

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Ryan Noah Shapiro)

Filing Date: May 16, 2012)

Case No.: FIA-12-0030

Issued: June 8, 2012

Decision and Order

On May 16, 2012, Ryan Noah Shapiro filed an appeal from a determination the Department of Energy’s (DOE) Office of Intelligence and Counterintelligence (IN) issued on April 5, 2012. In its determination, IN responded to a request for documents that Mr. Shapiro submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004.

I. Background

The Appellant requested from the DOE any “records that were prepared, received, transmitted, collected and/or maintained by the [DOE], the National Joint Terrorism Task Force, or any Joint Terrorism Task Force relating or referring to the ‘analysis of the animal rights movement in the U.S.’” referenced in a May 11, 1989, letter from the director of the DOE’s Office of Threat Assessment to a British law enforcement official. Letter from Ryan Noah Shapiro to DOE FOIA Requester Service Center (March 2, 2012) (quoting Letter from Robert A. O’Brien, Jr., Director, Office of Threat Assessment, Defense Programs, to Detective Superintendent Malcolm MacLeod, Scotland Yard (May 11, 1989)).¹ The request was referred to IN, which issued a determination stating that it had located no documents responsive to the request. Letter from Steven K. Black, Principal Deputy Director, IN, to Ryan Shapiro (April 5, 2002). In his Appeal of the determination, Mr. Shapiro contends that “the DOE conducted an inadequate search for records responsive to my request.” Appeal at 1.

¹ Though the request referenced Joint Terrorism Task Forces, the DOE treated the request as one for documents in the possession of the DOE, which could include documents that had been “prepared, received, transmitted, collected and/or maintained” by the DOE or by a Joint Terrorism Task Force.

II. Analysis

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Natural Resources Defense Council*, Case No. TFA-0127 (2005).² The FOIA, however, requires that a search be reasonable, not exhaustive. “[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. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). In cases such as these, “[t]he issue is *not* whether any further documents might conceivably exist but rather whether the government's search for responsive documents was adequate.” *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982) (emphasis in original).

We therefore contacted the DOE’s Office of Information Resources (OIR) for information regarding the search that was performed in this case. OIR informed us that it initially considered referring Mr. Shapiro’s request to the National Nuclear Security Administration (NNSA), but NNSA told OIR that the request did not fall under its jurisdiction. *See* E-mail from Ben Jaramillo, NNSA, to Diana P. Ngo, OIR (March 14, 2012). OIR also inquired with the DOE’s Office of History and Heritage Resources (OHHR), which informed OIR that the Office of Threat Assessment, from which originated the 1989 letter referenced above, had, by 1990, been transferred to the DOE’s Office of Intelligence. Email from Terry Fehner, Office of History and Heritage Resources, to Diana Ngo (April 2, 2012). On this basis, OIR referred Mr. Shapiro’s request to IN.

In reviewing the present Appeal, it became apparent to us that any documents responsive to Mr. Shapiro’s request, if such documents still exist, would be located in whatever DOE office assumed the responsibilities of the former Office of Threat Assessment (OTA). We consulted a source that indicated that, although the OTA became a part of the DOE’s Office of Intelligence in 1990, it was separated from that office as part of a 1994 reorganization. JEFFREY T. RICHELSON, *THE U.S. INTELLIGENCE COMMUNITY* 133 (4th ed. 1999). OHHR confirmed the accuracy of this source, and informed us that, as of 1999, the functions of OTA appear to have resided within the DOE’s Office of Security and Emergency Operations. Email from Terry Fehner, OHHR, to Steven Goering, OHA (May 24, 2012).

OHHR also provided us with contacts within the NNSA who might have knowledge of these matters, and we ultimately contacted a Senior Policy Advisor within the NNSA’s Office of Counterterrorism and Counterproliferation. This official told us that the functions of OTA that would have been responsible for the documents being requested became part of NNSA upon its creation in 2000, but that any such documents would no longer exist, as they would have been disposed of several years ago. Email from Patrick Daly, NNSA Office of Counterterrorism and Counterproliferation, to Steven Goering, OHA (May 25, 2012). Nonetheless, this official coordinated a search of his office, after which he informed us that the office located no responsive documents. Email from Patrick Daly to Steven Goering (May 31, 2012).

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Based on the information available to us, we are now convinced that the DOE has conducted a search reasonably calculated to uncover the materials sought by Mr. Shapiro, and that this search was, therefore, adequate under the FOIA. Thus, we will deny the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on May 16, 2012, by Ryan Noah Shapiro, OHA Case No. FIA-12-0030, 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: June 8, 2012