the Appellant has not sufficiently established he would contribute to an understanding by the public by disclosing any responsive records he would receive. Therefore, we find that he is not entitled to a waiver of fees associated with the processing of his FOIA request.

### **B. The Appellant’s Request for Expedited Processing**

Under the FOIA, agencies generally process requests in the order they are received and must respond to a request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i); 10 C.F.R. § 1004.5(d)(1) and (6). However, a requester that is granted “expedited processing” receives a preference over other requests before the agency, and is entitled to have their request processed “as soon as practicable.” 10 C.F.R. § 1004.5(d)(6). The FOIA provides that expedited processing should be granted only in cases where a “compelling need” for the records exist and “in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i); 10 C.F.R. § 1004(d)(6).

A “compelling need” exists when either “a 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” or “with respect to a request made by a person primarily engaged in disseminating information, [there is an] urgency to inform the public concerning actual or alleged Federal Government activity.”<sup>3</sup> 5 U.S.C. § 552(a)(6)(E)(v)(I)-(II); 10 C.F.R. § 1004.5(d)(6).

The Appellant claims he is an “indigent disabled tenant” with a heart condition. FOIA Request at 3. The Appellant also claims his heart condition could cause him to suffer a heart attack if his electricity is shut off because he cannot afford to pay his electric bill. *Id.* The Appellant also claims “there are very serious consequences” when electric companies cut power to indigent disabled persons and “[s]ubstantially delaying the production and release of information regarding the accuracy of (old) analog meters puts at risk all who are over-charged for electricity, especially those who are living on a fixed income or who are so poor that they are being threatened with a power disconnection.” Appeal Email at 3.

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<sup>3</sup> In his appeal, the Appellant does not allege he is “a person primarily engaged in disseminating information.” FOIA Request at 3. Therefore, OHA will not discuss this prong of the expedited processing standard in this decision.

The Appellant did not submit sufficient information to support an entitlement to expedited processing of his FOIA request. In analyzing whether an “imminent threat” to life or physical safety exists, there must be a connection between the information contained in the requested records and the alleged threat to be prevented. *In the Matter Ayyakkannu Manivannan*, OHA Case No. FIA-17-0025, FIA-17-0026 at 5 (2017). The Appellant’s claims of physical harm that he would suffer from a failure to receive the requested documents on an expedited basis are far too remote to support expedited processing. There is no evidence that avoiding termination of the Appellant’s electricity is dependent upon receipt of the requested records. Assuming the requested records provide the information the Appellant seeks, there is no evidence the records will prevent the Appellant’s electricity from being shut off or that any health consequences will result. Lastly, expedited processing cannot be granted based upon a threat to the safety of the general public, such as “those that are living on a fixed income” and “all who are overcharged.” Appeal Email at 3; *see In the Matter of Sarah Okeson*, OHA Case No. FIA-21-0004 at 3. Therefore, the Appellant has not established a compelling need for the requested records, and he is not entitled to expedited processing of his FOIA request.

### **III. Order**

It is hereby ordered that the appeal filed by John Carlo Manigaulte on May 26, 2023, Case No. FIA-23-0019, 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](http://ogis.archives.gov) Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770 Fax: 202-741-5769  
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