

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

In the Matter of Jeffrey Rosenberg )

Filing Date: August 28, 2024 )  
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Case No.: FIA-24-0049

Issued: September 6, 2024  
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**Decision and Order**  
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Jeffrey Rosenberg (Appellant) appealed a determination letter dated August 26, 2024 issued to him by the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) concerning a request (Request No. FOIA 24-00186-KA) that he 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. In its determination letter, NNSA stated that its search uncovered no responsive records. Appellant challenged the adequacy of the search. In this Decision, we deny the appeal.

**I. Background**

On February 20, 2024, the Appellant submitted a FOIA request stating, “I would like all chat logs and images posted by the participants in the infrastructure meeting on Skype for Y12 and Pantex on October 17, 2023.” FOIA Request from Jeffrey Rosenberg at 1 (Feb. 20, 2024).

On March 20, 2024, NNSA sent the Appellant a letter acknowledging his request. Acknowledgement Letter from NNSA to Jeffrey Rosenberg at 1 (Mar. 20, 2024). On April 1, 2024, the Appellant provided further information concerning the request, stating that the meeting was between 8:00 AM and 11:00 AM, and that two participants in the meeting were Jeffrey Rosenberg and Bryan Cross. Memorandum from NNSA Field Counsel to NNSA FOIA Analyst (Apr. 11, 2024).

NNSA determined that its contractor, Consolidated Nuclear Security, LLC (CNS), would possess any records related to the request. *Id.* CNS conducted a search in April 2024. *Id.* CNS had three employees conduct electronic searches of records of Skype meetings in the CNS unclassified network drive. *Id.* The employees searched using the date of the meeting and the terms: “October 17, 2023,” “infrastructure,” “stand up,” and “infrastructure stand up.”<sup>1</sup> *Id.* at 2. They searched on the date that the Appellant requested and also looked at nearby dates to ensure that there were no relevant files. *Id.* This search revealed no responsive documents. *Id.*

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<sup>1</sup> CNS determined that the information that the Appellant was seeking was about the “Infrastructure Stand-Up” meeting that was held on October 17, 2024. Memorandum from NNSA Field Counsel to NNSA FOIA Analyst (Apr. 11, 2024).

A follow up search was conducted in August of 2024 to clarify details regarding the above search and to verify that the results were correct. Memorandum from CNS Manager to NNSA Field Counsel (Aug. 14, 2024). As a part of this follow up search, CNS clarified that it was searching its Archive Manager, which stores all email history, Skype meeting history, and Skype conversation history. *Id.* In addition to searching the terms mentioned above again, CNS searched all emails<sup>2</sup> sent to and from individuals with the following names on October 17, 2023: “Rosenberg,” “Sederlin,”<sup>3</sup> and “Cross.” *Id.* These searches returned one record related to the meeting mentioned in the request, a Skype log for the 10/17/23 Infrastructure Stand-Up meeting, which only stated the participants in the meeting. *Id.* at 2. This record was determined to not be responsive to the request, and, as such, it was not provided to the Appellant. *Id.* If a Skype meeting has a chat history or attachments, that would have been automatically saved. Email from CNS Manager to NNSA Field Counsel and NNSA FOIA Analyst (Aug. 20, 2024). When searching, the CNS Manager had this fact confirmed by looking at chat logs of meetings on other dates which had been saved. *Id.*

NNSA issued a determination letter to the Appellant on August 26, 2024, explaining how it conducted its search and explaining that no responsive documents were located. Determination Letter from NNSA to Jeffrey Rosenberg at 1 (Aug. 26, 2024).

The Appellant timely appealed the determination letter to the Office of Hearings and Appeals (OHA) on August 28, 2024. Appeal Letter Email from Jeffrey Rosenberg to OHA at 1 (Aug. 28, 2024). In his appeal, the Appellant challenges the adequacy of the search. Appellant argues that NNSA must be inappropriately withholding responsive documents because, he alleges, he was present at the infrastructure meeting referenced in his FOIA request and witnessed the creation of the documents that he requested. *Id.*

## II. Analysis

A FOIA request requires an agency to “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 applicable standard of reasonableness “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. “The adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Jennings v. Dep’t of Justice*, 230 F. App’x 1, 1 (D.C. Cir. 2007) (internal quotation marks omitted). OHA has not hesitated to remand a case where it is evident that the search conducted was in fact inadequate, and whether the search conducted was reasonable depends on the facts of each case. *See, e.g., Ayyakkannu Manivannan*, OHA Case No. FIA-17-0035 (2017); *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 497 (D.D.C. 2017) (citing *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

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<sup>2</sup> According to the CNS Manager, they searched the email accounts because any meeting minutes, chats, or attachments related to the Skype call would have been saved to participants’ email accounts if those documents existed. Email from CNS Manager to OHA (Sept. 3, 2024).

<sup>3</sup> Mr. Sederlin’s email was searched because he was involved with another FOIA request that the Appellant made. Email from CNS Manager to OHA (Sept. 3, 2024). CNS was trying to “cover all of [its] bases” by including him in the search. *Id.*

The search described by NNSA was clearly calculated to uncover all relevant documents. Several relevant search terms were determined based on the Appellant's request, and then, those terms were used to search electronic databases where CNS would have reasonably expected any responsive records to be stored. NNSA took care to confirm that if records of the type that the Appellant was seeking existed, those records would be saved in the place that it searched. NNSA also had its contractor complete a second search to confirm that the records that the Appellant was seeking were not saved in an alternative location. The mere fact that CNS did not locate any responsive records is not alone indicative of an inadequate search. *Jennings*, 230 F. App'x at 1. As such, we find that the searches performed were reasonably calculated to uncover all responsive documents in the possession of NNSA.

### **III. Order**

It is hereby ordered that the appeal filed by Jeffrey Rosenberg on August 28, 2024, Case No. FIA-24-0049, 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:

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