

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

In the Matter of Savannah River Site Watch )  
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Filing Date: August 29, 2022 ) Case No.: FIA-22-0027  
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Issued: September 22, 2022

**Decision and Order**

On August 29, 2022, Savannah River Site Watch (“Appellant”) appealed a determination letter issued by the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) regarding Request No. FOIA 21-00282-R. In that determination, NNSA 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. In the Determination Letter, NNSA released three responsive documents, including one document which NNSA partially withheld under FOIA Exemption 5.<sup>1</sup> The Appellant challenged the adequacy of the search. As explained below, we deny Appellant’s appeal.

**I. Background**

On July 20, 2021, the Appellant submitted a FOIA request seeking “[a]ny ‘lessons-learned report(s)’ or review(s) analyzing what happened with the bungled MOX project and what can be [done to] avoid a similar boondoggle in the future; Any attachments to any MOX ‘lessons-learned report(s).’” Determination Letter at 1 (July 13, 2022). On November 19, 2021, the Appellant narrowed the scope of the request by submitting a revised FOIA request for the following information:

1. Though the CD-4 level for the MOX project was never reached, I request any project closure reports, project termination reports, lessons learned reports and “best practices” reports or assessments prepared concerning performance of both NNSA and contractors as the project was winding down, from January 1, 2016[,] and October 10, 2018.
2. I request any reports on lessons learned, project closeout, project termination or project management practices, per DOE regulations or per instructions by DOE and NNSA management, from October 10, 2018[,] to November 19, 2021, after MOX project termination was allowed to proceed by the federal court.
3. I am seeking the mentioned reports as they apply to both DOE and NNSA management and performance and contractor management and performance on the MOX project.

<sup>1</sup> Appellant’s appeal does not challenge NNSA’s redactions made pursuant to Exemption 5.

4. I am seeking any mentioned reports that were prepared for internal DOE or NNSA use or were sent to Congress.

Final Response Memorandum from NNSA Savannah River Field Office to NNSA (hereinafter “Final Response Memorandum”) at 1 (May 13, 2022). NNSA referred the revised FOIA request to the Savannah River Field Office (NA-SV).<sup>2</sup> Determination Letter at 1 (July 13, 2022). NA-SV in turn referred the case to the Savannah River Acquisition and Project Management Office (APMO) to conduct a search for responsive documents. Final Response Memorandum at 1; Memorandum of Telephone Conversation between APMO, NA-SV, and OHA (September 13, 2022). APMO located three responsive documents (Docs.) which NNSA released to the Appellant in its July 13, 2022, Determination Letter. NNSA redacted portions of Doc. 1 pursuant to Exemption 5, and released Doc. 2 and Doc. 3 in their entirety. Determination Letter at 1–2.

On August 29, 2022, OHA received Appellant’s appeal. The appeal asserts that NNSA conducted an inadequate search because the responsive documents that were provided to the Appellant contain references to four additional missing documents, which Appellant contends should have been provided to him. Appeal at 1–4. The Appellant argues that the four specific documents, which he identified in the appeal, are responsive to his request and “should have been identified” as part of NNSA’s search. Appeal at 4. The Appellant first argues that Doc. 2, entitled Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF) Project Closure Report, dated November 30, 2021, refers to a missing document as follows: “A complete Lessons Learned document is in development and will be provided under separate cover” (hereinafter “Lessons Learned Document One”). Appeal at 3; Doc. 2 at 9. Second, Appellant argues that Doc. 3, entitled Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF) Project Closure Report, dated September 23, 2021, refers to a missing list of “Lessons Learned Items.” Appeal at 3. Doc. 3 contains a Lessons Learned section which states,

The MOX Termination Project employed a Lessons Learned program that was procedurally implemented and executed in accordance with DOE Order 210.2A...and DOE O 413.3B, Program and Project Management for the Acquisition of Capital Assets. The procedure defined the processes by which Lessons Learned were received, identified, documented, validated, and disseminated. Various sources and projects were systematically reviewed and Lessons Learned were determined applicable to the project based on the nature of the work, hazards, ...similar projects, and trends.

