

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

In the Matter of Jeff Gipe

Filing Date: September 3, 2025

Case No.: FIA-25-0059

Issued: October 3, 2025

Decision and Order

Jeff Gipe (Appellant) appealed a determination letter dated July 17, 2025, issued to him by the Department of Energy (DOE) concerning a request (Request No. HQ-2018-01688-F) that he 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 its determination letter, DOE stated that its search uncovered no responsive records. The Appellant challenged the adequacy of the search. In this Decision, we grant the appeal.

I. Background

The Appellant's FOIA request was initially received by DOE in 2017. Acknowledgment Letter from DOE Office of Public Information (OPI) to Jeff Gipe (June 12, 2017). The request sought numerous categories of historical records related to sites controlled by DOE and its predecessor agencies, in particular the Rocky Flats Plant, between 1950 and 1990. Supplemental Final Response Letter from DOE to Jeff Gipe at 1–10 (July 17, 2025) (Determination Letter). Shortly after receiving this request, DOE directed the Appellant to the National Archives and Records Administration (NARA) based on its belief that NARA had possession of the records he was seeking. Email Correspondence between DOE and Jeff Gipe (2017). In 2018, the Appellant was informed that DOE still held the records he was seeking because there was a litigation hold on the materials and that he should file a FOIA request to obtain the records from DOE's Office of Legacy Management (LM), who had custody of the records at the Denver Federal Records Center. Email from Bob Darr, LM contractor employee, to Jeff Gipe (Mar. 27, 2018). Several DOE employees confirmed that any litigation hold on materials related to the Appellant's request was lifted sometime in 2018. Email Correspondence from DOE Office of the General Counsel (GC) forwarded to DOE's Office of Hearings and Appeals (OHA) (Sept. 18, 2025). On April 19, 2018, the Appellant amended his FOIA request to ask for, among other items, "May 1969 [Rocky Flats] Fire Video and Audio Recordings, 1969 Container Number: SWV88."¹ Determination Letter at 10.

¹ The Appellant confirmed that it was his understanding that the location information contained in his request referred to a building that was torn down when the Rocky Flats Plant was decommissioned. Email from Jeff Gipe to OHA (Sept. 18, 2025).

Between 2024 and 2025, DOE provided the Appellant three partial response letters that contained a total of 1,430 pages of responsive documents related to the Appellant's request. *Id.*

After receiving the third partial response, the Appellant asked DOE specifically about video and audio files. *Id.* at 10–11. LM consulted with a subject matter expert (SME) in its office about whether LM would have that type of records, and he explained to the best of his knowledge that such records were not in the possession of LM. *Id.* at 11; Search Certificate (June 14, 2025); Email from LM to OHA (Sept. 15, 2025). The SME explained that LM did not maintain video records from the 1960s.² Email from LM to OHA (Sept. 15, 2025). The SME indicated that it was his understanding that records from that time period would be in the possession of NARA. *Id.* DOE issued a supplemental final response letter to the Appellant on July 17, 2025, stating that no further responsive records were located. Determination Letter at 11.

The Appellant timely appealed the determination letter to OHA on September 3, 2025. Appeal Letter Email from Jeff Gipe to OHA at 1 (Sept. 3, 2025). In his appeal, the Appellant challenges the adequacy of the search. *Id.* The Appellant argues that it is clear from his conversations with DOE that DOE is in possession of the records that he seeks, and DOE should release those records. *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)).

Here, DOE assigned the Appellant's FOIA request to LM. Determination Letter at 10. LM consulted with an SME who had been with the agency for approximately five years and who is currently the Program Records Official responsible for overseeing LM's physical records. Email from LM to OHA (Sept. 17, 2025). Based on his experience in that position, the SME stated that he did not believe any video records related to the Appellant's request are in LM's custody. *Id.* While “an agency cannot improperly withhold records that it does not maintain,” it is not clear that LM does not maintain the records at issue here. *MacLeod v. Dep’t of Homeland Security*, No. 15-

² The SME initially reported to the FOIA Analyst processing the request that “LM does not possess the equipment or the manpower for processing any videos.” Email from LM to FOIA Analyst (June 11, 2025). The FOIA Analyst interpreted this response to mean that LM possessed video that could not be processed. Email from FOIA Analyst to Jeff Gipe (July 1, 2025). When asked by OHA to clarify if it possessed any video from the 1960s in its current holdings, LM said it did not. Email from LM to OHA (Sept. 15, 2025).

cv-1792 (KBJ), 2017 WL 4220398 at *31 (D.D.C. Sept. 21, 2017). A contractor to LM told the Appellant that LM maintained the relevant records around the time of the request. Statements to the Appellant by NARA and the existence of a litigation hold on records corresponding to the description of those sought by the Appellant provide further contextual evidence that LM possessed the records in 2018. LM has not presented any evidence to show that it no longer maintains those records, and the opinion of the SME alone, without a more concrete basis, is not sufficient for us to conclude that it would have been futile for LM to search for the video and audio recordings requested by Appellant. As such, we cannot find that an appropriate search was conducted. Therefore, we remand to LM to conduct a search in accordance with this Decision.

III. Order

It is hereby ordered that the appeal filed by Jeff Gipe on September 3, 2025, Case No. FIA-25-0059, is granted. This matter is remanded to LM to conduct a search in accordance with this Decision.

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
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