

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

In the Matter of Tracy A. Wellons	)	
	)	
Filing Date: January 29, 2024	)	Case No.: FIA-24-0011
	)	
_____	)	

Issued: February 12, 2024

**Decision and Order**

Tracy A. Wellons (Appellant) appeals an Interim Response Letter issued to her by the Department of Energy’s (DOE) Office of Science (SC) concerning a request (Request No. HQ-2024-00800-F) that she 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 SC denied the Appellant’s request for a waiver of fees associated with the processing of her FOIA request and the Appellant’s request for expedited processing. As explained below, we deny the appeal.

**I. Background**

On January 16, 2024, the Appellant submitted a FOIA request seeking “a possible contract between the [DOE], Argonne National Laboratory (ANL), Lawrence Berkeley National Laboratory (LBNL), and the National Institutes of Health (NIH) to conduct radiation experiments on [her] and [her] adult daughter” in her home. FOIA Request from Tracy A. Wellons at 1 (January 16, 2024). The Appellant requested a waiver of fees on the basis that she suffers from financial hardship as a victim of crime with SSI disability income. FOIA Request at 2–3. The Appellant also explained that she should receive a waiver of fees because the requested information would “confirm or deny the continuation of human radiation experiments on unwitting subjects,” and that “[t]he significance of the information requested has legal implications for two known victims of human radiation experiments.” *Id.* at 2. The Appellant further noted that her primary interest in disclosure was to “[d]emand a cease and desist order to immediately terminate human radiation experiments” on her and her daughter. *Id.* at 3. The Appellant also requested expedited processing of her FOIA request on the basis that “an imminent threat to the life or physical safety of an individual exist[ed].” *Id.* To support this assertion, the Appellant stated that “No-Touch Torture uses radiation weapons to deteriorate the victim’s physical health and damage them psychologically . . . .” *Id.*

On January 22, 2024, the SC issued an Interim Response Letter to the Appellant denying her requests for a waiver of fees and expedited processing of her request. Interim Response Email from SC to Tracey A. Wellons at 1–3 (January 22, 2024). In its Interim Response Letter, the SC notified the Appellant that she was not entitled to a waiver of fees because she did not demonstrate her ability to disseminate the information she requested to the public, she did not show that the

requested information was likely to contribute significantly to the public's understanding of the operations of government, and she did not demonstrate that disclosure of the records is not primarily in her commercial interest. Interim Response at 2–3. The SC also notified the Appellant that her FOIA request was not entitled to expedited processing because she did not demonstrate that a failure to obtain records on an expedited basis would pose an imminent threat to the life or physical safety of an individual, or that she was primarily engaged in disseminating information. *Id.* at 2. On January 29, 2024, the Appellant filed a timely appeal with the DOE's Office of Hearings and Appeals (OHA). Appeal Letter Email from Tracy A. Wellons to OHA at 1 (January 29, 2024).

As to her request for a waiver of fees, the Appellant asserts that disclosure of the requested records is in the public interest for “public health and safety reasons.” Appeal at 1. The Appellant asserts her request is “of particular interest to victims who are being subjected to non-consensual human radiation experiments,” and the public is being “misled” into believing these experiments no longer take place. *Id.* at 2. The Appellant also asserts that the information gained from her FOIA request “will be distributed for publication by a non-profit human rights organization called Targeted Justice Inc.,” who filed a lawsuit against various federal agencies for placing individuals on a terrorist watch list. *Id.* The Appellant asserts she is “a member of Targeted Justice,” but she is “not a paid staff member or board member with a commercial interest in the FOIA information.” *Id.* The Appellant also asserts the information from her FOIA request “will also be shared with a 501(c)(3) non-profit organization called People Against Covert Torture and Surveillance (PACTS) International, and their affiliates, for mass distribution to the general public as well as to legislative bodies that have already been contacted about these crimes against humanity.” *Id.* at 3.