Appeal at 3; Doc. 3 at 38. The appeal asserts that “No Lessons Learned documents prepared as part of the MOX Termination Project via the above-named procedures” were provided by NNSA to the Appellant. Appeal at 3. The appeal further asserts that, while Doc. 3 contains examples of some “Lessons Learned Items,” there must exist a complete list of “Lessons Learned Items”, and NNSA should have found and provided that list as a responsive document. Appeal at 3; Doc. 3 at

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<sup>2</sup> The Determination Letter contains an error in stating that NA-SV, Savannah River Nuclear Solutions, LLC (SRNS), and the Savannah River Acquisition and Project Management Office (APMO) conducted a search of their records. Determination Letter at 1. OHA verified that APMO was the program office that actually conducted the search for responsive records. Memorandum of Telephone Conversation between APMO, NA-SV, and OHA (September 13, 2022). OHA finds that the error in the Determination Letter is harmless because APMO officials responsible for the search correctly determined that there was no reason to believe that responsive documents would be located at SRNS or SA-NV. Telephone Memorandum at 1 (September 13, 2022).

38, 60. The appeal further argues that Doc. 3 mentions another document entitled, “NNSA, APM Lessons Learned Report, 2021;” however, NNSA did not provide that document to Appellant. Appeal at 3–4. Finally, the appeal asserts there is a fourth missing document because Doc. 3 states, “The MOX-T project will submit a Lessons Learned document by December 31, 2021[,] in accordance with the milestone listed in the statement of work document....” Appeal at 4; Doc. 3 at 39. This Lessons Learned document was not provided to Appellant. Appeal at 4.

The Appellant argues that because the search was inadequate, NNSA should be directed to “immediately release” the four allegedly missing documents, and he requests that “their release be expedited.” Appeal at 5. The Appellant also requests that “a search for documents that [it] has not identified be conducted.” *Id.*

Upon receipt of the appeal, OHA requested that NNSA provide a copy of the search certificates for the search performed pursuant to the FOIA request. Email from OHA to NNSA (September 2, 2022). In response, NNSA provided the Final Response Memorandum prepared by NA-SV. Email from NNSA to OHA (September 8, 2022). NNSA stated that it utilizes Final Response Memoranda as search certification(s). *Id.* The Final Response Memorandum stated that on November 19, 2021, the Appellant narrowed the scope of its FOIA request, and that in response to that revised request, “APMO conducted a search of the electronic shared folders.” Final Response Memorandum at 1–2. APMO’s search identified Doc. 1, Doc. 2, and Doc. 3 and concluded that those three documents were responsive to the Appellant’s FOIA Request. *Id.*

OHA contacted a representative from APMO and the DOE official from NA-SV who authored the Final Response Memorandum, in order to obtain additional information concerning the search that APMO performed. APMO noted that the Appellant narrowed the scope of its FOIA request to the time period from October 10, 2018, to November 19, 2021. Email from NA-SV and APMO to OHA, Attachment 1 at 2 (September 9, 2022). APMO stated that notwithstanding the fact that the request sought documents for the time period ending on November 19, 2021, since APMO received the Appellant’s request on November 30, 2021, APMO expanded its search to include a later cut-off date of November 30, 2021. *Id.* APMO did not search for any documents after the search cut-off date, and therefore, it does not know whether any such documents exist. APMO asserted that it may have received or generated new documents after the November 30, 2021, cut-off date, however, that would have required it to conduct a new search for responsive documents, which it contends is not within its search obligations because it is outside the scope of the Appellant’s FOIA request. *Id.*

APMO’s search for the requested documents included searches for “lessons learned” documents related to the MOX project, and was conducted using search terms such as “project closure reports; lessons learned” as well as additional terms from Appellant’s revised FOIA request. Memorandum of Telephone Conversation between NA-SV, APMO, and OHA (September 9, 2022). APMO’s search locations covered “searches of (i) Electronic Document Workflow System, (ii) Engineering, Plant, and Facilities Management, (iii) Lotus Notes Library (legacy), (iv) Pluto-Docu-Lite, and (v) MAX.gov.” Email from NA-SV and APMO to OHA (September 13, 2022). The locations that were searched are all databases that would include any “lessons learned” documents related to the MOX project. *Id.* Moreover, the “Pluto-Docu-Lite” system is a system used “for storage of Documentum from the MOX Fuel Fabrication Facility [hereinafter “MFFF”] Project.” *Id.* “The MOX MFFF used the Documentum to store documents, procedures, correspondence, reports, etc.

