

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

In the Matter of Saurabh Dixit)
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Filing Date: July 25, 2022) Case No.: FIA-22-0024
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_____)

Issued: August 10, 2022

Decision and Order

On July 25, 2022, Saurabh Dixit (“Appellant”) appealed a final determination letter issued by the Department of Energy’s (DOE) Office of Public Information (OPI) regarding Request No. HQ-2022-00506-F. In that determination, OPI responded to Appellant’s request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The DOE conducted a search and found no documents responsive to the request. The Appellant challenged the adequacy of the search. In this Decision, we deny the appeal.

I. Background

On December 13, 2021, the Appellant submitted a FOIA request seeking the following information:

I have filed a FOIA request because I came to know that DOE policies do[] not comply with the . . . Bureau of Industry and Security [BIS] guidelines regarding export control. They are discriminating against certain groups of people. I came to know that DOE labs are rejecting candidates for employment who have past associations (as students) with an organization that has an embargo. DOE labs say that badges can’t be issued to such candidates . . . Now the DOE labs are imposing restrictions on such candidates. This might be because the FACTS system may raise some kind of alert or flag. I want to understand this and write to the competent authorities along with proper documentation.

FOIA Request HQ-2022-00506-F.

On February 23, 2022, OPI issued an initial interim response letter acknowledging receipt of the request, and stating that upon completion of the search and review of any responsive records located, OPI would provide the Appellant with a response. Initial Interim Response Letter at 1 (February 23, 2022). On April 28, 2022, OPI issued a supplemental interim response letter in which it informed the Appellant that, after further review of the request, the DOE determined that the request was not reasonably described. Supplemental Interim Response Letter at 1 (April 28, 2022). The letter also informed Appellant that, in order for the DOE to commence processing his

request, Appellant would need to restructure his request to specific records sought within 30 days from the date of the letter. Supplemental Interim Response Letter at 1 (April 28, 2022).

On April 30, 2022, Appellant submitted an amended FOIA request to OPI asking for the following:

1. Kindly provide the list of organizations having embargoes. Which department publishes this list.
2. Kindly provide the list of restrictions imposed on these organizations by DOE. [Does] DOE follow the order/guidelines issues by any other U.S. department/departments regarding these restrictions?
3. Kindly provide the list of restrictions on a person ([f]oreign national) who has a past association in the following capacity with these organizations.
 - (i) employee
 - (ii) Contractor
 - (iii) Student or InternIs DOE following the orders/guidelines issued by any other U.S. department/departments regarding these restrictions? Kindly [provide] the name of the organization that originally issue[s] such orders/guidelines.
4. Can a [f]oreign [n]ational who has a past association in the following capacity with these organizations be employed by DOE labs (unclassified visit).
 - (i) employee
 - (ii) Contractor
 - (iii) Student or Intern
5. Can a foreign national (Indian) who had a past association (as a student/Intern) with Bhabha Atomic Research Center (BARC) India join or visit a DOE lab.

Determination Letter at 1–2 (July 18, 2022). OPI contacted the Office of Environment, Health, Safety, and Security (EHSS) to search for responsive records. An EHSS subject matter expert (SME) prepared a search certification which indicated that she had performed a search of EHSS’s staff records for a list of organizations having embargoes, list of restrictions imposed on those organizations by DOE, and a list of restrictions on foreign nationals who have past associations with these those organizations as described in the FOIA request. EHSS Search Certification (July 11, 2022). No records were found as a result of the search. *Id.*

In its Determination Letter to Appellant, OPI stated that EHSS had performed a search but did not locate any records responsive to Appellant’s FOIA request. Determination Letter at 2. Appellant timely appealed OPI’s determination, arguing that “[t]his is completely surprising that DOE doesn’t have any record related to list of organizations having embargoes...[or] records related to the list of restrictions on a ...[f]oreign national who has a past association.” Appeal at 1 (July 25, 2022). Appellant asserted that his request to visit one of the DOE labs was rejected because he was associated with an organization called BARC which has an embargo. *Id.* He further asserted, “Since DOE is conducting a very strict screening including background check[s] for ...[f]oreign [v]isits and [a]ssignments...[t]hey must have records which I have asked for.” *Id.*

OHA contacted a representative from EHSS to obtain additional information concerning the search performed by the EHSS SME. In her written response provided to OHA, the EHSS SME stated that she is the writer of record for DOE Order 142.3B, Unclassified Foreign National Access

