



USAID
FROM THE AMERICAN PEOPLE

TRANSMITTED VIA EMAIL
jbenshoof@globaljusticecenter.net

JUN 16 2017

Ms. Janet Benshoof
Global Justice Center
11 Hanover Square, 6th Floor
New York, NY 10005

Re: A-00003-17– Appeal of Expedited Treatment and Fee Waiver for FOIA F-00137-17

Dear Ms. Benshoof:

This letter is in response to your May 22, 2017 Freedom of Information Act (FOIA) appeal. Specifically, you appeal USAID’s denial of both expedited treatment and fee waiver for FOIA Request F-00137-17.

On March 6, 2017, you requested “all USAID emails, internal memos, contracts, grants and awards since November 8, 2016 that discuss or mention the Helms amendment, Global Gag Rule, or other US abortion restrictions on foreign assistance.” You also requested expedited processing and fee waiver. On March 9, 2017, USAID denied your requests for the latter.

After de novo review of the administrative record, USAID partially affirms/partially reverses its May 9, 2017 denial of your requests for expedited processing and fee waiver. On appeal, USAID affirms its denial of expedited processing and reverses its denial of fee waiver. The support for this determination is detailed below.

In making a determination to grant expedited treatment, requests shall be processed on an expedited basis whenever it is determined that such requests involve: “(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information; (iii) The loss of substantial due process rights; or (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” Freedom of Information Act Regulations, 81 Fed. Reg. 93806 (December 27, 2016) (to be codified at 22 C.F.R. § 212.8(e)).

Your appeal letter for expedited processing stated: “*There are frequent news reports regarding the ongoing global use of sexual violence and the matter of sexual violence in armed conflicts is on the agenda of the United Nations Security Council. As a human rights nonprofit organization, the GJC [Global Justice Center] is primarily engaged in disseminating information. The public has an urgent need for information pertaining to the Helms Amendment*

and United States abortion policy as indicated in the requested materials—particularly in light of the fact that such policies may place the U.S. in violation of several international laws, norms, and regimes.” USAID has determined your appeal does not support the aforementioned expedited processing criteria.

USAID does not contest that the Global Justice Center is “primarily engaged in disseminating information” or that the subject of the records concerns “actual or alleged Federal Government activity.” USAID finds that the requester has failed, however, to present facts to support a finding that there is an *urgency* to inform the public at large. Legislative history provides that “[t]he public’s right to know, although a significant and important value, would not by itself be sufficient to satisfy [the] standard” of an urgency to inform. H.R.REP. No. 104-795 (1996). In addition, pursuant to *Wadelton v. Dept’t of State*, No. 13-0412, 2013 WL 1760853 (D.D.C. Apr. 25, 2013), your request and appeal do not demonstrate “a robust public discussion taking place on this topic at this time, such that plaintiff would be harmed by receiving this information at a later date.” To this end, granting your request would cause injury to the Agency because “many FOIA requesters are standing in line waiting for the agency to fulfill their obligation under FOIA.” Additionally, your request does not “distinguish [this] FOIA request from any other FOIA request” and does not support a need to expedite your request beyond the general purpose of the FOIA.

Accordingly, USAID affirms the denial of your expedited treatment request. Kindly be advised that your request is being addressed under the customary FOIA procedures. The search for responsive records has commenced, and we are awaiting records from the respective programs. The records will be assessed and processed upon receipt. Interim releases will be provided to you until all of the records have been received and processed for final release.

With regard to your request for fee waiver, USAID must consider whether the requester has demonstrated that: “(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and (ii) Disclosure of the information is not primarily in the commercial interest of the requester.” Freedom of Information Act Regulations, 81 Fed. Reg. 93806 (December 27, 2016) (to be codified at 22 C.F.R. § 212.14(k)). USAID has considered your initial justification and subsequent appeal for fee waiver. Upon reconsideration, your fee waiver request is approved.

This constitutes USAID’s final decision in this matter. For status information regarding F-00137-17, you may contact the assigned Government Information Specialist, Nakia Scott. Nakia can be reached by phone on (202) 712-5572 or electronically at nascott@usaid.gov. Please reference tracking number F-00137-17 in future communications.

As part of the FOIA Improvement Act of 2016, you may contact USAID’s FOIA Public Liaison Officer, Lynn Winston, to discuss this determination at foia@usaid.gov. In the alternative, you may contact the Office of Government Information Services (OGIS). OGIS was created to offer 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. You may contact OGIS in any of the following ways: Office of Government Information Services; National Archives and Records Administration, Room 2510; 8601 Adelphi Road; College Park, MD 20740-6001; e-mail ogis@nara.gov; phone (301) 837-1996; Fax (301) 837-0348; Toll-free 1-877-684-6448. Lastly, pursuant to 5 U.S.C. § 552(a)(4)(B), you are entitled to seek judicial review of this decision in the appropriate United States District Court.

Thank you for your interest in USAID.

Sincerely,



Luis F. Garcia
FOIA Appeals Officer
Acting Director
Bureau for Management
Office of Management Services

Cc: Ms. Akila Radhakrishnan (aradhakrishnan@globaljusticecenter.net), Global Justice Center