

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Vicki Locklair)
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Filing Date: January 15, 2014) Case No.: FIA-14-0005
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Issued: February 6, 2014

Decision and Order

On January 15, 2014, Vicki L. Locklair (Appellant) filed an Appeal from a determination issued to her on December 17, 2013, by the Office of the Chief Information Officer (CIO) of the Department of Energy (DOE) (Request No. HQ-2013-00551-PA). In that determination, CIO released 136 documents which were responsive to the request the Appellant filed under the Privacy Act, 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008. This Appeal, if granted, would release four of those documents in a different format.

I. Background

On June 20, 2013, the Appellant filed a Privacy Act request with the CIO for copies of her entire Personnel Security folder dated 2006 through the present. Electronic FOIA Request Submission Form (June 20, 2013) (FOIA Request). On July 2, 2013, she filed an additional request to include a doctor's evaluation added to her file since the date of her first request. Electronic FOIA Request Submission Form (July 2, 2013). The CIO identified 136 documents, of which it released 124 in their entirety. Twelve documents were released in part with home addresses, personal phone numbers, personal email addresses, social security numbers, dates of birth, and other information of third party individuals withheld. Determination Letter dated November 15, 2013, from TheAnne Gordon, Privacy Act Officer, CIO, to Appellant.^{1/}

The Appellant challenges the determination, claiming that she did not receive all of the documents in her personnel security folder. Specifically, she is requesting (1) a DVD copy of her 2013 security interview, (2) a DVD or cassette and video of her two 2006 security interviews, (3) a DVD or cassette and video of her 2006 Accelerated Access Authorization

^{1/} A partial determination was sent to the Appellant on November 15, 2013, with the final determination being sent on December 17, 2013. The partial determination withheld two documents pending review. Those two documents were released to the Appellant in full on December 17, 2013.

Program (AAAP) psychological evaluation, and (4) her 2006 AAAP Minnesota Multi-Phasic Inventory (MMPI) test results.

II. Analysis

In assessing the adequacy of a search under the Privacy Act, courts apply the “adequacy of search” analysis as under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. *Sussman v. U.S. Dep’t of Justice*, 03 Civ. 3618 DRH ETB, 2006 WL 2850608 (E.D.N.Y. Sept. 30, 2006); see *Shores v. FBI*, 185 F. Supp. 2d 77, 82 (D.D.C. 2002); cf. *Sneed v. U.S. Dep’t of Labor*, 14 Fed. Appx. 343, 345 (6th Cir. 2001). 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).^{2/}

We contacted CIO to determine whether the documents the Appellant referenced in her Appeal exist in her personnel security folder and whether they were provided to her. We were informed that written transcripts of the 2013 and 2006 personnel security interviews (PSI) were released to the Appellant in full. We were also informed that a video copy of the 2013 PSI was in her folder at the time of her request. Further, audio cassettes of the two 2006 PSIs also existed in her folder at the time of her request. These three items were sent out for transcription after her request. Because the video and audio copies were present in the Appellant’s security file at the time of the request, that video and audio information is responsive to her request. Although the CIO attempted to satisfy her request by having a written transcript of the information created, such written transcripts, created after the date of the request, do not suffice. Therefore, we will remand the matter to CIO for a new determination either releasing that information in full or justifying its withholding.

As to the 2006 psychological evaluation and MMPI results, the Appellant was provided with copies of that information.^{3/} No DVD or cassette and video tape of the psychological evaluation existed in her file, therefore, she was provided with the hard copy of the psychological evaluation as well as the MMPI test results. Given the fact that no video or audio copies of the psychological evaluation or the MMPI exist in the Appellant’s personnel security file and paper copies of this information were released to the Appellant, we find that CIO’s search for the requested documents was adequate. The documents were in her personnel security file, and they were released to the Appellant. We will deny this part of the Appellant’s request.

^{2/} Decisions issued by the OHA after November 19, 1996, are available on the OHA website located at <http://www.energy.gov/oha>.

^{3/} The MMPI results were part of the psychological report and were designated as document 109 in the information that was released to the Appellant.

III. Conclusion

After considering the Appellant's arguments, we find that CIO did not provide all the information in the Appellant's personnel security file because it provided transcripts of the 2013 PSI and two 2006 PSIs rather than the video and audio copies. CIO did provide the 2006 psychological report and the MMPI. We will remand the matter to CIO for a new determination either releasing the video and audio information or justifying its withholding on another basis. Accordingly, the Appeal will be granted in part and denied in all other respects.

It Is Therefore Ordered That:

- (1) The Appeal filed by Vicki Locklair, Case No. FIA-14-0005, is hereby granted as specified in Paragraph (2) below and denied in all other respects.
- (2) The matter is hereby remanded to the Office of the Chief Information Officer of the Department of Energy, which shall issue a new determination in accordance with the instructions set forth in the above Decision.
- (3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552a(g)(1). 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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