

United States Department of Energy
Office of Hearings and Appeals

In the Matter of National Security Archive)
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Filing Date: July 12, 2012) Case No.: FIA-12-0039
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_____)

Issued: July 30, 2012

Decision and Order

On July 12, 2012, the National Security Archive (Appellant) filed an Appeal from a determination issued to it on June 21, 2012, by the Office of Information Resources (OIR) of the Department of Energy (DOE). In that determination, OIR did not locate any documents in responding to a request for information that the Appellant had 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 (Request No. HQ-2012-01104-F). The Appeal, if granted, would require OIR to conduct a further search for responsive documents.

I. Background

On April 17, 2012, the Appellant submitted a FOIA request to the OIR, for documents relating to the “First Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Held in Helsinki, Finland, on May 2-5, 1989.” Request Letter dated April 17, 2012, from Robert Wampler, Senior Fellow, Appellant, to Carolyn Lawson, OIR.

OIR forwarded the request to the Office of Policy and International Affairs (OPIA) and to the Office of the Executive Secretariat (ES) because any documents responsive to the request, if they exist, would fall under the jurisdiction of those offices. ES advised OIR that it was not a matter under its jurisdiction and OIR sent a letter to the Appellant advising it of that fact. E-mail dated July 13, 2012, from Alexander Morris, FOIA Officer, OIR, to Janet R. H. Fishman, Office of Hearings and Appeals (OHA), DOE. OPIA conducted searches of its records and failed to locate responsive documents. *See* Determination Letter dated June 21, 2012, from Alexander Morris, FOIA Officer, OIR, to Appellant. On July 12, 2012, OHA received the Appellant’s Appeal, in which it challenges the search for responsive records, including whether OPIA searched for responsive records at the National Records Center. *Id.*

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). “The 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., Glen Bowers*, Case No. TFA-0138 (2006); *Mark D. Siciliano*, Case No. FIA-12-0019 (2012).^{*/}

During the processing of this Appeal, OHA contacted OPIA to ascertain the scope of its search for responsive documents. E-mail dated July 12, 2012, to Alexander Morris, from Janet Fishman; E-mail dated July 16, 2012, to Edith Horne, OPIA, from Janet Fishman. We have not yet received a response from OPIA, and, therefore, are remanding this matter to OIR for an explanation of OPIA’s search for responsive documents and a determination of whether responsive documents are located at an off-site records holding center. The new determination letter should explain the parameters of the search of both on-site and off-site records, if any. Any responsive documents that are located will be identified and released to NSA, or the basis for their withholding will be explained in a new determination letter, with specific reference to one or more FOIA exemptions.

It Is Therefore Ordered That:

- (1) The Appeal filed by National Security Archive, OHA Case No. FIA-12-0039, is hereby granted in part, as described in Paragraph (2), below, and denied in all other respects.
- (2) The matter is remanded to the Office of Information Resources so that the request submitted by National Security Archive may be forwarded to the Office of Policy and International Affairs for an explanation of its search for responsive records and a determination whether responsive documents, as described above, exist.
- (3) 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.
- (4) 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:

^{*/} OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

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Date: July 30, 2012