



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF SCIENCE AND TECHNOLOGY POLICY  
WASHINGTON, D.C. 20502

June 28, 2022

Marc Rotenberg  
Center for AI and Digital Policy  
1100 13<sup>th</sup> St. NW  
Suite 800  
Washington, DC 20005

**Re: OSTP-FOIA # 22-080**

Dear Mr. Rotenberg:

This letter acknowledges a Freedom of Information Act (henceforth “FOIA”)<sup>1</sup> request submitted to the Office of Science and Technology Policy (hereinafter “OSTP”) on June 20, 2022. The request specifically sought:

- “1) All records, possessed by the agency, concerning the AI Bill of Rights
- 2) All records, possessed by the agency, concerning Eric Schmidt’s involvement in the development of the AI Bill of Rights and related AI policy initiatives, including but not limited to, communications involving representatives of Schmidt Futures / Schmidt Ventures, which includes those on the OSTP staff who received funding from Schmidt Futures / Schmidt Ventures
- 3) All records, possessed by the agency, concerning the agency’s use of AI to process FOIA requests.”

The request is for processing on an expedited basis. OSTP’s determination is articulated below.

In accordance with the FOIA, OSTP uses a multitrack processing system when reviewing FOIA requests.<sup>2</sup> Requests within each track are processed on a “first-in, first-out” basis.<sup>3</sup> “Track one is made up of requests that sought and received expedited processing.”<sup>4</sup> “Track two is for requests of simple to moderate complexity that do not require consultations with other entities and do not involve voluminous records.”<sup>5</sup> And “[t]rack three is for complex requests that involve voluminous records, require lengthy or

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<sup>1</sup> 5 U.S.C. § 552.

<sup>2</sup> 5 U.S.C. § 552(a)(6)(D); 32 C.F.R. § 2402.6(e).

<sup>3</sup> 32 C.F.R. § 2402.6(e)(1).

<sup>4</sup> *Id.* at § 2402.6(e)(1)(i).

<sup>5</sup> *Id.* at § 2402.6(e)(1)(ii).



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numerous consultations, raise unique or novel legal questions, or require submitter review under § 2402.7.”<sup>6</sup>

To qualify for expedited processing, one of the following compelling needs must be met:

- (i) The requester can establish that failure to receive the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (ii) The requester is primarily engaged in disseminating information and can demonstrate that an urgency to inform the public concerning actual or alleged Federal Government activity exists.<sup>7</sup>

### REQUEST FOR EXPEDITED PROCESSING

Here, requestor is not alleging that “failure to receive the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.”<sup>8</sup> Thus, the analysis will focus on the “urgency to inform the public” requirement.<sup>9</sup>

### NEED TO INFORM THE PUBLIC

In order to qualify for expedited processing under the urgent need to inform the public type of compelling need, the requestor has to be “a person primarily engaged in disseminating information.”<sup>10</sup> To establish the preceding requirement, requestor noted that the Center for AI and Digital Policy “publishes annually *Artificial Intelligence and Democratic Values*, a comprehensive review of AI policies and practices. The 2022 *AI and Democratic Values* report included a specific discussion about the status of the OSTP Bill of Rights initiative. The Center also publishes the *CAIDP Update*.”

In deciding whether “an urgency to inform [the public exists in a given situation], courts consider at least three factors:

- ‘(1) whether the request concerns a matter of current exigency to the American public;

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<sup>6</sup> *Id.* at § 2402.6(e)(1)(iii).

<sup>7</sup> *Id.* at § 2402.6(d)(2)(i)-(ii).

<sup>8</sup> *Id.* at § 2402.6(d)(2)(i)

<sup>9</sup> *Id.* at § 2402.6(d)(2)(ii)

<sup>10</sup> 32 C.F.R. § 2402.6(d)(2)(ii).



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(2) whether the consequences of delaying a response would compromise a significant recognized interest;

(3) whether the request concerns federal government activity.”<sup>11</sup>

Under the first prong, courts have held that a “compelling need” exists when the subject matter of the request is central to a pressing issue of the day. For example, “[news coverage regarding] the renewal of the USA PATRIOT Act”<sup>12</sup> or active discussions over the reauthorization of certain Voting Rights Act provisions.<sup>13</sup>

Here, requestor noted that:

“[t]he urgency arises from the ongoing delay in the finalization and publication of the previously announced AI Bill of Rights, following the agency’s prior public consultations, the White House endorsement, the receipt of public comments, and ongoing concern about the fairness of AI-based decision-making, as noted, for example, in the recent Gebru/Mitchell commentary in *The Washington Post*.”

