

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

In the Matter of Christopher Casilli                            )  
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Filing Date: November 2, 2023                            )     Case No.:     FIA-24-0005  
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Issued: November 13, 2023

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**Decision and Order**  
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Christopher Casilli (Appellant) appeals an Interim Response Letter issued to him from the Department of Energy (DOE), National Nuclear Security Administration (NNSA), Office of the General Counsel (OGC) concerning Request No. FOIA 24-00019-R, 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, OGC denied the Appellant’s request for expedited processing of his FOIA request. As explained below, we deny the appeal.

**I. Background**

On September 20, 2023, the Appellant submitted a FOIA request to the DOE, which sought “any information related to the Radioiodine Event of March 2023 at Los Alamos National Laboratory [(LANL)],” including any “documents, reports, and photos associated with this event.” FOIA Request from Christopher Casilli at 1 (September 20, 2023). The Appellant requested that his FOIA request receive expedited processing. *Id.* at 3. In support of his request for expedited processing, the Appellant wrote, “an urgency to inform the public concerning actual or alleged Federal Government activity exists.” *Id.* The Appellant also wrote that “[t]his event happened in March of this year and with the current active government promotions of nuclear energy as a clean energy source, timely release of this information is essential for both public awareness and effective decision making related to this technology.” *Id.* On October 12, 2023, the DOE transferred the Appellant’s FOIA request to the NNSA to conduct a search of its files for responsive records. Transfer Letter from DOE to Christopher Casilli at 1 (October 12, 2023).

On October 27, 2023, the NNSA OGC issued an Interim Response Letter to the Appellant denying his request for expedited processing. Interim Response Letter from NNSA OGC to Christopher Casilli (October 27, 2023). In its Interim Response, the NNSA OGC notified the Appellant that he was not entitled to expedited processing of his request because he did not demonstrate a “compelling need” for the information he requested. Interim Response Letter at 1. On November 2, 2023, the Appellant appealed the NNSA OGC’s denial of expedited processing with the DOE’s Office of Hearings and Appeals (OHA). Appeal Email from Christopher Casilli to OHA Filings (November 2, 2023). In the appeal, the Appellant asserted the following:

Any type of radioactive contamination event, especially accidental ones immediately elevate the need for any associated information to be rapidly disseminated to the public as a matter of public health. Especially since it is believed that this radiological contamination event occurred overseas, and that unknowingly exposed participants traveled via several means of public transportation back home to the United States.

The compelling need for the rapid release of this information is that it is possible that contaminated travel and co-mingling by these individuals with other travelers, potentially exposed those other travelers to secondary radioactive contamination. Those other travelers which were potentially exposed to these dangers have a right to know of these occurrences immediately to ensure proper actions are taken to identify any exposures and to mitigate any potential future health risks. It is again asked that this request receive expedited processing or that all information associated with it are immediately made available to the public. In these types of circumstances time is of the essence in determining if one was exposed or not.

*Id.* at 1.

## II. Analysis

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. § 1004.5(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>1</sup> 5 U.S.C. § 552(a)(6)(E)(v)(I)-(II); 10 C.F.R. § 1004.5(d)(6). The requester bears the burden of demonstrating there is a “compelling need” for the requested records to support expedited processing of their request. *Al-Fayed v. C.I.A.*, 254 F.3d 300, 305 (D.C. Cir. 2001).

First, assuming the Appellant’s interpretation of the event at LANL, as one that resulted in some form of “secondary radioactive contamination” and “exposure,” constitutes a threat, the Appellant did not demonstrate how that this threat is “imminent.” The Appellant contends in his appeal that “it is possible” that people were exposed from the event at LANL, and if people were exposed, they could have “potentially exposed” other travelers. Appeal Email at 1. A harm that could possibly occur, or has the potential to occur, is not imminent. *See Ayyakkannu Manivannan*, OHA Case No. FIA-17-0025, FIA-17-0026 at 13 (2017) (Appellant’s request for expedited processing

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<sup>1</sup> In his appeal, the Appellant did not allege he is “a person primarily engaged in disseminating information.” FOIA Request at 1–3. Therefore, OHA will not discuss this prong of the expedited processing standard in this decision.

of a FOIA request, based on “[a] harm that ‘could eventually be a threat,’ denied as not ‘imminent.’”). The Appellant also appears to allege that the subject of his FOIA request, which the Appellant described as a “radioactive contamination event,” automatically constitutes a threat that is imminent. Appeal Email at 1. FOIA requests involving substances alleged to be toxic, or biological agents alleged to have caused harm, have been denied expedited processing where the requestors could not establish that a failure to obtain records expeditiously would pose a threat that was imminent. *Gregory Kucera*, OHA Case No. FIA-20-0009 at 1 (2019) (Appellant who claimed “several biological and/or biochemical agents” affected his nervous system, after being hospitalized in 2005, was denied expedited processing where he failed to allege a “new, time-sensitive threat that could be construed as ‘immediate.’”); *James Salsman*, OHA Case No. TFA-0108, at 3–4 (2005) (Appellant’s request for records related to, “the toxicological profile of uranium” and the long-term effects of exposure to uranium on humans, was denied expedited processing where the Appellant did not demonstrate an “imminent risk” existed to an individual’s safety.). Therefore, the Appellant has not demonstrated that a failure to grant expedited processing of their FOIA request would result in a threat that is imminent.

Furthermore, the Appellant has not demonstrated that failure to obtain records on an expedited basis will pose a threat to the life or physical safety of an individual. The Appellant contends that “rapid release” of the requested documents will uncover “if one was exposed or not,” and claims that there are “unknowingly exposed participants” and “other travelers [who] were potentially exposed” to the event at LANL that need information about the event. Appeal Email at 1. Expedited processing of a FOIA request cannot be granted where the requester relies upon a perceived threat to a group of persons. *See Treatment Action Grp. v. FDA*, No. 15-cv-976 (VAB), 2016 U.S. Dist. LEXIS 127877 at 21–22 (D. Conn. September 20, 2016) (Plaintiff’s motion for summary judgment denied where they did not establish an entitlement to expedited processing of their FOIA request based upon a threat to the life or safety of “more than 250,000 patients.”).

Finally, the Appellant’s claim, that expedited release of responsive records is “essential for public awareness” of nuclear technology, cannot support a grant of expedited processing because it relies upon a perceived threat to the public. OHA has previously held that expedited processing cannot be granted based upon a threat to the safety of the public. *See In the Matter of Sarah Okeson*, OHA Case No. FIA-21-0004 at 3–4. (2021) (Appellant failed to demonstrate “compelling need” for records related to “the events of January 6,” where the Appellant claimed the records were necessary to “prevent further harm to U.S. citizens and residents.”). Therefore, the Appellant has failed to demonstrate that the processing of his FOIA request would affect the life or physical safety of an individual.

Accordingly, the Appellant has not established a compelling need for the requested records, and is not entitled to expedited processing of his FOIA request.

### **III. Order**

It is hereby ordered that the appeal filed by Christopher Casilli, on November 2, 2023, Case No. FIA-24-0005, 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  
Toll-free: 1-877-684-6448

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