

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

In the Matter of: Gary Mulryan)

Filing Date: August 13, 2025)

Case No.: FIA-25-0054

Issued: August 21, 2025

Corrected Decision and Order

On August 18, 2025, I issued a Decision and Order denying the Appeal of a Freedom of Information Act Determination filed by Gary Mulryan. Subsequently, an error in the citation of a quotation was discovered in which a quotation properly attributed to an internal memorandum was incorrectly cited as appearing in the Determination Letter to the Appellant. This error would not have affected the outcome of the Decision and Order. Nevertheless, I have modified this Decision and Order to reflect the correct attribution of the quotation. The outcome of the Decision and Order denying the Appeal has not changed.

On August 13, 2025, Gary Mulryan (Appellant) appealed a Determination Letter issued to him from the Department of Energy's (DOE) National Nuclear Security Administration (NNSA) regarding Request No. FOIA 25-00260-M, 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. NNSA found no responsive records. Appellant challenged the adequacy of the search. In this Decision, we deny the appeal.

I. BACKGROUND

On February 13, 2025, DOE received a FOIA request from Appellant seeking "any information you have regarding [the following] incident":

Sometime between 1975 and 1985 DOE's Transportation Safeguards Division was involved in a traffic accident on Highway 36 in Superior, Colorado. The accident happened just outside of the Rocky Flats Nuclear Plant. It was wintertime and the weather was bad. It was reported that the DOE was hauling hazardous cargo and they shut down the highway while they investigated.

FOIA Request Email from Appellant at 1 (February 13, 2025) (FOIA Request).¹

¹ Received February 14, 2025, and logged as February 13, 2025. FOIA Request at 1.

DOE transferred the request to the NNSA Office of Secure Transportation (OST)² for a search; OST received the request on February 25, 2025. *Id.* OST performed a search using the following search terms:

- Rocky Flats
- Rocky Flats Traffic Accident
- Rocky Flats Traffic Accident Highway 36
- Rocky Flats Traffic Accident Highway 36 1975/76/77/78/79/80/81/82/83/84/85
- Traffic Accident Highway 36 1975/76/77/78/79/80/81/82/83/84/85

Determination Letter to Appellant at 1 (July 28, 2025). OST performed manual and electronic searches of both electronic and hard copy planning systems and historical files. *Id.* In a July 2025 memorandum to NNSA’s FOIA Office regarding its search efforts, OST explained that “[g]iven the age and date range of the request and lack of specificity provided, combined with standard records retention/destruction timeline protocols applicable to any such responsive records (if they ever existed),” it had been unable to locate any responsive records and suggested that Appellant could contact local law enforcement and emergency response agencies as potential sources of related information. Memorandum from Robert B. Babcock, OST, to Delilah Perez, NNSA, at 1 (July 10, 2025).³ OST sent a Determination Letter to Appellant informing him that the search did not yield any records that were responsive to his request. Determination Letter at 1.

On August 13, 2025, Appellant timely filed the instant appeal. Appeal Email from Appellant at 1 (August 13, 2025). Appellant noted in his Appeal that he had incorrectly identified the crash location (“It did not occur outside of Rocky Flats.”). *Id.* He went on to argue that regardless of his mistake, it was “absolutely impossible that OST’s records have no mention of Rocky Flats. . . . It was one of their most frequent destinations until it was closed.” *Id.*

II. ANALYSIS

Agencies’ FOIA searches must be “a good faith effort 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) (internal citations omitted). While agencies may limit the scope of a search, any limitation must be “consistent with the agency’s duty to take *reasonable* steps to ferret out requested documents.” *McGehee v. CIA*, 697 F.2d 1095, 1101 (D.C. Cir. 1983) (emphasis in original). Generally, an agency may not limit a search’s subject matter unilaterally; it may, however, limit the subject matter when the requester articulates narrowing criteria. *Charles v. Office of the Armed Forces Med. Exam’r*, 730 F. Supp. 2d 205, 214–15 (D.D.C. 2010). Ultimately, the adequacy of the search is determined by the

² The “Transportation Safeguards Division” referenced in the FOIA Request was replaced by OST in 2000. See *Office of Secure Transformation History*, U.S. DEPARTMENT OF ENERGY, available at <https://www.energy.gov/nnsa/office-secure-transportation> (last visited Aug. 15, 2025).

³ This decision initially provided an incorrect citation to the Determination Letter here. This corrected decision reflects the correct location of the quoted statement.

methods used, not the results it returns. *Duenas Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

In the instant case, Appellant sought records pertaining to a wintertime traffic accident that occurred “just outside of the Rocky Flats Nuclear Plant” between 1975 and 1985 and involved “DOE’s Transportation Safeguards Division.” FOIA Request at 1. However improbable it may be that “OST’s records have no mention of Rocky Flats,” that is not what OST stated in its Determination Letter. Appeal at 1; Determination Letter at 1. Appellant did not request all records mentioning Rocky Flats, and thus not all records with that term are responsive. His request included date and location parameters, and although the Appellant now states that the location he provided was incorrect, the search terms OST selected were reasonably calculated to uncover any records responsive to the FOIA Request as it was stated. Moreover, records regarding an event thirty to forty years ago are likely to have been transferred to the National Archives or destroyed in accordance with their appropriate disposition schedule.

OST searched its historical files using manual and electronic searches. If responsive documents existed, it is reasonable to assume that they would be in historical files due to the time at which the incident described in the FOIA Request was said to have occurred. Accordingly, I find that OST’s search was reasonably calibrated to locate the information Appellant requested, and, therefore, I find that the search was reasonable.

III. ORDER

It is hereby ordered that the Appeal filed on August 13, 2025, by Gary Mulryan, No. FIA-25-0054, 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

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