When requestor’s statement regarding the alleged “delay in the finalization and publication of the previously announced AI Bill of Rights” is viewed in the light of cases cited above, it falls short of the requirement of a matter that creates “current exigency to the American public.”<sup>14</sup>

Additionally, requestor has not “demonstrated any ‘significant adverse consequence’ that would result if [the] request[] for expedited processing of these or any other documents were denied, and [he] therefore received the documents later rather than sooner. *See* H.R. REP. NO. 104-795, at 26 (‘By requiring a ‘compelling need,’ the expedited access procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.’).”<sup>15</sup>

Furthermore, the request is devoid of the type of supporting information that is typically used to establish an urgent need for requested information on an expedited

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<sup>11</sup> *Landmark Legal Found. v. E.P.A.*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012).

<sup>12</sup> *See, Amer. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004).

<sup>13</sup> *See Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005).

<sup>14</sup> *Landmark*, 910 F. Supp. 2d at 276.

<sup>15</sup> *Al-Fayed v. C.I.A.*, 254 F.3d 300, 311, 349 U.S. App. D.C. 223 (D.C. Cir. 2001) (discussing legislative history of the 1996 Electronic Freedom of Information Act Amendment that added expedited processing to the FOIA).



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basis. For instance, evidence of widespread media interest regarding the subject matter sought in the records in the days or weeks leading to the request.<sup>16</sup>

The D.C. Circuit Court has held that the “specified categories for compelling need are intended to be narrowly applied.”<sup>17</sup> This request squarely fails to satisfy that requirement, because requestor has not demonstrated that producing the information sought on an expedited basis is a “matter of current exigency to the American public.”<sup>18</sup>

Thus, the request for expedited process is **DENIED**.

Based on the denial, OSTP will process the submission as a track three request.<sup>19</sup> However, there are several pending requests that were received prior to the instant one. Accordingly, it is anticipated that the processing time will extend beyond 20 business days. Once the review process is completed, the responsive records will be immediately released to the extent permitted by any applicable FOIA exemptions.

Requestor is seeking a fee waiver. The waiver request is GRANTED.

Pursuant to the FOIA and OSTP regulations, a requestor may appeal an agency’s decision denying expedited processing.<sup>20</sup> Any appeal related to the processing of this request must be sent either (1) via email to [OSTPFOIA@ostp.eop.gov](mailto:OSTPFOIA@ostp.eop.gov); or (2) by mail to Chief FOIA Officer, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, NW, Washington, D.C 20504.<sup>21</sup> In the appeal letter, please specify OSTP-FOIA Control number: **22-080**. Any appeal must be sent to one of the above listed addresses no later than ninety (90) calendar days after the date of this letter.<sup>22</sup>

Please note that requestors have the right to seek dispute resolution services regarding their requests from OSTP’s FOIA Public Liaison or the Office of Government Information Services (hereafter “OGIS”). To employ these services, please contact Rachel Wallace via telephone at (202) 456-4444 or by e-mail at [OSTPFOIA@ostp.eop.gov](mailto:OSTPFOIA@ostp.eop.gov). To contact OGIS, please use the following contact information:

Office of Government Information Services

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<sup>16</sup> *Wadelton v. Dep’t of State*, 941 F. Supp. 2d 120, 123-24 (D.D.C. 2013).

<sup>17</sup> *Al-Fayed*, 254 F.3d at 311.

<sup>18</sup> *Landmark*, 910 F. Supp. 2d at 276.

<sup>19</sup> 32 C.F.R. § 2402.6(e)(1)(iii).

<sup>20</sup> 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa); 32 C.F.R. § 2402.8(a).

<sup>21</sup> 32 C.F.R. § 2402.8(b)(2).

<sup>22</sup> 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa); *Id.* at § 2402.8(b)(1).



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If you have any questions, please do not hesitate to contact me via telephone or e-mail.

Sincerely,

Rachel Wallace  
Deputy General Counsel