As to her request for expedited processing, the Appellant asserts that expedited processing of her FOIA request is necessary to protect public health and safety from human radiation experiments. Appeal at 2. The Appellant asserts that “[n]o touch torture” uses radiation to “deteriorate the victim's physical health and damage them psychologically with no health benefit,” and human radiation experiments are “fraudulently funded with research grants.” *Id.* at 2. The Appellant also asserts that the more time that is spent delaying the release of the requested records, “the more victims will suffer” from the consequences of human radiation experiments, which she describes as “cruel and unusual punishments” and “crimes against humanity.” *Id.* at 2–3. Finally, the Appellant asserts that “[t]he requested information will also be shared with [PACTS] International and their affiliates for mass distribution to the general public as well as legislative bodies that have already been contacted about these crimes against humanity.” *Id.* at 3.

## **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. *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). Although the SC’s Interim Response Letter did not address this factor, it is clear that the Appellant’s request, which seeks records regarding a “possible contract” between the DOE, ANL, LBNL, and NIH to conduct human radiation experiments on the Appellant and her daughter, concerns “the operations or activities of the government.” FOIA Request at 1-2.

#### **B. 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). In her appeal, the Appellant asserts that her request “is of particular interest to victims who are being subjected to non-consensual human radiation experiments well beyond President Bill Clinton’s 1995 apology following an Executive Report published . . . on the ethics of human radiation research conducted during the time period from 1944 to 1974.” Appeal at 1-2. Although there is no information to suggest the records requested are in the public domain, it is not clear how “the release of documents exclusively concerning [the Appellant and her daughter] would provide a better understanding of the government at large or be of interest to the general public.” *Chase v. United States Dep’t of Justice*, 301 F. Supp. 3d 146, 157 (D.D.C. 2018) (citations omitted). For example, in her FOIA request, the Appellant explained that the requested information “has legal implications for two

known victims of human radiation experiments.” FOIA Request at 2. The Appellant also indicated that the primary interest in her disclosure was to “[d]emand a cease and desist to immediately terminate human radiation experiments” on her on her daughter. *Id.* at 3. Thus, it appears that the disclosure would be used to support any potential legal claims that her and her daughter may have, not to contribute to an understanding of government operations or activities in the public’s interest. Therefore, the Appellant has not 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); *Faye Vlieger*, OHA Case No. TFA-0250 (2008). The Appellant has not demonstrated her ability to disseminate the information she obtains from the requested records to the public. In her appeal, the Appellant asserts that the requested information will be “distributed for publication by a non-profit human rights organization called Targeted Justice, Inc.,” which “manages a free website, free video interviews, free substack publications, and sends out a free newsletter via email to all of its 3,000+ members.” Appeal at 2. The Appellant further asserts that she will share the requested information with an additional non-profit organization, PACTS, for “mass distribution to the general public” and legislative bodies. *Id.* at 3.

As an initial matter, “it is clear beyond cavil that ‘[m]erely stating one’s intention to disseminate information does not satisfy this factor; instead, there must be some showing of one’s ability to actually disseminate the information.’” *Donato v. Exec. Office for United States Attys.*, 308 F. Supp. 3d 294, 311 (D.D.C. 2018). And “this is not a case where [the Appellant] operates [her] own means of information dissemination such as a newsletter or a website[,] therefore [she] is entirely dependent on external entities to distribute material to the public.” *Id.* (internal quotations and citation omitted). Other than identifying herself as a member of Targeted Justice, the Appellant has not provided any specific information about her ability to distribute the requested records. The Appellant has not indicated whether she has any “professional or personal contacts” with either Targeted Justice or PACTS, or whether she has a “history of publishing [on either organization’s website] that would lend credence to [her] statement of intention.” *Perkins v. U.S. Dep’t of Veterans Affairs*, 754 F. Supp. 2d 1, 9 (D.D.C. 2010); *see also James Kennedy*, OHA Case No. FIA-20-0036 at 4–5 (2020) (Appellant provided insufficient evidence to support his intention to disseminate requested information on a website when he did not establish he had “a record of conveying information obtained through FOIA request to the public,” and did not provide evidence of professional contacts with the website).

