

United States Department of Energy
Office of Hearings and Appeals

In the matter of Letitia A. Murphy)
)
Filing Date: July 11, 2013) Case No.: FIA-13-0050
_____)

Issued: July 22, 2013

Decision and Order

On July 11, 2013, Letitia Murphy (“Appellant”) filed an Appeal from a determination issued to her on June 26, 2013, by the Environmental Management Consolidated Business Center (EMCBC) of the Department of Energy (DOE) (FOIA Request Number EMCBC-2013-01218-F). In its determination, EMCBC 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 contends that there should be documents that are responsive to her FOIA request, which EMCBC has not produced. Thus, this Appeal, if granted, would require EMCBC to conduct another search for the documents that the Appellant requested.

I. Background

On June 24, 2013, the Appellant submitted a FOIA Request, seeking copies of medical records and occupational and industrial records for Gary Lawson, who is deceased. *See* Freedom of Information Act Request – Records for Deceased Individual, from Appellant to EMCBC (June 24, 2013). In her FOIA Request, the Appellant indicated that Gary Lawson worked at the Atomic Energy Plant and with Martin Marietta Corporation. On June 26, 2013, EMCBC issued its determination, stating that a “thorough search for responsive records was conducted by the Portsmouth Paducah Project Office (Portsmouth) of all staff records in their records database,” and that it located no responsive records. *See* Determination Letter from Scott D. Lucarelli, FOIA Officer, EMCBC, to Mary Lawson, c/o Letitia Murphy (June 26, 2013).

The Appellant claims that there should be responsive records, challenging the adequacy of the search for 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 its Determination Letter, EMCBC stated that the search was conducted at Portsmouth as that is the only location within its jurisdiction that may have responsive records. EMCBC explained that the “search consisted of both an automated search of electronic files and a manual search of paper files.” Moreover, in response to our inquiries, EMCBC provided us with additional information to evaluate the reasonableness of its search. EMCBC informed us that it forwarded the FOIA Request to the FOIA Records Point of Contact (“POC”) at Wastren-EnergX Mission Support, LLC, which conducts facility support services at Portsmouth. See Email from Rochelle Zimmerman, EMCBC, to Shiwali Patel, Attorney-Examiner, OHA (July 11, 2013). The POC conducted an electronic and manual search for documents, and it only located a contractor badge for Gary Lawson, but not any medical, occupational or industrial records for him. *Id.*

Based on the foregoing, we are satisfied that EMCBC has conducted an adequate search for documents that are responsive to the Appellant’s FOIA request. As stated above, the standard for agency search procedures is reasonableness, which “does not require absolute exhaustion of the files.” *Miller*, 779 F.2d at 1384-85. Here, a reasonable search was conducted to locate the requested documents. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by the Appellant on July 11, 2013, OHA Case Number FIA-13-0050, 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

* 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>.

Web: ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5759
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 22, 2013