

United States Department of Energy
Office of Hearings and Appeals

In the matter of Len Latkovski)
)
Filing Date: May 1, 2012)
) Case No.: FIA-12-0024
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_____)

Issued: May 24, 2012

Decision and Order

On May 1, 2012, Len Latkovski (“Appellant”) filed an Appeal from a determination issued by the Department of Energy (DOE) Office of Information Resources (OIR). In that determination, OIR responded to a request for information that the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require OIR to perform an additional search and require other DOE offices to search for responsive documents.

I. Background

On July 21, 2011, the Appellant submitted a FOIA request to the OIR, for records relating to certain “closed” cities of the former Soviet Union during the years 1945-1960.¹ See DOE Headquarters FOIA Request Form from Len Latkovski (July 21, 2011) (FOIA Request). On September 13, 2011, OIR sent the Appellant a partial determination letter stating that it referred the request to the Office of History and Heritage Resources (Office of History) in the Office of the Executive Secretariat so that responsive documents, if existing, could be located. The letter went on to state that the Office of History could find no documents responsive to his request.²

¹ These are cities with travel and residency restrictions which were associated with the former Soviet Union’s production of nuclear weapons and other defense and research projects.

² The Appellant appealed the adequacy of the search for responsive documents conducted by the Office of History. In a November 15, 2011, Decision and Order, OHA found that the Office of History had conducted an adequate search under the FOIA. *Len Latkovski*, Case No. FIA-11-0004 (November 15, 2011). OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

OIR subsequently decided to expand the search for documents responsive to the Appellant's FOIA Request to other DOE organizations.³ On March 22, 2012, OIR issued the Appellant another determination letter stating that an additional search had been made at the DOE's Office of Health, Safety and Security (HSS) but that no responsive documents had been located at that Office. Determination Letter at 2. The Letter also informed the Appellant that additional searches were being conducted at DOE's Office of Intelligence and the National Nuclear Security Administration (NNSA) and that the Appellant would receive responses from those offices regarding any responsive documents in their possession.⁴ Determination Letter at 1.

In his May 1, 2012, Appeal of OIR's March 22 determination, the Appellant argues that the search for responsive documents was inadequate. Appeal Letter at 2. The Appellant asserts that an adequate search would consist of a search of various DOE agencies he lists in his appeal. Appeal Letter at 2.

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." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). "[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., Todd J. Lemire*, Case No. VFA-0760 (2002).

During the processing of this Appeal, OHA first contacted OIR to ascertain the scope of the HSS search for responsive documents. *See* E-mail from Richard Cronin, Attorney-Examiner, OHA to Joan Ogbazghi, Information Access Specialist, OIR (May 2, 2012). In its response, an official of HSS informed OHA that the only potential source of responsive records would be contained in its records of the Russian Health Studies Program (RHSP) and that those records would not have any references to the listed "closed" cities especially since the RHSP did not include any of these cities in its studies and that it only possessed records from 1994 onward. *See* E-mail from Barrett Fountos, Program Manager, Russian Health Studies Program, Office of Domestic and International Health Studies Program (May 10, 2012). Additionally, the official had conducted a prior manual search of files for similar documents, pursuant to another FOIA request, but found no responsive documents. *Id.* Given that HSS entrusted the search to a knowledgeable official as to the possible existence of responsive documents and that the official had a reasonable basis to conclude that such documents did not exist in HSS, we find that the search conducted by HSS was adequate for the purposes of the FOIA. *See National Association of Home Builders*, Case No. TFA-0401, *slip op.* at 3 (August 9, 2010) (knowledgeable official's determination that

³ The Appellant's FOIA Request, Request No. HQ-2011-01057-F, was subsequently given a new FOIA Request number - HQ-2012-00181-F.

⁴ During the pendency of this Appeal, OIR requested that the Office of Scientific and Technical Information (OSTI) also conduct a search for documents responsive to the Appellant's request. *See* E-mail from Joan Ogbazghi, Information Access Specialist, OIR (May 15, 2012).

responsive documents were not maintained at a particular office held to constitute an adequate search under the FOIA).

With regard to the Appellant's challenge to the scope of OIR's overall DOE-wide search for responsive documents, we find that this challenge must fail. OIR has forwarded the Appellant's request to the Office of History, HSS, NNSA, OSTI, and the Office of Intelligence. OIR's selection of these offices represents a reasonable determination as to where documents relating to the specified "closed" cities in the former Soviet Union might exist.⁵ Consequently, we find that OIR's search for responsive documents throughout DOE is also adequate.⁶

Based on the foregoing, we find that HSS conducted an adequate search for responsive documents pursuant to the Appellant's FOIA Request. Additionally, we believe that OIR has conducted a DOE-wide search reasonably calculated to discover responsive documents. Therefore, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Len Latkovski on May 1, 2012, OHA Case No. FIA-12-0024, is hereby denied.
- (2) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review pursuant to the provisions of 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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Date: May 24, 2012

⁵ The Individual will receive separate determinations from NNSA, OSTI, and the Office of Intelligence.

⁶ We note that almost all of the offices or agencies the Appellant listed in his Appeal would have had their existing documents, if any, archived at the Office of History or the Office of Intelligence. E-mail from Joan Ogbazghi, Information Access Specialist, OIR to Richard Cronin, Attorney-Examiner (May 16, 2012). The Appellant may appeal the determinations regarding his FOIA Request which will be issued by NNSA, OSTI, and the Office of Intelligence.