As the Appellant acknowledged, she is not a paid staff member or board member of Targeted Justice. Appeal at 2. Merely identifying herself as a member of Targeted Justice, without more, is not enough to demonstrate her ability to disseminate the information. *Hyatt v. U.S. Pat. & Trademark Off.*, No. 18-cv-2800, 2022 U.S. Dist. LEXIS 96007 at \*11-13 (D.D.C. May 27, 2022) (determining that the plaintiff failed to provide “specific information about his ability to distribute the requested records” where he merely stated that he would make the information available to “a non-profit corporation in which [he] is a member, and will publish the records at a website he

maintains”) (internal quotations omitted). Further, the Appellant also failed to provide any information regarding her relationship with PACTS, and included only the conclusory assertion that PACTS will share the information with the general public. Appeal at 3. Therefore, 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). As noted above, the Appellant has not demonstrated how the disclosure of records related to any possible human radiation experiments on her or her daughter would contribute to the public’s understanding of government operations or activities. In her appeal, the Appellant contends that the requested information would be of “particular interest to victims being subjected to non-consensual human radiation experiments” because the Advisory Committee on Human Radiation Experiments “falsely misleads the general public into believing that human radiation experiments from 1975 to present either don’t exist or are now following more strict guidelines to protect human test subjects from these historical abuses.” Appeal at 1-2.

The Appellant’s request, however, does not relate to any potential human radiation experiments conducted after 1975 generally, but instead, only relates to herself and her daughter. As the Appellant indicated in her request, her primary purpose in obtaining this information is to “[d]emand a cease and desist to immediately terminate human radiation experiments” on her on her daughter. FOIA Request at 3. Thus, despite Appellant’s argument that the requested information would be of “particular interest” to other victims of human radiation experiments, the scope of her request is personal in nature and “too narrow to reveal documents that will make any significant contribution to public understanding of the agency’s operations.” *Pub. Employees for Env’tt. Responsibility v. U.S. Dep’t of Com.*, 968 F. Supp. 2d 88, 103 (D.D.C. 2013) (reasoning that where a request sought documents related to an agency’s alleged retaliation against a single employee, “the Court [could not] find that such information would contribute *significantly* to the public’s understanding of how its government operates”); *see also Krista A. Isham*, OHA Case No. FIA-16-0056, at 4 (2016) (dismissing Appellant’s argument that records related to an EEOC complaint she filed was an attempt “to obtain information in support of all women who were victimized” by her employer). 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 she intends, and is able, to disseminate the information obtained from the records with a reasonably broad audience. We also find the requested documents would not contribute to the public’s understanding of the subject matter of the request, and the Appellant did not demonstrate that disclosure of the requested records would significantly contribute to the public’s understanding of government operations or activities. Therefore, we find she is not entitled to a waiver of fees associated with the processing of her 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. § 1004.5(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.” 5 U.S.C. § 552(a)(6)(E)(v)(I)-(II); 10 C.F.R. § 1004.5(d)(6). A FOIA requester bears the burden of demonstrating that a “compelling need” exists for expedited processing. 5 U.S.C. § 552(a)(6)(E)(i); *Al-Fayed v. CIA*, 254 F.3d 300, 303 (D.C. Cir. 2001).

i. Imminent Threat to the Life or Physical Safety of an Individual

The Appellant asserts there are “victims” and “unwitting subjects” who are being subjected to “non-consensual human radiation experiments,” and that her receipt of the requested documents expeditiously is a matter of “public health and safety.” Appeal at 1–2; FOIA Request at 2. The Appellant did not identify an individual whose life or physical safety could reasonably be under threat by a failure to receive the requested records on an expedited basis. Instead, the Appellant’s request is based on a perceived threat to the safety of the public, which is not an appropriate justification for expedited processing. *See Treatment Action Group v. FDA*, 2016 U.S. Dist. LEXIS 127877 at \*21–22 (D. Conn. 2016) (Plaintiff’s request for expedited processing denied when request was based on “a problem that could affect the general HCV-affected public.”), *see also Sarah Okeson*, OHA Case No. FIA-21-0004 at 4 (2021) (Appellant failed to establish entitlement to expedited processing after asserting documents were necessary to “prevent further harm to U.S. citizens and residents”). Nor did the Appellant identify a threat to life or physical safety that is imminent. The Appellant asserts she needs the requested records expeditiously to “confirm or deny the continuation of human radiation experiments,” which is not sufficient to identify the use of such experiments as a current threat or that the use of such experiments on anyone is imminent. FOIA Request at 2. Therefore, the Appellant did not demonstrate that failure to receive the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

