



ADMINISTRATION AND
MANAGEMENT

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

Attachment 12

Ref: 14-A-0683
14-F-0683

JUL 02 2014

Mr. John H. Clark
Accuracy in Media
1629 K Street, NW
Suite 300
Washington, DC 20006

Dear Mr. Clark:

This responds to the Accuracy in Media's June 6, 2014, Freedom of Information Act (FOIA) appeal. Accuracy in Media appealed the Office of Freedom of Information's (OFOI) decision to deny their request for a news media status and expedited processing for the FOIA request dated March 31, 2014.

I reviewed the appeal at the appellate level and determined that Accuracy in Media's request for expedited processing should be denied. Accuracy in Media sought expedited processing on the basis of compelling need. Department of Defense (DoD) Regulation 5400.7-R § C1.5.4.3.2. states that compelling need means that "the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity." The DoD generally uses a standard 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." Additionally, federal courts have declared a three-pronged test to determine "compelling need" based on whether or not the information is "urgently needed" (*Al-Fayed v. CIA*, 245 F.3d 300 (D.C. Cir. 2001)). The three prongs of the test are as follows:

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.
3. Whether the request concerns actual or alleged federal government activity.

I have determined that Accuracy in Media's initial request meets the third prong of the "urgently needed" test. However, it does not meet the first and second prongs of the test. The FOIA request to OFOI does not meet the standard of the first prong because information related to the attacks on U.S. facilities in Benghazi, Libya has been debated in numerous stories by members of the media. Thus, it is no longer a "breaking news story," nor is it a matter of current exigency to the American people.

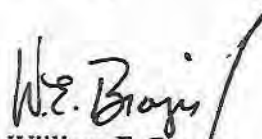
Additionally, Accuracy in Media does not meet the standard of the second prong because Accuracy in Media has not proven that the consequences of delaying a response to the request would compromise a significant recognized interest. In particular, Accuracy in Media admits that this topic is of ongoing interest, therefore showing that the requested information will not

lose its value. Therefore, I have determined that the information they seek will not lose its value if expedited processing is denied.

Finally, regarding your appeal of the denial of news media status. I have consulted with OFOI and they have placed Accuracy in Media in the "news media" category. Therefore this portion of your appeal is moot.

Accuracy in Media has the right to judicial review of this decision in a United States District Court, in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink that reads "W.E. Brazis". The signature is written in a cursive style with a long, sweeping flourish at the end.

William E. Brazis
Deputy Director

cc:
OFOI