

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

In the Matter of: Stephan Foley	)	
	)	
Filing Date: February 27, 2025	)	Case No.: FIA-25-0018
	)	
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Issued: March 13, 2025

**Decision and Order**

On February 27, 2025, Stephan Foley (Appellant) appealed a Determination Letter issued to him from the Department of Energy's (DOE) Office of Public Information (OPI) regarding Request No. HQ-2025-01935-F, 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 his request, Appellant was seeking a list of all systems of records for DOE's Office of Intelligence and Counterintelligence (IN) and their Privacy Impact Assessments. OPI informed Appellant that the requested information is publicly available and provided a link to it. Appellant challenged the adequacy of DOE's search. In this Decision, we deny the appeal.

**I. BACKGROUND**

On January 13, 2025, Appellant filed a FOIA request seeking the following records:

[A] list of all systems of records, as defined in 5 U.S.C § 552a(5), maintained by your component. I would like this list to include all systems of records maintained both at headquarters and in all field offices.

[A] list of all Privacy Impact Assessments produced by your component to fulfill the requirements of the E-Government Act of 2002. Again, I would like this for both headquarters and all field offices.

FOIA Request from Stephan Foley at 1 (Jan. 13, 2025). OPI forwarded the request to IN to perform a search. Final Determination Letter from Richard Hayes to Stephen Foley at 1 (Feb. 7, 2025). IN contacted OPI, stating:

In context, we (DOE-IN) would have to create new records in order to fulfill this request. There are no existing records that would provide the lists that the requester is after. Creating new requests is not a requirement under FOIA, so I'd like to know, **how your office would like to proceed?** The second concern is that the DOE system of records notices are published publicly on the federal [register]. **Would it**

**be best to point the requester in that direction?** Which would then answer this request.

Email from IN to Robert Edwards (Jan. 30, 2025) (emphasis in original). In its Final Determination Letter to Appellant, OPI stated IN had confirmed that the requested information was available publicly and provided the link to the Federal Register page that contained the requested information. Determination Letter at 1. Appellant filed an appeal, which stated, “[p]lease verify the following: A search was done for the most complete listings available [and] if any listing was withheld, that it was properly classified.” Appeal Letter from Stephan Foley to the Director of the Office of Hearings and Appeals (rec’d Feb. 27, 2025).

## **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.”). The FOIA does not require agencies to create records for the purpose of fulfilling a request for information. *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161–62 (1975)).

The email in which IN confirmed to OPI that it does not maintain lists of systems of records or Privacy Impact Assessments is sufficient to establish that an adequate search was performed for the requested records and that none were withheld. No internal lists of systems of records or Privacy Impact Assessments exist and IN is not required to create them. The search that was performed yielded only public information. There is no evidence that any classified information was withheld.

## **III. ORDER**

It is hereby ordered that the Appeal filed on February 27, 2025, by Stephan Foley, No. FIA-25-0018, 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](mailto:ogis@nara.gov)  
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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