Program (FNAP), and as such, she has been responsible for “the development of agency-level unclassified foreign national access policy for the past 20 years....” Email from EHSS SME to OHA (August 4, 2022). She is also “the program manager for the Foreign Access Tracking System (FACTS), the system used to document and track foreign national access across the DOE complex.” *Id.* The EHSS SME explained that “FACTS would be the database where information regarding embargoed entities or restrictions would be documented if it were collected.” *Id.* She stated that this requested information is not collected in FACTS. *Id.*

The EHSS SME’s search for the requested documents covered “electronic documentation, including email, presentations, discussion notes, and other policy development documentation related to the development of DOE Order 142.3B....” *Id.* The search also included a review of the Order itself. *Id.* In addition, the EHSS SME searched for “any information that indicated that DOE developed, or implemented through policy publication, agency-specific requirements involving embargoes or restrictions on foreign national access such as those indicated in the...FOIA request.” *Id.* The EHSS SME concluded,

[T]here are no DOE specific, agency-level policy requirements regarding embargos or restrictions related to foreign nationals who have past associations with embargoed organizations. Any lists of organizations that have been embargoed would be held by the Department of Commerce, Bureau of Industry and Security, the Department of State, or the Department of Treasury. That information can be found on publicly facing websites.

Email from EHSS SME to OHA.

II. Analysis

The FOIA requires agencies to make publicly available records that are reasonably described in a written request, so long as those records are not exempt from disclosure. 5 U.S.C. §§ 552(a)(3)(A), (b). In responding to a FOIA request, an agency need not conduct an exhaustive search of each of its record systems; rather, it need only conduct a reasonable search of “all systems ‘that are likely to turn up the information requested.’” *Ryan v. FBI*, 113 F. Supp. 3d 356, 362 (D.D.C. 2015) (quoting *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The reasonableness of a search depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017) (citing *Weisberg v. DOJ*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

A lack of responsive records does not necessarily indicate that a search was unreasonable. Indeed, a search’s adequacy is “determined not by the fruits of the search, but by the appropriateness of [its] methods.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., American Oversight*, OHA Case No. FIA-19-0010 (2019).

The personal knowledge of agency employees may limit the scope or depth of a search where such personal knowledge reasonably leads the searcher to believe that such scope and depth are reasonably calculated to discover requested records. Though an agency “cannot fail to search at all based upon alleged personal knowledge,” such personal knowledge may guide a search such

that a more limited scope is reasonable. See *James Madison Project v. DOJ*, 267 F. Supp. 3d 154, 161 (D.D.C. 2017); *Emma Best*, OHA Case No. FIA-22-0009 at 3–4 (2022).

A. Adequacy of the Search

In this case, the EHSS SME who conducted the search has in-depth knowledge of past and current requirements for agency-level unclassified foreign national access policy. Given her expertise, based on her knowledge of the FNAP and 20 years of experience in policy development for unclassified foreign national access including to DOE sites, it was not unreasonable for the EHSS SME to be designated as the employee to conduct a search that was most likely to uncover relevant documents. As for the search methods and locations searched, the search was conducted using search terms provided in the FOIA request, with a focus on obtaining any information that indicated that DOE had either developed or implemented restrictions on foreign national access. This electronic search for records included a search for several forms of electronic documentation—e.g., policy development documentation, presentations, email, and discussion notes. The requested documents would be most likely to be found in electronic format because, as explained by the EHSS SME, the entire policy development process for DOE Order 142.3B (FNAP) was conducted electronically online. Email from EHSS SME to OHA. As such, we find that the EHSS’s search, though it did not produce the requested lists and documents sought by Appellant, was nonetheless adequate, given the description of the search conducted by the EHSS SME.

In addition, the EHSS SME states that she has personal knowledge that there are no lists of organizations embargoed by the DOE—i.e., embargoed entities—nor are there lists of restrictions on foreign nationals that have been embargoed by the DOE. As explained in her written response, if such information existed within DOE records, it would have been collected in the FACTS system, which documents and tracks foreign national access across the DOE complex. As the program manager for the FACTS system, it is reasonable to assume that the EHSS SME possesses personal knowledge of the contents of the FACTS system. Therefore, she used her personal knowledge to guide the search and conduct a search tailored to the scope described above; *i.e.*, a search of the electronic records in locations most likely to contain the requested documents.

We find that DOE has met its burden to show that its search was reasonably calculated to discover the responsive records, based on the search certification submitted by EHSS, and a sufficiently detailed explanation as to the search methods, locations searched, and an explanation that DOE has no relevant policies or lists of embargoed organizations or of restrictions on foreign nationals who have past associations with embargoed entities.

III. Order

It is hereby ordered that the appeal filed by Saurabh Dixit on July 25, 2022, Case No. FIA-22-0024, is denied.

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. § 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.

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 the right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769
Toll-free: 1-877-684-6448

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