



U.S. Department of Justice

Office of Information and Privacy

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Washington, D.C. 20530  
APR 12 2006

EJ Hurst, Esq.  
PMB No. 124  
550M Ritchie Highway  
Severna Park, MD 21146

Re: Appeal Nos. 06-1604 and 06-1605  
Request Nos. 2006-02285 and  
2006-02289  
DJM:JTR

Dear Mr. Hurst:

This is to advise you that your administrative appeals from the action of the Federal Bureau of Prisons (BOP) on your requests for access to certain records related to violence at Federal Correctional Institution La Tuna were received in this Office on March 30, 2006.

Your appeals have been assigned numbers **06-1604** (Request No. 2006-02285) and **06-1605** (Request No. 2006-02289). Please mention these numbers in any future correspondence to this Office regarding this matter.

This letter addresses your appeals from BOP's denial of your requests for expedited processing. The other aspects of your appeals will be handled separately.

A request will be taken out of chronological order based on the date of receipt and given expedited treatment by the Department of Justice only when it is determined to involve: (1) circumstances in which lack of such treatment could reasonably be expected to pose an imminent threat to the life or safety of an individual; (2) an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; (3) the loss of substantial due process rights; or (4) a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. See 28 C.F.R. § 16.5(d)(1) (2005). This Office makes determinations regarding the first three categories, while requests made pursuant to the fourth standard must be submitted to the Department's Director of Public Affairs. See id. § 16.5(d)(2).

You assert that your requests for expedited processing should be granted under each of these four standards. For the reasons outlined below, I am affirming BOP's denial of expedited processing of your requests. Additionally, the Director of Public Affairs has determined that expedited processing of your requests is not warranted under the fourth standard for expedited processing.

Under the first standard, expedited processing will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."

28 C.F.R. § 16.5(d)(1)(i). In establishing the expedited processing framework, Congress noted that the "categories for compelling need are intended to be narrowly applied." H.R. Rep. No. 104-795, at 26 (1996). Congress further stated: "A threat to an individual's life or physical safety qualifying for expedited access should be imminent. A reasonable person should be able to appreciate that a delay in obtaining the requested information poses such a threat." Id.; see also, e.g., Cleaver v. Kelley, 427 F. Supp. 80, 81 (D.D.C. 1976) (criminal defendant, facing possible "loss of freedom or life" in imminent state prosecution, demonstrated "exceptional and urgent need to obtain any and all information that could prove exculpatory"); Exner v. FBI, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978) (plaintiff obtained expedited treatment after leak of information exposed her to harm by organized crime figures), aff'd, 612 F.2d 1202 (9th Cir. 1980). Based on the information you have provided, and in light of Congress's intent, I have determined that you have not met your burden under this standard. Unfortunately, federal prisons often serve as a forum for violence, and BOP has accordingly developed a system designed to separate individuals or groups of inmates from each other where conflict is likely. I can discern no difference between your request for expedited processing for records concerning BOP's separation program and prison violence and the hundreds of other requests that BOP receives for similar records.

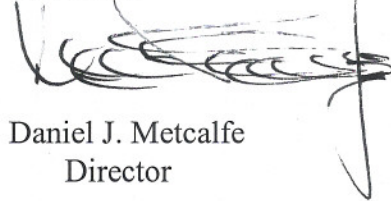
The second standard for expedited processing requires you to demonstrate both that there is an "urgency to inform the public about an actual or alleged federal government activity," and that you are "a person primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii). Although you maintain the Web site [www.victorvillefoia.org](http://www.victorvillefoia.org), and have indirectly involved employees of the KFOX-TV station in your requests and appeals, you have failed to demonstrate that you are "primarily engaged in disseminating information." Cf. ACLU of N. Cal. v. U.S. Dep't of Justice, 2005 WL 588354, at \*14 (N.D. Cal. Mar. 11, 2005) (determining that public interest law group was not "primarily engaged in disseminating information," because information dissemination was "a main activity" of the group, not "the main activity"). Additionally, I have determined that you have not demonstrated that there is an "urgency to inform the public" about the subject of the requested records. A significant factor to be considered is "whether the request concerns a matter of current exigency to the American public." Al-Fayed v. CIA, 254 F.3d 300, 310 (D.C. Cir. 2001). At most, you have demonstrated only a small amount of local news interest in the subject of the requested records, not the "substantial" national interest required under this factor. See id. at 311.

Concerning the third standard, courts have held that expedited processing for due process reasons generally should not be granted unless a requester shows that he is "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 either one of the parts of this test: You have not alleged that you or anyone you are requesting records on behalf of is facing grave punishment in a pending criminal proceeding, nor have you demonstrated that the requested information will aid in anyone's defense, in a criminal proceeding or otherwise.

Finally, the Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request should be denied. I agree with the determination of the Director of Public Affairs that expedited treatment of your request 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 which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv).

If you are dissatisfied with the action on your appeals concerning expedited treatment of your requests, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(6)(E)(iii) (2000 & Supp. III 2003).

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Metcalfe", written over a horizontal line. The signature is somewhat stylized and includes a long vertical flourish on the right side.

Daniel J. Metcalfe  
Director