

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

In the Matter of Donna Deedy)
)
Filing Date: March 10, 2014) Case No.: FIA-14-0017
_____)

Issued: March 24, 2014

Decision and Order

On March 10, 2014, Donna Deedy (“Appellant”) filed an Appeal from a determination issued to her on February 24, 2014, by the Office of Health, Safety and Security (HSS) of the Department of Energy (DOE) (FOIA Request Number HQ-2014-00311-F). In its Determination Letter, HSS responded to the Appellant’s request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. Specifically, the Appellant challenges the adequacy of HSS’s search for responsive documents.

I. Background

The Appellant submitted a FOIA Request seeking “copies of all interagency agreements between the Department of Labor (DOL) and DOE pertaining to occupational safety and health of contractor employees at DOE, Government-owned, contractor-operated facilities since the two Agencies signed its original Memorandum of Understanding (MOU) in 1993.” *See* Determination Letter from Patricia R. Worthington, PhD, Director, Office of Health and Safety, HSS, to Appellant (February 24, 2013). The Appellant also requested “copies of any subsequent MOU relating to occupational safety and health between the two Agencies since 1993,” and a “list of all Government-owned, contractor-operator facilities where DOE exercises statutory authority to enforce occupational safety and health rules.” *Id.*

In its Determination Letter, HSS stated that it conducted a search but could not locate documents or interagency agreements between DOE and DOL. *Id.* With regard to the Appellant’s request for a list of all Government-owned, contractor-operated facilities where DOE exercises statutory authority to enforce occupational safety and health rules, HSS directed the Appellant to two public sources – Federal Register Volume 71, No. 27 and Volume 65, No. 129. *Id.*

On March 10, 2014, the Appellant appealed HSS’s Determination only as to its search for a “list of all Government-owned, contractor-operator facilities where DOE exercises statutory authority to enforce occupational safety and health rules.” *See* Appeal. The Appellant contends that the

Federal Register citations HSS provided only reference sites under OSHA's jurisdiction, and not DOE's jurisdiction. *Id.*

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). "[T]he standard of reasonableness which we apply to agency search procedures 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. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Project on Government Oversight*, Case No. TFA-0489 (2011).*

In response to our inquiries, HSS explained it does not maintain a list of the nuclear and non-nuclear facilities that DOE oversees, and that it specifically does not have a list of the Government-owned, contractor-operated facilities where DOE exercises statutory authority to enforce occupational safety and health rules. *See* Email from Patricia R. Worthington, PhD, Director, Office of Health and Safety, HSS, to Shiwali Patel, Attorney Advisor, OHA (Mar. 18, 2014). Accordingly, it did not conduct a search of its files for documents responsive to that part of the Appellant's FOIA Request. Nonetheless, HSS provided the Appellant with information in the public domain to assist her in locating the information that she seeks. HSS also stated that the majority of the DOE facilities covered by 10 C.F.R. Part 851 may be found online at <http://www.energy.gov/hss/nuclear-facilities> and a partial listing of non-nuclear DOE facilities at <http://science.energy.gov/laboratories/>. *Id.*

Hence, as HSS does not maintain a list of the requested documents and went so far as to provide citations of public records and websites where the Appellant may locate the requested information, we will deny this Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on March 10, 2014, OHA Case Number FIA-14-0017, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 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

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Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5759
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: March 24, 2014