

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

In the Matter of John T. Vistica )

Filing Date: January 27, 2026 )

Case No.: FIA-26-0014

Issued: February 10, 2026

**Decision and Order**

John T. Vistica (Appellant) appealed a determination letter dated November 7, 2025, issued to him by the Department of Energy’s (DOE) Idaho Operations Office (ID) concerning a request (Request No. ID-2025-03992-F) that he 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, ID stated “[Battelle Energy Alliance (BEA)]<sup>1</sup> exercised its contractual right to withhold its contractor-owned records that have not otherwise become agency records for the purposes of FOIA” and that ID did not locate any responsive documents when it conducted a search related to the request. The Appellant challenged the adequacy of the search. In this Decision, we grant the appeal.

**I. Background**

On August 20, 2025, the Appellant submitted a FOIA request asking for:

The full contract agreement and any amendments, task orders, or statements of work associated with Notice INL-22-005 and Contract No. 03165185 entered into between BEA and the federal government (DOE and/or NASA) in which BEA was tasked with administering the FSP Phase 1 solicitation. The requested documents likely predate the November 19, 2021 solicitation original publication date.

If available, I also request:

- Any correspondence, memoranda, or documentation outlining the scope of BEA’s custodial responsibilities under this contract.
- Any interagency agreements or cooperative arrangements between DOE and NASA relevant to this contract.

FOIA Request at 1. ID issued a determination letter on November 7, 2025, denying the Appellant’s request. Determination Letter from ID to John T. Vistica at 1–2 (Nov. 7, 2025). The Appellant timely appealed that determination. Appeal Letter Email from John T. Vistica to DOE’s Office of Hearings and Appeals (OHA) (Jan. 27, 2026). In his appeal, the Appellant challenges the adequacy

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<sup>1</sup> BEA is the management and operating contractor for the DOE’s Idaho National Laboratory (INL), which is overseen by ID. *See* INL Research Areas, <https://inl.gov/research-programs/> (last accessed Feb. 6, 2026).

of the search. *Id.* The Appellant argues that if the records he is seeking are contractor-owned records they may nevertheless be subject to FOIA, and, therefore, ID is obligated to search for those records. *Id.* at 3–4. He also contends that the records must be government-owned because BEA has been designated custodian of the records by DOE and NASA. *Id.* at 5.

## II. Analysis

### A. Ownership of Records

The Prime Contract for the management and operation of INL makes it clear that records related to procurement actions taken by the contractor are contractor-owned. *See* Contract No. DE-AC07-05ID14517, I.15(b)(3), <https://contracts.id.energy.gov/Contract/INLBasic> (“The following records are considered the property of the contractor . . . Records relating to any procurement action by the Contractor, except for records . . . under 48 CFR 970.5232-3.”). However, certain records related to procurement actions and mentioned in 48 C.F.R. § 970.5232-3 are government-owned. *See* 48 C.F.R. § 970.5232-3 (explaining that a contractor should maintain accounts and records related to the contract and that these records are the property of DOE).

To the extent that the Appellant argues that the records he is seeking are government-owned, we are unable to address the issue because it is unclear to us on the face of his FOIA request precisely which records he is seeking and, accordingly, which records ID is claiming are owned by BEA. The determination letter states “[t]he matter you’ve referenced . . . is a BEA procurement action” without considering that the Appellant may be seeking some non-procurement-related records or that some records related to the procurement may nonetheless be agency records subject to FOIA. *See* Determination Letter at 1. When asked for information about how ID concluded that the records the Appellant was seeking were contractor-owned, ID did not provide any responsive information.<sup>2</sup> Email from ID to OHA (Jan. 29, 2026).

To the extent ownership is relevant to the inquiry described below, ID should identify which records sought by the Appellant’s FOIA request are considered contractor-owned and articulate why that is so, so that the Appellant has the opportunity to respond to those contentions.

### B. Agency Records

ID argues that the records at issue here are contractor-owned and, thus, are not agency records subject to FOIA. Email from ID to OHA (Jan. 29, 2026). As described above, ID has not described the records at issue in sufficient detail for us to determine whether they are contractor-owned records. However, even if the records were owned by BEA, contractor-owned records may also be agency records subject to FOIA. *Burka v. Dep’t of Health and Human Services*, 87 F.3d 508, 515 (D.C. Cir. 1996); *Martin Pfeiffer*, OHA Case No. FIA-24-0014 (2024).

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<sup>2</sup> ID provided OHA with an email from a BEA employee explaining BEA’s position on the request. Attachment to Email from ID to OHA (Jan. 29, 2026). While this email provided some context to ID’s decision-making and generally asserted BEA’s belief that the responsive records were related to a procurement, owned by BEA, and “not subject to FOIA,” it is not a substitute for ID advancing its own legal arguments. *Id.* As the federal entity here, it is ID’s obligation to justify nondisclosure.

In *Dep't of Justice v. Tax Analysts*, the Court decided that records are subject to FOIA if they (1) were created or obtained by an agency, and (2) are under agency control at the time of the FOIA request. 492 U.S. 136, 144–45 (1989). To determine if an agency has control of records, we consider four factors:

- (1) The intent of the document's creator to retain or relinquish control over the document;
- (2) The ability of the agency to use and dispose of the record as it sees fit;
- (3) The extent to which agency personnel have read or relied upon the record; and
- (4) The degree to which the record was integrated into the agency's record system or files.

*Burka*, 87 F.3d at 515; *Nuclear Watch New Mexico*, OHA Case No. FIA-13-0060A (2013).

ID has not identified what documents are asserted to be non-agency records, nor has it provided any information as to whether those records were created or obtained by the agency. Without that information from ID, it is impossible for us to evaluate whether the first prong of the *Tax Analyst* test is satisfied.

Next, we must consider whether ID has control over the records. BEA has clearly indicated that it does not intend to relinquish control over the relevant records. However, ID has not provided sufficient information to consider the remaining factors. Without additional information about whether ID has ever had a copy of the requested records, whether ID employees have read and relied upon the records, and ID's ability to use the records, we cannot determine if ID has control of the records such that they would be subject to FOIA.

Therefore, we remand this matter to ID to conduct the above-described inquiry and determine whether the records asserted to be BEA-owned here are subject to FOIA.

### **C. Adequacy of the Search**

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, the determination letter stated “[w]ith respect to DOE controlled records, the DOE Idaho Operations Office conducted a search and did not locate any documents responsive to your

request.” Determination Letter at 2. However, when asked directly for a search certificate or search narrative, ID provided documentation of how BEA conducted its search rather than documentation of how it searched its own files. Email from ID to OHA (Jan. 29, 2026). Without some kind of contemporaneous documentation of how ID searched its own files, we are unable to determine if the search was adequate.

### **III. Order**

It is hereby ordered that the appeal filed by John T. Vistica on January 27, 2026, Case No. FIA-26-0014, is granted. This matter is remanded to ID to determine whether the responsive records asserted to be BEA-owned are nonetheless subject to FOIA and, if so, whether they should be released, and to conduct a new search consistent 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](https://ogis.archives.gov) 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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