



OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950



FEB 10 2004

Ref: 04-F-0064(A)

ADMINISTRATION &
MANAGEMENT

Ms. Amrit Singh
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Dear Ms. Singh:

This is in response to your December 8, 2003, Freedom of Information Act (FOIA) appeal of the Directorate for Freedom of Information and Security Review determination to deny expedited processing of your request of October 7, 2003.


I have reviewed your appeal and determined that it must be denied. In order to be considered for expedited processing, an individual must show a "compelling need" for the information. Compelling need can be demonstrated several ways as outlined in DoD Regulation 5400.7-R, Department of Defense Freedom of Information Act Program. In your appeal you focus on the portion of the statute, as set forth in DoD 5400.7-R, which states that compelling need is shown by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. Your appeal has not provided any additional information that demonstrates that the ACLU is primarily a news gathering and disseminating organization.

Additionally, in order to qualify for expedited processing under the compelling need provisions of the FOIA, a requester must show that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or that the information is urgently needed because the value would be lost if not disseminated quickly. The potential release of the information you are requesting does not appear to be the type of time sensitive material that would lose its value if not disseminated quickly. In subparagraph C1.5.4.3.2.1. of the DoD FOIA Regulation (DoD 5400.7-R), it states that "urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest." DoD has adopted "a breaking news story" as its benchmark in consideration of granting expedited processing under compelling need. Because the subject matter of your request is not "breaking" news to a general audience and the failure to obtain the records on an expedited basis does not endanger the life or safety of any individual, I find that your appeal does not meet either threshold of compelling need under the FOIA.

DFOISR will continue to process your request within their normal queue. You will hear from DFOISR upon the completion of that processing.

You are advised that you have a right to judicial review of this decision in a United States District Court in accordance with 5 USC § 552(a)(4)(B).

Sincerely,


for Raymond F. DuBois
Director