ii. Whether the Appellant is Primarily Engaged in Disseminating Information

To establish that they are primarily engaged in disseminating information, the FOIA requester must establish that disseminating information is their “main activity, and not merely incidental to other activities that are their actual, core purpose.” *Energy Policy Advocates v. U.S. Dep’t of the Interior*, No. 21-1247, 2021 U.S. Dist. LEXIS 180480, at \*7 (D.D.C. Sept. 22, 2021). As discussed above, the Appellant did not represent herself as a representative of the news media, that she has a history of dissemination information to the public, and she has not demonstrated that she intends to, or is able to, disseminate the information obtained from the requested records to the public on her own. Instead, the Appellant is dependent upon two human rights organizations to, possibly,

distribute the information to the public. Appeal at 2–3. Therefore, the Appellant has not established that she is primarily engaged in disseminating information.

iii. Whether There an Urgency to Inform the Public Concerning Actual or Alleged Federal Government Activity

To determine whether a requester has demonstrated an urgency to inform the public concerning a federal government activity, courts consider three factors: (1) whether the request concerns a matter of current exigency to the American public; (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*, 254 F.3d at 310 (D.C. Cir. 2001). As discussed above, there is no dispute regarding whether the subject of the Appellant’s request concerns an actual or alleged activity of the federal government. Interim Response at 1–3. Therefore, we will limit our analysis to the exigency of the subject matter of the Appellant’s FOIA request and whether a further delay would compromise a significant recognized interest.

Courts have found sufficient exigency to support expedited processing of a FOIA request where there is “genuine widespread public concern” about the subject of the FOIA request, or a current unfolding story about the topic. *Energy Policy Advocates v. U.S. Dep’t of the Interior*, U.S. Dist. LEXIS 180480, at \*11; *see also Wadelton v. Dep’t of State*, 941 F. Supp.2d 120, 123 (D.D.C. 2013). A FOIA requester must also submit sufficient information to establish that the information to be gained from the requested documents is “time sensitive” to support a finding of urgency. *Legal Eagle, LLC v. NSC Records Access & Info. Sec. Mgmt. Directorate*, No. 20-1732, 2020 U.S. Dist. LEXIS 50637, at \*18 (D.D.C. Mar. 18, 2021). Courts have also recognized a significant recognized interest exists in the public’s ability to “[obtain,] in a timely fashion[,] information vital to the current and ongoing debate surrounding the legality of a high profile government action.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Defense*, 263 F. Supp.3d 293, 299–300 (D.D.C. 2017).

In this case, the Appellant has not submitted any information to support that interest in the subject of human radiation experiments, and whether they continue to occur, is shared by the public. The two non-profit human rights organizations the Appellant claims will distribute information on the topic may have an interest in the subject, but those organizations are akin to a “niche community,” which is too limited to support a finding of current exigency to the public. *Wadelton*, 941 F. Supp.2d at 123. Furthermore, an apology given by a former U.S. President, 29 years ago, or that unidentified “legislative bodies” have been contacted about the subject, does not support a finding that there is a current public controversy, or public debate, on the subject. Appeal at 1–3. Finally, after reviewing the Appellant’s FOIA request and appeal, we find that the Appellant has not identified a significant interest that would be affected by her failure to obtain the requested documents on an expedited basis. Therefore, the Appellant has not demonstrated there is an urgency to inform the public about the human radiation experiments by the federal government.

The Appellant has not established that a failure to obtain records related to the use of human radiation experiments on an expedited basis could reasonably be expected to pose an imminent threat to the life or safety of an individual. The Appellant has also failed to establish that she is primarily engaged in disseminating information, or that there is an urgency to inform the public about the use of human radiation experiments by the federal government. Therefore, the Appellant

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

### **III. Order**

It is hereby ordered that the appeal filed by Tracy A. Wellons on January 29, 2024, Case No. FIA-24-0011, 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

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals