

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

In the Matter of Martha J. McNeely                     )  
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Filing Date:    May 21, 2014                             )    Case No.:        FIA-14-0028  
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Issued: June 3, 2014

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**Decision and Order**

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On May 21, 2014, Martha J. McNeely (“Appellant”) filed an Appeal from a determination issued to her on April 10, 2014, by the Oak Ridge Office (ORO) of the Department of Energy (DOE) (FOIA Request Number ORO-2014-00571-F). In its determination, ORO 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 contends that there should be additional documents that are responsive to her FOIA request, which ORO has not produced. Thus, this Appeal, if granted, would require ORO to conduct another search for the documents that the Appellant requested.

**I. Background**

On February 3, 2014, the Appellant submitted a FOIA request to ORO requesting “a copy of the Research Project documentation, including the Multiple Studies in which I was a subject, conducted on the group of small school children in Richland, Washington during the years 1948 through 1952.” *See* FOIA Request from Appellant to Amy Rothrock, FOIA/PA Officer, ORO, DOE (Feb. 3, 2014). On April 10, 2014, ORO responded to the Appellant’s FOIA Request stating that it conducted a search for records and that it does not have the requested documents, but that “responsive material consists of non-agency record material located at Battelle Memorial Institute (BMI) in Ohio.” *See* Determination Letter from Amy Rothrock, FOIA/PA Officer, ORO to Appellant (Apr. 10, 2014). Moreover, ORO informed the Appellant that many of the requested reports have been publicly released by Battelle and provided information on where she could locate those records. *Id.*

In her Appeal, the Appellant contends that ORO did not conduct an adequate search for records, that no search was conducted under the Privacy Act (5 U.S.C. § 552a(a)(5)), and that ORO referred to documents in its Determination Letter that are non-responsive.

## 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).\*

ORO stated that searches were conducted under both the FOIA and Privacy Act at the Oak Ridge Associated Universities (ORAU) and the Pacific Northwest National Laboratory (PNNL). *See* Determination Letter from Amy Rothrock, FOIA/PA Officer, ORO to Appellant (Apr. 10, 2014); Memorandum of Telephone Conversation with Amy Rothrock, FOIA/PA Officer, ORO (May 28, 2014). ORAU conducted an electronic search for records and PNNL conducted an electronic and manual search for records on databases that were likely to contain the requested information, if it was available. *See* Memorandum of Telephone Conversation with Amy Rothrock, FOIA/PA Officer, ORO (May 28, 2014). They used the search terms “Richland School” and “School Children” and searched records using the Appellant’s name and years during which she indicated she was part of the study in her FOIA Request. *See id.* However, ORAU and PNNL did not have the requested records. Moreover, ORO explained that when the Appellant previously submitted a request for similar records under the Privacy Act with the Richland Operations Office (ROO) in 2012, PNNL searched its files and provided all responsive documents it located to ROO. *See* Email from Amy Rothrock, FOIA/PA Officer, ORO, to Shiwali Patel, Attorney Advisor, OHA (May 22, 2014). Hence, based on the foregoing, we are satisfied that ORO has conducted an adequate search for documents that are responsive to the Appellant’s FOIA request. As stated above, the standard for agency search procedures is reasonableness, which “does not require absolute exhaustion of the files.” *Miller*, 779 F.2d at 1384-85. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on May 21, 2014, OHA Case Number FIA-14-0028, 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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\* Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at <http://www.energy.gov/oha>.

non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
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Telephone: 202-741-5770  
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Toll-free: 1-877-684-6448

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: June 3, 2014