



DEPARTMENT OF HEALTH & HUMAN SERVICES

Program Support Center

Division of FOIA Services  
Parklawn Building, Room 17-66  
5600 Fishers Lane  
Rockville, Maryland 20857  
PH: 301-443-5252  
Fax: 301-443-0925

PSC Case No.: 11-0107  
OS Case No.: 2011-0234

December 8, 2010

***By U.S. Mail and e-mail***

Mr. Paul J. Bracher  
California Institute of Technology  
Caltech Mail Code 139-74  
1200 E. California Blvd.  
Pasadena, CA 91125

Dear Mr. Bracher:

This will acknowledge receipt of your November 29, 2010, Freedom of Information Act (FOIA) request for all documents pertinent to the investigation of scientific misconduct of Dr. Bengu Sezen of Columbia University. You also requested expedited processing and a fee waiver.

***Request for Expedited Processing***

Granting a request expedited processing gives that request priority over other requests, by moving it ahead of others and correspondingly delaying the processing of earlier requests. A request for records may be expedited upon the requester's demonstration of a compelling need. The compelling need standard is "intended to be narrowly applied." *Al-Fayed v. CIA*, 254 F.3d 300,310 (D.C.Cir. 2001). Compelling need means that (1) the failure to obtain the records on an expedited basis could pose an imminent threat to the life or physical safety of an individual, or (2) the requester is primarily engaged in the dissemination of information and there is an urgency to inform the public concerning an actual or alleged Federal government activity.

In support for your request for expedited processing, you stated that "this issue is of great concern to [your] readership." While the subject of your request may be of interest to the scientific community, you have not demonstrated that you are primarily engaged in disseminating information.

In order for a requester to qualify for expedited processing, the requester must demonstrate that he or she is "a person primarily engaged in disseminating information."<sup>1</sup> You state on your blog, ChemBark.com, that you are a National Science Foundation ACC Postdoctoral Fellow at the California Institute of Technology and that you "have limited time to devote to the site." As

<sup>1</sup> 5 U.S.C. 552(a)(6)(E)(v)(II).

such, we have determined that the maintenance of blog is not your primary function. Rather, it appears that you are primarily a scientist at the California Institute of Technology.

The result of my review of your request for expedited processing, as documented in this letter, confirms that your request for expedited processing does not meet the requirements under the FOIA and cannot be granted.

The records you seek may be in the custody of the Office of Research Integrity (ORI) and the staff has not yet been able to complete a search to determine whether there are records within the scope of your request.

***Request for a fee waiver***

As it is our policy to proceed with our search when administrative FOIA issues are resolved, we are proceeding with the search for responsive records. Your request has been forwarded to ORI for a search for responsive records. We have not made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

If you are not satisfied with my action on this request, you may administratively appeal this denial of expedited processing involving the search for records. Your appeal should be mailed within 30 days from the date you receive this letter, to the Deputy Assistant Secretary for Public Affairs (Media), U.S. Department of Health and Human Services, Parklawn Building, Suite 17-66, 5600 Fishers Lane, Rockville, MD 20857. Clearly mark both the envelope and your letter "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol Maloney".

Carol Maloney  
Director  
Division of FOIA Services