

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

In the Matter of Texas Public Policy Foundation)	
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Filing Date: March 6, 2025)	Case No.: FIA-25-0019
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Issued: April 4, 2025

Decision and Order

Texas Public Policy Foundation (Appellant) appealed a determination letter dated January 30, 2025, issued to it by the Department of Energy's (DOE) Office of Public Information (OPI) concerning a request (Request No. HQ-2022-00952-F) that it 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, OPI stated that its search uncovered one responsive record. Appellant challenged the adequacy of the search and the determination letter. In this Decision, we deny the appeal.

I. Background

On June 13, 2022, the Appellant submitted a FOIA request seeking:

All communications regarding the roundtable between Jigar Shah, Director, U.S. Department of Energy Loan Programs Office [(LPO)] and any of the roundtable attendees, including those listed below, from January 1, 2022[,] to April 30, 2022.

- a. Dr. Alondra Nelson, [White House Office of Science and Technology Policy (OSTP)] Director
- b. Dr. Jane Lubchenco, OSTP Deputy Director for Climate and Environment
- c. Eric Lander, former OSTP Director
- d. Tony Leiserowitz, Founder and Director of the Yale Program on Climate Communication, Senior Research Scientist at the Yale School of the Environment
- e. Andrea Dutton, Professor of Geoscience from the University of Wisconsin
- f. Gernot Wagner, New York University Associated[sic] Clinical Professor and Clinical Associate Professor of Environmental Studies and Public Service
- g. Dan Abbasi, former government and civil society climate communicator, now with Douglass Winthrop Advisors

- h. Marshall Shepherd, University of Georgia Distinguished Professor of Geography and Atmospheric Sciences and past President of American Meteorological Society
- i. Katey Walter Anthony, Professor & Aquatic Ecosystem Ecologist, the University of Alaska Fairbanks
- j. Kerry Ard, Professor of Environmental & Natural Resource Sociology, Ohio State University
- k. Shahzeen Attari, Professor of Environmental and Public Affairs, Indiana University
- l. Kim Cobb, Georgia Power Chair & Director, Global Change Program, Georgia Tech
- m. Justin Farrell, Professor of Sociology, Yale University
- n. John E. Fernandez, Professor of Architecture & Director of the MIT Environmental Solutions Initiative
- o. Michel Gelobter, Climate Strategist, Founder & Chairman, Cooler
- p. Katharine Hayhoe, Chief Scientist, The Nature Conservancy and Professor, Texas Tech University
- q. Michael Mann, Professor of Atmospheric Science & Director of Earth System Science Center, Pennsylvania State University
- r. Naomi Oreskes, Professor of the History of Science & Professor of Earth and Planetary Sciences, Harvard University
- s. Veerabhadran “Ram” Ramanathan, Professor of Climate Sciences and Physical Oceanography, Scripps Institution of Oceanography at University of California San Diego

FOIA Request from Texas Public Policy Foundation at 1–2 (June 13, 2022).

The Appellant also sought “[a]ll communications regarding the roundtable between any DOE employee of [DOE] Loan Programs Office and any of the roundtable attendees including those listed above, from January 1, 2022[,] to April 30, 2022.” *Id.* at 2.

As the Appellant was seeking information originating in LPO, the OPI FOIA Analyst contacted LPO to conduct a search. Memorandum of Telephone Conversation between OPI FOIA Analyst and OHA at 1 (March 12, 2025); Email from OPI FOIA Analyst to OHA, Attachment 2 (March 10, 2025). Six LPO employees were identified as potentially in possession of responsive records, including Jigar Shah. Telephone Memorandum at 1; Email from OPI FOIA Analyst to OHA, Attachment 3 (March 7, 2025). It was determined that these six LPO employees participated, to some degree, in the roundtable, and accordingly, were most likely to have responsive documents. Email at Attachment 2 (March 10, 2025). The search terms used to search these employees’ email accounts were “roundtable” and “OSTP,” and as requested by the Appellant, the applicable dates were January 1, 2022, to April 30, 2022. Email at Attachment 3 (March 7, 2025). A memorandum explaining the aforementioned search parameters was created and sent to the Office of the Chief Information Officer (OCIO) to conduct the actual electronic search for responsive documents. Telephone Memorandum at 1. When all potentially responsive documents were located, the OCIO contractor who conducted the search sent the potentially responsive documents to the OPI FOIA Analyst, so that the analyst could examine each document and determine whether it was

