

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

In the Matter of: Gary Mulryan)	
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Filing Date: March 25, 2026)	Case No.: FIA-26-0024
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Issued: April 27, 2026

Decision and Order

On March 25, 2026, 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 25-00516-LB, 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 documents, and Appellant challenges the adequacy of the search. In this Decision, we deny the Appeal.

I. BACKGROUND

Appellant filed a FOIA request on August 6, 2025, stating “[p]er the attached newspaper articles there was an accident involving a DOE SST on I-84. Kindly provide all information regarding this accident.” FOIA Request from Appellant to NNSA FOIA Office at 3 (Aug. 6, 2025). The request was forwarded to the NNSA’s Office of Secure Transportation (OST) for a search. Memorandum from OST to NNSA at 1 (Mar. 5, 2026). Using the terms “Western Nebraska SST Traffic Accident,” “Nebraska SST Traffic Accident,” “Traffic Accident 1996,” and “SST Traffic Accident 1996,” OST performed manual and electronic searches of the planning system where OST’s “after action reports”¹ are stored (though it only stores them for a few years at most) and a file of significant events and non-standard mission events that could be used for after action reports and training to enhance execution of OST’s mission. *Id.*; Memorandum of Telephone Conversation Between Executive Officer, OST, and Kristin L. Martin, OHA (Telephone Memorandum) (Apr. 20, 2026). No responsive records were located. Memorandum from OST to NNSA at 1. The OST Executive Officer—who designed the search in consultation with a records specialist and a specialist in the planning system—had worked at OST for over fifteen years and had firsthand knowledge that all files created before the year 2000 were supposed to have been transferred to the National Archives and Records Administration (NARA) around 2022. Telephone Memorandum.

¹ DOE defines an after action report as “[t]he final product of a test, training, or exercise event. The AAR summarizes key information related to the evaluation of the event and includes an overview of performance related to each exercise objective and associated core capabilities, while highlighting strengths and areas for improvement” or “[a] document intended to capture observations, issues, and lessons learned from an exercise or real-world incident.” After Action Report, Terms and Definitions, DOE, available at https://www.directives.doe.gov/terms_definitions/after-action-report-aar (last visited Apr. 21, 2026).

In communicating its search results to the NNSA FOIA Office, a Management Analyst with OST noted, “[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), OST believes it has conducted an appropriate search for responsive records and considers this matter closed.” Memorandum from OST to NNSA at 1.

On March 9, 2026, NNSA issued a Determination Letter to Appellant stating that OST’s search had produced no responsive records. Determination Letter from NNSA to Appellant at 1 (Mar. 9, 2026). The letter included the search terms and searched locations. *Id.* NNSA added that further information responsive to Appellant’s FOIA request may be located with state and local agencies as well as NARA. *Id.*

On March 25, 2026, OHA received the instant Appeal, which stated:

There was a well-documented accident involving a DOE SST in Western Nebraska in 1996.

I am attaching articles from the New York Times, ChatGPT and CoPilot that discuss the matter.

There is no question that this accident happened and no doubt that the Federal Government has records of this accident. I would like all records, incident reports and photos regarding this matter.

Appeal from Appellant to OHA at 1 (Mar. 25, 2026). The referenced New York Times, ChatGPT, and CoPilot articles were not attached to the Appeal, but Appellant subsequently sent them to OHA on March 27, 2026. App. Exhibits (Mar. 27, 2026).

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). Ultimately, the adequacy of the search is determined by the methods used, not the results it returns. *Duenas Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). Agencies may demonstrate adequacy of the search via declaration of a responsible agency official where the declaration is reasonably detailed and “not controverted by contrary evidence or evidence of bad faith.” *ACLU of S. Cal. v. U.S. Citizenship and Immigration Servs.*, 133 F.Supp. 3d 234, 246 (D.D.C. 2015). Courts have long held that it is “clear beyond cavil that an agency cannot improperly withhold records that it does not maintain, and that ‘[w]here the Government’s declarations establish that a search would be futile, the reasonable search required by FOIA may be no search at all.’” *Macleod v. United States Dep’t of Homeland Sec.*, 2017 U.S. Dist. LEXIS 153651, *30-31 (D.D.C. 2017) (quoting *Reyes v. U.S. Env’tl. Prot. Agency*, 991 F. Supp. 2d 20, 27 (D.D.C. 2014)).

Appellant states that there is “no doubt that the Federal Government has records of this accident,” but provides no evidence to support that assertion. NNSA has not alleged that records of the incident in question never existed or even that they are not held by the federal government. It has merely stated that responsive records do not appear to be held by DOE. Given the legally required records retention schedules by which DOE is bound,² there is indeed a great deal of doubt as to whether records from 1996 would still be in the possession of the agency if they were ever in the agency’s possession to begin with. As pointed out by OST, the age of any files related to the 1996 traffic accident makes it unlikely that they would still be retained by the agency, which is why NNSA recommended that Appellant request a search from NARA. This alone could have satisfied the *Macleod* standard because the 2022 transfer of pre-2000 files to NARA, of which the OST employee who designed the search had firsthand knowledge, rendered a search futile. Even so, OST conducted a search of locations likely to hold after action reports to be certain that no records had been retained for training or mission preparedness. I find that OST properly determined that DOE was unlikely to have any responsive records and that the search performed exceeded the necessary standard of reasonability.

III. ORDER

It is hereby ordered that the Appeal filed on March 25, 2026, by Gary Mulryan, No. FIA-26-0024, 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

² The event described in the New York Times article sent by Appellant involved a transport truck for a nuclear weapon tipping on its side while driving through an ice storm. App. Exhibits NYT at 1 (Mar. 27, 2026). No injuries, contamination, or damage occurred, the truck was righted, and the weapons continued the journey on a different truck. *Id.* at 1–2. Multiple Senators issued public statements and inquiries regarding the incident. *Id.* at 2. Records relating to this event likely fall under Department of Energy Administrative Records Schedule 18: Security, Emergency Planning, and Safety Records 11.1 Occurrence Reporting Records. DOE ADM 18 11.1 (2024), *available at* https://www.energy.gov/sites/default/files/2025-06/ADM_18_Rev_11_Aug_2024_508_Compliant.pdf. Section 11.1 covers “[r]ecords relating to occurrences as defined by the Assistant Secretary for Environment, Safety and Health.” *Id.* The applicable definition for “occurrences” is “[e]vents or conditions that adversely affect, or may adversely affect, DOE (including NNSA) or contractor personnel, the public, property, the environment, or the DOE mission.” DOE O 232.2A at 38 (2017), *available at* <https://www.directives.doe.gov/directives-documents/200-series/0232.2-BOrder-a-chg1-minchg/@@images/file>. The Occurrence Reporting Records Schedule states that “[r]ecords on occurrences which were of widespread public and congressional interest” are permanent, but are transferred to NARA 25 years after the cutoff date. DOE ADM 18 11.1(a). In this case, any extant records would have been scheduled for transfer to NARA in 2022.

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