



Department of Energy
Washington, DC 20585

March 6, 2024

Phil Rutherford
8655 Delmonico Ave
West Hills, CA 91304

Via email: email@philrutherford.com

Re: HQ-2024-01160-F

Dear Phil Rutherford:

This is an interim response to the request for information that you sent to the U. S. Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

I am requesting the complete file on the DOE Office of Inspector General's complaint 23-0160-C.

I have assigned your request to DOE's Office of the Inspector General to conduct a search of its files for responsive documents. Upon completion of the search and review of any records located, you will be provided a response. Upon the search and review of any responsive documents located you will be provided a response.

In your request, you requested a waiver of all fees associated with the processing of this request. For purposes of assessment of any fees, you have been categorized under the DOE regulation that implements the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(4), as an "other" requester. Requesters in this category are entitled to two (2) free hours of search time and are provided 100 pages at no cost.

Pursuant to 10 CFR 1004.9(8), I have reviewed the information you provided in the request to support your request for a fee waiver. I have reviewed your stated reason for a fee waiver and have determined that you have not adequately addressed the criteria established at 10 CFR § 1004.9(a)(8) for consideration of fee waivers or reduction of fees. The information you requested pertains to an operation or activity of the government. However, it is also required that the information will be disclosed to the public and contribute to public understanding. Your requests provide the following justification for your fee waiver request:

I request a waiver of fees since this information is requested for non-commercial purposes. The reference by OIG of the existence of an investigation "file" implies that a compiled "file" already exists, and that



no further significant search, or expense would be incurred in providing that “file” to me.

Your justification does not explain how you intend to disclose information to the public and what information from this request will contribute to a public understanding of government activities. Therefore, your request for a waiver of fees is hereby denied. You requested expedited processing of your request and provided the following specific justification:

I believe a compelling need exists to warrant expedited processing because the original OIG Complaint was submitted a year ago on February 10, 2023, and was still open on August 2, 2023, six months ago. Since then, OIG has failed to notify me that the investigation was closed at an indeterminate date. Given the glacial speed, and opaque, one-way nature of OIG’s deliberations, I believe that there is no excuse for further delays.

The FOIA permits agencies to expedite the processing of requests if requesters demonstrate a “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when one of two criteria are met. 5 U.S.C. § 552(a)(6)(E)(v)(II). The criteria are met when (1) failure to obtain the records quickly “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” or (2) if the “requester is primarily engaged in disseminating information” and can demonstrate that there is an “urgency to inform the public concerning actual or alleged Federal Government activity.”

The reasons you have provided do not adequately address the basis for which a request may be expedited. You have not provided information that establishes that there is any imminent threat to the life or safety of an individual that would justify expeditious processing of the request. You also have not identified an actual or alleged activity that poses any particular urgency that requires the dissemination of information in an expedited manner. In order to determine whether a requester has demonstrated an “urgency to inform,” and hence a “compelling need,” courts consider at least 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. C.I.A., 254 F. 3d 300, 310 (D.C. Cir. 2001); Associated Press v. DOE, Case No. TFA-0273 (September 11, 2008).

Your request does not sufficiently address factors one or two. For these reasons, I am denying your request for expeditious processing. The request will be processed in accordance with provisions of the FOIA.

The denial of your requests for fee waiver and expedited processing may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L’Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA

appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase “Freedom of Information Appeal” in the subject line (this is the method preferred by the Office of Hearings and Appeals). The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE’s records are situated, or (4) in the District of Columbia.

You may contact DOE’s FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, via email at alexander.morris@hq.doe.gov, or by mail at MA-46/Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Please refer to the above referenced number in any communications with DOE about the request. If you have questions about this letter, please contact Jordan O’Donnell via email at jordan.o’donnell@hq.doe.gov.

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C. Morris
FOIA Officer
Office of Public Information