responsive. *Id.* One responsive document was identified. *Id.* At some point, this matter passed from one FOIA Analyst to another for processing, and OPI issued a final determination letter, along with one responsive document, to the Appellant on January 30, 2025. Determination Letter from OPI to Texas Public Policy Foundation at 1 (January 30, 2025); Email at 1 (March 10, 2025). In the final determination letter, OPI explained that it located one responsive document, and that information was withheld from that document pursuant to Exemption 6. *Id.* at 2.

The Appellant timely appealed the determination letter to OHA on March 6, 2025. Appeal Letter from Texas Public Policy Foundation to OHA (March 6, 2025). In the appeal, the Appellant challenged the adequacy of the search and the “sufficiency of the Department’s response in producing responsive records.” *Id.* at 1. The Appellant stated that in its communications with the DOE’s FOIA Public Liaison, it learned that the “search for documents . . . returned more than 8,000 potentially responsive emails.” *Id.* As the Appellant received only one responsive document, it “request[ed] more information regarding the Department’s search and production, particularly: (a) which search terms were used and (b) which locations were searched.” *Id.* The Appellant also asked that DOE “clarify how many of the 8,000 documents identified as potentially responsive were withheld on the basis of alleged FOIA exemptions and the applicable exemptions.” *Id.*

II. Analysis

As an initial matter, we note that the Appellant points to no regulation or statute that requires OPI to describe its search in its determination letter. DOE regulations state only that

[t]he Authorizing Official or FOIA Officer will prepare a written response . . . [g]ranting the request[,] [d]enying the request[,] [g]ranting/denying in part[,] [r]eplying with a response stating that the request has been referred to another agency under § 1004.4(f) or § 1004.6(e)[,] or [i]nforming the requester that responsive records cannot be located or do not exist.

10 C.F.R. § 1004.5(b)(1)–(5).

Further, in the event of a denial, 10 C.F.R. § 1004.7 indicates that a determination letter must include “[a] statement of the reason for denial, containing a reference to the specific exemption under the FOIA authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld[.]” 10 C.F.R. § 1004.7(c)(1). OPI has clearly met the requirements laid out in 10 C.F.R. § 1004.5 and § 1004.7, and, therefore, we find no defect in its determination letter.

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 standard of reasonableness we apply “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). We have 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)).

To begin, the current OPI FOIA Analyst to whom the matter was assigned conducted a second review of the potentially responsive records, even though the previous OPI FOIA Analyst had already conducted one such review. Telephone Memorandum at 1. In reviewing the potentially responsive records a second time, the current OPI FOIA Analyst located one responsive document. *Id.*

We find that OPI conducted a search reasonably calculated to uncover all relevant documents. It was reasonable for OPI to search the emails of the LPO employees specifically identified to have had some involvement in the roundtable, one of whom was identified by the Appellant, as the Appellant had requested information originating from that office. The Individual takes issue with the fact that the search resulted in thousands of potentially responsive documents, but only one document was determined to be responsive. It is of particular note that the Individual sought communications that occurred from January 1, 2022, to April 30, 2022, between an LPO employee *and* any of the listed attendees specifically regarding the roundtable. Documents that did not meet those particular requirements would not have been responsive. As the OCIO memo indicates that LPO employee emails were searched for specific mention of the roundtable and/or OSTP, and further, the documents were examined by two OPI FOIA Analysts to determine whether they were between LPO employees and a listed attendee during the requisite time period, OPI has demonstrated that the search was “reasonably calculated to uncover all relevant documents.” *Truitt*, 897 F.2d at 542.

III. Order

It is hereby ordered that the appeal filed by Texas Public Policy Foundation on January 30, 2025, Case No. FIA-25-0019, 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 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

Poli A. Marmolejos
Director
Office of Hearings and Appeals