United States Department of Energy Office of Hearings and Appeals

In the Matter	of Robert Orr, Jr.)		
Filing Date:	March 26, 2014))	Case No.:	FIA-14-0019
	Issued:	April 16, 2014		
		Decision and Orde	r	

On March 26, 2014, Robert Orr, Jr. ("Appellant") filed an Appeal from a determination issued to him on March 12, 2014, by the Oak Ridge Office (ORO) of the Department of Energy (DOE) (FOIA Request Number ORO-2014-00136-F). In its Determination Letter, ORO responded to the Appellant's request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. Specifically, the Appellant challenges the adequacy of ORO's search for responsive documents.

I. Background

On October 25, 2013, the Appellant submitted a FOIA Request, seeking "all documents creating and/or describing the terms of whatever the arrangement is between China and the United States for the research, design, and/or development of molten salt nuclear technology in China." On March 12, 2014, ORO responded to the Appellant's FOIA Request stating that it searched its files and the files of the Oak Ridge National Laboratory (ORNL) record repositories and program offices, and that it could not locate any responsive records. *See* Determination Letter from Amy L. Rothrock, Authorizing Official, ORO, to Appellant (Mar. 12, 2014). In his Appeal, the Appellant contests the adequacy of search and claims that other offices within the DOE should have possession of the requested documents.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not

hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Project on Government Oversight, Case No. TFA-0489 (2011).**

In response to our inquiries, ORNL stated that it asked its legal group and contracts group to search for "any agreement or contract the laboratory had between China and ORNL regarding molten salt reactors," and after conducting a search, both groups responded that they could not locate any responsive documents. *See* Email from Bryan Quilty, Lab Records Manager, ORNL, to Shiwali Patel, Attorney Advisor, OHA (Apr. 14, 2014). ORNL further explained that both groups maintain databases of the MOUs and contracts and that they used the following search terms to locate the requested documents: "ORNL," "China," "Molten Salt Reactor," and "MSRE." *See* Email from Bryan Quilty, Lab Records Manager, ORNL, to Shiwali Patel, Attorney Advisor, OHA (Apr. 15, 2014). Nonetheless, their search did not yield any responsive documents. Accordingly, based on the above, we conclude that ORO has conducted a reasonable search to uncover relevant documents. *See Valencia-Lucena*, 180 F.3d at 325.

Finally, after receipt of the Appeal, the DOE's Office of Information Resources (OIR) stated that it would forward the Appellant's FOIA Request to the Office of Nuclear Energy (NE) to search for responsive documents. *See* Email from Alexander Morris, FOIA Officer, OIR, to Shiwali Patel, Attorney Advisor, OHA (Apr. 9, 2014). Thus, as requested by the Appellant, another DOE office will be conducting a search for the documents he requested. Accordingly, we will deny this Appeal.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by the Appellant on March 26, 2014, OHA Case Number FIA-14-0019, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) 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 8601 Adelphi Road-OGIS College Park, MD 20740 Web: ogis.archives.gov

E-mail: ogis@nara.gov Telephone: 202-741-5770

_

^{*} Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at http://www.energy.gov/oha.

Fax: 202-741-5769

Toll-free: 1-877-684-6448

Poli A. Marmolejos Director Office of Hearings and Appeals

Date: April 16, 2014