

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

In the Matter of Protect the Public's Trust	)	
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Filing Date: September 9, 2025	)	Case No.: FIA-25-0062
	)	
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Issued: September 16, 2025

**Decision and Order**

Protect the Public's Trust (Appellant) appealed a determination letter dated June 16, 2025, issued to it by the Department of Energy (DOE) concerning a request (Request No. HQ-2025-03181-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, DOE stated that its search uncovered no responsive records. The Appellant challenged the adequacy of the search. In this Decision, we deny the appeal.

**I. Background**

On May 27, 2025, the Appellant submitted a FOIA request asking for:

From June 1, 2024, through the date this request is processed, records showing the names of all employees of the U.S. Department of Energy (DOE) who are permitted to be granted official time for representing a bargaining unit, work on union matters, or any other purposes determined as authorized by [5] U.S.C. [§] 7131.

FOIA Request at 1. DOE issued a determination letter to the Appellant on June 16, 2025, stating that no responsive documents were located. Determination Letter from DOE to Protect the People's Trust at 1 (June 16, 2025).

The Appellant timely appealed the determination letter to DOE's Office of Hearings and Appeals (OHA) on September 9, 2025. Appeal Letter Email from Protect the People's Trust to OHA at 1 (Sept. 9, 2025). In its appeal, the Appellant challenges the adequacy of the search. *Id.* The Appellant argues that "the initial search was inadequate, as it failed to locate records that should exist." *Id.* The Appellant further asserts that the requested records should exist because "[o]ther agencies maintain and have released similar records" and "[t]axpayers have a right to know how employee time and government resources are used." *Id.*

**II. Analysis**

As an initial matter, a search under FOIA cannot be found to be inadequate solely because it failed to uncover responsive records. *Jennings v. Dep't of Justice*, 230 F. App'x 1, 1 (D.C. Cir. 2007). 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*, 230 F. App'x at 1 (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)).

Here, DOE assigned the Appellant's FOIA request to DOE's Office of the Chief Human Capital Officer (HC). Determination Letter at 1. HC consulted an experienced director in its Labor Relations (LR) office. Memorandum of Conversation between OHA and LR Director (Sept. 10, 2025). The LR Director had personal knowledge of how DOE tracked the union-related activities of its employees. *Id.* Based on his experience in LR and his knowledge of relevant files, the LR Director stated that he did not believe any “records showing the names of all employees . . . who are permitted to be granted official time” for union-related matters exists. *Id.* “[A]n agency cannot improperly withhold records that it does not maintain, and . . . ‘[w]here . . . a search would be futile, the reasonable search required by FOIA may be no search at all.’” *MacLeod v. Dep't of Homeland Security*, No. 15-cv-1792 (KBJ), 2017 WL 4220398 at \*31 (D.D.C. Sept. 21, 2017) (quoting *Reyes v. Envtl. Prot. Agency*, 991 F. Supp. 2d 20, 27 (D.D.C. 2014)). Based on the LR Director's statements, I find that DOE established a search in this case would be futile, and, as such, DOE conducted a reasonable search.

### III. Order

It is hereby ordered that the appeal filed by Protect the People's Trust on September 9, 2025, Case No. FIA-25-0062, 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

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