relating to the construction of the MOX Project.” *Id.* Thus, APMO searched the databases for the MOX MFFF Project, and it searched the databases for the MOX Termination Project.<sup>3</sup> Memorandum of Telephone Conversation between NA-SV, APMO, and OHA (September 13, 2022). The above searches by APMO were conducted by subject matter experts (SME) for the MOX Project, including the Federal Project Director who was in charge of the MOX Termination Project. Telephone Memorandum at 1 (September 9, 2022); Email from NA-SV and APMO to OHA (September 13, 2022); Telephone Memorandum at 1 (September 13, 2022). APMO has control over all documents related to capital line items for NNSA at Savannah River. Telephone Memorandum at 1 (September 13, 2022). As part of its role concerning projects at Savannah River, APMO was responsible for oversight authority for construction of the MOX MFFF Project. Telephone Memorandum at 1 (September 9, 2022). Also, the documents associated with the MOX MFFF Project and the MOX Termination Project documents are stored by APMO. Telephone Memorandum at 1 (September 13, 2022). Moreover, APMO has control of the types of documents for the MOX Termination Project that were sought in the revised FOIA request. Telephone Memorandum at 1 (September 13, 2022).

Following OHA’s contact with APMO regarding the appeal, APMO informed OHA that on September 12, 2022, it conducted new searches in which it searched the NNSA APMO SharePoint and shared workgroup network folders. Email at 1–2 (September 13, 2022). Those additional searches were conducted for purposes of attempting to locate two of the allegedly missing, responsive documents discussed in the appeal: (1) a list of “Lessons Learned Items” that the Appellant asserted was in existence during the requested time period of his revised FOIA request, and (2) the “Lessons Learned document” by the MOX-T project which was supposed to have been completed by December 31, 2021 (hereinafter “December 2021 Lessons Learned document”). *Id.* The networks where APMO searched contain “project documents (*i.e.*, lessons learned, reports, correspondence, etc.) related to the projects for the NNSA APMO.” *Id.* Regarding the list of “Lessons Learned Items,” APMO used the search term “lessons learned” when conducting the search, but found no “complete list” of “Lessons Learned Items” in its networks. Email at 1 (September 13, 2022). Moreover, regarding the allegedly missing list of “Lessons Learned Items,” NA-SV and APMO explained to OHA that the examples of “Lessons Learned Items” on page 38 of Doc. 3 that the Appellant cited in the appeal are not items that are part of the MOX Termination Project.<sup>4</sup> Telephone Memo at 1 (September 13, 2022). Rather, those “Lessons Learned Items” in Doc. 3 are examples of various outside resources and other projects that were used as references that have potential applicability to the MOX Termination Project due to concepts such as the “nature of the[ir] work,... similarity in projects, and trends.” Telephone Memo at 1 (September 13, 2022); *see* Doc. 3 at 38.

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<sup>3</sup> The construction of the MOX MFFF Project was never completed, and “[o]n October 10, 2018, DOE NNSA [APMO], Procuring Contracting Officer, ...issued to MOX Services, LLC (MS) a notice of termination for construction of the MOX MFFF.” Doc. 3 at 8. Following the issuance of this termination notice, the “NNSA Office of Acquisition and Project Management, Head of the Contracting Activity...delegated authority to administer MOX project termination activities to the Termination Contracting Officer (TCO).” *Id.* Thus, when construction of the MOX MFFF Project terminated prior to its completion, the MOX Termination Project began.

<sup>4</sup> For example, one of the “Lessons Learned Items” in Doc. 3 at 39 refers to the “Thomas Jefferson National Accelerator Facility” and its lessons learned from receiving “suspected counterfeit N95 masks from a registered vendor.” Doc. 3 at 38. This Lessons Learned Item referred to a completely different facility that was not part of the MOX Fuel Fabrication Facility (MFFF) Project or the MOX Termination Project. Telephone Memo at 1 (September 13, 2022).

As for the “December 2021 Lessons Learned document,” APMO conducted a new search for this document on September 12, 2022. Email at 1–2 (September 13, 2022). APMO searched the NNSA AMPO SharePoint and shared network which contain project documents related to the MOX project using the search term “lessons learned.” Email at 1–2 (September 13, 2022). As a result of this search, APMO found that NNSA generated the “MOX Termination Project Lessons Learned Report” on December 21, 2021. *Id.* Thus, NNSA created the document after the cut-off date for this FOIA request.

