

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

In the Matter of: Anna Noteboom

Filing Date: April 4, 2024

Case No.: FIA-24-0019

Issued: May 1, 2024

Decision and Order

On April 4, 2024, Anna Noteboom (Appellant) appealed a Determination Letter issued to her from the National Nuclear Security Administration's (NNSA) Office of the General Counsel (OGC) regarding Request No. A-FOIA 22-00274-R, a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In its Determination Letter, OGC stated that its search discovered no responsive records. Appellant challenged the adequacy of the search. In this Decision, we deny the appeal.

I. BACKGROUND

On August 15, 2022, Appellant submitted a FOIA request seeking a “moment in time capture” for the following file:

- Location: Thin client associated with Microsoft 365 USERID anna.noteboom, Domain: nnsa.doe.gov, Associated email address: anna.noteboom@nnsa.doe.gov.
- What: Request Moment in Time capture for file.
- Filename contains: SpecificTask [sic] List Plan - Noteboom - v4 -AN notes. File type: Microsoft Excel (.xlsx).
- Path: “This Computer” (for account: anna.noteboom) -> “Documents” -> “Admin”
- Moment in Time: 1300 EDT, 13 July 2022.”¹

Determination Letter 1 from OGC to Anna Noteboom at 1 (dated June 7, 2023, sent June 14, 2023). OGC contacted the Department of Energy's (DOE) Office of the Chief Information Officer (OCIO) and requested that OCIO perform an email search based on the parameters Appellant specified. NNSA Exhibit (Ex.) 2 at 1. OCIO used the search terms “Directory: This Computer-> Documents-> Admin,” “All files in this folder(*.*) Including any file in this folder with the filename: SpecificTask List Plan - Noteboom - v4 -AN notes,” “UserID: anna.noteboom,” “Domain: nnsa.doe.gov,” and “From Date: 13 July 2022.” Determination Letter at 1. On June 14, 2023, OGC sent Appellant a Determination Letter informing her that no records responsive to her request had

¹ Records responsive to FOIA requests include only those records in existence at the time the search is performed. *Aguiar v. DEA*, 992 F.3d 1108, 1111 (D.C. Cir. 2021). The FOIA does not require agencies to create records in response to a FOIA request or to add explanatory material to a document; a FOIA requestor “must take the agency records as he finds them.” *Id.* at 1112.

been located in the search. *Id.* at 1. Appellant timely appealed, stating that the search had been limited to email when she had asked for a search of the Documents folder of the Microsoft Windows profile associated with USERID anna.noteboom. Appeal 1 at 1. Appellant added that the requested file contents were subject to retention under policies of the National Archives and Records Administration. *Id.* On September 8, 2023, I issued a decision finding that the search performed in response to Appellant’s FOIA request was inadequate because OCIO did not search the specific location identified by the requester. OHA Case No. FIA-23-0026. I remanded the case to OGC for further processing. *Id.*

OGC again requested that OCIO perform the search for the requested records. OCIO Search Memorandum at 1 (January 3, 2024). OCIO found that the search terms referred to a virtual client and the contents of the requested folder would have had to be uploaded to Appellant’s OneDrive account while she was logged in to avoid them being deleted when she logged out. *Id.* at 2. OCIO further found that the Appellant’s OneDrive account was decommissioned on July 13, 2022, and the requested folder therein was no longer accessible or searchable. *Id.* OCIO also provided to OGC a screenshot of the OneDrive location where files stored on the NNSA server had been migrated after the transition to OneDrive. Email from Aric King, OCIO, to Theresa Follo, NNSA Records Management Program Officer (April 10, 2023). The folder contained no files. *Id.* OCIO’s search discovered no responsive records. *Id.* at 1.

On February 20, 2024, OGC sent Appellant a Determination Letter describing the results of OCIO’s search and stating that the search did not yield any responsive records. Determination Letter 2 at 2. Appellant filed this appeal, arguing that files located within the folders she referenced were subject to permanent retention according to the Federal government’s records management policy (FRMP).² Appeal 2 at 1. She further argued that the date for the snapshot of the files requested was prior to NNSA’s migration to OneDrive, so the files would have been stored on a server. *Id.*

II. ANALYSIS

Under the FOIA, agencies are required to “conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Reporters Comm. for Freedom of the Press v. FBI*, 877 F.3d 399, 402 (D.C. Cir. 2017). An agency is obligated to search all locations likely to hold responsive records unless doing so would cause an undue burden for the agency. *Heffernan v. Azar*, 317 F. Supp. 3d 94, 113 (D.D.C. 2018; *see also Valencia-Lucena v. United States Coast Guard, FOIA/PA Records Mgmt.*, 180 F.3d 321, 327 (D.C. Cir. 1999) (“It is well-settled that if an agency has reason to know that certain places may contain responsive documents, it is obligated under FOIA to search barring an undue burden.”)).

FOIA requests must reasonably describe the records sought, and the agency has a duty to construe requests liberally in favor of disclosure. *Wallick v. Agric. Mktg. Serv.*, 281 F. Supp. 3d 56, 67 (D.D.C. 2017). A request is reasonably described when the phrasing is “specific enough so that a professional employee of the agency who was familiar with the subject area of the request would be able to locate the record with a reasonable amount of effort.” *Id.* It is well established that the “linchpin inquiry is whether the agency is able to determine ‘precisely what records (are) being requested.’” *Yeager v. Drug Enf’t Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982) (quoting S.Rep. No. 854, 93d Cong., 2d Sess. 10 (1974); Source Book at 162) (parentheses in original). DOE regulations

² Whether DOE properly adhered to a record management schedule is outside the scope of a FOIA appeal.

require DOE to: (1) inform a requester when the language of the request does not reasonably describe the records sought and (2) work with the requester to clarify the language of the request. 10 C.F.R. §§ 1004.4(c)(2), 1004.5(a).

Appellant described the location of the requested file in detail. OCIO attempted to follow the path specified but was unable to locate the requested location because it had been decommissioned and was no longer accessible. Moreover, the migrated location for Appellant's server-side files was empty. Appellant was specific and consistent since making her request about the location of the requested file. OCIO's search followed the specified path as closely as possible until reaching a point where the path's folders no longer existed. Accordingly, I find that OCIO's search was reasonably constructed to locate the requested file with a reasonable amount of effort.

III. ORDER

For the foregoing reasons, I find that the search performed in response to Appellant's FOIA request was adequate. It is hereby ordered that the Appeal filed on April 4, 2024, by Anna Noteboom, No. FIA-24-0019, 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 one's 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: <https://www.archives.gov/ogis> Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals