



OFFICE OF THE DIRECTOR OF ADMINISTRATION AND MANAGEMENT
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

Ref: 21-AC-0065-A1
NGB J-21-0101

Thomas Curley
Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107

Dear Mr. Curley:

This responds to your Freedom of Information Act (FOIA) appeal dated April 12, 2021. You appealed on behalf of your client, Mr. Tom Vanden Brook, Pentagon correspondent for USA TODAY, from the action of the National Guard Bureau (NGB) on his Freedom of Information Act request dated April 5, 2021.

After carefully considering your appeal, I am affirming the NGB's action in denying your client's request for expedited treatment. Your appeal seeks expedited processing on the basis of "compelling need." Compelling need is demonstrated where either "the 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," 32 CFR § 286.8(e)(1)(i)(A), or where "the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity." 32 CFR § 286.8(e)(1)(i)(B). As a requester seeking expedited processing under the "urgently needed" standard of 32 CFR § 286.8(e)(1)(i)(B), your client must demonstrate "a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally." 32 CFR § 286.8(e)(3).

In determining whether your client has demonstrated that there is an "urgency to inform the public" under 32 CFR § 286.8(e)(3), 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 client's request concerns a federal government activity, your client has not established that delaying a response would compromise a significant recognized interest. While your appeal cites several examples of media and congressional interest in this subject matter, your client has not demonstrated that the specific requested DoD information must be released on an expedited basis in order to avoid one of the harms, or achieve one of the benefits, that are outlined in the regulations governing expedited processing of FOIA requests. As a result of this denial, your client's request will remain in its original processing queue with other pending requests and will be addressed in turn.

Please be advised that this Directorate's decision was made only after a thorough legal review of your appeal, your underlying request, and NGB's action in response to your request.

If your client is dissatisfied with my action on his appeal for expedited treatment of his request, the FOIA permits him to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B); see 5 U.S.C. § 552(a)(6)(E)(iii)-(iv).

Sincerely,

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Joo Y. Chung
Director
Oversight and Compliance

cc:
NGB