

Exhibit 5



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

Ref: 22-A-0905-A1
FOID: 22-F-0905

Mr. Aaron Siri
Siri & Glimstad
200 Park Avenue
Seventeenth Floor
New York, New York 10166

Dear Mr. Siri:

This responds to your Freedom of Information Act (FOIA) appeal, dated August 03, 2022. You appealed the determination of the Freedom of Information Division (FOID) to deny your request for expedited processing in response to your FOIA request, dated May 6, 2022.

After carefully considering your appeal, I have determined that your request for expedited processing should continue to be denied. Your appeal seeks expedited processing on the basis that you are “primarily engaged in disseminating information to the general public” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” You add that FOIA provides for “expedited processing of request for records” upon a showing of “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(II). 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), you 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 you have 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 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. While your appeal notes that this was a major news worthy event, you have 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 request will remain in its original processing queue with other pending requests and will be addressed in turn.

If you are dissatisfied with my action on your appeal for expedited treatment of your request, you may 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

cc:
FOID