

EXHIBIT 19

Administrator Email

Mon, 14 Dec 2020 09:02:43 -0500 (EST)

To: Ahmed, Sameer

Response to FOIA Appeal A-2021-00520

Attachments: [Appeal response letter .pdf](#) (0.0 bytes)

The Office of Information Policy has made its final determination on your FOIA Appeal Number A-2021-00520. A copy of this determination is enclosed for your review, along with any enclosures, if applicable. Thank you.



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Sameer Ahmed

sahmed@law.harvard.edu

December 14, 2020

Re: Appeal No. A-2021-00520
Request No. FOIA-2021-00127
MWH:JKD

VIA: Email

Dear Sameer Ahmed:

This is to advise you that your administrative appeal from the action of the Initial Request Staff (IR Staff) of the Office of Information Policy was received in this Office on December 7, 2020. You appealed from the IR Staff's denial of your request for expedited treatment of your Freedom of Information Act request, the IR Staff's constructive denial of your request for a waiver of fees, and the IR Staff's failure to respond to your FOIA request. You also requested expedited treatment of your appeal.

Department of Justice regulations provide for an administrative appeal to the Office of Information Policy only after there has been an adverse determination by a component. See 28 C.F.R. § 16.8(a) (2019). No adverse final or fee waiver determination has yet been made by the IR Staff, nor has the IR Staff yet determined to assess fees in connection with the processing of your request. As you may know, the FOIA authorizes requesters to file a lawsuit when an agency takes longer than the statutory time period to respond. See 5 U.S.C. § 552(a)(6)(C)(i). However, I can assure you that this Office has contacted the IR Staff and has been advised that your request is currently being processed. If you are dissatisfied with the IR Staff's final response, you may appeal again to this Office.

This Office has forwarded a copy of your letter to the IR Staff. You should contact the IR Staff's Requester Service Center at (202) 514-3642 for further updates regarding the status of your request.

Additionally, in your appeal letter, you assert that your request is entitled to expedited treatment pursuant to the first, second, third, and fourth standards enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the first standard will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). See also 28 C.F.R. § 16.5(e)(1)(i) (2019). Under the second standard, you must show that there is "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person

primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 28 C.F.R. § 16.5(e)(1)(ii) (2019). Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. § 16.5(e)(1)(iii) (2019). Under the fourth standard, you must show that the subject matter of your request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Id. at § 16.5(e)(1)(iv). This Office makes determinations regarding the first three standards, while the Department's Director of Public Affairs makes determinations regarding the fourth standard. See id. at § 16.5(e)(2).

After carefully considering your appeal, I am affirming the IR Staffs action in denying your request for expedited treatment. Regarding the first standard, Congress noted that the "categories for compelling need are intended to be narrowly applied." H.R. Rep. No. 104-795, at 26 (1996). Congress further stated: "A threat to an individual's life or physical safety qualifying for expedited access should be imminent. A reasonable person should be able to appreciate that a delay in obtaining the requested information poses such a threat." Id.; see also, e.g., Cleaver v. Kelley, 427 F. Supp. 80, 81 (D.D.C. 1976) (criminal defendant, facing possible "loss of freedom or life" in imminent state prosecution, demonstrated "exceptional and urgent need to obtain any and all information that could prove exculpatory"); Exner v. FBI, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978) (requester obtained expedited treatment after leak of information exposed her to harm from organized crime figures), aff'd, 612 F.2d 1202 (9th Cir. 1980). Based on the information that you have provided, I have determined that you have not met your burden under the first standard. You have not presented any facts that demonstrate how a delay in processing your request would pose an imminent threat to the life or physical safety of any individual. Without such proof, expedited processing pursuant to the first standard is not warranted.

In deciding whether you have demonstrated that there is an "urgency to inform the public" under 28 C.F.R. § 16.5(e)(1)(ii) (2019), I considered 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 v. CIA, 254 F.3d 300, 310 (D.C. Cir. 2001). Although your request concerns a federal government activity, you have not established that the requested records are a matter of current exigency to the American public. Furthermore, although the Harvard Immigration and Refugee Clinical Program may well engage in the dissemination of information, you have not demonstrated that it is "primarily engaged" in disseminating information. See Landmark Legal Found. v. EPA, 910 F. Supp. 2d 270 (D.D.C. 2012) (noting that plaintiff must be "primarily, and not just incidentally, engaged in information dissemination"); ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (holding that information dissemination must be "*the* main activity" rather than merely "*a* main activity" of plaintiff to satisfy expedition standard). Without such a showing, expedited processing pursuant to the second standard is not warranted.

Regarding the third standard, courts have held that requests for expedited treatment for

due process reasons generally should not be granted unless requesters show that they are "facing grave punishment" in a pending criminal proceeding and that "there is a reason to believe that the information produced will aid in the individual's defense." Aguilera v. FBI, 941 F. Supp. 144, 150 (D.D.C. 1996). Based on the information that you have provided, I have determined that you do not meet this test because you have not demonstrated that the information sought will aid in any criminal defense nor that anyone is facing a grave punishment. Without such a showing, expedited treatment pursuant to the third standard is not warranted.

The Acting Deputy Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request should be denied. I agree with the determination of the Acting Deputy Director of Public Affairs that expedited treatment of your request is not warranted under this standard because you have failed to sufficiently demonstrate that the subject of your request is "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) (2019). Accordingly, the Acting Deputy Director of Public Affairs properly determined that you failed to meet your burden under the fourth standard for expedited processing.

I note that you requested expedited treatment of your appeal. Because I am closing your underlying appeal within ten calendar days, your request for expedited treatment of this appeal is moot.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the IR Staff in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

X

Matthew Hurd

Acting Chief, Administrative Appeals Staff