

# Exhibit N



**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

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Telephone: (202) 514-3642

Joseph P. Vardner, Esq.  
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1050 Connecticut Avenue, NW  
Washington, DC 20036  
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Re: Appeal No. DOJ-AP-2017-005521<sup>1</sup>  
Request No. DOJ-2017-002953 (AG)  
SRO:MTC

**VIA: FOIAonline**

Dear Mr. Vardner:

This is to advise you that your administrative appeal<sup>2</sup> from the action of the Initial Request Staff (IR Staff) of the Office of Information Policy, acting on behalf of the Office of the Attorney General and four other offices was received in this Office on July 24, 2017.<sup>3</sup> You appealed from the IR Staff's denial of your request for expedited treatment of your Freedom of Information Act request. You also appeal from the IR Staff's failure to respond to your requests.

In your request and appeal letters, you appear to assert that your request is entitled to expedited treatment pursuant to the second standard enumerated in the Department of Justice's regulations. 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) (2016). 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).

With regard to whether you are "primarily engaged in disseminating information," although Lambda Legal may well engage in the dissemination of information, you have not demonstrated 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.

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<sup>1</sup> Please be advised this letter also responds to your Appeal Nos. DOJ-AP-2017-005551, DOJ-AP-2017-005552, DOJ-AP-2017-005553, and DOJ-AP-2017-005554, made from Request Nos. DOJ-2017-003114 (DAG), DOJ-2017-003115 (ASG), DOJ-2017-003116 (OLP), and DOJ-2017-003117 (PAO), respectively.

<sup>2</sup> I note that you are jointly appealing along with Susan Sommer, Director of Constitutional Litigation at Lambda Legal.

<sup>3</sup> Specifically, you are appealing from action taken by the IR Staff on behalf of the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Office of Legal Policy, and the Office of Public Affairs.

- 2 -

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.

Additionally, you attempted to appeal from the failure of the IR Staff to respond to your request. 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) (2016). As no final adverse determination has yet been made by the IR Staff, there is no further action for this Office to consider on appeal.

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 determined that your request is still pending. 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.

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.

If you are dissatisfied with my action on your appeal for expedited treatment of your request, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(6)(E)(iii).

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](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

7/31/2017

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Sean R. O'Neill  
Chief, Administrative Appeals Staff  
Signed by: OIP