



Appeal Expedited Determination for Appeal Number A-2022-00182

1 message

Administrator Email <oip-noreply@usdoj.gov>

Thu, Oct 28, 2021 at 4:33 PM

To: foia@aflegal.org

Cc: No-Reply.OIP.FOIASTAR@usdoj.gov

Expedited Determination decision has been made on Appeal Number A-2022-00182 with the decision of Denied.

This is to advise you that your administrative appeal from the action of Executive Office for U.S. Attorneys (EOUSA) was received in this Office on October 19, 2021. Your appeal has been assigned number A-2022-00182. Please mention this number in any future correspondence with this Office regarding this appeal. You assert that your appeal is entitled to expedited treatment pursuant to the second standard enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the second standard will be granted where the requester shows 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." 28 C.F.R. § 16.5(e)(1)(ii) (2020). I have determined that you have not met your burden under the second standard because you have not shown an "urgency to inform the public" about an actual or alleged federal government activity and because you have failed to demonstrate that you are "primarily engaged in disseminating information." *Id.* at § 16.5(e)(1)(ii). 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), 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, nor that delaying a response would compromise a significant recognized interest. Further, you have not provided any evidence that you are "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). In addition, you assert that your appeal is entitled to expedited treatment pursuant to the third standard enumerated in the Department of Justice's regulations. 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) (2020). Courts have held that requests for expedited treatment for due process reasons generally should not be granted unless a requester shows 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 you are facing grave punishment, that the information sought will aid in any defense, or that your request relates to a pending criminal proceeding. Accordingly, I am denying your request for expedited treatment of your appeal. Finally, the Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request for expedition should be denied. I agree with the determination of the Director of Public Affairs that expedited treatment of your appeal 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 that affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) (2020). Accordingly, the Director of Public Affairs properly determined that you failed to meet your burden under the fourth standard for expedited processing. Please be advised that the other portions of your appeal will be responded to separately by this Office. Please also be advised that because EOUSA responded to your request within 10 days, any challenge to its failure to adjudicate your request for expedited processing on the request is moot. As a result of the denial, your appeal will be placed into chronological order with the other pending appeals and will be addressed in turn. 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 EOUSA 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.