## 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

The Appellant argues that the search was inadequate because, allegedly, there are four additional responsive documents that should have been identified during the search and which NNSA failed to provide with its Determination Letter. The Appellant relies on the fact that some of the responsive documents that NNSA provided to it make reference to four additional documents. However, it is the appropriateness of the search methodology, rather than the fruits of the search, that determines whether the search was adequate. Given the description of the search conducted by APMO, we find that the search was reasonably calculated to discover responsive documents. Since APMO was responsible for oversight authority for construction of the MOX MFFF Project, and it has control of the documents associated with the MOX Termination Project, APMO was a logical choice as the correct program office to conduct the search for responsive documents. Further, the SMEs who conducted the search included the Federal Project Director (FPD) who was in charge of the MOX Termination Project. Given the FPD’s expertise in the MOX Termination

Project, it was not unreasonable for the FPD SME to be designated as one of the APMO officials to conduct a search that was most likely to uncover relevant documents. As explained and indicated by APMO, the FPD would have known where the requested documents were located, including the allegedly missing documents that are the subject of the appeal, if they existed during the time period of the FOIA request.

Further, APMO took several actions that demonstrate that its search was reasonably calculated to produce responsive documents. First, APMO used specific search terms provided in the Appellant's revised FOIA request, and it searched its databases and file systems which housed documents from the MOX Termination Project. It also expanded its search to include the database that stores documents, procedures, correspondence and reports for the MOX MFFF Project that were generated during the construction of the MOX MFFF Project. By expanding the search in this manner, it was more likely to capture any responsive documents that were related to the MOX Termination Project, including those documents during its construction that may have subsequently been associated with its termination. Second, APMO also expanded its search by extending the search cut-off date to November 30, 2021, which increased the likelihood that the search would produce responsive documents since it searched for documents that were generated after the requested time period ending on November 19, 2021. APMO's searches would have also been reasonably likely to produce the allegedly missing documents that Appellant discusses in the appeal. Specifically, the Appellant contends that Doc. 2 mentions "[a] complete Lessons Learned document" that was under development and was purportedly going to be provided under separate cover. The appeal also asserts that Doc.3 makes reference to a "December 2021 Lessons Learned document," a "NNSA APM Lessons Learned Report, 2021" and a List of Lessons Learned Items that allegedly existed during the requested time period of the Appellant's FOIA request. Appeal at 3. Given APMO's expansive search which also extended the cut-off date, if the requested documents had existed during the requested time period identified in the FOIA request, APMO's search was crafted using sufficient methodology that there is a reasonable likelihood it would have located those documents. Moreover, as correctly asserted by APMO, while it is possible that APMO had continued to receive or generate new documents after the November 30, 2021, cut-off date, APMO was not obligated to search for documents after the search cut-off date because such a search would be beyond the scope of the FOIA request.

APMO also undertook new, additional searches subsequent to being contacted by OHA, whereby APMO searched its NNSA AMPO SharePoint and shared network folders for two of the allegedly missing documents discussed in the appeal. Those subsequent searches further support OHA's determination that APMO's search was adequate. Regarding the "December 2021 Lessons Learned document, NNSA APMO's search produced the document which was not generated by NNSA until December 21, 2021. This is significant because the document was not in existence at the time of the search cut-off date. Moreover, the document itself is outside the scope of the original FOIA request because the Appellant had requested documents through November 21, 2021. Therefore, we find NNSA's search was adequate.

As for the additional search for the list of "Lessons Learned Items," APMO's search was adequate because it used the search terms "Lessons Learned" which reflects the type of document sought as well as its subject matter, and it searched the locations that contain project documents that were related to the projects for NNSA APMO including the MOX Termination Project. Thus, if such a document existed and it was responsive to the FOIA request, then it was reasonably likely that

APMO's new search would have located the requested document. Moreover, as explained by APMO, the examples of "Lessons Learned Items" on page 38 of Doc. 3 that the Appellant cited in the appeal are not items that are part of the MOX Termination Project. Thus, even if there was a complete list of "Lessons Learned Items" taken from the referenced partial list of examples in Doc. 3, such a list would have provided additional examples of different projects, rather than the MOX Termination Project. This is evidenced by the examples cited by the Appellant on page 38 of Doc. 3, which refer to Lesson Learned Items from completely different facilities that are not the MOX Fuel Fabrication Facility (MFFF). This information supports the possibility that even if such a list of Lessons Learned Items existed, it would not be responsive to the FOIA request because it goes beyond the narrowed scope of the revised request.

Accordingly, we conclude that the search was reasonably calculated to uncover the records requested by Appellant, and that the search was therefore adequate.

### **III. Order**

It is hereby ordered that the appeal filed by Savannah River Site Watch on August 29, 2022, Case No. FIA-22-0027, 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.

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