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

In the Matter of Tonya Mead)
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Filing Date: July 15, 2024) Case No.: FIA-24-0039
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Issued: July 22, 2024

Decision and Order

Tonya Mead (Appellant) appeals an Interim Response Letter issued to her by the Department of Energy's (DOE) Office of Public Information (OPI) concerning a request (Request No. HQ-2024-01577-F) 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 request for a waiver of fees associated with the processing of her FOIA request. As explained below, we deny the appeal.

I. Background

On March 27, 2024, the Appellant submitted a FOIA request seeking data of federal employees' eligibility for, and participation in, teleworking arrangements, from "years 2019 to December 2023." FOIA Request from Tonya Mead at 1–2 (March 27, 2024).

Later, on March 27, 2024, the Appellant supplemented her FOIA request by notifying the OPI that she is unable to pay fees associated with the processing of her request and requesting a waiver of fees. Email from Tonya Mead to OPI at 1–3 (March 27, 2024). In the supplement to her FOIA request, the Appellant asserted that the subject of her request relates to "the manner by which telework and/or remote work arrangements impact direct operations and activities of the government (efficiencies, productivity, and service quality) for instance." *Id.* at 1. The Appellant also asserted that the informative value of the information she seeks to obtain "is very likely to contribute to an understanding of government operations or activities and how its best practices could be replicated in the private sector or vice versa." *Id.* The Appellant also asserted that she "intends to collect, analyze and disseminate the data so that its disclos[ure] will contribute to the general public's understanding of telework and remote work." *Id.* Finally, the Appellant asserted that "[t]he dissemination of this data collected and analyzed will not be re-sold," it will be "made available as [an] open-sourced resource," and it will "contribute 'significantly' to public understanding of government operations or activities as it relates to telework and remote work." *Id.*

On April 18, 2024, the OPI issued an Interim Response Letter to the Appellant denying her request for a waiver of fees. Interim Response Letter from OPI to Tonya Mead at 1–3 (April 18, 2024). In its Interim Response Letter, the OPI notified the Appellant that, although her FOIA request

pertains to an operation or activity of the government, she did not explain how she intends to “disclose information to the public and what information from [the] request will contribute to a public understanding of government activities,” so her request for a waiver of fees was denied. Interim Response at 2.

On July 15, 2024, the Appellant filed a timely appeal with the DOE’s Office of Hearings and Appeals (OHA), in which she submitted additional information to support her request for a waiver of fees. Appeal Email from Tonya Mead to OHA at 1–4 (July 15, 2024).

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. *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 subject of the Appellant's FOIA request, data related to telework and remote work arrangements among federal employees, "pertains to an operation or activity of the government." Interim Response at 2. As we agree that the information sought by Appellant concerns the operations or activities of the government, we find the Appellant has satisfied Factor A.

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. 1994). In her appeal, the Appellant claims that although the government has established policies related to telework for its workforce, "there has not yet been published in the public domain case studies and best practices based upon measurable data for which business leaders in industry can emulate." Appeal Email at 1. The Appellant also claims "[g]athering information to learn more about how the government implements its telework policies [is] vital to understanding best practices and well as dispelling myths and misconceptions" on the subject. *Id.*

Although there is no information suggesting that the records requested by the Appellant exist in the public domain, the Appellant has not provided sufficient information showing "the necessary connection between the requested information and increased public understanding of specific government operations and activities." *Citizens for Responsibility & Ethics v. U.S. H.H.S.*, 481 F. Supp. 2d 99, 112 (D.D.C. 2006). For example, it is not clear how data on the number of DOE employees eligible for, or participating in, teleworking arrangements will provide a better understanding of how telework or remote work arrangements impact specific government functions. The Appellant also failed to provide any details on what "myths and misconceptions" exist related to teleworking and how the requested records will aid the public in understanding and dispelling those myths. Therefore, we find the Appellant has not satisfied Factor B.

C. Factor C

Factor C asks whether the requested records 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). The Appellant states that, although she is "not affiliated with any formal entity," she "will disseminate the requested information by way of a statistical analysis of the data" she obtains and she will include the information in an "academic report and scientific study that will be self-published and presented at conferences and published in journals related to human resources, data integrity, cyber security, and employee engagement." Appeal Email at 1–2.

Although the Appellant asserts she intends to disseminate the requested information, one's entitlement to a fee waiver also requires "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). The Appellant’s request for a waiver does not include information establishing she owns or operates a means of publishing the information herself, as she claims. Nor does the Appellant’s request specify what professional or personal contacts she has with scientific or academic outlets to support her intent or ability to disseminate the information. *See Perkins v. U.S. Dep’t of Veterans Affairs*, 754 F. Supp. 2d 1, (D.D.C. 2010) (Plaintiff did not demonstrate entitlement to fee waiver when he failed to “indicate that he has any professional or personal contacts with [an identified] newspaper or a history of publishing in it that would lend credence to his statement of intention” to disseminate the requested information). The Appellant also failed to specify which journals, and during which conferences, she would present the information she seeks to obtain.

The Appellant also claims she has presented information she obtained from previous FOIA requests to various government agencies, such as the Department of Commerce and the National Institute of Standards and Technology, and “[her] methodology of dissemination will be consistent with [her] demonstrated performance in informing the public about issues in need of further study and discussion.” Appeal Email at 2. But the Appellant has not provided details on the content of those presentations to support her entitlement to a fee waiver in this instance. *See Perkins*, 754 F. Supp. 2d 1 at 8–9 (Plaintiff’s statement that he previously presented demographic data to two government officials “without any details as to the content or context of the presentations” was insufficient to support entitlement to a fee waiver). Finally, to establish entitlement to a fee waiver, the requester must establish there is a “reasonably broad audience of persons interested in the subject” of the request. *Cause of Action*, 799 F.3d at 1116 (*quoting Carney*, 19 F.3d 807 at 815). In her request for a waiver, the Appellant failed to describe the potential size of the audience that would consume the requested information, if disseminated in academic or scientific journals. Appeal Email at 1–2. Therefore, we 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). While the Appellant states she intends to use her expertise in research to “help the general public understand the challenges related to telework,” she did not demonstrate *how* the records she seeks would advance the public’s understanding of government operations and activities. Appeal Email at 2. Without any details, we cannot conclude the information the Appellant seeks would significantly contribute to the public’s understanding of government operations. 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 to a reasonably broad audience. We also find she has not demonstrated the requested documents 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.

III. Order

It is hereby ordered that the appeal filed by Tonya Mead on July 15, 2024, Case No. FIA-24-0039, 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
Toll-free: 1-877-684-6448

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