

7. All correspondence, including emails, between DOE and the Executive Office of the President or the State Department pertaining to LNG exports and life cycle greenhouse gas emissions of LNG between November 1, 2023 and February 6, 2024;
8. All DOE studies, analysis, or correspondence between 2021 and 2024 addressing the market price of natural gas to domestic end-users resulting from Administration policies that reduce or otherwise limit domestic natural gas production;
9. All records pertaining to the life cycle greenhouse gas emissions associated with LNG, including correspondence and materials containing the terms “Howarth,” “McKibben,” and “Cornell”; and
10. All correspondence between DOE and the [International Energy Agency (IEA)] addressing climate policy, IEA public messaging, and IEA budgets.

FOIA Request from David LaCerte at 1–2 (February 6, 2024). The Appellant requested expedited processing of his FOIA request and provided the following as justification:

Many thousands of US jobs and billions of dollars in investments are impacted by the pause on LNG exports.¹ Without the prompt ability for the public to view these documents, livelihoods may be lost and tens of thousands of Americans may be negatively economically impacted.

Id. at 3 (footnote added).

On March 8, 2024, the OPI issued an Interim Response Letter to the Appellant denying his request for expedited processing. Interim Response Letter from OPI to David LaCerte at 1–4 (March 8, 2024). In its Interim Response Letter, the OPI notified the Appellant that his FOIA request was not entitled to expedited processing because he did not establish an “imminent threat to the life or safety of an individual.” Interim Response at 2. The OPI also notified the Appellant that he did not establish that his request concerns a matter of current exigency to the American public, and that “the consequences of delaying a response would compromise a significant recognized interest.” *Id.* at 2–3.

On April 9, 2024, the Appellant filed a timely appeal with the DOE’s Office of Hearings and Appeals (OHA). Appeal Letter Email from David LaCerte to OHA at 1 (April 9, 2024). In his appeal, the Appellant asserts that “[t]he blocking of new permits for the exportation of LNG has caused multiple lawsuits from several state AGs in seeking to block the irreparable harm that this policy continues to inflict upon industry, states, and private citizens.” Appeal at 1. The Appellant also asserts that “[t]he underlying issues in the LNG Pause and the subsequent litigation from the

¹ On January 26, 2024, President Biden announced a “temporary pause on pending decisions on exports of Liquefied Natural Gas (LNG) to non-[free trade agreement] countries until the Department of Energy can update the underlying analyses for authorizations.” Fact-Sheet: Biden-Harris Administration Announces Temporary Pause on Pending Approvals of Liquefied Natural Gas Exports (Jan. 26, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/26/fact-sheet-biden-harris-administration-announces-temporary-pause-on-pending-approvals-of-liquefied-natural-gas-exports/> (last visited Apr. 15, 2024).

states [both] create a great urgency to inform the public who have a vastly compelling need to understand the inner workings of their government.” *Id.* The Appellant also asserts that “[t]he states and their citizens stand to suffer irreparable economic harm from the policies of the Department of Energy and their due process rights for judicial review stand in the balance.” *Id.*

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 exists 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, entitling them to 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 did not demonstrate that a failure to receive expedited processing of his FOIA request will pose a threat to his own, or any individual’s life or physical safety. Rather, the Appellant asserted that “tens of thousands of Americans” “may” be impacted if the public is not able to view the requested documents “promptly.” FOIA Request at 3. The Appellant also claims the government’s policy will have an impact “upon industry, states, and private citizens.” Appeal at 1. The Appellant’s request is based on a perceived threat to the livelihoods of “tens of thousands of Americans,” 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”). Furthermore, the Appellant asserts that failure to expedite his request “may” have an impact on the public; but it should be noted that a harm that could potentially occur is not imminent. FOIA Request at 3; *Ayyakkannu Manivannan*, OHA Case No. FIA-17-0025, FIA-17-0026 at 13 (2017). 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. Urgency to Inform the Public Concerning Actual or Alleged Federal Government Activity

To determine whether a FOIA 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). In its Interim Response Letter, the OPI found the Appellant was primarily engaged in disseminating information,² and the OPI acknowledged that the Appellant's request concerned an actual or alleged activity of the federal government. Interim Response at 3. The OPI did not find, however, that the other two factors were met. Therefore, we will limit our analysis to the exigency of the subject matter of the Appellant's FOIA request, and whether standard processing of his FOIA request 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 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, although the President's recent announcement regarding the issuance of LNG export applications has been the subject of media coverage, the Appellant has not demonstrated that there is an urgent need for the information sought in his FOIA request. The Appellant requested "studies and data" related to exports of LNG and natural gas production in the U.S., along with correspondence between the DOE and other government agencies discussing exports of LNG and its effect on greenhouse gas emissions. FOIA Request at 1–2. The Appellant asserts that the "underlying issues in the LNG Pause" and subsequent litigation related to DOE's announcement creates an urgency to inform the public. Appeal at 1. But, the Appellant did not identify what those issues are or demonstrate that the information in the requested records will lose its value to the public if received using the standard FOIA processing time. The Appellant also ties an urgency to inform the public to a perceived economic harm to the public, without explaining how the requested records will preserve the livelihoods of those who may be affected by DOE's announcement pertaining to pending LNG export applications. Therefore, the Appellant has not established that there is an urgency to inform the public of the requested records.

Finally, the Appellant asserts the public's "need to understand the inner workings of their government" will be compromised if his FOIA request is not processed on an expedited basis. Appeal at 1. Courts have held that merely citing the public's "right to know" certain information,

² In his FOIA request, the Appellant indicated his request was "made as part of news gathering" for a "web blog and substack." FOIA Request at 2.

in itself, is not sufficient justification to support a finding that there is an urgency to inform the public and expedite a FOIA request. Appeal at 1; *see Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 277–278 (D.D.C. Dec. 21, 2012) (finding that “[t]he public’s right to know” is not “by itself” sufficient to find that an urgency to inform the public exists). Therefore, the Appellant has not established that a significant interest will be compromised by his failure to receive expedited processing of his FOIA request.

The Appellant did not demonstrate that a failure to receive expedited processing of his FOIA request will pose a threat to his own, or any individual’s, life or physical safety. The Appellant also failed to establish that there is an urgency to inform the public about the subject matter of his FOIA request, or that the failure to receive the requested records on an expedited basis will compromise a significant recognized interest. Therefore, the Appellant has not met his burden of establishing a compelling need for the requested records, and his request is not entitled to expedited processing.

III. Order

It is hereby ordered that the appeal filed by David LaCerte on April 9, 2024, Case No. FIA-24-0020, 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
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