

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Gabriele Weber)
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Filing Date: November 20, 2013) Case No.: FIA-13-0073
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Issued: December 3, 2013

Decision and Order

On November 20, 2013, Dr. Gabriele Weber (“Appellant”) filed an Appeal from a determination issued to her on October 30, 2013, by the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (FOIA Request Number 11-00308-J). In its determination, NNSA 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. NNSA could not locate any responsive documents, and accordingly, the Appellant challenges that adequacy of NNSA’s search for documents. Thus, this Appeal, if granted, would require NNSA to conduct another search for the documents that the Appellant requested.

I. Background

On March 14, 2011, the Appellant submitted a FOIA Request seeking a copy of

all documents related to the May 1960 visit to Argentina by U.S. scientists from the U.S. Army, headed by Mr. Herbert York, including names of persons who participated, the plan, the reports about the experiments, the places that were visited, and the results of these experiments.

See Determination Letter from Elizabeth L. Osheim, Deputy General Counsel, NNSA, to Appellant (Oct. 30, 2013). On October 30, 2013, NNSA responded to the Appellant’s FOIA Request, stating that after conducting a search, it could not locate any responsive documents. *Id.* NNSA explained that the Lawrence Livermore National Laboratory (LLNL) searched for documents without success. *Id.* Moreover, the Nevada Site Office (NSO) searched its federal and contractor files for responsive documents and found none. *Id.* Moreover, NNSA informed the Appellant that documents regarding “Project Plowshare” and “Ditchdigger” are available to the public and accordingly, not subject to a FOIA request. Finally, NNSA suggested that the Appellant may want to submit a FOIA request to the Defense Advanced Research Projects

Agency (DARPA) and the Mandeville Special Collections Library at the University of California, San Diego. *Id.*

On November 20, 2013, the Appellant filed the instant Appeal challenging NNSA's response.

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, NNSA provided us with additional information to evaluate the reasonableness of its search. First, NNSA stated that the subject of the Appellant's Request, Dr. York, was the Director of LLNL from 1952-1958, and that he was not affiliated with NNSA during the time period identified in the Request, which was 1960. *See* Email from Karen Laney, Information Programs Specialist, Office of General Counsel, NNSA, to Shiwali Patel, Attorney-Examiner, OHA (Nov. 26, 2013). NNSA stated that when DOE originally received the request, it searched the History Division within the Office of the Secretariat, but it could not locate any responsive documents. *Id.* Subsequently, DOE transferred the request to NNSA to conduct a search for responsive records, where a search of the Nevada and Livermore field offices' files was conducted. *Id.* The LLNL conducted a search of their archives regarding its involvement in Argentina and it searched an individual's classified correspondence, but found no responsive records. *Id.* The Nevada field office searched its federal and contractor records but could not locate responsive documents. *Id.* Specifically, an individual with the Nuclear Testing Archive searched for documents regarding Argentina, but could not locate responsive documents. Finally, NNSA stated that it believes that any responsive documents would be within the Department of Defense either through the Department of the Army or with the Defense Advanced Research Projects Agency. *Id.* Based on the foregoing, we are satisfied that NNSA 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.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on November 20, 2013, OHA Case No. FIA-13-0073, is hereby denied.

* 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>.

(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.

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Director
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